

BINDING PRIVATE RULING: BPR 157

DATE: 18 November 2013

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 25B, 10B(2)(a), 56(1)(g) AND 7(8), AND PARAGRAPHS 20(1)(h)(vi) and 80(3) OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : RECEIPT OF FOREIGN ASSETS AND SUBSEQUENT DONATION THEREOF TO A NON-RESIDENT TRUST

1. Summary

This ruling deals with the income tax consequences arising from, and the attribution rules applicable to a distribution of foreign assets to be made by two non-resident discretionary trusts to a beneficiary who is a resident of South Africa, and the subsequent donation by the beneficiary of such assets to another non-resident trust.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 78(1) and published in accordance with section 87(2) of the Tax Administration Act No. 28 of 2011.

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act, applicable as at 14 August 2013 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This is a ruling on the interpretation and application of the provisions of –

- section 25B;
- section 10B(2)(a);
- section 56(1)(g);
- section 7(8); and
- paragraphs 20(1)(h)(vi) and 80(3) of the Eighth Schedule.

3. Parties to the proposed transaction

The Applicant: A natural person who is a resident of South Africa
Trust A: A non-resident testamentary discretionary trust
Trust B: A non-resident discretionary trust
Trust C: A non-resident trust to be founded by the Applicant
Company A: A non-resident company

Company B: A non-resident company

4. Description of the proposed transaction

The Applicant is a beneficiary of Trusts A and B. Trusts A and B hold all the shares in Companies A and B.

It is proposed that Trusts A and B will, in due course, distribute certain foreign assets in the form of loan accounts, cash reserves and shares to the Applicant. Upon receiving the distributed assets the Applicant intends to donate them to Trust C.

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:

6.1 Distribution of Trust B's loan account in Company A to the Applicant

- The distribution of the loan account to the Applicant will fall outside the ambit of section 25B(1), (2) and (2A).
- The provisions of paragraph 80 of the Eighth Schedule will not apply to the distribution of the loan account to the Applicant.
- The base cost of the loan account in the Applicant's hands will be equal to the market value (or face value) of the loan as at the date of distribution in terms of paragraph 20(1)(h)(vi) of the Eighth Schedule.

6.2 Distribution of Trust B's cash reserves to the Applicant

- The distribution of the cash reserves to the Applicant will fall outside the ambit of section 25B(1), (2) and (2A).

6.3 Distribution of Trust A's loan account and shares held in Company A to the Applicant

- The distribution of the loan account and shares to the Applicant will fall outside the ambit of section 25B(1), (2) and (2A).
- The provisions of paragraph 80 of the Eighth Schedule will not apply to the distributions of the loan account and shares to the Applicant.
- The base cost of the loan account and shares in the Applicant's hands will be equal to the market value (or face value) of the loan and shares respectively as at the date of distribution in terms of paragraph 20(1)(h)(vi) of the Eighth Schedule.

6.4 Donation of the foreign assets to Trust C

- The donation by the Applicant of the foreign assets to Trust C will be exempt from donations tax under the provisions of section 56(1)(g)(ii).

- 6.5 Section 7(8), read with section 10B(2)(a), will apply to the donation of the Company A shares to Trust C.
- 6.6 Section 7(8) will apply to the donation of Trust A and B's loan accounts to Trust C to the extent that any interest is charged or there exists any obligation to pay interest on these loans.
- 6.7 Section 7(8) will apply to the donation of Trust B's cash reserves to Trust C to the extent that any interest is earned on such reserves, or from any amounts arising in Trust C as a result of the utilisation of such funds for the purchase of an income-generating asset.
- 6.8 The application of section 7(8) as per points 6.5 to 6.7 above will be limited to the amounts generated in Trust C, as a result of the donation of the foreign assets by the Applicant, and it will not apply to any amounts generated in or by Company A.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 3 years from 14 August 2013.

Issued by:

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