**BINDING PRIVATE RULING: BPR 114**

DATE: 19 March 2012

The guidance contained in this ruling is affected by subsequent law changes. Refer to paragraph 43(1), the repeal of paragraph 43(4) and Part XIII of the Eighth Schedule.

**ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)**

**SECTION : SECTION 24I, PARAGRAPH 43(1) AND PART XIII OF THE EIGHTH SCHEDULE TO THE ACT**

**SUBJECT : LOAN FACILITIES RAISED BY A FOREIGN PERMANENT ESTABLISHMENT FROM WHICH DEPOSITS AND ADVANCES ARE MADE**

## 1. Summary

This ruling deals with the income tax consequences for a resident company arising from the raising of loan facilities by a foreign branch of the company from international banks and the subsequent placement by the branch of these funds on deposit with various other international banks.

## 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, paragraphs and Parts are to sections of the Act, paragraphs of the Eighth Schedule to the Act and Parts of the Eighth Schedule to the Act applicable as at 21 July 2011 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 24I;
- paragraph 43(1) of the Eighth Schedule; and
- Part XIII of the Eighth Schedule.

## 3. Parties to the proposed transaction

The Applicant: A company incorporated in South Africa

The Branch: A branch of the Applicant, operating in a foreign country as a permanent establishment

## 4. Description of the proposed transaction

The Applicant established branch operations in a foreign country with the approval of the South African Reserve Bank and conducts branch operations from premises located there.

The functional currency of the Branch for the Applicant's financial reporting purposes is US Dollars (USD) as the Applicant primarily operates its business in the foreign country in USD, this being the currency in which it predominantly generates and expends cash.

The Applicant is in the process of negotiating a term loan facility (the facility) through the Branch which is in turn negotiating through a foreign Bank as co-ordinator. The funding will therefore be raised from the co-ordinating foreign Bank and potentially other international banks.

Pending utilization of these funds by the Applicant through the provision of loans to its clients, the funds will be placed on deposit by the Branch with various international bank counterparties. The deposits or advances will be denominated in USD.

Once granted the facility will represent a liability for the Applicant's annual financial statement purposes whilst the deposit or advances to client(s) will represent an asset.

## 5. Conditions and assumptions

This binding private ruling is subject to the condition that the Branch situated in the foreign country is a "permanent establishment" as defined in section 1.

## 6. Ruling

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

- The facility to be raised and the deposits or advances to be made by the Branch will fall within the scope and application of section 24I. However, the facility, deposits and advances will be considered to be denominated in the "local currency" of the Branch. The result is that no "exchange item" and accordingly no "exchange difference" will arise for the Applicant in the determination of the taxable income derived by it from the Branch operations.
- Paragraph 43(1) of the Eighth Schedule will apply to the proposed transaction, but will result in a no gain no loss situation.

- Part XIII of the Eighth Schedule will neither apply to the facility, deposits or advances to be made by the Branch.

## 7. Period for which this ruling is valid

This binding private ruling is valid for a period of five (5) years from July 2011; provided there are no retrospective legislative changes to the particular sections, paragraphs and Part of the Act under which the ruling was requested.

Issued by:

**Legal and Policy Division: Advance Tax Rulings**
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