

BINDING PRIVATE RULING: BPR 213

DATE: 17 December 2015

ACTS : **INCOME TAX ACT NO. 58 OF 1962 (the Act)**
: **SECURITIES TRANSFER TAX ACT NO. 25 OF 2007 (the STT Act)**
SECTION : **SECTIONS 8(4)(a) AND 19 OF THE ACT AND PARAGRAPH 12A OF THE EIGHTH SCHEDULE TO THE ACT**
: **SECTION 1 OF THE STT ACT – DEFINITION OF “TRANSFER”**
SUBJECT : **REPAYMENT OF INTERCOMPANY LOANS FROM PROCEEDS OF A NEW SHARE ISSUE**

1. Summary

This ruling determines the tax consequences of the repayment of intercompany loans out of the proceeds of a new share issue.

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 and paragraphs are to sections of the relevant Acts and paragraphs of the Eighth Schedule to the Act applicable as at 3 December 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 –

- the Act –
 - section 8(4)(a);
 - section 19; and
 - paragraph 12A.
- the STT Act –
 - section 1 – definition of “transfer”.

3. Parties to the proposed transaction

The Applicant:	A company incorporated in and a resident of South Africa
The Holding Company:	A company incorporated outside South Africa and not a resident of South Africa, which is the sole shareholder of the Applicant

Group Companies: Companies incorporated outside South Africa and not residents of South Africa, which form part of the same group of companies as the Holding Company

4. Description of the proposed transaction

The Applicant obtained intercompany loans from the Holding Company and the Group Companies to fund its operational expenditure.

The Holding Company will subscribe for further ordinary no par value shares in the Applicant. The subscription price, which will be equal to the total amount of the Applicant's outstanding intercompany loans, will be paid in cash.

The Applicant will use the cash to repay both the capital of and the interest on its outstanding intercompany loans.

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 issue of the further ordinary no par value shares will not constitute a "transfer" as defined in section 1 of the STT Act and will, therefore, not be subject to securities transfer tax.
- Section 8(4)(a) of the Act will not be applicable to the payment of the capitalised interest on the intercompany loans.
- Section 19 of the Act and paragraph 12A of the Eighth Schedule to the Act will not be applicable to the repayment of the intercompany loans, or to the payment of the interest on the intercompany loans.

7. Additional note

This ruling does not consider any general anti-avoidance provisions which may be applicable to the proposed transaction.

8. Period for which this ruling is valid

This binding private ruling is valid for a period of 2 years from 3 December 2015.