

BINDING PRIVATE RULING: BPR 313

DATE: 9 November 2018

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1) – DEFINITIONS OF “FOREIGN DIVIDEND” AND “FOREIGN RETURN OF CAPITAL”; 10B(2)(a) AND PARAGRAPHS 20(1)(a) AND 64B(4) OF THE EIGHTH SCHEDULE
SUBJECT : FOREIGN SHARE BUYBACK

Preamble

This binding private ruling is published by consent of the applicant(s) to which it has been issued. It is binding as 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 effect of a share buyback by a non-resident company from a resident trust.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act and references to paragraphs are to paragraphs of the Eighth Schedule to the Act applicable as at 10 October 2018. 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 “foreign dividend” and “foreign return of capital”;
- section 10B(2)(a);
- paragraph 20(1)(a);
- paragraph 64B(4); and
- paragraph 20(3)(a).

3. Parties to the proposed transaction

The applicant:	A resident discretionary trust established for the benefit of an individual and his family
Company A:	A company incorporated in South Africa but resident in the United Kingdom
Company B:	A resident company incorporated in South Africa

4. Description of the proposed transaction

The applicant previously held shares in Company B, which it disposed of to Company A in an asset-for-share transaction, in exchange for shares in Company A. As a result the applicant currently holds more than 10% of the total equity shares and voting rights in Company A.

Company A will repurchase the shares held by the applicant in exchange for shares it holds in Company B (the “repurchase consideration shares”).

5. Conditions and assumptions

This binding private ruling is subject to the additional condition and assumption that Company A is indeed a resident of the United Kingdom at all material times.

6. Ruling

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

- a) To the extent that the amount to be received by the applicant from Company A on the share repurchase will constitute a “foreign dividend” as defined in section 1(1), the amount will be exempt under section 10B(2)(a);
- b) To the extent that it will constitute a “foreign return of capital” as defined in section 1(1), any capital gain must be disregarded under paragraph 64B(4);
- c) The base cost of the repurchase consideration shares for the applicant as contemplated in paragraph 20(1)(a) will be an amount equal to the market value of the repurchase consideration shares on the date of the distribution of those shares to the applicant.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 10 October 2018.