

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 020

The guidance contained in this ruling is affected by subsequent law changes.

DATE : 14 July 2008

ACT : INCOME TAX ACT, 58 OF 1962 (“the Act”)

SECTION : SECTIONS 1, DIVIDEND DEFINITION AND 64C

SUBJECT : IMPACT THAT THE TRANSFER OF AN AMOUNT OF SHARE PREMIUM OF A COMPANY TO ANOTHER RESERVE OF THAT COMPANY HAS ON THE NATURE OF THE SHARE PREMIUM

1. Summary

The issue considered in this ruling is whether the transfer of an amount constituting share premium of a company to another reserve of such company results in the nature of the amount being unchanged as envisaged under the second proviso to the dividend definition.

If this is so, any subsequent distribution out of the share premium included in such reserve will not constitute a dividend as defined in paragraph (f) of the definition of “**dividend**” in section 1 of the Act.

An attendant issue considered is whether the “specific identification method” in relation to reserves that are distributed to shareholders under a dividend declaration can be applied in these circumstances.

2. Relevant tax laws

This ruling is a binding private ruling requested by the Applicant in accordance with the requirements of section 76E of the Act and issued by the Legal and Policy Division: Advance Tax Rulings in accordance with section 76Q of the Act.

All legislative references are to sections of the Act applicable as at 31 July 2007 and unless the context otherwise indicates, any word or expression in this ruling bears the meaning ascribed to them in the Act.

The relevant provisions of the Act are –

- section 1, definition of “**dividend**”; and
- section 64C

3. Party to the transaction

Applicant: A dual listed South African resident company incorporated outside South Africa.

4. Description of the proposed transaction

The Applicant is a company with a primary listing on a foreign Stock Exchange and a secondary listing on the JSE Limited. The Applicant is resident in South Africa for the purposes of the Act.

The balance sheet of the Applicant reflected share premium and a deficit. Under these circumstances its board was unable to declare a dividend to its shareholders. Accordingly, an appeal was made to a court to reduce the share premium account to eliminate the deficit. The share premium account was further reduced to create a special reserve. Permission was granted for this special reserve to be available for distribution to the shareholders of the Applicant, as its creditors had been adequately protected.

The special reserve was transferred to the company's profit and loss account. This transfer has resulted in the company having increased retained profits. The Applicant anticipates distributing a portion of this amount to its shareholders in 2007, and the balance to the shareholders in future. The amount to be distributed will be specifically identified in the resolutions of the Applicant as having formed part of the share premium account of the company. The amount which originally formed part of the Applicant's share premium account does not consist of any reserves previously transferred to such share premium account.

The Applicant may in future receive dividends from various subsidiaries. It may distribute the said amount released from the share premium account prior to distributing any amount received as a dividend. Consequently,

dividends distributed in the normal course by subsidiaries will not form part of the said amount released from the share premium account to be distributed by the Applicant to its shareholders.

5. Specific conditions and assumptions

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

- The existing share premium of the Applicant does not include any amounts transferred from any reserves or undistributed profits of the Applicant. In other words, the said share premium balance constitutes so-called “pure” or “untainted” share premium.
- Any amount forming part of the special reserve distributed to the Applicant’s shareholders will only be regarded as constituting the reduction of share premium to the extent that the Applicant specifically identifies the distribution as being out of share premium in the resolutions passed in respect of such distribution.

6. Specific ruling

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

- The amount of share premium transferred to the special reserve retains its nature as share premium of the Applicant in terms of the second proviso to the definition of dividend in section 1. The balance of the amount of share premium transferred to a special reserve, which is currently reflected in the retained earnings, totals \$Z million at the date of this ruling.
- Any amount distributed to the Applicant’s shareholders from the \$Z million referred to above, does not constitute a dividend as defined in section 1, but represents a reduction of the share premium account as envisaged under paragraph (f) to the definition of dividend.
- The amount distributed to shareholders, to the extent that it is represented by the amount transferred from the share premium account

to the special reserve, will not be regarded as a deemed dividend in terms of section 64C(2) due to the provisions of section 64C(4)(a).

- For purposes of determining whether the amount constitutes a dividend or the reduction of share premium, the Applicant is entitled to identify the origin of any amounts distributed to the shareholders by means of a director's resolution.

7. Period for which this ruling letter is valid

This binding private ruling, issued in January 2007, is valid until the amount transferred from the share premium account to the distributable reserves (that is \$Z million) has been depleted by distributions to shareholders or as a result of any action taken by the company which would legally result in the said amount of \$Z million being reduced to \$nil.

Issued by:

Legal and Policy Division: Advance Tax Rulings
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