

BINDING PRIVATE RULING: BPR 379

DATE: 3 October 2022

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 8E AND 8EA
SUBJECT : QUALIFYING PURPOSE

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 determines the tax consequences of a dividend declared by the issuer of a preference share which was issued for a qualifying purpose after the shares in an operating company financed by the preference share funding are disposed of by the shareholder in the operating company.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 13 June 2022. 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 8E; and
- section 8EA.

3. Parties to the proposed transaction

The applicant: A resident company, and wholly owned subsidiary of Company H

The co-applicant: A resident company

Company H: A resident company

Company T: A listed resident company

4. Description of the proposed transaction

Company H contemplated an investment in Company T, an operating company, and requested its subsidiary, the applicant, to provide financial assistance. The applicant raised the funding by issuing cumulative redeemable preference shares to the co-applicant and provided a loan to Company H. The preference shares are “hybrid equity instruments” as defined in paragraph (c)(i), of that definition, in section 8E(1). The preference share terms contain an “enforcement right”, as defined in section 8EA(1) and would have qualified as hybrid equity instruments as defined in paragraph (c)(i) of the definition of that term in section 8EA(1). The ordinary shares in Company T have since been disposed of by Company H because of on-going losses sustained in the market on the value of the shares.

It is proposed that a preference share dividend be declared by the applicant subsequent to the disposal of the ordinary shares held in Company T.

5. Conditions and assumptions

This binding private ruling is subject to the following condition and assumption:

- (a) Company T is an “operating company”, as defined in section 8EA(1), at the time the dividend is declared by the applicant.

6. Ruling

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

- (a) Any dividends paid by the applicant to the co-applicant on the preference shares, after the sale by Company H of the equity shares in Company T, will not be recharacterized as income under the provisions of either section 8E or 8EA of the Act in the hands of the co-applicant.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 13 June 2022.