

BINDING PRIVATE RULING: BPR 269

DATE: 3 April 2017

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
**SECTION : SECTIONS 1(1) – DEFINITION OF “FOREIGN DIVIDEND” AND
“FOREIGN RETURN OF CAPITAL”, 10B AND PARAGRAPH 64B OF
THE EIGHTH SCHEDULE TO THE ACT**
**SUBJECT : INCOME TAX CONSEQUENCES OF A SHARE BUY-BACK
BETWEEN TWO CONTROLLED FOREIGN COMPANIES**

1. Summary

This ruling determines the income tax consequences of a share buy-back between two controlled foreign companies (CFCs) of a resident 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 and references to paragraphs are to paragraphs of the Eighth Schedule to the Act applicable as at 14 March 2017. 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 “foreign dividend” and “foreign return of capital”;
- section 10B; and
- paragraph 64B.

3. Parties to the proposed transaction

CFC A: A company incorporated in and a resident of foreign country X

CFC B: A company wholly-owned by CFC A which is incorporated in and a resident of foreign country Y

4. Description of the proposed transaction

CFC A and CFC B are CFCs of a resident company. CFC A incorporated CFC B to acquire assets located in foreign country Y and capitalised it with sufficient share capital to fund the bulk of the purchase price. Over time the operations of CFC B have generated sufficient cash so that it is no longer necessary to maintain the original share capital. CFC B is not listed on any stock exchange.

The proposed transaction will be as follows:

- CFC B will buy back 53% of its shares in issue from CFC A at market value.
- The share capital of CFC B will be reduced to the extent of the original subscription price of the shares bought back.
- The income tax laws of country Y provide, amongst others, that if, in terms of an off-market share buy-back, the shares are bought out of profits derived by the purchaser, the difference between the full purchase price and the part of the purchase price which is debited against the company's share capital account is "taken to be a dividend." The share buy-back price will therefore consist of a dividend component and a capital component.

5. Conditions and assumptions

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

- a) The dividend component of the share buy-back will be treated as a dividend or similar payment by CFC B for purposes of the income tax laws of foreign country Y.
- b) The capital component of the share buy-back will be treated as a distribution (other than a foreign dividend as defined in section 1(1)) by CFC B for purposes of the income tax laws of foreign country Y.

6. Ruling

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

- a) The dividend component of the share buy-back will constitute a "foreign dividend", as defined in section 1(1).
- b) The foreign dividend will be an exempt receipt by CFC A in accordance with section 10B(2)(a).
- c) The capital component of the share buy-back price will constitute a "foreign return of capital", as defined in section 1(1).
- d) Paragraph 64B(4) will apply to the proposed share buy-back. The capital gain in the hands of CFC A determined in respect of the capital component of the share buy-back must accordingly be disregarded.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 1 year from 14 March 2017.