

BINDING PRIVATE RULING: BPR 214

DATE: 22 December 2015

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)

SECTION : SECTION 8EA

SUBJECT : THIRD-PARTY BACKED SHARES

1. Summary

This ruling determines whether cumulative redeemable preference shares constitute “third-party backed shares”.

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 are to sections of the Act applicable as at 5 November 2015. 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 the provisions of section 8EA.

3. Parties to the proposed transaction

The Applicant: A company incorporated in and a resident of South Africa

Other parties: A listed company incorporated in and a resident of South Africa (Company A)

A private company incorporated in and a resident of South Africa (Company B)

A private company incorporated in and a resident of South Africa (Company C)

A listed company incorporated in and a resident of South Africa (Company D)

A listed company incorporated in and a resident of South Africa (Company E)

A listed company incorporated in and a resident of South Africa, acting through its Corporate and Investment Banking division (Company F)

4. Description of the proposed transaction

The Applicant is a wholly owned subsidiary of Company B, which in turn is a wholly owned subsidiary of Company A. Company C is a wholly owned subsidiary of the Applicant.

Company C borrowed an amount from Company B with the sole purpose of acquiring shares in Company D, a special purpose, non-operating company which was created to hold equity shares in Company E, an operating company.

The loan was subsequently delegated by Company C to the Applicant, with the result that the Applicant is now indebted to Company B. The Applicant required funds to partially settle the loan and, therefore, issued cumulative redeemable preference shares (shares) to Company F in order to finance the partial settlement of the loan.

The following additional arrangements will apply in addition to the share subscription –

- the Applicant will, amongst others, indemnify Company F in the event of all non-payments relating to the shares and will enter into a pledge and cession agreement, in respect of certain rights it holds, with Company F;
- Company B will subordinate all of its claims against the Applicant in favour of Company F;
- Company A will extend a guarantee to Company F for all the post-redemption obligations of the Applicant; and
- Company A or Company B, or both of them, may also extend a guarantee(s) to Company F in respect of non-payments in respect of the shares.

Three classes of dividends (calculated in accordance with the share subscription agreement) are to be payable in respect of the shares.

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 shares were applied for a qualifying purpose as contemplated in section 8EA(3) read with subparagraph (b)(i)(aa) of the definition of “qualifying purpose” in section 8EA(1), by virtue of the shares being issued for the indirect acquisition of an equity share in an operating company. The shares do not constitute “third-party backed shares” as defined in section 8EA(1).
- No regard must be had to the enforcement right exercisable by Company F where the security provider is Company A or Company B as contemplated in section 8EA(3)(b)(iv)(bb) read with section 8EA(3)(b)(ii), by virtue of

Company A and Company B forming part of the same group of companies as the Applicant.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 3 years from 5 November 2015.

Legal and Policy Division: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE