

**BINDING PRIVATE RULING: BPR 413**

DATE: 18 November 2024

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : SECTION 8EA**  
**SUBJECT : APPLICATION OF *PROVISO* TO SECTION 8EA(3)**

***Preamble***

This binding private ruling is published with the consent of the Applicant(s) to which it has been issued. It is binding between SARS, the Applicant and any Co-Applicant(s) only and published for general information. It does not constitute a practice generally prevailing.

**1. Summary**

This ruling determines that the *proviso* to section 8EA(3) will apply where equity shares in an operating company acquired by a person through the direct or indirect application of preference share funding are no longer directly or indirectly held by that person.

**2. Relevant tax laws**

In this ruling references to sections are to sections of the Act applicable as at 13 November 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.

**3. Parties to the proposed transaction**

The Applicant:	A resident company
The Co-Applicants:	Institutions that provide funding to the Applicants group of companies
Company A:	A resident company and a wholly-owned subsidiary of the Applicant
Company B:	A resident company and a wholly-owned subsidiary of the Applicant
Company C:	A resident company and a wholly-owned subsidiary of the Applicant
Company D:	A resident company and a wholly-owned subsidiary of the Applicant

Company E:	A resident company and a wholly-owned subsidiary of the Applicant
Company F:	A non-resident company
Company G:	A resident company and a wholly-owned subsidiary of Company B
Company H:	A resident company and a wholly-owned subsidiary of Company B
Company I:	A resident company partly held by Company D
Company J:	A resident company

#### 4. Description of the proposed transaction

The Applicant is an intermediary holding company of a group of companies comprising, among others, Company A to Company E.

The Applicant makes and directs the investment and funding decisions of the group.

The Co-Applicants provide funding to the group of companies by way of, among others, preference share funding. The preference share funding for the group is raised by Company A and on-advanced directly or indirectly to the company that requires funding in the group.

The Co-Applicants have in the past subscribed for preference shares in Company A. The Applicant has provided guarantees to the Co-Applicants for the due compliance with the obligations of Company A in respect of the preference share funding in addition to guarantees provided by the subsidiary companies of the Applicant which provide the Co-Applicants with direct access to their underlying assets in the event of the execution of security rights.

The proceeds from the previous issue of tranches preference shares by Company A to the Co-Applicants mentioned above and relevant to this ruling has been applied as follows:

- Pref Shares 1

The Pref Shares 1 subscription proceeds were used by Company A to redeem other previously issued tranches preference shares the proceeds from which subscription were applied by Company A to advance a loan to Company C, which in turn advanced a loan to Company B to acquire equity shares in Company F. X portion of the equity shares acquired by Company B in Company F were subsequently disposed of by Company B to Company G and Company H, both companies being wholly-owned subsidiaries of Company B. The remaining Y portion of equity shares in Company F remain held by Company B.

- Pref Shares 2

The Pref Shares 2 subscription proceeds were used by Company A to redeem other previously issued tranches of preference shares the proceeds from which subscription were applied to advance a loan to Company D to acquire equity shares in Company I.

- Pref Shares 3

The Pref Shares 3 subscription proceeds were applied by Company A to advance a loan to the Applicant to acquire equity shares in Company J.

The Applicant and some of its subsidiary companies propose to enter into the transactions detailed below, with the consent of the Co-Applicants. The proposed steps to implement transaction are as follows:

- Company B will dispose of the shares it holds in Company G and Company H to the Applicant whereafter Company G and Company H will be liquidated, resulting in the Applicant holding the shares in Company F that were previously held by Company G and Company H.
- Company D will dispose of the shares it holds in Company I to the Company E.
- The Applicant will dispose of X portion of shares that it holds in Company J. The funding so raised will not be applied to redeem any of the Pref Shares 3 but will be used for business operations purposes. The Applicant will continue to hold Y portion of shares in Company J.

## 5. Conditions and assumptions

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

- a) Each one of the Pref Shares 1, 2 and 3 constitutes a “preference share” as defined in section 8EA(1).
- b) An “enforcement right” as defined in section 8EA(1) read with section 8EA(3)(b) is present in respect of the Pref Shares 1, 2 and 3 as a result of the guarantee provided by the Applicant which is a person contemplated in section 8EA(3)(b).
- c) At the time of the receipt by or accrual to the Co-Applicants of any dividend in respect of the Pref Shares 1, 2 and 3, Company F, Company I and Company J will be “operating companies” as defined in section 8EA(1).

## 6. Ruling

The ruling below in connection with the proposed transaction applies in respect of dividends received by or accrued to the Co-Applicants in respect of Pref Shares 1, 2 and 3 in their respective years of assessment commencing on or after 1 January 2024 as follows:

- a) As Company B will no longer directly or indirectly hold X portion of the equity shares in Company F at the time of the receipt by or accrual to the Co-Applicants of any dividend in respect of the Pref Shares 1, the *proviso* to section 8EA(3) will apply, with the effect that section 8EA(3) will not apply to

the X portion of the Pref Shares 1 on which the dividend was received or accrued and therefore the X portion of any dividend in respect of those Pref Shares 1 must be deemed, in relation to each Co-Applicant, to be an amount of income received or accrued.

- b) As Company B will still directly hold Y portion of the equity shares in Company F at the time of the receipt by or accrual to the Co-Applicants of any dividend in respect of the Pref Shares 1, the *proviso* to section 8EA(3) will not apply, with the effect that section 8EA(3) will apply to the Y portion of the Pref Shares 1 on which the dividend was received or accrued and therefore the Y portion of any dividend in respect of those Pref Shares 1 must not be deemed, in relation to each Co-Applicant, to be an amount of income received or accrued, provided that the requirements of section 8EA(3) are satisfied at the time of the receipt by or accrual to each Co-Applicant of such dividend.
- c) As Company D will no longer directly or indirectly hold equity shares in Company I at the time of the receipt by or accrual to the Co-Applicants of any dividend in respect of the Pref Shares 2, the *proviso* to section 8EA(3) will apply, with the effect that section 8EA(3) will not apply to the Pref Shares 2 on which the dividend was received or accrued and therefore any dividend in respect of those Pref Shares 2 must be deemed, in relation to each Co-Applicant, to be an amount of income received or accrued.
- d) As the Applicant will no longer directly or indirectly hold X portion of the equity shares in Company J at the time of the receipt by or accrual to the Co-Applicants of any dividend in respect of the Pref Shares 3, the *proviso* to section 8EA(3) will apply, with the effect that section 8EA(3) will not apply to the X portion of the Pref Shares 3 on which the dividend was received or accrued and therefore the X portion of any dividend in respect of those Pref Shares 3 must be deemed in relation to each Co-Applicant to be an amount of income received or accrued.
- e) As the Applicant will still directly hold Y portion of the equity shares in Company J at the time of the receipt by or accrual to the Co-Applicants of any dividend in respect of the Pref Shares 3, the *proviso* to section 8EA(3) will not apply, with the effect that section 8EA(3) will apply to the Y portion of the Pref Shares 3 on which the dividend was received or accrued and therefore the Y portion of any dividend in respect of those Pref Shares 3 must not be deemed, in relation to each Co-Applicant, to be an amount of income received or accrued, provided that the requirements of section 8EA(3) are satisfied at the time of the receipt by or accrual to each Co-Applicant of such dividend.

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

This binding private ruling is valid for a period of five years from 13 November 2024.