

BINDING PRIVATE RULING: BPR 424

DATE: 6 February 2026

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 24J
SUBJECT : INTEREST INCURRED ON LOAN FUNDING USED TO REDEEM PREFERENCE SHARES AND SETTLE DIVIDENDS

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 and the Applicant only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling considers the deductibility of interest incurred in respect of loan funding used to redeem preference shares and settle any current or accumulated preference share dividends.

2. Relevant tax laws

In this ruling, references to sections are to sections of the Act applicable as at 12 December 2025. 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 24J.

3. Parties to the proposed transaction

The Applicant: A resident company

Bank: A resident commercial bank

4. Description of the proposed transaction

The sole purpose of the Applicant is to develop and own a project (the Project). The Bank has offered a project finance facility. The funds raised by way of the facility will be used by the Applicant to fund costs attendant to the Project.

The salient terms and conditions that will be applicable to the facilities to be provided by the Bank to the Applicant, will be as follows:

- 40% of the funding will be in the form of the "Senior JIBAR Facility" which the Applicant will utilise to fund costs attendant to the construction costs and initial start-up costs in relation to the Project (the Initial Loan);

- 60% of the funding will, initially, be provided by the Bank subscribing for unsecured, redeemable preference shares in the Applicant (the Preference Shares). The Applicant will use the proceeds from the Preference Shares to fund construction costs and initial start-up costs in relation to the Project.

The Preference Shares and, if applicable, any accumulated dividends will later be redeemed using the “Post Construction Senior JIBAR Facility” (the New Loan). Once the Preference Shares are replaced with the New Loan, all the funding provided to the Applicant will be in the form of senior debt.

The New Loan is considered part and parcel of the funding facility from inception since its terms are agreed alongside those of the Initial Loan and the Preference Shares, that is, the New Loan comes into existence as a contractual arrangement at inception, but drawdowns are only available from when the Preference Shares become redeemable.

The Applicant's payment obligations under the Initial Loan and the New Loan are secured by, amongst others, notarial bonds over the assets of the Applicant, security cession of debtors' balances and claims against third parties, bank accounts, insurance proceeds, guarantees and performance bonds, shares in the Applicant and a subordination of shareholder claims. A special purpose vehicle (the Security SPV) will be established on behalf of the Bank for the sole purpose of securing the payment obligations of the Applicant in respect of the Initial Loan and the New Loan.

Security for the Applicant's obligations under the Preference Shares is limited to a cession in security by the Applicant of its non-interest-bearing claim against the Security SPV for residual proceeds, following the enforcement of security.

The terms of the finance facility stipulate, amongst others, the following in relation to the purpose of the Initial Loan:

“Funding the design, construction, erection, commissioning and operating of the Project, as well as for capitalising the Reserve Accounts, paying Interest during construction (“Interest Capitalised”) and initial working capital and any other agreed expenditure in connection with the Project.”

The Preference Shares will have a term of seven years and confer on the holder (the Bank) the right to receive a preferential, cumulative cash dividend, calculated as per the terms of the finance facility. Subject to the specified dividend grace period, which is the period from financial close until the scheduled commercial operations date (SCOD), dividends will accrue and will be payable quarterly in arrears. There is also a partial deferment of dividends for a period of three years after SCOD.

The terms of the finance facility include, in relation to redemption of the Preference Shares, the following:

“No Preference Share may be redeemed unless and until all accumulated, accrued and unpaid Dividends on that Preference Share have been paid.

Scheduled Redemption of the Preference Share shall begin on the next Dividend Payment Date following at the earliest 3 years and 1 day after the last Drawdown under the Preference Share Facility and at the latest 3 years after SCOD.

On the Final Redemption Date (being seven (7) years after the issue date) any outstanding Preference Shares may be redeemed using proceeds drawn under the Post-Construction Senior JIBAR Facility.”

The purpose of the New Loan is articulated in the terms of the finance facility as follows:

“The facility shall be used for the purposes of redeeming any outstandings under the Preference Share Facility.”

The Post-Construction Senior JIBAR Facility is the New Loan and, although no Preference Share may be redeemed unless all unpaid dividends have been paid, the Applicant may drawdown on the New Loan to fund any unpaid dividends and the redemption amount of the Preference Shares, in question. This may occur at any time from SCOD plus three years and up to seven years after SCOD, which date coincides with the date by which all the Preference Shares must be redeemed.

The New Loan endures for a period of 20 years following SCOD. The drawdown may be made in one lumpsum during the availability period, following notice. The New Loan has an availability period of seven years from SCOD. Once drawn, the terms and conditions applicable to the Initial Loan will also apply to the New Loan.

The New Loan will bear interest at the rate specified in the terms of the finance facility, subject to an interest roll-up period of between six and seven years after the date of the financial close of the Project.

The funding arrangements are subject to several conditions precedent, one of which reads:

“... tax opinion (including without limitation that the structure and Prefs do not fall foul of section 8E and section 8EA of the Income Tax Act) in respect of the preference shares from counsel acceptable to the Subscriber and in a form and substance satisfactory to the Subscriber”.

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 Applicant will be entitled to deduct interest, determined in accordance with the provisions of section 24J, in respect of the New Loan to the extent that the interest does not relate to amounts used to fund the payment of current or accumulated dividends in respect of the Preference Shares, from the year of assessment during which the first drawdown of funds occurs.
- b) No ruling is issued in relation to the application of section 8E or section 8EA in respect of the Preference Shares.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 10 years from 12 December 2025.

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