

BINDING PRIVATE RULING: BPR 396

DATE: 14 November 2023

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 8(4)(a) AND (l); 19 AND PARAGRAPH 12A OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : SETTLEMENT OF SHAREHOLDER'S LOANS

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, 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 for the Applicant of a proposed settlement of a shareholder's debt *via* set-off against the subscription price for the issue of additional shares to the shareholder.

2. Relevant tax laws

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 6 July 2023. 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 8(4)(a) and (l);
- section 19; and
- paragraph 12A.

3. Parties to the proposed transaction

The Applicant: A resident investment holding company

Company A: A foreign company that is the sole shareholder of the Applicant

4. Description of the proposed transaction

The Applicant is indebted to Company A following successive foreign currency denominated loans advanced by previous shareholders and other group companies that had been taken over by Company A. These loans collectively constitute "the Debt".

The Debt was used by the Applicant to fund its operational costs and invest by way of equity and loans in property developing subsidiaries. The investment income from its subsidiaries comprises interest earned on the loans as well as dividends.

Under the proposed transaction, the Applicant will reduce its total balance sheet liabilities by settling the Debt, as follows:

- The Applicant will issue shares to Company A for an amount equal to the face value of the Debt and will leave the liability for the share subscription outstanding on loan account.
- The liability to be owed by Company A to the Applicant for the share subscription will be set-off against the Debt owed by the Applicant 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:

- a) Section 19(2) will apply to the portion of the Debt utilised to fund operational expenditure to the extent that a “debt benefit” as defined in paragraph (d) of such definition in section 19(1) arises.
- b) Paragraph 12A(2) will apply to the portion of the Debt utilised to invest in the subsidiaries by means of subscriptions for equity and the advancement of loans to the extent that a “debt benefit” as defined in paragraph 12A(1) arises.
- c) Section 19(5) and paragraph 12A(5) will apply to the proposed transaction to the extent that a “debt benefit” arises; however, section 19(8)(f) and paragraph 12A(6)(g) will relieve the Applicant from the consequences of section 19(5) and paragraph 12A(5) if any debt benefit arises but the relief will not apply to the capitalised interest.
- d) Section 8(4)(a) and (f) will not apply to recoup any historical deductions of interest granted under section 24J upon implementation of the proposed transaction.
- e) Section 8(4)(a) will not apply to recoup any historical deductions of foreign exchange losses granted under section 24I upon implementation of the proposed transaction.

7. Period for which this ruling is valid

This binding private ruling is valid in respect of the year of assessment ending 31 May 2024.