

BINDING PRIVATE RULING: BPR 298

DATE: 23 March 2018

ACT : INCOME TAX ACT 58 OF 1962 (the Act)

SECTION : SECTION 55 AND 58

SUBJECT : WAIVER OF DEBT

1. Summary

This ruling determines the donations tax consequences of the waiver of debt.

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 28 of 2011.

In this ruling references to sections are to sections of the Act applicable as at 12 February 2018. 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 –

- section 55; and
- section 58.

3. Parties to the proposed transaction

The applicant: A resident company

Trust X: A resident vesting trust, whose interest is held in equal proportions by the applicant and the shareholders of the applicant

Trust Y: A resident vesting trust, whose interest is held by Trust X

Company A: A resident company, which is 100% held by Trust Y

Company B: A non-resident company, which is 99.5% held by Company A

4. Description of the proposed transaction

The applicant has, over the years, supplied services to Company B on loan account. None of the fees have been recovered from Company B. These fees have been recorded as revenue in the applicant's financial records at all times and thereby included in the applicant's gross income.

The applicant has not charged Company B any interest in respect of the trade debt accumulated to date.

The applicant proposes to waive a portion of the debt, as Company B has persistently suffered cash flow issues and is currently insolvent. It does not make commercial sense for the applicant to carry the entire debt, given that Company B may in fact never be in a position to repay the debt in full.

The waiver of a portion of the debt is proposed in an effort to maintain the solvency of Company B.

5. Conditions and assumptions

This binding private ruling is subject to the additional condition and assumption that the trusts in the corporate structure are vested trusts.

6. Ruling

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

- a) Donations tax will not be levied on the waiver of a portion of the debt owing by Company B to the applicant.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 12 February 2018.

**Legal Counsel: Advance Tax Rulings
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