

BINDING PRIVATE RULING: BPR 412

DATE: 24 October 2024

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 8F, 10(1)(k), 41(1) – DEFINITION OF “GROUP OF COMPANIES” AND 64FA OF THE ACT
SUBJECT : TAX CONSEQUENCES OF THE ISSUE OF A LONG-TERM LOAN FOR THE ISSUER AND HOLDER

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 attendant upon the issue of 30-year interest-bearing loan by the Applicant to the Co-Applicant, particularly the re-characterisation of interest as dividends *in specie*.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 23 September 2024. 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 8F;
- section 10(1)(k);
- section 41(1) – definition of “group of companies”; and
- section 64FA.

3. Parties to the proposed transaction

The Applicant:	A resident company
Company A:	A resident company that is the 100% shareholder of the Applicant
Co-Applicant:	A resident company that is the 100% shareholder of Company A

4. Description of the proposed transaction

The Applicant will advance a loan to the Co-Applicant under the following terms and conditions:

- The Co-Applicant will not be obliged to repay the loan capital within 30 years from the date the Loan was advanced to it by the Applicant.
- The Co-Applicant will be allowed, in its own discretion, to make voluntary repayments of the capital amount outstanding before the final repayment date, but subject to certain trigger events, without incurring any penalty.
- If it becomes impossible for any reason whatsoever for any party to perform its obligations as contemplated in the loan agreement as a result of the introduction, change, interpretation, administration or application of any applicable law or the compliance with any applicable law, then the Applicant will notify the Co-Applicant upon becoming aware of such event or change and upon receipt of the above notice by the Co-Applicant, the Co-Applicant will repay the outstanding amount on the date specified by the Applicant in the notice.
- The Loan will bear interest at a market related rate which will be compounded semi-annually in arrears. Interest accrued on the Loan shall be payable semi-annually each year.
- Non-payment of capital (after 30 years), and/or non-payment of interest by the Co-Applicant will be a breach event. In the event of a breach the Applicant will be able to claim repayment for any accrued interest, however, the Applicant will not be entitled to claim a repayment of any capital amounts prior to the expiry of the period of 30 years.
- The Co-Applicant will further, in accordance with the terms of the Loan, not have any right, whether fixed or contingent, to require any other person to:
 - acquire the Loan;
 - make any payment in respect of the Loan in terms of a guarantee, indemnity or similar arrangement; or
 - procure, facilitate, or assist with the acquisition or the making of any payment as noted above.
- The Applicants will classify and measure the loan at amortised cost in accordance with IFRS 9.
- There will thus be no fair value accounting entries processed on the loan in either the Applicant's or Co-Applicant's Statement of Comprehensive Income

5. Conditions and assumptions

This binding private ruling is subject to the following additional conditions and assumptions:

- a) For purposes of the definition of "group of companies" in section 41(1), none of the equity shares of Company A or the Applicant are the subject of any contractual obligation to sell or purchase, or of any option contract, that feature non-market related pricing.

- b) In relation to every year of assessment during its term, the Loan would not contain any right, whether fixed or contingent, to require any person other than the issuer of that instrument to:
 - i) acquire that instrument from the holder thereof;
 - ii) make any payment in respect of that instrument in terms of a guarantee, indemnity or similar arrangement; or
 - iii) procure, facilitate or assist with any acquisition contemplated in (i) above, or the making of any payment contemplated in (ii) above.

6. Ruling

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

- a) The Loan is a hybrid debt instrument as defined in section 8F(1) and the interest accrued by the Applicant under the Loan will be deemed to be a dividend *in specie* in respect of a share that is declared and paid by the Co-Applicant to the Applicant on the last day of the year of assessment of the Co-Applicant.
- b) The deemed dividend *in specie* received or accrued to the Applicant in terms of section 8F will be exempt from income tax in terms of section 10(1)(k).
- c) The deemed dividend *in specie* in terms of section 8F will be exempt from Dividends Tax under section 64FA.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 23 September 2024.