

BINDING PRIVATE RULING: BPR 121

DATE: 14 September 2012

ACT : **INCOME TAX ACT, NO. 58 OF 1962 (the Act)**
SECTION : **SECTIONS 64B(1), DEFINITION OF “DECLARED” AND 64E(1)
READ WITH SECTION 64D**
SUBJECT : **SECONDARY TAX ON COMPANIES OR DIVIDENDS TAX**

1. Summary

This ruling deals with the question as to whether a dividend to be paid to shareholders will be subject to secondary tax on companies or dividends tax.

2. Relevant tax laws

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

In this ruling references to sections are to sections of the Act applicable as at 16 April 2012 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 on the interpretation and application of the provisions of –

- section 64B(1), the definition of “declared”; and
- section 64E(1) read with section 64D.

3. Parties to the proposed transaction

The Applicant: A public listed company incorporated in and a resident of South Africa, listed on the Johannesburg Stock Exchange (JSE)

The Co-Applicant: A public listed company incorporated in and a resident of the United Kingdom, with its primary listing on the London Stock Exchange (LSE) and its secondary listing on the JSE.

4. Description of the proposed transaction

The Applicant and the Co-Applicant operate as dual listed companies of a broader group.

The ordinary shares of the Co-Applicant have the same rights as the ordinary shares of the Applicant, and vice versa. This means, for example, that any dividend paid in respect of each ordinary share of the Co-Applicant will be matched by an equivalent dividend in respect of each ordinary share of the Applicant.

Prior to 1 April 2012, in the disclosure of the group's full year results for the 2011 financial year end, the board of directors of both the Applicant and the Co-Applicant recommended a final dividend of €xx cents per share payable to shareholders post 1 April 2012. The final dividend will be subject to the approval of the shareholders of the Applicant and the Co-Applicant at the respective annual general meetings scheduled post 1 April 2012.

5. Condition and assumption

This ruling is made subject to the condition and assumption that the final dividend to be declared is a "dividend", as defined in section 1.

6. Ruling

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

- The final dividend will not constitute a dividend declared by the Applicant and the Co-Applicant before 1 April 2012, as contemplated in the definition of "declared" in section 64B(1).
- The final dividend declared and paid by the Applicant and the Co-Applicant on or after 1 April 2012, will be subject to dividends tax, as set out in Part VIII of the Act.
- The final dividend will be subject to DT under section 64E(1), subject to any applicable exemptions or double tax treaty reductions that may apply, and in the case of the Co-Applicant only to the extent that such dividend is declared and paid in respect of its JSE "listed shares".

7. Period for which this ruling is valid

This binding private ruling is valid for the implementation of the proposed transaction.

Issued by:

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