

BINDING CLASS RULING: BCR 089

DATE: 30 July 2024

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 8EA(1),(2) and (3)
SUBJECT : QUALIFYING PURPOSE AND THIRD-PARTY BACKED SHARES

Preamble

This binding class ruling is published with the consent of the Applicant(s) who applied for the ruling. It is binding between SARS and the Class Members only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines whether cumulative redeemable preference shares (preference shares) will be issued for a qualifying purpose and whether they will constitute third-party back shares.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 20 March 2024. 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 8EA(1);
- section 8EA(2); and
- section 8EA(3).

3. Class

The class members to whom this ruling will apply are the preference shareholders referred to in 4.

4. Parties to the proposed transaction

Class Members:	Holders of cumulative redeemable preference shares in a subsidiary of the Applicant
The Applicant:	A listed resident company
The Issuer:	A resident company and a wholly-owned subsidiary of the Applicant
The Target:	A non-resident operating company

5. Description of the proposed transaction

The Applicant purchased equity shares (the Target Shares) in an operating company. The purchase price together with additional fees relating to their acquisition was funded with debt.

In order to settle the debt incurred to acquire the Target Shares, the Issuer will issue preference shares to the Class Members. The Class Members will be entitled to preferred dividends calculated at an agreed rate, on the respective issue prices of the preference shares and will be payable at agreed intervals. The preference shares will be redeemable more than three years after the issue date. The Applicant or a wholly-owned subsidiary will guarantee the Issuer's obligations (both actual and contingent) under the preference shares.

The Issuer will lend the funds derived from the issue of the preference shares to the Applicant who will in turn apply the funds to settle the debt incurred to acquire the Target Shares.

The loan made by the Issuer to the Applicant will accrue interest from time to time in an amount equal to the dividends actually paid to the Applicant by the Target in respect of the Target Shares.

The Applicant will be expected to make capital repayments on the loan which is equal to the redemption price of the preference shares which would be required to be redeemed by the Issuer on the respective redemption dates of the preference shares.

6. Conditions and assumptions

This binding class ruling is subject to the additional condition and assumption that the debt incurred was solely used for the purposes of acquiring the Target Shares (which includes the additional fees relating to their acquisition).

7. Ruling

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

- a) Since the proceeds of the issue of the preference shares will be applied by the Applicant to settle debt incurred by it to acquire the Target Shares, the preference shares will be issued (by the Issuer) for a "qualifying purpose", as defined in section 8EA(1), provided that the Target is an operating company at the time of the receipt or accrual of any dividend in respect of those preference shares.
- b) Although the preference shares will be subject to an enforcement right in the form of a guarantee issued by the Applicant or a wholly-owned subsidiary, section 8EA(3) will apply and the enforcement right exercisable against the Applicant must accordingly be disregarded in determining whether the preference shares are third-party backed shares.
- c) On the issue date of this ruling, the preference shares will not constitute third party backed shares as defined in section 8EA(1).

8. Period for which this ruling is valid

This binding class ruling is valid for a period of seven years.

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