

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 062

DATE: 20 November 2009

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 8(4)(m), 20(1)(a)(ii), 54 AND 64C(2) AND PARAGRAPH 3(b) READ WITH PARAGRAPH 20(3)(b) AND PARAGRAPH 12(5) OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : SETTLEMENT OF A LOAN BY AN OFF-SHORE HOLDING COMPANY IN FAVOUR OF ITS SOUTH AFRICAN SUBSIDIARY WITHOUT REQUIRING ANY *QUID PRO QUO*

1. Summary

This ruling deals with whether any income tax, secondary tax on companies (STC), donations tax or capital gains tax (CGT) implications would arise where an off-shore holding company settles its South African subsidiary's loan with a bank without requiring any *quid pro quo* from its subsidiary.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling legislative references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 19 December 2007 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

The relevant provisions of the Act are –

- sections 8(4)(m), 20(1)(a)(ii), 54, and 64C(2);
- paragraph 3(b) read with paragraph 20(3)(b); and
- paragraph 12(5).

3. Parties to the proposed transaction

The Applicant: A company which is a “resident” as defined in section 1

Off-shore Co: A company which is not a “resident” as defined in section 1 and which indirectly holds 100% of the shares in the Applicant

The Bank: A third party Bank which has lent funds to the Applicant

4. Description of the proposed transaction

The Off-shore Co wishes to settle the outstanding loan debt, which the Applicant owes the Bank, directly with the Bank (the loan settlement). The loan debt is an interest bearing loan that the Bank had made available to the Applicant for purposes of its trade. The intention of the Off-shore Co is solely to give effect to the loan settlement, without expecting anything in return or taking responsibility for any other debt of the Applicant.

After the loan settlement, there will be no further transactions, nor will any *quid pro quo* be given to the Off-shore Co by the Applicant. The Applicant will not have any input into the actions of the Co-parties (that is, the Off-shore Co and the Bank), nor can it affect any decisions of such Co-parties to the transaction.

The Applicant will simply receive the benefit as a result of the actions of the Off-shore Co and the Bank as a third party but will not in any way be involved in the proposed transaction.

5. Conditions and assumptions

This ruling is made subject to the conditions and assumptions that –

- the Off-shore Co is not a “resident” as defined in section 1;
- there will be no delegation of the debt by the Applicant to the Off-shore Co;
- there will be no cession of the debt by the Bank to the Off-shore Co; and
- the Off-shore Co will comply with the necessary exchange control regulations and will provide a guarantee that there will be no repatriation of the funds (that is, the funds applied by the Off-shore Co to settle the loan).

6. Ruling

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

- The proposed transaction will fall outside the ambit of section 20(1)(a)(ii) and, therefore, the assessed loss of the Applicant will not be reduced.
- There will be no recoupment under section 8(4)(m), except to the extent that the loan settlement is in respect of interest already incurred and deducted by the Applicant, in which case a recoupment will arise in the hands of the Applicant in relation to any interest already deducted but not yet paid by the Applicant.
- Subsequent to the transaction, the provisions of paragraph 3(b) read with paragraph 20(3)(b) will not apply.
- The proposed transaction will not be treated as a deemed disposal by the Applicant under paragraph 12(5).
- No donations tax liability will arise for the Off-shore Co pursuant to the proposed transaction as the provisions of section 54 are not applicable to the Off-shore Co, which is not a “resident” as defined in section 1.
- No STC implications will arise for the Applicant pursuant to the proposed transaction as the provisions of section 64C(2) are not applicable.

7. Period for which the ruling is valid

This binding private ruling, issued in December 2007, is valid for the year of assessment during which the Off-shore Co settles the loan.

Issued by:

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