

**BINDING PRIVATE RULING: BPR 346**

DATE: 16 July 2020

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 19 AND 64F(1)(a)**  
**SUBJECT : TAX IMPLICATIONS RESULTING FROM THE ELIMINATION OF  
INTRA-GROUP 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 practice generally prevailing.

**1. Summary**

This ruling determines the income tax and dividends tax consequences of the redemption of intra-group loans by way of set-off against dividends payable.

**2. Relevant tax laws**

In this ruling references to sections are to sections of the Act applicable as at 11 March 2020. 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 19; and
- section 64F(1)(a).

**3. Parties to the proposed transaction**

The below-mentioned companies belong to the same group of companies as defined in section 41(1).

The applicant: A private company and a resident

Co-applicant A: A private company and a resident

Co-applicant B: A private company and a resident

Co-applicant C: A private company and a resident

**4. Description of the proposed transaction**

The applicant is an investment holding company. It owns all the equity shares in co-applicant A and co-applicant B.

Co-applicant B holds 100% of the share capital of co-applicant C.

The following loan accounts exist between the applicants –

- loan 1 receivable by co-applicant A from the applicant;
- loan 2 receivable by co-applicant A from co-applicant B;
- loan 3 receivable by co-applicant C from the applicant;
- loan 4 receivable by co-applicant C from co-applicant A; and
- loan 5 receivable by co-applicant B from the applicant.

The loans arose from ongoing advances by the group companies to one another to fund operations within the group. None of the funds were used to fund the acquisition of assets. The loans were used to fund the day-to-day operations of the group companies.

The group wishes to eliminate the intra-group loans as far as possible. The steps to implement the proposed transactions are as follows:

#### **Step 1**

- Co-applicant A will declare a dividend to the applicant equal to the balance of loan 1, which will be left outstanding on loan account.
- Co-applicant A and the applicant will agree to set off the dividend payable by co-applicant A against loan 1 payable by the applicant to co-applicant A, resulting in the full settlement of both loans.

#### **Step 2**

- Co-applicant C will declare a dividend to co-applicant B equal to the balance owing in respect of loan 3, which will be left outstanding on loan account. Co-applicant C will cede loan 3 to co-applicant B in settlement of the dividend.
- Co-applicant B will cede loan 3 and loan 5 to co-applicant A in part payment of loan 2.

#### **Step 3**

- Co-applicant C will declare a dividend to co-applicant B for an amount equal to the balance in respect of loan 4, which will be left outstanding on loan account. Co-applicant C will cede loan 4 to co-applicant B in settlement of the dividend.
- Loan 2 and loan 4 will be set-off against each other. The net balance will be an amount owing by co-applicant B to co-applicant A in respect of loan 2.

#### **Step 4**

- Co-applicant A will declare a dividend to the applicant for an amount equal to the sum of the balances of loan 2, 3 and 5, which will be left outstanding on loan account.
- Loan 3 and loan 5 will be set off against the dividend.
- Co-applicant A will cede loan 2 to the applicant in settlement of the dividend.

**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 dividend to be declared by co-applicant A, which equals the amount owed by virtue of loan 1 by the applicant, will be exempt from dividends tax under section 64F(1)(a).
- b) The dividends to be declared by co-applicant C in steps 2 and 3 will be exempt from dividends tax under section 64F(1)(a).
- c) The dividend to be declared by co-applicant A in step 4 will be exempt from dividends tax under section 64F(1)(a).
- d) The redemptions of loans 1, 3 and 5 by way of the set-off arrangements in step 1 and step 4 will, in each instance, constitute a “concession or compromise” as defined in paragraph (a)(ii)(aa) of that term in section 19(1). However, the set-off arrangements will in none of those cases amount to a “debt benefit” as defined in section 19(1).

**7. Additional Note**

This ruling does not cover the application of any general or special 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 one year from 12 March 2020.