

**BINDING PRIVATE RULING: BPR 327**

DATE: 20 September 2019

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 10(1)(k)(i), 45(3A), 64F(1)(a), 64G(2)(b) AND PARAGRAPH 3, 20(1) AND 35(3)(a) OF THE EIGHTH SCHEDULE TO THE ACT**  
**SUBJECT : TAX IMPLICATIONS OF A GROUP RESTRUCTURING**

***Preamble***

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

**1. Summary**

This ruling determines the tax consequences of a group restructuring which includes liquidation distributions.

**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 28 of 2011.

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act as at 7 November 2018. 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 –

- section 10(1)(k)(i);
- section 45(3A);
- section 64F(1)(a);
- section 64G(2)(b);
- paragraph 3;
- paragraph 20(1); and
- paragraph 35(3)(a).

**3. Parties to the proposed transaction**

The applicant: A resident company and the parent company of a group of companies

The co-applicant:	A resident company. Its shares are held by the applicant (97.36%) and company C (2.64%)
Company A:	A resident company that is a wholly-owned subsidiary of the co-applicant
Company B:	A resident company that is a wholly-owned subsidiary of the co-applicant
Company C:	A resident company. Its shares are held by the co-applicant (51.30%) and company B (48.70%)
Company D:	A resident company that is a wholly-owned subsidiary of the co-applicant

#### 4. Description of the proposed transaction

The applicant and its subsidiaries would like to restructure in order to eliminate certain entities within the group, namely:

- The co-applicant;
- Company A;
- Company B;
- Company C; and
- Company D.

Part of the restructuring will involve the applicant acquiring a portfolio of investments in operating companies held by company D that includes shares in Company X, Company Y, and Company Z.

The co-applicant and Company A also hold N ordinary shares in the three above-mentioned companies. The N ordinary shares track an economic interest in the operating company's operations.

The economic interest of the co-applicant in company D equals 49.87% consisting of –

- 100% of the ordinary shares in company D;
- 100% of the N ordinary shares in company Z; and
- 17.6% of the N ordinary shares in company Y.

The economic interest of company A in company D equals 50.13% consisting of –

- 100% of the N ordinary shares in company X; and
- 82.4% of the N ordinary shares in company Y.

Any dividends declared by the three above-mentioned companies to Company D will be distributed by the latter to its ordinary and special class dividend shareholders, *i.e.* the co-applicant and Company A.

The proposed transaction will be effected through the implementation of the proposed transaction steps set out below:

**Step 1**

Company B will dispose of its shares in Company C to the co-applicant at market value in terms of a “liquidation distribution”, as defined in paragraph (a) of that term in section 47(1).

**Step 2**

Company C will dispose of its shares in the co-applicant to the co-applicant at market value in terms of a “liquidation distribution”, as defined in paragraph (a) of that term in section 47(1).

**Step 3**

The applicant will purchase the portfolio of shares in the operating companies from company D at market value in terms of an “intra-group transaction”, as defined in paragraph (a) of the definition of that term in section 45(1). The purchase consideration will be left outstanding on loan (Loan Obligation 1) via the creation of a loan claim (Loan Claim 1). It will be interest free and repayable on demand.

**Step 4**

Company D will distribute its assets, including Loan Claim 1, to its shareholders, namely the co-applicant and company A, in accordance with their different classes of shares and respective shareholding percentages, as a “liquidation distribution”, as defined in paragraph (a) of the definition of that term in section 47(1).

Loan Claim 1 will be distributed to its shareholders based on the value of the relevant underlying investments taking into account investments in N ordinary shares in Company X, Y and Z. As a result a portion (54%) of Loan Claim 1 against the applicant is distributed to company A, and the balance (46%) of Loan Claim 1 is distributed to the co-applicant along with other assets attributable to the ordinary shares in company D.

**Step 5**

Company A will distribute all its assets (including the portion of Loan Claim 1 distributed to it under proposed transaction step 4) to the co-applicant (its sole shareholder) as a “liquidation distribution”, as defined in paragraph (a) of the definition of that term in section 47(1). As a result, the co-applicant will hold the total loan claim in respect of Loan Claim 1.

**Step 6**

The co-applicant will declare a dividend equal to the amount of Loan Claim 1 to the applicant, which will be left outstanding as Loan Obligation 2, which will result in Loan Claim 2 in favour of the applicant.

**Step 7**

Loan Obligation 2, due by the co-applicant, will be set off against Loan Obligation 1, due by the applicant.

**5. Conditions and assumptions**

This binding private ruling is not subject to any additional conditions and assumptions.

**6. Ruling**

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

- a) The dividend declared by the co-applicant to the applicant and settled via the creation of Loan Claim 2 in favour of the applicant in proposed transaction step 6–
  - will be exempt from income tax under section 10(1)(k)(i); and
  - will be exempt from dividends tax under section 64F(1)(a) read with section 64G(2)(b).
- b) Loan Claim 2 will, for purposes of paragraph 20(1)(a), have a base cost equal to the amount of the dividend declared by the co-applicant.
- c) Section 45(3A)(c) will be applicable to the settlement of Loan Claim 1 in proposed transaction step 7 and therefore no capital gain will be realised by the co-applicant in respect of the settlement of Loan Claim 1 under the set-off transaction under proposed transaction step 7.

**7. Period for which this ruling is valid**

This binding private ruling is valid for a period of three years from 7 November 2018.

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