



South African Revenue Service

BINDING CLASS RULING: BCR 061

DATE: 16 March 2018

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 1(1) – DEFINITION OF “FOREIGN RETURN OF CAPITAL”
SUBJECT : FOREIGN RETURN OF CAPITAL

1. Summary

This ruling determines the interpretation of the definition of “foreign return of capital” in section 1(1) in the context of a foreign unbundling of a part of the business of a dual-listed company to South African resident shareholders.

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 28 of 2011.

In this ruling references to sections are to sections of the Act applicable as at 21 December 2017. 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 return of capital” in section 1(1).

3. Class

The class members to whom this ruling will apply are the shareholders of the applicant referred to in 4, who are residents, as defined in section 1(1).

4. Parties to the proposed transaction

The applicant: A listed company, incorporated in and a resident of a foreign country and listed in that foreign country and South Africa, amongst other places

5. Description of the proposed transaction

The applicant owns all of the shares in a foreign subsidiary company in which it houses its business interests in the foreign country. The applicant performed a strategic review of the whole group and concluded that the interests of the shareholders would be best served by separating its businesses. Part of the separation involves the unbundling of this subsidiary.

The proposed transaction will be implemented by way of an unbundling by the applicant to all of its shareholders (including the class members) of its investment (unbundled shares) in the subsidiary company.

The proposed transaction will be implemented pursuant to a specific term to be incorporated into the founding document of the applicant, which will provide that the applicant can transfer specified assets (including some, or all, of the applicant's shareholding in one or more of its subsidiaries) to its shareholders for no consideration, or to a company which issues shares to the shareholders as consideration, otherwise than by way of declaring a dividend in a specified amount.

The proposed transaction will be achieved either by way of –

- the transfer of the unbundled shares to the shareholders (including the class members) without declaring a cash dividend made out of the applicant's distributable reserves (e.g. retained earnings) (option 1); or
- the transfer of the unbundled shares to the shareholders by way of a combination of a reduction of capital (expected to comprise a relatively small proportion) and a distribution out of other reserves such as retained earnings and/or merger reserve (option 2). Option 2 will be implemented as one combined step.

The choice between the two options will be determined in part by the levels of the relevant reserves at the time of the proposed transaction.

The transfer of the unbundled shares will be governed by specific legislation that provides for the transaction to be tax neutral in the foreign jurisdiction. In consequence, the transaction will not constitute a taxable distribution for purposes of the foreign jurisdiction's laws in respect of the taxation of companies.

6. Conditions and assumptions

This binding class ruling is subject to the additional condition and assumption that the proposed transaction complies with the requirements set out in the specific foreign legislation and therefore that the proposed transaction qualifies as an exempt distribution for purposes of the tax laws on companies in that jurisdiction.

7. Ruling

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

- a) The proposed transfer of the unbundled shares by the applicant to the class members will constitute a "foreign return of capital" as defined in section 1(1).

8. Period for which this ruling is valid

This binding class ruling is valid for the year of assessment in which the transaction takes place.