

BINDING PRIVATE RULING: BPR 354

DATE: 29 September 2020

The principle confirmed in this ruling relating to paragraph 64E has been reviewed. This ruling should not be relied upon by anyone other than the Applicant(s)/class members to whom it was issued.

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1), DEFINITION OF "GROSS INCOME", 11(a) AND 23H AND PARAGRAPHS 11(1)(d) AND 64E OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : CASH GRANTS TO AN EMPLOYEE INCENTIVE TRUST AND THE TRANSFER OF SHARE AWARDS TO QUALIFYING EMPLOYEES

Preamble

This binding private ruling is published with the consent of the applicant(s) to which it has been issued. It is binding between SARS and the applicant and any co-applicant(s) only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines the income tax and capital gains tax consequences arising from cash grants made by an employer to an employee share incentive trust and the receipt thereof by the share incentive trust, and the vesting of shares in qualifying employees.

2. Relevant tax laws

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 2020. 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 –

- section 1(1), definition of "gross income";
- section 11(a);
- section 23H;
- paragraph 11(1)(d); and
- paragraph 64E.

3. Parties to the proposed transaction

The applicant: A listed resident company

The co-applicant: A resident share incentive trust

Qualifying employees: Senior management who will participate in a share incentive scheme

4. Description of the proposed transaction

The applicant will make cash grants to the co-applicant that will be used to purchase shares of the applicant on the open market. The shares will be awarded in tranches to the qualifying employees over time and at the relevant vesting dates the co-applicant will transfer these shares to them.

5. Conditions and assumptions

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

6. Ruling

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

Ruling in respect of the applicant

- The cash contributions paid by the applicant to the co-applicant will be deductible under section 11(a).
- Section 23H will be applicable to the deductions.

Ruling in respect of the co-applicant

- The cash contributions received by the co-applicant from the applicant will not be included in the gross income of the co-applicant.
- The vesting of the shares by the co-applicant in the qualifying employees will be a disposal under paragraph 11(1)(d) and the provisions of paragraph 64E will find application in respect of any gains determined as a result of such disposals.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 14 August 2020