

BINDING PRIVATE RULING: BPR 118

DATE: 14 May 2012

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 1, – DEFINITION OF “DIVIDEND”, 64D, 64E, 64F, 64G, 64H AND 64K
SUBJECT : WITHHOLDING OF DIVIDENDS TAX

1. Summary

This ruling deals with the determination of which party will be responsible for withholding dividends tax.

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 section of the Act applicable as at 1 April 2012 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 “dividend”;
- section 64D;
- section 64E;
- section 64F;
- section 64G;
- section 64H; and
- section 64K.

3. Parties to the proposed transaction

The Applicant: A Vesting Trust that is a “resident” as defined in section 1

The Co-Applicants: Companies that form part of a “group of companies” as defined in section 1 and each company is a “resident” as defined

Other Parties:

Holdco	The holding company of the Co-Applicants which is not a “resident” as defined
Beneficiaries	All Beneficiaries of the Applicant are shareholders of Holdco registered on Holdco’s South African branch share register (South African registered shareholders), or their nominees

4. Description of the proposed transaction

The object and purpose of the Applicant is to receive dividends from the Co-Applicants and to distribute these dividends to its beneficiaries, being Holdco’s South African registered shareholders who hold their shares on the South African branch register, pro rata to their shareholding in Holdco’s South African branch register. This object is in accordance with an agreement with the South African Reserve Bank, to prevent large outflows of dividends from South Africa.

In terms of the Articles of Association of Holdco, an amount paid as a dividend to the Applicant by any Co-Applicant is received by the Applicant on behalf of the South African registered shareholders of Holdco. The entitlement of such shareholders to be paid dividends by Holdco pursuant to the said Articles shall be reduced by the corresponding amount which those shareholders are entitled to receive from the Applicant.

An amount is thus paid by any of the Co-Applicants to the Applicant to coincide and correlate with the payment required to be made to the South African registered shareholders in respect of a dividend declared by Holdco.

The above mechanism will effectively reduce the South African group’s dividend payment to Holdco and will prevent large outflows of dividends from South Africa which (except for the Applicant’s shares in the Co-Applicants) would have to be paid back to the South African registered shareholders.

It is proposed that the following dividend distribution mechanism to distribute the South African dividend be followed –

- dividends flow from the South African group of companies (declaring companies), to the Co-Applicants;
- the trustees of the Applicant authorise the Co-Applicants to pay the dividend declared by them (to be received by the trustees for

distribution) into a Central Securities Depository Participant (CSDP) trust account which is nominally held in the Applicant's name for the benefit of the South African registered shareholders;

- the CSDP pays the dividend amount to STRATE which distributes the amount to the various CSDPs; and
- the CSDPs distribute the dividends to the Beneficiaries on the Applicant's behalf.

5. Conditions and assumptions

This ruling is not subject to any conditions and assumptions.

6. Ruling

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

- The beneficiaries of the Applicant (being the beneficiaries of a vesting trust) are, to the extent that they do not constitute regulated intermediaries, the beneficial owners of the dividends declared by the Co-Applicants.
- The payments by the Co-Applicants into the CSDP's trust account which is nominally held in the Applicant's name for the benefit of the South African registered shareholders as authorised by the trustees of the Applicant are to be treated as payments by the Co-Applicant to a "regulated intermediary" as defined in section 64D and as such the Co-Applicants do not have to withhold dividends tax from such payments.
- The CSDP used by the Co-Applicants and other CSDPs as regulated intermediaries must withhold dividends tax from the payments of the Co-Applicants' dividends subject to the specific exclusions from this obligation as referred to in section 64G(2).

7. Period for which this ruling is valid

This binding private ruling was issued for a period of three years from April 2012.

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Legal and Policy Division: Advance Tax Rulings
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