BINDING PRIVATE RULING: BPR 280

DATE: 4 October 2017

ACT	**:**	**INCOME TAX ACT 58 OF 1962 (the Act)**
SECTION	**:**	**SECTIONS 8(4)(*a*), 19 AND 47 AND PARAGRAPH 56 OF THE EIGHTH SCHEDULE TO THE ACT**
SUBJECT	**:**	**DEBT REDUCTION, CAPITAL LOSSES AND CORPORATE RULES**

1. Summary

This ruling determines the income tax consequences for the debtors and creditor that form part of the same group of companies, following the forgiving of a loan and subsequent liquidation of the debtors.

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 and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 27 June 2017. 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 8(4)(*a*);
- section 19;
- section 47; and
- paragraph 56.

3. Parties to the proposed transaction

The applicant:	A private company incorporated in and a resident of South Africa
Company A:	A listed company incorporated in and a resident of South Africa and the ultimate indirect holder of 91% of the applicant's shares
Operating Companies:	Several private companies incorporated in and residents of South Africa that are wholly-owned subsidiaries of the applicant

4. Description of the proposed transaction

The applicant is the holding company of the various operating companies. Each operating company received on loan, start-up funding from the applicant, which was used to acquire allowance assets, initial trading stock and for associated expenditure. Most of the operating companies have assessed losses.

The trading stock that was acquired using the loan funding has since either been sold or scrapped. Not all allowance assets would be fully depreciated for tax purposes by all operating companies at the time of the proposed transaction.

The steps to implement the proposed transaction will be as follows:

- Company A will advance an amount equal to the debt owed by each Operating Company to the Applicant (step 1 loans).
- Each of the operating companies will use that advance to repay its shareholder loan to the applicant.
- Company A will waive the Step 1 loans for the benefit of the operating companies.
- Each operating company will transfer all of its assets (other than assets it elects to use to settle any debts incurred in the ordinary course of its trade) to the applicant, in anticipation of or in the course of its liquidation, winding up or deregistration, under section 47.

5. Conditions and assumptions

This binding private ruling is subject to the following additional conditions:

a) The operating companies must comply with the steps contemplated in section 41(4) within 36 months from the date of each of the liquidation distributions, or within any further period that the Commissioner may allow under section 47(6)(*c*)(i).

b) Each operating company must carry on a trade during the year of assessment during which the Step 1 loans are waived.

6. Ruling

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

a) In relation to each operating company:

   i) To the extent that a deduction or allowance was granted to that operating company, the waived amount will be deemed to be recouped for purposes of section 8(4)(*a*), under section 19(5) or (6), as the case may require;

   ii) that recouped amount will be deemed to be income under section 8(4)(*a*); and

   iii) any assessed loss of any operating company will be reduced by the amount deemed to be income under section 8(4)(*a*), read with section 19(5) or (6).

b) So much of Company A's capital loss that arises upon the waiver of the Step 1 loans as the Operating Companies are deemed to have recouped under section 19(5) or (6), read with section 8(4)(*a*), will not be disregarded under paragraph 56(1), in consequence of the application of paragraph 56(2)(*c*) of the Eighth Schedule.

c) The transfer of all of the assets of each operating company to the applicant will constitute a “liquidation distribution” as defined in section 47(1)(*a*) and therefore, the tax consequences contained in section 47(2) to (5) will be applicable to the operating companies or the applicant, as the context requires.

d) Under section 19(7) the applicant (deemed to be one and the same person as each operating company following the application of section 47(3)(*a*)(ii) in relation to allowance assets not fully written off for tax purposes by that operating company at the time of the proposed transaction) will not be entitled to claim any further allowances in relation to those allowance assets.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from the date of this ruling.

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