

BINDING PRIVATE RULING: BPR 246

DATE: 24 August 2016

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 8(4)(a) AND 19, AND PARAGRAPH 12A OF THE EIGHTH SCHEDULE
SUBJECT : DEBT REDUCTION AND CAPITALISATION

1. Summary

This ruling determines the tax consequences for the Applicant of a proposed settlement of a shareholder's debt and the subsequent issue of preference shares.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 78(1) and published in accordance with section 87(2) of the Tax Administration Act No. 28 of 2011.

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 4 August 2016. 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 the provisions of –

- section 8(4)(a);
- section 19; and
- paragraph 12A.

3. Parties to the proposed transaction

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

The Partnership: An *en commandite* partnership formed in and a resident of South Africa

4. Description of the proposed transaction

The Partnership holds 64,69% of the ordinary shares in the Applicant. The remainder is held by seven different shareholders.

Some years ago, the Partnership advanced funding to the Applicant by way of unsecured, fixed rate debentures (the debentures).

The precarious financial position of the group, of which the Applicant forms part, has necessitated a debt restructuring. As part of that debt restructuring the following steps will be implemented:

- The Applicant will obtain bridging funding from a bank for the amount due under the debentures.
- The Applicant will redeem the debentures for their full value, including all accrued but unpaid interest together with all other amounts that may be payable by the Applicant in accordance with the terms of the debentures (redemption proceeds), by way of electronic funds transfer into a banking account designated by the Partnership.
- The Partnership will subscribe for preference shares and will direct the designated bank to pay, by way of electronic funds transfer, an amount equal to the redemption proceeds into a banking account designated by the Applicant.
- The Applicant will allot and issue the preference shares to the Partnership as fully paid-up and will deliver the share certificates to the Partnership.
- The Applicant will repay the external bridging funding, using the proceeds from the issue of the preference shares.

5. Conditions and assumptions

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

6. Ruling

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

- a) The redemption of the debentures at full value will not be subject to the provisions of section 19 or paragraph 12A of the Eighth Schedule. Accordingly, section 19(6) will not deem an amount to have been received or recouped by the Applicant for purposes of section 8(4)(a), to the extent that the amount outstanding on the debentures includes interest for which a deduction or allowance was permitted in terms of the Act.
- b) In the absence of section 19 applying, section 8(4)(a) will also not apply in consequence of the redemption of the debentures for an amount that includes accrued but unpaid interest, since there will be no amount to be recovered or recouped by the Applicant.

7. Note

This ruling does not cover the application of any general anti-avoidance provision to the proposed transaction.

8. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 4 August 2016.

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