

## **BINDING PRIVATE RULING: BPR 134**

DATE: 23 January 2013

**ACT** : INCOME TAX ACT NO. 58 OF 1962 (the Act)  
: EXCHANGE CONTROL AMNESTY AND AMENDMENT OF  
TAXATION LAWS ACT NO. 12 OF 2003 (the Amnesty Act)

**SECTION** : SECTION 10B(2)(a) OF THE ACT  
: SECTION 4 OF THE AMNESTY ACT

**SUBJECT** : EXEMPTION UNDER SECTION 10B(2)(a) IN RELATION TO A  
FOREIGN DIVIDEND THAT IS DEEMED TO BE RECEIVED BY A  
PERSON WHO IS A RESIDENT

### **1. Summary**

This ruling deals with the income tax consequences with regard to an election made by a person under section 4(1) of the Amnesty Act that deemed the person to be the holder of any foreign asset which was held on 28 February 2003 by a discretionary trust which is not a resident of South Africa.

### **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 relevant Act applicable as at 20 September 2012 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in that Act.

This is a ruling on the interpretation and application of the provisions of –

- section 10B(2)(a) of the Act; and
- section 4 of the Amnesty Act.

### **3. Parties to the proposed transactions**

The Applicant: An individual who is a resident of South Africa

The Trust: A discretionary trust that is not a resident of South Africa, established by the Applicant for the benefit of the Applicant and his family

Foreign Co: A company that is not a resident of South Africa that holds various investments outside South Africa

#### **4. Description of the proposed transactions**

The Applicant was the donor in relation to the Trust. The Trust owns 100% of the shares in Foreign Co. The trustee of the Trust intends to simplify the investment holding structure of the assets held by the Trust through Foreign Co by removing Foreign Co from the structure. To this end the trustee intends ensuring that Foreign Co will distribute all of its assets to the Trust as a dividend *in specie*.

The Applicant applied for amnesty previously and made the election contemplated in section 4(1) of the Amnesty Act. As a result, for the purposes of the Act, the shares in Foreign Co are deemed to be held by the Applicant. Dividends will be deemed to be received by the Applicant.

#### **5. Conditions and assumptions**

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

- The proposed transaction is not part of or connected with any other transaction, operation or scheme, other than as set out in the application for the ruling.
- The distribution by Foreign Co of all of its assets as a dividend *in specie* to the Trust will be a “foreign dividend” as defined in section 10B(1) of the Act.

#### **6. Ruling**

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

- The distribution by Foreign Co of all of its assets as a dividend *in specie* to the Trust will result in a foreign dividend being deemed to be received by the Applicant.
- This foreign dividend will be exempt from normal tax in the hands of the Applicant under section 10B(2)(a) of the Act.

#### **7. Period for which this ruling is valid**

This ruling is valid until the end of the year of assessment in which Foreign Co distributes all of its assets as a dividend *in specie* to the Trust, or until 28 February 2014, whichever occurs first.

Issued by:

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