South African Revenue Service

BINDING PRIVATE RULING: BPR 414

DATE: 31 March 2025

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 8EA
SUBJECT : APPLICATION OF THE *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 and 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 how the *proviso* to section 8EA(3) will apply in certain circumstances where equity shares in an operating company that were acquired by a person through the application of preference share funding, are no longer held, directly or indirectly, by that person.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 25 March 2025. 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: Resident companies A, B and C, being the parties that hold preference shares in the Applicant.

4. Description of the proposed transaction

The Applicant is an investment holding company wholly owned by an *inter vivos* trust, duly established in South Africa (the Trust). The Trust holds shares in private companies and various listed companies (Trust shares).

The Applicant holds ordinary shares in a private company and indirect interests in various South African operating companies through a newly incorporated company, Company D.

In 2015 the Co-Applicants subscribed for 1 450 cumulative redeemable preference shares in the Applicant (the Preference Shares) for an aggregate subscription price of R1 450 000 000 (the Preference Share Subscription Consideration). Between

2015 and the date of this ruling letter, some of the 1 450 Preference Shares were redeemed such that at the date of this ruling letter, 1 133 Preference Shares were in issue. The Co-Applicants acted jointly as subscribers for the Preference Shares in the following proportions:

- Company A: 73.32%
- Company B: 13.34%; and
- Company C: 13.34%.

The above percentages remained the same since 2015 even after the historical redemptions of some of the Preference Shares.

The Preference Share Subscription Consideration of R1 450 000 000 was applied by the Applicant for various purposes including, amongst others, the Applicant refinancing a bridge loan which it used to acquire a minority portion of the equity shares in Company E, for R101 111 706. Company E was listed on the JSE in 2015. The Preference Share Subscription Consideration was also applied by the Applicant to make investments in other operating companies (Opco(s)), each application of which constituted a "qualifying purpose" as defined in section 8EA(1). Company E and the other Opco's are collectively referred to as the Applicant Assets.

The Applicant's acquisition of the Company E shares accounted for 6.97% of the application of the Preference Share funding obtained, being R101 111 706 / R1 450 000 000. The balance of the R1 450 000 000 was used to acquire the equity shares in the other Opco's, of which the Applicant remains the holder at the date of this ruling letter, on an indirect basis, as a result of a restructure described below.

The Trust guaranteed the obligations of the Applicant *vis-à-vis* the Preference Shares in the event of a default by the Applicant (the Trust Guarantee). The Trust pledged and ceded a portion of its Trust shares, and amounts held in an interest-bearing bank account, to the Co-Applicants as security in respect of the Trust Guarantee.

In 2022 the Applicant implemented an internal asset restructure (the Applicant Asset Restructure), which resulted in most of the Applicant Assets being held under Company D. At the time of the Applicant Asset Restructure, the offer to acquire the entire issued share capital in Company E (other than specifically excluded shares) and its delisting had already been announced.

All the Applicant's equity shares in Company E were sold in 2023 and Company E was subsequently delisted from the JSE. The proceeds from the disposal of Company E were not used to redeem any of the Preference Shares. The equity shares in Company E were not substituted for other listed share(s).

The disposal of the Company E shares took place before the introduction of the *proviso* to section 8EA(3), which was enacted with effect from 1 January 2024, and is applicable in respect of any dividend received or accrued during any year of assessment commencing on or after 1 January 2024.

It is now proposed by the Applicant that 6.97% of the Preference Shares be redeemed (Voluntary Redemption). As the Preference Shares in issue at the date of this ruling letter total 1 133, 6.97% of 1 133 equates to 79 Preference Shares to be redeemed in terms of the Voluntary Redemption.

6. Conditions and assumptions

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

a) At the time that a dividend is received by or accrues to a Co-Applicant in respect of a Preference Share, in each instance, such share in respect of which the dividend is received or accrues, constitutes a "preference share" as defined in section 8EA(1), in respect of which an "enforcement right", as defined, is exercisable by the holder;

b) The funds derived from the issue of the Preference Shares were applied for a qualifying purpose as contemplated in 8EA(3)(*a*) read with the definition of "qualifying purpose" in section 8EA(1); and

c) The "enforcement rights" were exercisable against the Trust, being a person contemplated in section 8EA(3)(*b*).

7. Ruling

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

a) The 79 Preference Shares currently in issue that are traced to the acquisition of Company E, are "tainted Preference Shares".

b) Dividends in respect of 57 tainted Preference Shares, that accrue to Company A from 1 January 2024 up to the Voluntary Redemption, will be subject to income tax in that Co-Applicant's hands.

c) Dividends in respect of 11 tainted Preference Shares, that accrue to Company B from 1 January 2024 up to the Voluntary Redemption, will be subject to income tax in that Co-Applicant's hands.

d) Dividends in respect of 11 tainted Preference Shares, that accrue to Company C from 1 July 2024 up to the Voluntary Redemption, will be subject to income tax in that Co-Applicant's hands.

e) After the Voluntary Redemption of the 79 tainted Preference Shares, no portion of a Preference Share dividend that accrues to the Co-Applicants will be subject to the *proviso* to section 8EA(3), if the Applicant continues to hold the remaining equity shares in the Opco's as contemplated in section 8EA(3)(*a*) while the Preference Shares remain in issue.

8. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 25 March 2025.

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