

**BINDING PRIVATE RULING: BPR 303**

DATE: 11 June 2018

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)  
SECURITIES TRANSFER TAX ACT 25 OF 2007 (STT Act)**

**SECTION : SECTIONS 19 and 24J(2) AND PARAGRAPHS 12A AND 20(1) OF  
THE EIGHTH SCHEDULE TO THE ACT  
SECTIONS 2 AND 6 OF THE STT ACT**

**SUBJECT : TAX IMPLICATIONS OF A GROUP RESTRUCTURING  
TRANSACTION**

**1. Summary**

This ruling determines the tax consequences of a group restructuring transaction which includes the discharge of debt by way of set-off, the disposal of shares in a subsidiary to unconnected persons and the tax implications of a replacement loan.

**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 the STT Act and paragraphs of the Eighth Schedule to the Act applicable as at 28 February 2018. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the relevant Act.

This is a ruling on the interpretation and application of –

- the Act –
  - section 1(1) – definition of “contributed tax capital”;
  - section 19; and
  - section 24J(2);
  - paragraph 12A; and
  - paragraph 20(1).
- the STT Act –
  - section 2; and
  - section 6.

**3. Parties to the proposed transaction**

The applicant: A listed company and a resident of South Africa

Co-applicants 1, 2 and 3:	Companies which are residents of South Africa
Co-applicant 4:	A foreign company
Co-applicants 5 and 6:	Companies which are residents of South Africa
Companies A, B, C, D and E:	Companies which are residents of South Africa

#### 4. Description of the proposed transaction

The applicant holds 100% of the shares in co-applicant 1, which holds 100% of the shares in Companies A and B. Company A holds 100% of the shares in Company C. Company B holds 100% of the shares in Company D. The shares in co-applicant 2 are held by Company C (80%), co-applicant 5 (17.5%) and Company E (2.5%). Co-applicant 2 holds 100% of the shares in co-applicant 3.

The applicant wishes to restructure its group and settle certain intra-group loans prior to it making a disposal of the shares held in co-applicant 2 to co-applicant 6.

As at 30 September 2017, the relevant intra-group loans included –

- a loan by co-applicant 1 to co-applicant 2 of R132 million;
- a loan by co-applicant 1 to co-applicant 3 of R108 million;
- a loan by Company D to co-applicant 2 of R171 million.

The proposed transaction will be implemented by way of the following transaction steps:

##### Step 1

Co-applicant 1 will subscribe for “A” preference shares and “B” preference shares in co-applicant 2 for R161 million, plus the amount of any new loans granted by co-applicant 1 to co-applicant 2 after 30 September 2017 and up to 28 February 2018 (“new loans”). Co-applicant 1 and co-applicant 2 will agree the outstanding consolidated new loans balance before the implementation of step 1.

The consideration will consist of R108 million in cash with the balance (of R55 million plus the amount of the new loans) left outstanding on loan account.

##### Step 2

Co-applicant 2 will subscribe for additional ordinary shares in co-applicant 3 for cash of R108 million.

##### Step 3

Co-applicant 3 will use the cash thus obtained in step 2 to repay its loan to co-applicant 1 of R108 million.

Step 4

The loan owing by co-applicant 1 to co-applicant 2 will be set-off against an equal portion (that is R55 million, plus the amount of the new loans) of the loan owing by co-applicant 2 to co-applicant 1.

Step 5

Co-applicants 4 and 5 will subscribe for shares at arm's length consideration in co-applicant 6 so that co-applicant 4 will hold 32.84% and co-applicant 5 67.16% of the ordinary shares.

Step 6

Co-applicant 4 will acquire 49% of the shares in co-applicant 2 from Company C at arm's length consideration of one rand; and

Co-applicant 6 will acquire 31% of the shares in co-applicant 2 from Company C at arm's length consideration of one rand and 2.5% of the shares in co-applicant 2 from Company E at arm's length consideration of one rand.

Step 7

Co-applicant 4 will acquire 100% of the "A" preference shares in co-applicant 2 from Co-Applicant 1 at arm's length consideration (of not more than R7 350) representing 49% of all the preference shares;

Co-applicant 6 will acquire 65.69% of the "B" preference shares in Co-applicant 2 from co-applicant 1 at arm's length consideration (of not more than R5 025) representing 33.5% of all the preference shares; and

Co-applicant 5 will acquire 34.31% of the "B" preference shares in co-applicant 2 from co-applicant 1 for arm's length consideration (of not more than R2 625) representing 17.5% of all the preference shares.

Step 8

Co-applicant 4 will advance an interest-bearing loan of R250 million to co-applicant 2. Then co-applicant 2 will settle the remaining balance of R77 million owing to co-applicant 1 and the R171 million loan owing to Company A.

**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:

Step 1

- The base cost of the "A" preference shares and the "B" preference shares acquired by co-applicant 1 will be equal to the subscription price, being the sum of the cash consideration paid and the outstanding subscription price owing by co-applicant 1.

- The contributed tax capital attributable to each of the “A” preference shares and the “B” preference shares will be equal to the respective subscription prices of those classes of shares.

#### Step 2

- The base cost of the ordinary shares issued by co-applicant 3 to co-applicant 2 will be equal to the total cash subscription paid for the shares.
- The contributed tax capital attributable to the ordinary shares issued by co-applicant 3 will be equal to the total cash subscription price paid.

#### Step 3

- The cash settlement of the loan owing by co-applicant 3 to co-applicant 1 will not result in a “reduction amount” and therefore section 19 and paragraph 12A will not apply to this transaction.

#### Step 4

- The set-off of the loan owing by co-applicant 1 to co-applicant 2 (loan 4) against an equal portion of the loan owing by co-applicant 2 to co-applicant 1 (loan 1) will not result in a “reduction amount” and therefore section 19 and paragraph 12A will not apply to this transaction.

#### Step 5

- The base cost of the ordinary shares issued by co-applicant 6 to co-applicant 4 and co-applicant 5 will be equal to the respective subscription prices paid.
- The contributed tax capital attributable to the ordinary shares issued by co-applicant 6 will be equal to the total subscription price received.

#### Step 6

- The base cost for each of the parties of the ordinary shares in co-applicant 2 acquired by co-applicants 4 and 6, will be equal to the respective subscription prices paid for the shares.
- Securities transfer tax will be payable by co-applicant 2 at a rate of 0.25% on the higher of the consideration paid or the market value of the shares.

#### Step 7

- The base cost of the “A” preference shares acquired, by co-applicant 4, will be equal to the consideration paid for the “A” preference shares.
- The base cost of the “B” preference shares acquired by co-applicants 5 and 6, will be equal to the respective subscription prices paid for those” preference shares.
- Securities transfer tax will be payable by co-applicant 2 at a rate of 0.25% on the market value of the “A” preference shares and “B” preference shares since they will be acquired at nominal values.

#### Step 8

- Any interest incurred by co-applicant 2 on the loan from co-applicant 4 will be deductible under section 24J(2).

- The cash settlement of loan 1 and loan 3 at the respective face values of those loans by co-applicant 2 will not result in a “reduction amount” in either case and therefore section 19 and paragraph 12A will not apply to those transactions.

**7. Note**

The consideration referred to in the proposed transaction steps was in each case determined to be arm’s length consideration by the parties. The ruling is not a determination as to whether or not those amounts are in fact arm’s length, since SARS is by law precluded from making such a determination.

**8. Period for which this ruling is valid**

This binding private ruling is valid in respect of the year of assessment ended 28 February 2018.

**Legal Counsel: Advance Tax Rulings  
SOUTH AFRICAN REVENUE SERVICE**