

BINDING PRIVATE RULING: BPR 198

DATE: 7 July 2015

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 10(1)(k), 47, 64D AND 64FA(1)(b)
SUBJECT : DISTRIBUTION OF A DEBIT LOAN ACCOUNT IN ANTICIPATION OF DEREGISTRATION OF A COMPANY

1. Summary

This ruling deals with the distribution of a loan account, which is the only asset of the Co-Applicant, a wholly owned subsidiary of the Applicant. This distribution will comprise of a distribution of all of the Co-Applicant's accumulated profits and a return of its share capital to the Applicant in anticipation of the Co-Applicant's deregistration.

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 Act applicable as at 16 May 2014 and 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 provisions of –

- section 10(1)(k);
- section 47;
- sections 64D; and
- section 64FA(1)(b).

3. Parties to the proposed transaction

The Applicant: A company incorporated in and a resident of South Africa and the holding company of the Co-Applicant

The Co-Applicant: A company incorporated in and a resident of South Africa and a wholly owned subsidiary of the Applicant

4. Description of the proposed transaction

The Applicant proposes to deregister dormant companies in its group to simplify its group structure. The Co-Applicant is one such dormant company that has a loan account owing to it by the Applicant and the loan is the Co-Applicant's only asset, representing both its share capital and distributable reserves in its books of account. The Co-Applicant has no liabilities.

The Co-Applicant will distribute this loan account to the Applicant and then deregister.

5. Conditions and assumptions

This ruling is subject to the following additional conditions and assumptions –

- the Co-Applicant will, as required by section 47(6)(c)(i), within 36 months from the date of the liquidation distribution comply with the steps contemplated in section 41(4) to liquidate, wind up or deregister and will at no stage withdraw any steps to liquidate, wind up or deregister;
- the parties will not agree in writing to opt out of the provisions of section 47; and
- the Co-Applicant must notify the Applicant in writing what amount of the liquidation distribution constitutes a return of capital as contemplated in paragraph 76(4) of the Eighth Schedule to the Act.

6. Ruling

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

- The distribution of the loan account by the Co-Applicant to the Applicant will qualify as a "liquidation distribution" as defined in section 47(1)(a). The disposal will accordingly fall within the ambit of section 47(2)(a). The distribution of the loan account by the Co-Applicant to the Applicant will be a dividend *in specie* to the extent that it is not a "return of capital" as defined in section 1(1).
- The dividend amount will be exempt from dividends tax under section 64FA(1)(b).
- To the extent that the distribution of the loan account by the Co-Applicant to the Applicant is a "return of capital" as defined in section 1(1), such return of capital must under section 47(5)(b) be disregarded in determining the Applicant's taxable income, assessed loss, aggregate capital gain or aggregate capital loss.
- The subsequent disposal by the Applicant of the equity shares held by it in the Co-Applicant as a result of the liquidation, winding up or deregistration of the Co-Applicant must under section 47(5)(a) be disregarded for the purposes of determining the Applicant's taxable income, assessed loss, aggregate capital gain or aggregate capital loss.

- The dividend received by the Applicant as a dividend *in specie* will be exempt from normal tax under section 10(1)(k)(i).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 1 year from 16 May 2014.

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