

BINDING PRIVATE RULING: BPR 366

DATE: 21 June 2021

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 1(1) – DEFINITIONS OF “DIVIDEND” AND “RETURN OF CAPITAL” AND PARAGRAPH 75 OF THE EIGHTH SCHEDULE
SUBJECT : DISTRIBUTION *IN SPECIE* OF SHARES

Preamble

This binding private ruling is published with the consent of the applicant to which it has been issued. It is binding between SARS and the 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 distribution *in specie* of shares by a resident company to its shareholders.

2. Relevant tax laws

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 31 May 2021. 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 1(1) – definitions of “dividend” and “return of capital”; and
- paragraph 75.

3. Parties to the proposed transaction

The applicant:	A listed resident company
Company A:	A resident company that is a wholly-owned subsidiary of the applicant
Company B:	A resident company that is a wholly-owned subsidiary of Company A
Company C:	A company that is not resident and the majority of its shares are held by Company A

4. Description of the proposed transaction

The applicant and its subsidiaries are holding companies with portfolios of interests in various companies. Their objective is to hold the investments on capital account.

The applicant and its subsidiaries have commenced a corporate restructuring. The proposed transaction is the last step in the restructuring. Before the restructuring commenced, the applicant and its subsidiary structure was as follows:

- The applicant held all the ordinary shares in Company A.
- Company A held all the ordinary shares in Company B.
- Company B held all the shares in Company C. Company C has a primary listing of its ordinary shares on both the JSE and on a foreign exchange. Company C is a controlled foreign company in relation to Company B.

It is proposed that the shares in Company C be distributed to the shareholders of the applicant. The eventual distribution of the shares of Company C entails various transaction steps, some of which have already been implemented. The proposed transaction relevant for this ruling is the final transaction step.

Transaction steps one to three have been implemented as follows:

- a) Step one: Share consolidation
 - i) The issued ordinary shares in Company C were consolidated to eliminate fractional shares.
- b) Step two: Unbundling of Company C shares
 - i) Company B unbundled all its shares in Company C to Company A in accordance with paragraph (b) of the definition of “unbundling transaction” in section 46(1).
- c) Step three: Asset-for-Share Purchase
 - i) Company C acquired investment assets from Company B in exchange for the issue of its own shares to Company B.

Transaction step four will be implemented as follows:

- d) Step four: Equity Repurchase
 - i) Company A will repurchase a certain number of its own ordinary shares from the applicant at a certain consideration amount. The repurchase consideration will be settled by Company A transferring a certain number of shares in Company C to the Applicant and will reduce the contributed tax capital of Company A's ordinary shares. The base cost of shares that the applicant holds in Company A will also be reduced.
 - ii) The applicant will acquire an aggregate base cost in the Company C shares equal to the value of those shares. These values at which this transaction step will be done will be determined by the applicant.

The final step in the restructuring is the proposed transaction which will be implemented as follows:

- e) Step five: Distribution of Company C shares
 - i) The applicant will distribute *in specie* all the shares it holds in Company C to its shareholders. The distribution will reduce the applicant's contributed tax capital.

5. Conditions and assumptions

This binding private ruling is subject to the following additional conditions and assumptions:

- a) The directors of the applicant will pass a resolution directing that the distribution of the Company C shares will constitute a return of capital and not a dividend.
- b) The shareholders of the applicant hold their shares on capital account.

6. Ruling

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

- a) The distribution *in specie* by the applicant of the Company C shares to its shareholders will constitute a “return of capital” as defined in section 1(1).
- b) The distribution *in specie* by the applicant of the Company C shares to its shareholders will fall within the ambit of paragraph 75. Consequently, the applicant will be treated as having disposed of the Company C shares for an amount equal to market value on the date of distribution as contemplated in paragraph 74.

7. General Note

No ruling was requested and none is issued in respect of transaction steps prior to the final transaction step.

The transaction steps have not been considered with regard to the application of any general or specific anti-avoidance provisions or doctrines.

8. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 31 May 2021.