

BINDING PRIVATE RULING: BPR 260

DATE: 25 January 2017

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 23(f) AND (g) AND 24J
SUBJECT : INTEREST ON LOANS USED TO ACQUIRE SHARES

1. Summary

This ruling determines the continuing deductibility of interest on loans used to acquire shares in companies that will be liquidated following the distribution to the borrower as a dividend *in specie* of the businesses operated by those companies.

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 (the TA Act).

In this ruling references to sections are to sections of the Act as at 25 November 2016. 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 24J read with section 23(f) and (g).

3. Parties to the proposed transaction

The Applicant:	A company incorporated in and a resident of South Africa
Company A:	A company incorporated in and a resident of South Africa that is a wholly-owned subsidiary of the Applicant
Company B:	A company incorporated in and a resident of South Africa that is a wholly-owned subsidiary of the Applicant
Company C:	A company incorporated in and a resident of South Africa that is a wholly-owned subsidiary of Company B

4. Description of the proposed transaction

The Applicant is the main trading subsidiary within a group of listed companies. The Applicant has always sought to make new acquisitions by buying the assets and the businesses from companies that are the sellers. In a small minority of cases, however, the Applicant was compelled to buy the shares in the companies rather than the assets and the business itself. In those cases in which the Applicant acquired the shares, it immediately took steps to procure the distribution of the assets and the businesses of the companies as a liquidation distribution

under section 47 of the Act. In these cases the purchase price was paid by the Applicant out of its available cash reserves.

For the acquisition of the shareholding in Company A and Company B, the Applicant had to incur debt in order to fund the acquisitions. The Applicant has been able to rely on section 24O of the Act to claim the deduction for the interest arising in respect of the debts incurred.

Company B is solely a holding company of Company C that is the operating company under Company B.

The Applicant would have preferred, subsequent to the acquisitions of the shares of both Company A and Company B, to have caused the companies to distribute their assets and their businesses *in specie* immediately after these acquisitions to the Applicant, under section 47 of the Act, and then to liquidate or deregister those subsidiaries. However, the Applicant was not prepared to undertake that step without first obtaining a binding private ruling under Chapter 7 of the TA Act, confirming that the interest will continue to be deductible following such distribution. The Applicant could not obtain such a ruling at that time, since the issue under consideration was on the list of additional considerations in respect of which the Commissioner may reject an application for an advance ruling, as contemplated in section 80(2) of the TA Act.

It was the Applicant's intention, as soon as the relevant loan had been repaid, to cause the underlying company to distribute its assets and its business as contemplated in section 47 of the Act.

It came to the Applicant's attention that the Commissioner had issued a revised notice under section 80(2) of the TA Act, in which the matter concerning the deductibility of interest incurred by a company on debt used to finance the acquisition of shares in another company for the purpose of acquiring the underlying assets or the business had been removed from the list.

Accordingly, the Applicant now wishes to eliminate Company A and Company B.

The Applicant proposes to undertake the following steps:

- Company B will unbundle all its shares in Company C to the Applicant in terms of an unbundling transaction under section 46 of the Act.
- Liquidation distributions by Company A and Company C will be effected as contemplated in section 47 of the Act.

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 interest incurred on the loans owing by the Applicant, which were obtained to fund the acquisition of the shares in Company A and Company B, will continue to be deductible. The interest will not be disallowed as a deduction under section 23(f) and (g) of the Act.

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 five years from 25 November 2016.

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