

BINDING PRIVATE RULING: BPR 152

DATE: 13 August 2013

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

SECTIONS : PARAGRAPHS 3, 11(1)(b), 35(1) AND 38 OF THE EIGHTH SCHEDULE TO THE ACT

SUBJECT : CAPITAL GAINS TAX: CANCELLATION AND EXTINGUISHMENT OF A RIGHT TO INTEREST

1. Summary

This ruling deals with the question as to whether the cancellation and extinguishment of a right to claim interest on a shareholder loan will trigger a capital gains tax liability in terms of the provisions of the Eighth Schedule to the Act.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 78(2) and published in accordance with section 87(2) of the Tax Administration Act No. 28 of 2011.

In this ruling references to paragraphs are to paragraphs of the Eighth Schedule to the Act applicable as at 30 April 2013 and 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 –

- paragraph 3;
- paragraph 11(1)(b);
- paragraph 35(1); and
- paragraph 38 of the Eighth Schedule.

3. Parties to the proposed transaction

The Applicant: A public company incorporated in and a resident of South Africa;

The Co-Applicant: A private company incorporated in and a resident of South Africa.

4. Description of the proposed transaction

A listed public company sold its majority shareholding of 74% in the Co-Applicant to the Applicant. The Co-Applicant and the Applicant were not connected parties prior to the equity acquisition in the Co-Applicant by the Applicant.

As part of the acquisition of 74% of shares in the Co-Applicant, the Applicant acquired a total loan claim to the value of R4,161 billion owed by the Co-Applicant

to a financing company. The Applicant paid R1,1 billion for the loan claim. The Co-Applicant, however, continues to owe the Applicant the total R4,161 billion amount. Interest is charged at JIBAR plus 4.9% per annum. The Co-Applicant is not in a position to service all the interest on the loan claim due to the Applicant.

The Applicant proposes splitting the loan claim into two parts. Interest will continue being charged on the R1,1 billion amount. Interest on R3,061 billion, reflecting the discounted portion of the loan claim, will be cancelled. The R3,061 billion amount will subsequently become an "interest free portion";

In addition, the loan claim will be subordinated in order to restore the solvency of the Co-Applicant and to allow the Co-Applicant to be in a position to negotiate better credit terms with other financial institutions.

5. Conditions and assumptions

This ruling is not subject to any additional conditions and assumptions.

6. Ruling

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

- As the Co-Applicant and the Applicant were not connected parties prior to the equity acquisition in the Co-Applicant by the Applicant, the R1,1 billion amount for the loan claim will represent an arm's length price.
- The cancellation and extinguishment of the Applicant's right to interest based on the interest free portion of the loan claim will not trigger any capital gains tax liability for the Applicant under the provisions of the Eighth Schedule.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 5 years from 30 April 2013.

Issued by:

**Legal and Policy Division: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**