

BINDING PRIVATE RULING: BPR 211

DATE: 10 December 2015

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)

SECTION : SECTIONS 24I AND 42

SUBJECT : TRANSFER OF EXCHANGE ITEMS USING CORPORATE RULES

1. Summary

This ruling determines the consequences under section 24I for the transferor and transferee of intra-group loan assets, denominated in foreign currency, in terms of an asset-for-share transaction under section 42.

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 are to sections of the Act applicable as at 1 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 24I; and
- section 42.

3. Parties to the proposed transaction

The Applicant: A resident and a wholly-owned subsidiary of a company listed on the JSE. The Applicant is the transferor of loan assets.

The Co-Applicant: A resident and a wholly-owned subsidiary of the Applicant. The Co-Applicant is the transferee of loan assets.

4. Description of the proposed transaction

Over time, the Applicant extended interest-bearing long term loans (loans) to a fellow subsidiary based offshore. These loans are unsecured, have no fixed terms of repayment and are considered mezzanine debt. As a result the provisions of section 24J have not been applied. The Applicant intends to transfer these loans to the Co-Applicant in exchange for the issue of shares in the Co-Applicant in terms of an asset-for-share transaction under the provisions of section 42.

The Applicant treats these loans as capital assets. The Co-Applicant will also treat them as capital assets after the implementation of the proposed transaction.

The Applicant applied the deferral of tax on all unrealised exchange differences in relation to the loans under section 24I(10) in the past. Since section 24I(10A) came into effect, the taxation of unrealised exchange differences were deferred under this section.

The Co-Applicant will be a group treasury entity, providing funding from South Africa to certain of the foreign jurisdictions where the group is active, once the loans have been transferred to the Co-Applicant. For accounting purposes, they will be transferred at their face values, determined in Rand. It is not intended that the transferred loans be capitalised or disposed of by the Co-Applicant, otherwise than as a result of their repayment.

5. Conditions and assumptions

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

- No unrealised exchange differences in relation to the loans that comprise the assets to be transferred in terms of the proposed transaction have previously been included in or deducted from the Applicant's income.
- No forward exchange contract or foreign currency option contract serves as a hedge for any of these loans.

6. Ruling

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

- The proposed transfer by the Applicant of the loans in exchange for the issue of shares in the Co-Applicant will qualify as an "asset-for-share transaction" under section 42.
- For purposes of section 24I, the "ruling exchange rate", as defined, on the date of the transaction, will be deemed to be the spot rate applicable on the date that each loan was advanced to the debtor. Therefore, no amount will be included in the income of the Applicant in respect of exchange differences in consequence of the transfer of these loans.
- At the end of the year of assessment during which the transaction will occur, the Co-Applicant must determine the exchange difference on the loans acquired, by multiplying the exchange item by the difference between the spot rate, applicable at the time when these loans were advanced by the Applicant to the debtor, and the spot rate on the translation date (the end of that year of assessment). This exchange difference must either be included in or deducted from the Co-Applicant's income under section 24I(3) or deferred under section 24I(10A), if the requirements of that section are met.

7. Period for which this ruling is valid

This binding private ruling is valid for the year of assessment during which the transaction takes place.

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