

BINDING PRIVATE RULING: BPR 289

DATE: 19 January 2018

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 10(1)(k), 24O, 45(4B), 64F(1)(a) AND 64G(2)(b) AND PARAGRAPHS 20(1)(a) AND 35(3)(a) OF THE EIGHTH SCHEDULE
SUBJECT : BASE COST OF LOAN CLAIM AND TAX IMPLICATIONS OF ACQUISITION TRANSACTION

1. Summary

This ruling determines the tax implications of a corporate restructuring involving, amongst others, the declaration of a dividend that is settled by the issue of debt and the implementation of a share acquisition transaction.

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 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 20 September 2017. 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 10(1)(k);
- section 24O;
- section 45(4B);
- section 64F(1)(a);
- section 64G(2)(b);
- paragraph 20(1)(a); and
- paragraph 35(3)(a).

3. Parties to the proposed transaction

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

The co-applicant: A company incorporated in and a resident of South Africa and a wholly-owned subsidiary of the Applicant

Company A: A company incorporated in and a resident of South Africa, also a wholly-owned subsidiary of the applicant

4. Description of the proposed transaction

The applicant intends to introduce a black economic empowerment entity as a shareholder of the co-applicant. In order to facilitate the entry of that shareholder, the equity value of the co-applicant must be reduced in order to decrease the level of funding required by the new shareholder.

The proposed steps to implement the transaction will be as follows:

- a) The co-applicant will declare a dividend to the applicant, which will be paid by creating a loan claim and the issuing of a note evidencing that claim (Note A) in favour of the applicant. The salient terms of the note will be that it will be payable on thirty days written notice to the co-applicant, non-interest bearing and rank *pari passu* with all of the co-applicant's unsecured obligations, except for obligations which are mandatorily preferred by law.
- b) The applicant will dispose of all its equity shares in Company A to the co-applicant in terms of an intra-group transaction contemplated in section 45(1) on loan account (Note B). The salient terms of the note will be as follows:
 - i) Note B will be subject to interest at a rate to be agreed, however, the parties will agree not to charge interest for the immediate future.
 - ii) The applicant may not distribute or otherwise deal with Note B within a period of two years from the effective date of the intra-group transaction.
 - iii) Note B will in principle be repayable on thirty days written notice, although it will in fact not be paid within two years of the transaction.
- c) The co-applicant will obtain interest-bearing bank funding to repay Note B after two years from the effective date of the intra-group transaction. The applicant will use the amount received from the repayment of Note B to make a cash distribution to its shareholders that do not form part of the same group of companies.

5. Conditions and assumptions

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

- a) The transaction in terms of which the applicant will dispose of all of its shares in Company A to the co-applicant in exchange for Note B will comply with the requirements of an "*intra-group transaction*" as defined in paragraph (a) of the definition of that term in section 45(1) and the relief contemplated in section 45(2) will apply to the applicant and the co-applicant, as the context requires.
- b) The applicant and the co-applicant will not elect that section 45 will not be applicable to the transaction as contemplated in section 45(6)(g).

6. Ruling

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

- a) The dividend declared by the co-applicant to the applicant will be exempt from income tax under section 10(1)(k) and will be exempt from dividends tax under section 64F(1)(a) read with section 64G(2)(b).
- b) The dividend declaration by the co-applicant and settlement of the dividend by the creation of Note A in favour of the applicant will not result in a capital gain in the hands of the applicant.
- c) The base cost of Note A will be equal to the market value of the applicant's erstwhile right to claim the dividend payment.
- d) Section 45(4B) will not apply to any portion of the cash proceeds that will be received by the applicant from the repayment of Note B by the co-applicant after a period of two years from the effective date of the intra-group transaction and which will be distributed by the applicant to its shareholders.
- e) Any interest incurred on the interest-bearing bank loan that will be obtained to re-finance Note B will be deemed to have been incurred in the production of the co-applicant's income and laid out or expended for purposes of its trade in terms of section 24O.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 20 September 2017.

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