

**BINDING PRIVATE RULING: BPR 364**

DATE: 26 May 2021

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : PARAGRAPHS 43A AND 64B OF THE EIGHTH SCHEDULE**  
**SUBJECT : EXTRAORDINARY DIVIDEND FOLLOWED BY THE DILUTION OF SHAREHOLDERS' INTEREST**

***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 only and published for general information. It does not constitute a practice generally prevailing.

**1. Summary**

This ruling determines the capital gains tax consequences of a proposed special dividend, followed by a dilution of shareholders' interest.

**2. Relevant tax laws**

In this ruling references to sections are to sections of the Act applicable as at 13 April 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 paragraphs 43A and 64B of the Eighth Schedule to the Act.

**3. Parties to the proposed transaction**

The applicant: A resident company

Company A: A non-resident company

**4. Description of the proposed transaction**

The applicant currently holds more than 90% of the ordinary shares in Company A. Company A is not incorporated or effectively managed in South Africa. The applicant has held this shareholding in Company A, on capital account, for more than 18 months prior to the date of this application and the date of the proposed transaction.

Company A is considering listing 100% of its equity shares on a foreign securities exchange (FSE), which will include an Initial Public Offering (IPO) of 20% of Company A.

It is proposed that Company A will declare a special dividend, payable in cash, to its existing shareholders prior to the IPO (pre-IPO special dividend). It is assumed that the special dividend will exceed 15% of the higher of the market value of the Company A shares. The pre-IPO special dividend will be funded either through debt financing, existing cash reserves or a combination thereof.

Company A will increase its authorised share capital in preparation for the IPO, where after Company A will issue shares to new non-resident investors, that are not connected persons, in terms of the IPO on the FSE.

**5. Conditions and assumptions**

This binding private ruling is not subject to any additional conditions and assumptions.

**6. Ruling**

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

- a) The dilution of the applicant's shareholding in Company A, as a result of the issue of shares on the FSE, will not constitute a "disposal" as contemplated in paragraph 64B of the Eighth Schedule.
- b) The capital gain or loss, as determined by paragraph 43A(2), may not be disregarded under the provisions of paragraph 64B of the Eighth Schedule.

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

This binding private ruling is valid for a period of three years from 13 April 2021.

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