

BINDING PRIVATE RULING: BPR 276

DATE: 28 June 2017

ACT : INCOME TAX ACT 58 OF 1962 (the Act)

SECTION : SECTIONS 64G(3) AND 108

ARTICLE 10 OF THE CONVENTION BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE KINGDOM OF SWEDEN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME (SA/SWEDEN TAX TREATY)

THE PROTOCOL AMENDING THE SA/SWEDEN TAX TREATY (PROTOCOL)

ARTICLE 10 PARAGRAPH 1 OF THE AGREEMENT BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE STATE OF KUWAIT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME (SA/KUWAIT TAX TREATY)

SUBJECT : DIVIDENDS TAX AND THE MOST FAVOURED NATION CLAUSE IN A TAX TREATY

1. Summary

This ruling determines whether dividends tax must be withheld when a dividend is paid to the beneficial owner that is a resident of the Kingdom of Sweden. Sweden and South Africa concluded the SA/Sweden tax treaty which, when read with the Protocol, includes a 'most favoured nation' clause.

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 No. 28 of 2011.

In this ruling references to sections and articles are to sections of the Act and articles of the SA/Sweden treaty and the Protocol applicable as at 26 May 2017. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the Act or the Protocol.

This is a ruling on the interpretation and application of –

- Sections 64G(3) and 108;
- article 10 of the SA/Sweden tax treaty published in Government Gazette (GG) 16890 dated 27 December 1995 as amended by articles I and II of the Protocol published in GG 35268 dated 23 April 2012; and
- article 10 paragraph 1 of the SA/Kuwait tax treaty published in GG 29815 dated 20 April 2007.

3. Parties to the proposed transaction

The Applicant: A private company incorporated in and a resident of South Africa that is a wholly-owned subsidiary of Company A

Company A: A company incorporated in and a resident of Sweden

4. Description of the proposed transaction

Company A is the beneficial owner of the preference shares in the Applicant and of any dividends that may accrue in respect of those shares. The preference shares are redeemable fifteen years after their issue date only. Redemption is not compulsory, but subject to the express consent of the shareholder. The Applicant does not have the option to redeem the preference shares. The preference shares do not carry any right to share beyond a specified amount in capital or dividend distributions. On the facts, it is unlikely that the existence of the Applicant will be terminated within three years from the date of issue of the preference shares. The preference shares carry a preferential right to dividends before ordinary shares. The dividends payable on the preference shares are not calculated directly or indirectly with reference to any specified rate of interest or the time value of money.

The Applicant proposes to pay a dividend to Company A.

Article II of the Protocol lays down that –

“[i]f any agreement or convention between South Africa and a third state provides that South Africa shall exempt from tax dividends ... arising in South Africa, or limit the tax charged in South Africa on such dividends ... to a rate lower than ... [5%], such exemption or lower rate shall automatically apply to dividends ... arising in South Africa and beneficially owned by a resident of Sweden”.

In this regard, the SA/Kuwait tax treaty provides in article 10 paragraph 1 that should dividends be paid by a company that is a resident of South Africa to a resident of Kuwait who is the beneficial owner, those dividends would be taxable in Kuwait only.

5. Conditions and assumptions

This binding private ruling is subject to the additional condition and assumption that the ruling is applicable to preference shares currently in issue that were issued under the Preference Share Terms identified above.

6. Ruling

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

- a) In respect of the preference shares issued by it, the Applicant will not be required to withhold dividends tax from the payment made to Company A if it complies with the documentary requirements in section 64G(3).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 29 May 2017.

**Legal Counsel: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**