

BINDING PRIVATE RULING: BPR 147

DATE: 14 May 2013

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 1, DEFINITION OF “GROSS INCOME” AND 8C
SUBJECT : CONSIDERATION RECEIVED FOR THE SURRENDER OF A RIGHT TO ACQUIRE SHARES

1. Summary

This ruling deals with the income tax consequences for a taxpayer in respect of consideration to be received for the surrender of a right to acquire shares.

2. Relevant tax laws

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

In this ruling references to sections are to sections of the Act applicable as at 2 November 2011 and 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 1, definition of “gross income”; and
- section 8C.

3. Parties to the proposed transaction

The Applicant: A natural person who is a “resident” as defined in section 1

The Employer: The Applicant’s employer

4. Description of the proposed transaction

The Applicant was the chief executive officer and managing director of Subco, a wholly owned subsidiary of Holdco. Subco disposed of its business, with all its assets and liabilities, as a going concern.

At the time of negotiating the sale of the business, the Applicant received and accepted an offer of employment from the purchaser of the business. The offer of employment provided, *inter alia*, that the purchaser was to –

- transfer the acquired business to a new company (Newco);
- employ the Applicant as the chief executive officer of Newco; and
- transfer an equity share in Newco to the Applicant for no consideration. However, the transfer of the shares was subject to a restriction, requiring the Applicant to complete an uninterrupted period of 5 years employment within the purchaser's group of companies.

Shortly after the offer of employment was accepted, the Applicant received a letter from his Employer, stating that the Employer intends to dispose of some parts of Newco's business to a company outside the Employer's group of companies.

As a result of the intended disposal, the Applicant's right to acquire an equity share in Newco would be significantly less in value. The Employer, therefore, proposes to enter into an agreement with the Applicant, whereby the Applicant will be compensated for surrendering his right to acquire an equity share in Newco. In terms of this agreement, the Employer is to transfer an amount in rands to the Applicant, equal to the value of the equity share the Applicant had a right to receive in terms of his employment agreement, on the date of the sale of the said parts of the business of Newco. The compensation is to be payable from the proceeds of the sale mentioned in the previous paragraph.

5. Conditions and assumptions

This ruling is not subject to any additional conditions and assumptions.

6. Ruling

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

- The consideration to be received by or accrued to the Applicant will constitute a gain that is to be included in the Applicant's income as contemplated in section 8C(1).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of two (2) years as from 2 November 2011.

Issued by:

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