

BINDING PRIVATE RULING: BPR 089

DATE: 12 July 2010

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTION 64B AND PARAGRAPHS 11(1)(b) AND 12(5)(a) OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : WAIVER OF CERTAIN RIGHTS CONNECTED TO SHARES

1. Summary

This ruling deals with the tax consequences for a shareholder, resulting from the waiver of certain rights connected to shares.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling legislative references to sections and paragraphs are to sections of the Act and paragraphs to the Eighth Schedule to the Act, applicable as at 8 January 2009. Unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested under the provisions of –

- section 64B; and
- paragraphs 11(1)(b) and 12(5)(a) of the Eighth Schedule.

3. Parties to the proposed transaction

The Applicant: A private company that is a “resident” as defined in section 1

The Operating Companies: Private companies, some that are “resident” and the others that are not “resident” as defined in section 1

4. Description of the proposed transaction

The Applicant and the Operating Companies, form a group of companies (the Group), that recently underwent some restructuring which resulted in the trademark for the Group and its brand name being registered in the name of the Applicant.

The Applicant intends to enter into a trademark licence agreement with each Operating Company. The Applicant will ensure that the Policy Manual that governs the use of the trademark is adhered to by all the Operating Companies within the Group and that the Operating Companies that ultimately own the trade mark and brand name protect it.

Each Operating Company will pay a license fee to the Applicant to cover the Applicant's expenses. Extraordinary expenses of the Applicant will be invoiced at cost to the Operating Companies. It is the intention of the Applicant not to make a profit, but that the profit will be generated by the individual Operating Companies, practising as professionals.

The Applicant further intends to acquire a 10% shareholding in each of these Operating Companies by subscribing for ordinary shares in each of them, at the nominal value of R1.00 per share.

The Operating Companies will agree to the issuing of these ordinary shares to the Applicant at the nominal value, on condition that a shareholder agreement is to be concluded with each Operating Company. In terms of the shareholder agreement to be concluded the Applicant will waive its right to any future dividends and part of its voting rights "*ab initio*" and "*ad infinitum*". The subscription will be subject to the conclusion of the shareholder agreement. The waiver by the Applicant of these rights will comply with the provisions of the Companies Act, No. 61 of 1973.

The intention of the Applicant, upon the issue of the ordinary shares to it, is to relinquish all rights to dividends and the right to vote in relation to the financial affairs of the Operating Companies.

The Operating Companies are autonomous businesses and the Applicant has no desire to become involved in their affairs. The Applicant is only interested in the protection of the trade mark of the Group and its brand name by enforcing the Policy Manual.

The Applicant will render a facilitation service to the Operating Companies, safeguarding the Applicant's and ultimately the Operating Companies' rights in and to the trademark and brand name. Each Operating Company will pay an annual royalty to the Applicant for the use of the trade mark and brand name, in terms of a royalty agreement.

The 10% shareholding in each of the Operating Companies will be acquired by the Applicant with the sole intention to have specified voting rights in order to protect its trade mark and brand name.

5. Conditions and assumptions

This ruling is not subject to any conditions and assumption.

6. Ruling

The ruling made in connection with the proposed transaction is as follows:

- 6.1 The waiver of future rights to dividends, as envisaged in the proposed transaction, will not constitute a disposal of an asset as contemplated in paragraph 11(1)(b) of the Eighth Schedule or a part disposal as contemplated in paragraph 33 of the Eighth Schedule.
- 6.2 The waiver of future rights to dividends, as envisaged in the proposed transaction, will not constitute a debt being discharged as contemplated in paragraph 12(5)(a) of the Eighth Schedule.
- 6.3 The waiver of future rights to dividends, as envisaged in the proposed transaction will not be subject to secondary tax on companies under the provisions of section 64B.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five (5) years as from 5 March 2010.

Issued by:

**Legal and Policy Division: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**