



*SOUTH AFRICAN REVENUE SERVICE*

**BINDING PRIVATE RULING: BPR 045**

DATE: 25 September 2009

**ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)**

**SECTION : SECTIONS 24J AND 11(a) READ WITH SECTION 23(g)**

**SUBJECT : DEDUCTIBILITY OF CONDITIONAL INTEREST INCURRED IN TERMS OF A LOAN**

**1. Summary**

This ruling deals with conditional interest which will be incurred in terms of a loan and whether it will be deductible in terms of section 24J of the Act or alternatively section 11(a) read with section 23(g) of the Act.

**2. Relevant Tax Laws**

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling legislative references to sections are to sections of the Act applicable as at 1 April 2008 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested under the provisions of –

- section 24J; and
- section 11(a) read with section 23(g).

**3. Parties to the proposed transaction**

The Applicant:                      Subsidiary Company (Subco)

Other party:                          Holding Company (Holdco)

**4. Description of the proposed transaction**

Holdco intends to grant loans (the loan facility) to Subco to be used by Subco to fund its capital expenditure. The following will be the key terms of the loan facility, as intended:

- (a) Each loan under the loan facility will have a final maturity date, which date will be the 30<sup>th</sup> anniversary of the draw down date.
- (b) Each loan will carry interest at a fixed rate.
- (c) The financial position of Subco will be assessed on a six-monthly basis (measure date) for the duration of each loan. Should Subco meet certain financial ratios, interest will accrue to Holdco on each loan for the six months period preceding such measure date. Such interest must be paid to Holdco within a period of 30 days from such measure date (period within which the interest payment is to be made). If Subco does not meet the financial ratios, interest will not accrue to Holdco for the six months period preceding such measure date.
- (d) Any accrued interest to Holdco in respect of which payment of such interest is not made by Subco within such specified period will be carried forward to the next succeeding interest payment period. All accrued interest to Holdco which is not paid by Subco will be capitalised annually in arrears and will be paid in full by Subco on the maturity date of such loan.

The loan will be unsecured and subordinated.

## **5. Conditions and assumptions**

This ruling is made subject to the following conditions and assumptions –

- the loans to be granted in terms of the loan facility will only be applied by Subco to fund its capital expansion programme; and
- interest to be paid by Subco on such loans received by Subco is conditional on the specified financial ratios being met by Subco.

## **6. Ruling**

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

- Each loan under the term loan facility granted by Holdco to Subco will be regarded as an “instrument” as defined in section 24J.
- The interest payments made by Subco to Holdco in respect of each loan obtained will not qualify as a deduction under the provisions of section 24J as the payment of interest is conditional.
- The interest that will accrue to Holdco on each loan will be allowed as a deduction from the income of Subco under section 11(a) read with section 23(g).

## **7. Period for which this ruling is valid**

This binding private ruling is valid as from 26 August 2008 until the

maturity date, being the 30<sup>th</sup> anniversary of the draw down date of each loan received under the loan facility, or such earlier date as may be agreed upon between the parties to the proposed transaction.

Issued by:

**Legal and Policy Division: Advance Tax Rulings  
SOUTH AFRICAN REVENUE SERVICE**