

BINDING PRIVATE RULING: BPR 173

DATE: 2 July 2014

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 LOAN FROM PROCEEDS OF A NEW ISSUE OF ORDINARY SHARES

1. Summary

This ruling deals with the income tax consequences arising from the repayment of shareholder loan from the proceeds of a new issue of ordinary shares in 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 to the Act applicable as at 15 April 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 19; and
- paragraph 12A of the Eighth Schedule.

3. Parties to the proposed transaction

The Applicant: A company incorporated in and a resident of South Africa
Management: The Management of the Applicant
Holdco: A foreign company that is the majority shareholder of the Applicant

4. Description of the proposed transaction

Holdco owns the majority of the issued share capital in the Applicant and the remaining issued share capital is owned by Management.

As at 31 March 2013, the Applicant owed an outstanding loan amount to Holdco. The loan was used to fund operational expenditure of the Applicant.

Holdco wishes to recapitalise the Applicant by way of a new issue of ordinary shares (the shares). The Applicant will use the cash so generated to repay the loan owed to Holdco in full.

Management will also have the option to subscribe for more shares in the Applicant.

Holdco will subscribe for the shares in terms of a Subscription Agreement to be entered into between the Applicant, Holdco and Management. It is, however, unlikely that any member of Management will subscribe for more shares in the Applicant.

On the date of subscription, Holdco will pay a subscription price in cash equivalent to the amount of the outstanding loan to the Applicant.

The shares will be of the same class as those currently in issue. The Applicant will issue the shares at par value as it has sufficient authorised but unissued shares.

The Applicant will issue share certificates to Holdco and will timeously repay the outstanding loan amount in cash to Holdco.

5. Conditions and assumptions

This ruling is subject to the following additional conditions and assumptions:

- The subscription price for the new issue of shares is to be settled in cash by Holdco.
- The loan amount owed to Holdco will be settled in cash, by the Applicant as contemplated in the proposed transaction.
- No ruling is issued on the past deductibility of the operating expenses and the applicability of section 31 to the facts.
- The Applicant must comply with the relevant regulations and sub-regulations under Regulation 31(5)(b) of the Companies Act, 71 of 2008.

6. Ruling

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

- Section 19 will not be applicable to the repayment of the shareholder loan, accordingly, there will be no recoupment in accordance with section 8(4)(a) to the extent that any amount of the shareholder loan was used directly or indirectly to fund any expenditure for which a deduction or allowance was permitted in terms of the Act.
- Paragraph 12A will not be applicable to the proposed transaction.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of one year from 15 April 2014.

Issued by:

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