

BINDING PRIVATE RULING: BPR 208

DATE: 8 October 2015

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTION 19 AND PARAGRAPH 12A OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : REPAYMENT OF SHAREHOLDER'S LOAN FROM PROCEEDS OF A NEW SHARE ISSUE

1. Summary

This ruling determines the income tax consequences of a repayment of a shareholder's loan from the proceeds of a new share issue by a company.

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 paragraphs are to sections of the Act and paragraphs of the Eighth Schedule thereto applicable as at 18 September 2015. 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 19; and
- paragraph 12A.

3. Parties to the proposed transaction

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

The Seller: A company incorporated in and a resident of South Africa which is a 50% shareholder of the Applicant

The Purchaser: A company incorporated and resident outside South Africa which is the other 50% shareholder of the Applicant

4. Description of the proposed transaction

The Seller and the Purchaser have concluded a share purchase agreement (the agreement) in terms of which the Purchaser will acquire the Seller's 50% shareholding in the Applicant (the transfer shares).

An incorporated division of the Seller had previously granted loans to the Applicant for purposes of financing its business operations. These loans, consisting of capital and accrued interest, have been transferred to the Seller prior to the conclusion of the agreement. The Applicant is, therefore, indebted to the Seller (the Seller's shareholder loan).

It was always the Purchaser's intention to acquire the transfer shares only in the Applicant, therefore, the Seller's shareholder loan will have to be settled prior to the Purchaser acquiring the transfer shares.

The agreement is subject to certain suspensive conditions, amongst others, that:

- The capitalisation transaction is to be implemented in full. It follows that the subscription shares are to be issued to the Purchaser and Seller, the Seller's shareholder loan have to be repaid and the outstanding value thereof has to be reduced to nil.
- The Applicant has to obtain a binding private ruling in relation to the repayment of the Seller's shareholder loan from funds received by the Applicant from the capital contribution.

The proposed transaction will be achieved through the following transaction steps:

- (a) The Seller and the Purchaser will each subscribe for one share in the Applicant.
- (b) The Purchaser will subscribe for one share at a nominal value of R1.00 and the Seller will subscribe for one share at a premium equal to the face value of the Seller's shareholder loan at the time of the subscription.
- (c) The Applicant will use the cash proceeds of the capital contribution to repay and discharge the Seller's shareholder loan in full.
- (d) The outstanding value of the Seller's shareholder loan will, therefore, be reduced to nil before the sale of the transfer shares to the Purchaser.

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:

- The provisions of section 19 and paragraph 12A of the Eighth Schedule will not be applicable to the proposed transaction.

7. Additional note

This ruling does not cover the application of any general 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 5 years from 18 September 2015.

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