BINDING PRIVATE RULING: BPR 299

DATE: 23 March 2018

ACT	**:**	**INCOME TAX ACT 58 OF 1962 (the Act)**
SECTION	**:**	**SECTION 1(1) – DEFINITION OF “DIVIDEND”**
SUBJECT	**:**	**DIVIDEND DISTRIBUTION**

1. Summary

This ruling determines the income tax consequences for a company that makes dividend distributions to its holding company.

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 28 of 2011.

In this ruling references to sections are to sections of the Act applicable as at 10 January 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) - definition of “dividend”.

3. Parties to the proposed transaction

The applicant:	A private company incorporated in, and a resident of South Africa
Company X:	A company incorporated offshore, which holds 90% of the ordinary shares in the applicant
Company Y:	A company incorporated and resident in South Africa which holds 10% of the issued ordinary shares in the applicant
Company Z:	A newly incorporated South African resident company

4. Description of the proposed transaction

The applicant is a privately held South African resident company that owns various subsidiaries, some of which do business in South Africa, and some which do so in other African countries. The applicant will conduct the proposed transaction by way of the following steps:

Pre-transaction step

Company Z, a newly incorporated South African resident company, will allot and issue 9 ordinary no par value shares to Company X and 1 ordinary no par value share to Company Y, at a subscription price of R1 per share. After such issue of shares, the ordinary shares in Company Z will be held in the same ratio as the ordinary shares are held (before the steps below) in the applicant.

Transaction step 1

Company X will dispose of its ordinary shares (of R1 par value each) in the applicant to Company Z, in exchange for ordinary no par value shares in Company Z. Company Y will dispose of its ordinary shares (of R1 par value each) in the applicant to Company Z at market value in exchange for ordinary no par value shares in Company Z. The transaction between Company Y and Company Z will take place under the provisions of section 42 of the Act.

Transaction step 2

The applicant will declare two distributions in respect of the ordinary shares of the applicant to Company Z, as follows –

- the first distribution approximating the market value of the applicant's subsidiaries' African operations.
- the second distribution approximating the market value of the applicant's South African operations and subsidiaries.

These distributions will be payable when steps 3, 4, 5 and 6 become effective and are implemented, by way of set-off as indicated below. The board of directors of the applicant will not determine that the distributions will be transfers of contributed tax capital, as contemplated in the definition of "contributed tax capital" in section 1(1).

Transaction steps 3, 4 and 5

The applicant will dispose of 100% of the ordinary shares in the three companies holding its African operations, to Company Z. The three disposals will be at their combined market values equating to the amount of the first distribution noted in step 2. The amount due by Company Z for the acquisition of shares will be settled by set-off against the first distribution.

Transaction step 6

The applicant will allot and issue "A" preference shares ("preference shares") to Company Z, at a subscription price of R1 per share. These shares will be cumulative redeemable non-participating preference shares.

The subscription price owing by Company Z will be settled by set-off against the second distribution.

Transaction step 7

The applicant will allot and issue 20 ordinary shares (of R1 par value each) at a nominal cash subscription price of R1 per share, of which 10 will be issued to Company Z and 10 to a BEE shareholder.

After the proposed transaction, Company Z will hold 90 ordinary shares and a number of "A" Preference Shares in the applicant. The BEE shareholder will hold 10 ordinary shares in the applicant.

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:

- The distributions will constitute dividends as defined in section 1(1).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 9 January 2018.

Legal Counsel: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE