

BINDING PRIVATE RULING: BPR 108

DATE: 01 March 2012

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTION 1, DEFINITION OF “DIVIDEND”
SUBJECT : ISSUE OF REDEEMABLE PREFERENCE SHARES FROM RESERVES AVAILABLE FOR DISTRIBUTION

1. Summary

This ruling deals with the question as to whether the issuing of redeemable preference shares from the reserves of a company will constitute a “dividend” as defined in section 1 of the Act.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling legislative references to sections are to sections of the Act applicable as at 8 November 2011 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested under the provisions of section 1, the definition of “dividend”.

3. Parties to the proposed transaction

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

The Shareholders: The holders of a specific class of redeemable preference share

4. Description of the proposed transaction

The Applicant intends to issue a specific class of redeemable preference share (the shares) from its reserves available for distribution. These shares will be issued to Shareholders in proportion to their trading ratio with the Applicant.

The rights that will be attached to the shares can be summarised as follows –

- the shares will be non-convertible;
- will have no voting rights; and
- holders of the shares will not be entitled to any preference dividend in respect thereof.

The Shareholders will also only be allowed to redeem the shares if the Applicant is liquidated or its business is sold, whichever event takes place first.

5. Condition and assumption

This ruling is made subject to the condition and assumption that the redemption of the shares will constitute a “dividend” as defined in section 1.

6. Ruling

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

- The issue of the redeemable preference shares, from the reserves available for distribution to the shareholders, will not constitute a “dividend” as defined in section 1 and as such will not be subject to secondary tax on companies.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five (5) years as from November 2011.

Issued by:

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