

BINDING PRIVATE RULING: BPR 351

DATE: 28 August 2020

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECURITIES TRANSFER TAX ACT 25 OF 2007 (STT Act)**

**SECTION : SECTIONS 10(1)(k), 47 and 64FA(1)(b) AND PARAGRAPHS 12A AND
43A OF THE EIGHTH SCHEDULE TO THE ACT
SECTIONS 1 AND 8(1)(a)(v) OF THE STT ACT**

**SUBJECT : WAIVER OF AN INTRA GROUP LOAN TO, AND SUBSEQUENT
LIQUIDATION DISTRIBUTION BY A SUBSIDIARY**

Preamble

This binding private ruling is published with the consent of the applicant(s) to which it has been issued. It is binding between SARS and the applicant and any co-applicant(s) only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines the income tax, dividends tax and securities transfer tax consequences of the waiver of an intra group loan by a holding company to its subsidiary followed by the distribution *in specie* of the subsidiary's only asset to its holding company.

2. Relevant tax laws

In this ruling references to sections and paragraphs are to sections of the relevant Act and paragraphs of the Eighth Schedule to the Act applicable as at 31 July 2020. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the relevant Act.

This is a ruling on the interpretation and application of –

- the Act –
 - section 10(1)(k);
 - section 47;
 - section 64FA(1)(b);
 - paragraph 12A(6)(e);
 - paragraph 43A(2);
- the STT Act –
 - section 1 – definition of “transfer”; and
 - section 8(1)(a)(v).

3. Parties to the proposed transaction

The applicant: A wholly-owned subsidiary of the co-applicant and a resident

The co-applicant: An investment company and a resident

4. Description of the proposed transaction

The co-applicant is an investment holding company. The co-applicant previously advanced an unsecured, non-interest-bearing loan to the applicant to enable it to acquire ordinary no par value shares of the co-applicant from a shareholder of the co-applicant. The shares in the co-applicant comprise the applicant's only asset.

The shareholders of the co-applicant seek to restructure their investments and it will entail the sale of specific investments of the co-applicant to the shareholders wishing to increase their shareholdings in those investments. As part of the proposal, the 10% shareholding in the co-applicant will however first be eliminated to remove the inevitable circular distribution consequences of the proposed liquidation distribution.

In order to eliminate the shareholding of the applicant in the co-applicant, the following is proposed:

- The co-applicant will waive the loan previously advanced to the applicant.
- The applicant will distribute all its assets, namely the shares in the co-applicant, as a dividend *in specie* to the co-applicant availing the parties of the relief provided by section 47.

5. Conditions and assumptions

This binding private ruling is subject to the additional condition and assumption that the liquidating company (the applicant) must, within 36 months after the date of the liquidation distribution or within such longer period as the Commissioner may allow, take steps to liquidate, wind-up or deregister. It may not at any stage withdraw any such step or do anything to invalidate such step with the result that it is not wound-up, liquidated or deregistered.

6. Ruling

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

- a) Paragraph 12A(6)(e) will apply to the waiver of the loan by the co-applicant.
- b) The distribution of the shares by the applicant to the co-applicant will constitute a "liquidation distribution" as defined in paragraph (a) of the definition of that expression in section 47(1).
- c) The applicant will be deemed to have disposed of the shares at their base costs and no capital gain will therefore arise for the applicant.
- d) Section 47(5)(a) will apply to the proposed transaction and the co-applicant must disregard the disposal for purposes of determining its taxable income, assessed loss, aggregate capital gain or aggregate capital loss.

- e) The liquidation distribution will constitute a dividend, but it will be exempt under section 10(1)(k)(i).
- f) Section 64FA(1)(b) will apply to the dividend and the applicant will not be required to pay any dividends tax.
- g) Paragraph 43A(2) will not apply to the distribution of the dividend in specie.
- h) The transfer of the shares from the applicant to the co-applicant will be exempt from STT under section 8(1)(a)(v) of the STT Act.
- i) The cancellation of the shares by the co-applicant will not constitute a “transfer” as defined in section 1 of the STT Act and no STT will be payable.

7. Period for which this ruling is valid

This binding private ruling is valid in respect of the year of assessment ending 28 February 2021.