

**BINDING PRIVATE RULING: BPR 181**

DATE: 4 November 2014

**ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 1(1) DEFINITION OF “RESIDENT”, 9(2)(b), 24J(1) DEFINITION OF “INTEREST”, 50A(1) DEFINITION OF “FOREIGN PERSON”, 50B AND 50E OF THE ACT AND ARTICLES 1, 4 AND 11 OF THE CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE KINGDOM OF DENMARK FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME (SOUTH AFRICA/DENMARK TREATY)**  
**SUBJECT : WITHHOLDING TAX ON INTEREST IN RELATION TO A FOREIGN GOVERNMENT**

**1. Summary**

This ruling deals with the withholding tax on interest arising from loans made by a funding scheme related to a foreign government, to a resident of South Africa.

**2. Relevant tax laws**

This is a binding private ruling issued in accordance with section 78(1) and published in accordance with section 87(2) of the Tax Administration Act No. 28 of 2011.

In this ruling references to sections and Articles are to sections of the Act and Articles of the South Africa/Denmark Treaty applicable as at 17 September 2014 and 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 the provisions of –

- section 1(1) definition of “resident”;
- section 9(2)(b);
- section 24J(1) definition of “interest”;
- section 50A(1) definition of “foreign person”;
- section 50B; and
- section 50E of the Act; and
- Articles 1, 4 and 11 of the South Africa/Denmark Treaty.

**3. Parties to the proposed transaction**

The Applicant: A private company incorporated in and a resident of South Africa

The Co-Applicants: Two private companies incorporated in and residents of South Africa

Funding Scheme: A foreign funding scheme established and owned by the Danish State under Denmark's official credit agency and a resident of the Kingdom of Denmark whose place of effective management is not situated in South Africa

Domestic Banks: Bank A and Bank B both incorporated in and residents of South Africa

#### **4. Description of the proposed transaction**

The Applicant and Co-Applicants intend to construct renewable energy wind farms (the wind farms) in South Africa. Three wind farms will be constructed and housed in three separate entities, namely, the Applicant and the two Co-Applicants.

Currently, the intended funding for the plant and equipment for the wind farms has been underwritten by Bank A. Denmark's official credit agency (the Agency) has provided guarantees (export credit guarantees) to Bank A in order to assist the Applicant and Co-Applicants in financing the purchase of the plant and equipment from a Danish company.

The Agency has also agreed to co-sign the lenders' commitment letter as part of the pre-bid financial structure, and to the extent that the Applicant and Co-Applicants are successful in their bid to develop the wind power plants, to participate in funding the projects.

The projects are expected to end by April 2017. The funding facility will become available from the middle of October 2014.

Bank A will be released from its prior commitment and the Danish Government (*via* the Funding Scheme) will participate in any loans that are provided to the Applicant and Co-Applicants.

It is intended that Bank A will provide 10%, Bank B will provide 10% and the Funding Scheme will provide 80% of the required funding to the Applicant and Co-Applicants, which will be used to finance the costs in relation to, amongst others, the design, development, financing, construction, ownership, operation and maintenance of the wind farms which the Applicant and Co-Applicants will construct.

Once construction has been completed, interest on the loans will be paid semi-annually to Bank A, Bank B and the Funding Scheme. The tenor of the facility will be 15 years.

The Funding Scheme has confirmed that it does not carry on business in South Africa through a permanent establishment situated in South Africa. The Funding Scheme has further confirmed that it is the beneficial owner of the interest.

#### **5. Conditions and assumptions**

This ruling is not subject to any additional conditions and assumptions.

**6. Ruling**

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

- Article 11(1) of the South Africa/Denmark Treaty is applicable and the interest that is to be paid to the Danish Government (*via* the Funding Scheme) will be subject to tax in South Africa at a reduced rate of zero, provided the Funding Scheme submits a declaration and written undertaking contemplated in section 50E(3) to the Applicant and the Co-Applicants.

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

This binding private ruling is valid for a period of 5 years from 17 September 2014.

Issued by:

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