



South African Revenue Service

BINDING CLASS RULING: BCR 074

DATE: 25 August 2020

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1) – DEFINITIONS OF “COMPANY”, “FOREIGN COMPANY” AND “FOREIGN PARTNERSHIP”, 50A – DEFINITION OF “FOREIGN PERSON”, 50C, 50E, 64D – DEFINITION OF “BENEFICIAL OWNER”, 64EA, 64G, 64H AND 108
ARTICLES 10 AND 11 OF THE CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA (SA) AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN (UK) AND NORTHERN IRELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS TAX, (THE TREATY)
THE PROTOCOL BETWEEN THE GOVERNMENT OF SA AND THE GOVERNMENT OF THE UK TO AMEND THE TREATY (THE PROTOCOL)
SUBJECT : TREATY RELIEF – AUTHORISED CONTRACTUAL SCHEME

Preamble

This binding class ruling is published with the consent of the applicant to which it has been issued. It is binding between SARS, the applicant and the class members only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines that UK investors in an authorised contractual scheme are entitled to claim treaty relief on income from SA equity and debt instruments.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 13 May 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) – definitions of “company”, “foreign company” and “foreign partnership”;
- section 50A – definition of “foreign person”;
- section 50C;
- section 50E;
- section 64D – definition of “beneficial owner”;

- section 64EA;
- section 64G;
- section 64H;
- section 108; and
- articles 10 and 11 of the Treaty read together with article 2 of the Protocol.

3. **Class**

The class members to whom this ruling will apply are the investors referred to in 4.

4. **Parties to the proposed transaction**

The Authorised Contractual Scheme (ACS): A UK registered authorised contractual scheme

The applicant: A non-resident company

The depositary: A non-resident company

Investors: The investors who will acquire units in the ACS

5. **Description of the proposed transaction**

The ACS is a UK registered authorised contractual scheme established as a co-ownership scheme. The applicant is the authorised manager of the ACS.

Each class member is a resident of the UK.

The applicant advised that under UK law:

- The ACS is not a separate legal entity but a contractual arrangement established by way of a deed initially entered into between the applicant and the depositary.
- The ACS is structured as an umbrella scheme with different sub-funds, which are separate pools of assets and liabilities, which have, amongst others, distinct investment objectives and do not constitute separate entities.
- An investor participates in the ACS by acquiring a unit or units in a sub-fund of the ACS.
- The property in each sub-fund is beneficially owned by the investors in the sub-fund as tenants in common: The investors are the beneficial owners of any income derived from the property held in a sub-fund, whether or not that income is distributed to the investors.
- The ACS is not a taxable entity in the UK and is not within the charge to direct taxes: It is fiscally transparent: Each investor is responsible for its own tax arising on its own share of income arising in the ACS at its own rate of tax. Each investor is also taxable at its own rate of tax on its capital gains on the sale of its units in the ACS and not on gains realised in respect of the underlying assets held in a sub-fund as capital gains and losses do not flow through to the investor.

- The ACS manager acts in its own name when entering into contracts in the course and furtherance of its management activities, but does so for and on behalf of the investors.

It is proposed that:

- The investors will invest in one of the sub-funds of the ACS (the sub-fund) by purchasing units in the sub-fund.
- The applicant, acting in its capacity as the manager of the ACS, will, through the sub-fund, acquire SA equities and debt instruments that will yield dividend and interest income.
- The investors will obtain co-ownership rights in the SA equities and debt instruments and any dividend and interest income arising from the investments.

6. Conditions and assumptions

This binding class ruling is subject to the following additional conditions and assumptions:

- The ACS is not a taxable entity in the UK and is not within the charge to tax. Each investor is the taxable party on its proportionate share of income arising from the ACS.
- The UK treats an investor's share of any income of the ACS to be attributed directly to the investor on an arising basis regardless of whether or not any income is actually paid to the investor.
- The UK treats the character and source of the income in the hands of an investor as the same as if the investor had become entitled to income directly from the SA equities and debt instruments.

7. Ruling

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

- a) The ACS is not a "foreign partnership" as defined in section 1(1) and is therefore not treated locally as fiscally transparent. The ACS is a "company" as defined in paragraph (e)(ii) of that definition in section 1(1) and a "foreign company" as defined in that definition in section 1(1).
- b) As the ACS is a company as defined in paragraph (e)(ii) of that definition in section 1(1), it is the –
 - "beneficial owner" of dividends that will be paid as contemplated by that definition in section 64D read with section 64EA; and
 - "foreign person" to or for the benefit of which interest will be paid as contemplated in that definition in section 50A read with section 50C.
- c) Due to the application of the Treaty read together with the Protocol and section 108, each class member is a beneficial owner of its proportionate share of dividends or interest or both that will be received by or accrue to the ACS, and will be entitled to claim relief in accordance with article 10 or article 11 or both of the Treaty, read together with article 2 of the Protocol and sections 64G(3), 64H(3) and 50E(3), whichever is applicable, provided

that the class member complies with sections 64G(3), 64H(3) or 50E(3), as the case may be.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of five years from 1 August 2019.

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