

BINDING PRIVATE RULING: BPR 295

DATE: 5 March 2018

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 64F(1)(b) AND 64FA(1)(a) OF THE ACT AND PARAGRAPH 75 OF THE EIGHTH SCHEDULE
SUBJECT : DISTRIBUTION *IN SPECIE* OF A SHARE

1. Summary

This ruling determines the dividends tax and capital gains tax consequences of the proposed distribution *in specie* of a share to the government.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 78(1) and published in accordance with section 87(2) of the Tax Administration Act 28 of 2011.

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 11 December 2017. 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 64F(1)(b);
- section 64FA(1)(a); and
- paragraph 75.

3. Parties to the proposed transaction

The applicant: A state-owned company which is a resident

Company A: A resident company that is a wholly-owned subsidiary of the applicant

4. Description of the proposed transaction

The applicant is a state-owned company listed in Schedule 2 of the Public Finance Management Act 1 of 1999. It is the sole shareholder of Company A.

Company A is subsidised by the government and funded by the applicant. It -

- is a loss-making company;
- has been approved by the Commissioner of the South African Revenue Service under section 10(1)(cA)(ii) as a tax-exempt entity and may issue tax certificates under section 18A;

- has since inception never declared any dividends to its shareholder; and
- projects that it will continue making losses in the future.

It is proposed that Company A should be directly held by the government and no longer by the applicant. It is therefore proposed that the Applicant's directors will resolve to declare the share held in Company A as a dividend *in specie* to its shareholder, whereafter the share will be distributed without any consideration.

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 applicant will be exempt from dividends tax under section 64FA(1)(a) read with section 64F(1)(b).
- b) The market value of the share in Company A for purposes of paragraph 75 of the Eighth Schedule will be a nominal value.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 11 December 2017.

**Legal Counsel: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**