

BINDING PRIVATE RULING: BPR 420

DATE: 18 November 2025

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 8EA
SUBJECT : APPLICATION OF 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 clarifies how section 8EA(3) will continue to apply, and the *proviso* to section 8EA(3) will not apply, in circumstances where equity shares in an operating company acquired by a person through the application of preference share funding, are still held, indirectly, by that person.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 4 November 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 Applicant currently holds indirect interests in various South African operating companies through Company D.

In 2015 the Co-Applicants subscribed for cumulative redeemable preference shares in the Applicant (the Preference Shares). Between 2015 and the date of this ruling, further Preference Shares were issued by the Applicant and subscribed for by the Co-Applicants (the Preference Shares Subscriptions).

The Preference Share Subscription consideration was applied, in each instance, by the Applicant for a “qualifying purpose” as defined in section 8EA(1). The application of the Preference Shares Subscription consideration included the acquisition by the Applicant of the equity shares in two companies that are “operating companies” as defined in section 8EA(1); namely, Company E in 2019 and Company F in 2021 (collectively referred to as the Opcos). The acquisition by the Applicant of the equity shares in the Opcos was, in each instance, an indirect acquisition by subscribing for ordinary shares in two special purpose vehicles; being, Company G and Company H (collectively referred to as the SPVs). Company G and Company H respectively hold 13.5% and 28% of the shares in Company E and Company F.

In 2022, the Applicant implemented an internal asset restructure, which resulted in the SPVs being housed under Company D, with the Applicant continuing to hold the equity shares in the Opcos on an indirect basis after such restructure.

The Trust guaranteed the obligations of the Applicant *vis-à-vis* the Preference Shares.

It is now proposed that, in anticipation of liquidation, the SPVs distribute their investments in the Opcos and other assets to Company D, in terms of section 47 of the Act (the Proposed Transaction).

5. 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). This requirement of section 8EA was still met post the implementation of the internal group restructure in 2022. The Opcos are “operating companies” as defined in section 8EA(1) when the Preference Share dividend is received by or accrue to a Co-Applicant.
- c) The “enforcement right” is exercisable against the Trust, being a person contemplated in section 8EA(3)(b).

6. Ruling

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

- a) The implementation of the Proposed Transaction will not result in the *proviso* to section 8EA(3) becoming applicable. Consequently, section 8EA(3) will continue to apply to the Preference Share dividends received by or accrued to the Co-Applicants.
- b) The implementation of the Proposed Transaction, in and of itself, will not result in section 8EA(2) finding application.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 4 November 2025.

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