



SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 066

DATE: 03 December 2009

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTION 24J(2)
SUBJECT : DEDUCTIBILITY OF INTEREST INCURRED ON LOANS OBTAINED TO ACQUIRE THE BUSINESSES OF A GROUP OF COMPANIES AS GOING CONCERNS THROUGH THE ACQUISITION OF THE SHARES IN A HOLDING COMPANY

1. Summary

This ruling deals with the question as to whether interest incurred on shareholders loans and on bank funded loans obtained with the intention to acquire the businesses of a group of companies as going concerns will be deductible for income tax purposes.

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 14 April 2009 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 sections 24J(2).

3. Parties to the proposed transaction

The Applicant: A newly formed limited liability company which will acquire the shares in Company A

Company A: A limited liability holding company with various subsidiaries which forms a group of companies (the Group)

4. Description of the proposed transaction

During its negotiations with the Group, the Applicant sent a letter of intent, offering to purchase the individual businesses of the various companies within the Group as going concerns. The shareholders of Company A decided against selling the assets and liabilities of the various companies within the Group to the Applicant. The Group indicated that it would only enter into an agreement with the Applicant on the basis that the Applicant acquires the shares in Company A.

The Applicant's objective is to acquire the business operations of Company A and its subsidiary companies in order to operate these businesses as divisions of the Applicant. To achieve this, the Applicant intends to acquire the shares in Company A in order to immediately enable the Applicant to acquire all the businesses of the companies in the Group as going concerns and thereafter to liquidate those companies (except the business of one company, hereinafter called Company X).

Company A holds 50% of the shares in Company X. The other 50% are held by an unrelated third party. Company X holds a valuable strategic asset for the Group. Access to this asset enables the Group to tender for a variety of contracts which would otherwise not have been possible. Selling the shares in Company X would undermine the future viability of the operations in relation to the key strength of company X and also provide their largest competitor with sole access to the ability to tender for certain contracts. The shares in Company X will accordingly be transferred from Company A to the Applicant and these shares will not be sold.

5. Conditions and assumptions

This ruling is made subject to the conditions and assumptions that –:

- the purchase price payable by the Applicant for the shares in Company A is market related;
- no ruling is issued in respect of the market value of any of the shares or any assets;
- no dividend will be declared to any shareholder of Company A as a result of, or as part of the acquisition process of Company A;
- the businesses of the various companies within the Group of companies will be transferred to the Applicant within a period of six (6) months; and
- the necessary steps to liquidate, wind up or deregister Company A and its subsidiaries as envisaged in section 47 of the Income Tax Act must have been taken within a period of eighteen (18) months

from the date of this ruling or such further date as the Commissioner may approve.

6. Ruling

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

- The interest to be incurred by the Applicant on the shareholders loans and the bank funded loans obtained to acquire the businesses of Company A and its subsidiaries as going concerns *via* the acquisition of the shares in Company A is an expense incurred in the “production of income” as envisaged by section 24J(2) and therefore deductible in determining the taxable income of the Applicant.

7. Period for which this ruling is valid

This binding private ruling is valid as from 16 April 2009 for the years of assessment that interest will be incurred on the amounts borrowed to acquire the shares in Company A.

Issued by:

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