

BINDING CLASS RULING: BCR 046

DATE: 16 April 2015

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTION 1(1), DEFINITION OF “FOREIGN DIVIDEND”
SUBJECT : DIVIDENDS DISTRIBUTED BY FOREIGN COMPANIES

1. Summary

This ruling deals with dividends distributed by foreign companies and whether they will be foreign dividends as defined in section 1(1) of the Act.

2. Relevant tax laws

This is a binding class ruling issued in accordance with section 78(2) 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 20 March 2015 and 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 definition of “foreign dividend” in section 1(1).

3. Class

The class members to whom this ruling will apply are described in point 4 below.

4. Parties to the proposed transaction

The Applicant: A company incorporated and registered in a foreign country (Country X) that is a resident of and has its place of effective management in another foreign country (Country Y)

The First Co-Applicant: The branch office of a company incorporated and registered in a foreign country (Country Z) that is located in Country Y

The Second Co-Applicant: A company incorporated and registered in Country Y that is a resident of and has its place of effective management in Country Y

The Class Members: South African investors (SA investors) who are residents of South Africa and the beneficial owners of dividends associated from time to time with the Applicant's shares

5. Description of the proposed transaction

SA investors will acquire shares (investor shares for purposes of this ruling) of the Applicant. Depending on the nature of the investor and the regulatory environment in which the investor operates, the acquisition may be by way of subscription for the investor shares or by way of the acquisition of the investor shares via the First Co-Applicant subject to a repurchase agreement to be entered into between the investor and the First Co-Applicant. The investor shares will –

- rank pari passu with the ordinary shares in the Applicant in respect of any distribution of capital and any dividends by the Applicant;
- have no stated maturity date or redemption rights;
- rank pari passu with the ordinary shares in the Applicant on a winding up of the Applicant; and
- confer voting rights upon the SA investors.

The Applicant will subscribe for cumulative non-redeemable preference shares (preference shares) in the Second Co-Applicant. The preference shares will –

- rank pari passu with the ordinary shares in the Second Co-Applicant in respect of any distribution of capital by the Second Co-Applicant;
- have no stated maturity date or redemption rights;
- rank pari passu with the ordinary shares in the Second Co-Applicant on a winding up of the Second Co-Applicant, provided that any liquidation proceeds shall be limited to an amount equal to the subscription price;
- confer voting rights upon the Applicant; and
- confer a preferential right on the Applicant to have a quarterly dividend declared and paid to it. Such distributions on the Second Co-Applicant's shares will be treated as dividends or similar payments for purposes of the corporate income tax laws in Country Y.

The Second Co-Applicant will utilise the funds in its business operations.

There will be no direct or indirect re-investment of the funds into South African assets as a result of the proposed transaction.

The distributions which will be paid or payable to SA investors by the Applicant, and to the Applicant by the Second Co-Applicant, will be treated as dividends or similar payments not deductible for corporate income tax purposes in Country Y.

6. Conditions and assumptions

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

- The distributions which will be received by the Class Members in respect of the investor shares held in the Applicant, will not include any amount that constitutes either a redemption of a participatory interest in an arrangement or scheme as contemplated in paragraph (e)(ii) of the definition of “company” or a share in the Applicant.
- The distributions which will be received by the Applicant from the Second Co-Applicant in respect of the shares held by it in the Second Co-Applicant will not include any amount that constitutes either a redemption of a participatory interest in an arrangement or scheme as contemplated in paragraph (e)(ii) of the definition of “company” or a share in the Second Co-Applicant.

7. Ruling

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

- The distributions which will be received by the Class Members in respect of the investor shares held in the Applicant will constitute foreign dividends as defined in section 1(1).
- The distributions which will be received by the Applicant from the Second Co-Applicant in respect of the shares held by it in the Second Co-Applicant will constitute foreign dividends as defined in section 1(1).

8. Period for which this ruling is valid

This binding class ruling is valid for a period of 5 years from 20 March 2015.

9. General note

The potential application of the provisions of section 80A to the proposed transaction or any step or transaction implemented or to be implemented pre- or post the proposed transaction have not been considered.