

BINDING PRIVATE RULING: BPR 080

Some guidance contained in this ruling may be affected by subsequent law changes. Refer to the definition of "dividend".

DATE: 12 April 2010

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTION 1, DEFINITION OF "DIVIDEND" AND SECTIONS 54, 56 AND 64
SUBJECT : DONATION OF SHARES

1. Summary

This ruling deals with the question as to whether an agreement in terms of which a shareholder, who is not a "resident" as defined in section 1 of the Act, agrees to have shares held in a company, which is a "resident" as defined in section 1 of the Act, bought back by such company for no consideration will result in donations tax being levied, in relation to the market value of those shares being cancelled, in the hands of that shareholder. This ruling also deals with whether the cancellation of the shares will constitute a dividend in the hands of the company cancelling the shares, resulting in a secondary tax on companies charge for the company.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling legislative references to sections are to sections of the Act applicable as at 16 November 2007 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested under the provisions of –

- section 1, the definition of "dividend";
- section 54;
- section 56; and
- section 64.

3. Parties to the proposed transaction

The Applicant: A limited liability holding company that is a "resident" as defined in section 1

Co-Applicant: A majority shareholder of the Applicant, who is not a "resident" as defined in section 1

ABC SA Limited: A limited liability wholly owned subsidiary of the Applicant that is not a “resident” as defined in section 1

4. Description of the proposed transaction

The Applicant is the ultimate holding company of a group of companies operating in Southern Africa. The Applicant has launched a focused effort towards social and economic upliftment and to this end has undertaken to make a lump sum donation to an identified charitable organisation (a trust) which will be registered as a public benefit organisation.

The Co-Applicant, who holds a significant interest in the equity of the Applicant in his own right, *via* ABC SA Limited will, in pursuit of an upliftment initiative and in recognition of the Applicant’s donation to the trust, donate an agreed percentage of his equity shares in the Applicant to the Applicant. Thereafter, such shares will be cancelled by the Applicant.

5. Conditions and assumptions

This ruling is made subject to the conditions and assumptions that:

- The Co-Applicant and ABC SA Limited each remain to be not a “resident” as defined in section 1 for the duration of the transaction which will include the donation of an agreed percentage of the Co-Applicant’s shares in the Applicant to the Applicant, the cancellation of the said shares by the Applicant and the Applicant’s donation to the trust.
- The trust will be registered as a public benefit organisation under section 30 and that its receipts and accruals will be exempt from income tax under section 10(1)(cN).
- The transaction is underpinned by a gratuitous intention and that the Co-Applicant suffers a real economic loss as a result of the transaction.
- The shareholders in the Applicant, other than ABC SA Limited, are not connected persons to the Co-Applicant or ABC SA Limited.

6. Ruling

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

- The Co-Applicant’s donation of an agreed percentage of his equity shares in the Applicant to the Applicant will not be subject to donations tax levied under section 54 as the Co-Applicant is not a “resident” as defined in section 1.
- The Co-Applicant’s donation of an agreed percentage of his equity shares in the Applicant to the Applicant will not be a “dividend” as defined in section 1 as the Applicant will not distribute any amount to

the Co-Applicant as a result of the partial reduction or redemption of the capital of the Applicant that will occur in consequence of the said donation.

- The Applicant's donation to the trust will be exempt from donations tax under section 56(1)(h) read with section 10(1)(cN).

7. Period for which this ruling is valid

This binding private ruling is valid only for the year of assessment in which the Applicant cancels the shares donated by the Co-Applicant and for the year of assessment in which the Applicant makes a donation to the trust.

As the Co-Applicant is not a "resident" as defined in section 1 and no tax implications arise for the Co-Applicant as a result of the transaction under review, the ruling is valid for the Co-Applicant for the duration of the transaction.

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