

## **BINDING PRIVATE RULING: BPR 266**

DATE: 9 February 2017

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 7B, 11(a), 23(g), 23N AND 24J(2)**  
**SUBJECT : ACQUISITION OF A BUSINESS IN EXCHANGE FOR THE  
ASSUMPTION OF LIABILITIES AND THE ISSUING OF A LOAN NOTE**

### **1. Summary**

This ruling determines the tax consequences resulting from the acquisition of a business of a company in exchange for the assumption of the liabilities of that company and the issuing of a loan note in favour of that company. It also determines the deductibility of interest on a loan incurred to finance the repayment of the loan note.

### **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 19 January 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 7B;
- section 11(a);
- section 23(g);
- section 23N; and
- section 24J(2).

### **3. Parties to the proposed transaction**

The Applicant:	A company incorporated in and a resident of South Africa
Company A:	A company established in a foreign country and a resident of South Africa
Holdco:	A listed company incorporated in and a resident of South Africa that holds 100% of the shares in the Applicant and in Company A

#### **4. Description of the proposed transaction**

Holdco has been rationalising its group structure.

Pursuant to that exercise, the Applicant will acquire Company A's business at fair market value in exchange for the assumption of Company A's liabilities (including contingent liabilities) and the issuing of a loan note in favour of Company A in terms of an intra-group transaction. The contingent liabilities will consist of the following provisions –

- leave pay;
- bonuses; and
- post-retirement medical aid.

Within 18 months of the acquisition, Company A will call upon the Applicant to repay the loan note. The Applicant will approach a third party bank to obtain an interest bearing loan to do so. Company A will distribute the cash thus received from the Applicant as a dividend to Holdco.

#### **5. Conditions and assumptions**

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

- i) The requirements of section 11(a) read with section 7B and 23(g) must be met at the time when the leave pay and bonus contingent liabilities materialise.
- ii) The requirements of section 11(a) read with section 23(g) must be met at the time when the post-retirement medical aid contingent liabilities materialise.

In assessing whether the requirements of the sections referred to in paragraphs i) and ii) above are met, the expenditure must be evaluated within the context of the nature of the going concern's business as was carried on by Company A prior to the proposed transaction and by the Applicant subsequent to the proposed transaction without considering the fact that the assumption of the contingent liabilities by the Applicant will be part of the consideration for the acquisition of Company A's business. The circumstances under which the contingent liabilities arose in Company A will therefore be relevant.

#### **6. Ruling**

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

- a) The expenditure to be incurred by the Applicant in respect of the leave pay and bonus contingent liabilities will be deductible.
- b) The expenditure to be incurred by the Applicant in respect of the post-retirement medical aid contingent liability will be deductible.
- c) The interest to be incurred on the loan will be deductible by the Applicant under section 24J(2), subject to the limitations as set out in section 23N.

**7. Period for which this ruling is valid**

This binding private ruling is valid for a period of five years from 19 January 2017.

**Legal Counsel: Advance Tax Rulings  
SOUTH AFRICAN REVENUE SERVICE**