

BINDING CLASS RULING: BCR 041

DATE: 24 July 2013

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTION 1(1), DEFINITION OF “FOREIGN DIVIDEND”
SUBJECT : DIVIDENDS DISTRIBUTED BY A FOREIGN COMPANY

1. Summary

This ruling deals with the question whether dividends distributed by a foreign company will be foreign dividends as defined in section 1(1) of the Act.

2. Relevant tax laws

This is a binding class ruling issued in accordance with section 78(2) and published in accordance with section 87(2) of the Tax Administration Act No. 28 of 2011.

In this ruling references to sections are to sections of the Act applicable as at 8 May 2013 and 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 the definition of a “foreign dividend” in section 1(1).

3. Class

The class members to whom this ruling will apply are described in point 4 below.

4. Parties to the proposed transaction

- The Applicant: A corporate partnership limited by shares, registered in a foreign country (Country X) as a securitisation company
- The Class Members The beneficial owners of foreign dividends associated from time to time with the Applicant’s shares

5. Description of the proposed transaction

The Applicant’s shares are listed in Country X and its depository receipts are listed on the JSE.

Currently the Applicant’s major asset is shares listed on the London Stock Exchange, which are held via a subsidiary of the Applicant. A dividend attributable to that asset was the material source of the Applicant’s income in its previous financial year.

The Applicant's income is subject to tax in Country X. In calculating its taxable net income based on its unconsolidated financial statements, the Applicant is able to deduct from its net income the dividends paid or undertaken to be paid pursuant to resolutions of its shareholders at an annual general meeting and, in the case of interim dividends, by the general partner.

The Applicant's shareholders who are resident in Country X are taxed on that dividend income on the basis that it is treated as interest.

A distribution by the Applicant is not subject to dividends withholding tax or interest withholding tax in Country X.

The Applicant has not declared any dividends since its establishment.

6. Conditions and assumptions

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

- The Applicant is a "foreign company" as defined in section 1(1).
- The shares of the Applicant in respect of which dividends are to be declared are not "hybrid equity instruments" as defined in section 8E(1).
- The amount paid by way of a dividend —
 - (a) is a dividend for purposes of the Convention between the Government of the Republic of South Africa and the Government of Country X for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, as well as for purposes of company law, securitisation law and accounting;
 - (b) does not constitute the redemption of a participatory interest in an arrangement or scheme contemplated in paragraph (e)(ii) of the definition of a "company" in section 1(1); and
 - (c) does not constitute a "share" in the Applicant as defined in section 1(1).

7. Ruling

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

- Any dividend declared by the Applicant to any of the Class Members will constitute a foreign dividend.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of 5 years from 8 May 2013.

Issued by:

**Legal and Policy Division: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**