

BINDING PRIVATE RULING: BPR 120

DATE: 12 September 2012

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

SECTION : SECTIONS 45 AND 24J

SUBJECT : THE INTERACTION BETWEEN SECTIONS 45 AND 24J IN THE TRANSFER OF INTEREST-BEARING RECEIVABLES UNDER THE CORPORATE RULES

1. Summary

This ruling deals with the treatment of interest-bearing receivables to be transferred in terms of the corporate rules contained under section 45 of the Act as read with section 24J of the Act.

2. Relevant tax laws

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

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 1 June 2012 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested on the interpretation and application of the provisions of –

- section 1, definition of "group of companies";
- section 22;
- section 24J(1), definitions of "accrual amount", "adjusted initial amount", "adjusted gain on transfer or redemption of an instrument", "adjusted loss on transfer or redemption of an instrument", "holder", "income instrument", "initial amount", "instrument", "interest", "transfer" and "transfer price" and "yield to maturity";
- section 24J(3);
- section 24J(4);
- section 41(1), definitions of "allowance asset", "base cost" and "capital asset";
- section 41(2);

- section 45(1);
- section 45(2)(a);
- section 45(2)(b);
- paragraph 1 of the Eighth Schedule, definitions of "asset" and "base cost"; and
- paragraph 20(1)(a) of the Eighth Schedule.

3. Parties to the proposed transaction

The Applicant: A company incorporated in and a resident of South Africa

The Co-Applicant: A company incorporated in and a resident of South Africa that holds 100% of the shares in the Applicant

4. Description of the proposed transaction

The Applicant intends to dispose of its interest-bearing receivables to the Co-Applicant under the corporate rules as contained in section 45. A summary of the proposed transaction is set out below:

- The Applicant intends to dispose of its interest-bearing receivables to the Co-Applicant for a cash consideration equal to the market value thereof.
- It is anticipated that the market value of the interest-bearing receivables will be lower than the face value thereof.
- The Co-Applicant will continue to hold the interest-bearing receivables so acquired on the same basis (that is, capital asset or trading stock) as the Applicant.

5. Conditions and assumptions

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

- the interest-bearing receivables are not to be disposed of by the Applicant to the Co-Applicant in terms of a liquidation distribution referred to in section 47, regardless of whether or not an election has been made for the provisions of that section to apply and regardless of whether or not the Co-Applicant acquires that asset as a capital asset or as trading stock;
- the Applicant and the Co-Applicant will not agree in writing that the provisions of section 45 will not apply to the disposal of the interest-bearing receivables; and

- the total amount of interest recognised in respect of each interest-bearing receivable will be the same irrespective of whether or not the proposed transaction takes place.

6. Ruling

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

- Section 45 will apply to the proposed sale of the interest-bearing receivables of the Applicant to the Co-Applicant with the result that –
 - for the Applicant, the proceeds upon the disposal of the receivables will be deemed to be equal to the base cost (see section 45(2)(a)(i)) of or the expenditure incurred (see section 45(2)(b)(i)) in respect of such receivables as at the date of the disposal;
 - the Co-Applicant will be deemed to have acquired the interest-bearing receivables from the Applicant at the base cost/expenditure thereof which will thus be the Co-Applicant's base cost/expenditure in respect of the interest-bearing receivables subsequent to the acquisition thereof; and
 - such base cost/expenditure will be equal to the adjusted initial amount at the beginning of the accrual period in which the transfer takes place (that is, initial amount plus accrual amounts of all previous periods plus other payments made by the holder during previous accrual periods less any payments received by the holder during all previous accrual periods) plus accrual amounts for the current accrual period ending on the date of transfer and other payments made by the holder during such period less any payments received by the holder during such period.
- The provisions contained in section 45 will have the following impact on the application of section 24J to the Applicant and the Co-Applicant –
 - the "transfer price", for purposes of the treatment of the transfer of the interest-bearing receivables in the hands of the Applicant under section 24J, will be deemed to be equal to the base cost/expenditure of the interest-bearing receivables (as calculated in terms of the principles set out above); and
 - the "transfer price", for purposes of the treatment of the interest-bearing receivables in the hands of the Co-Applicant under section 24J subsequent to the proposed transaction will be deemed to be equal to the base cost/expenditure of the interest-

bearing receivables (as calculated in terms of the principles set out above).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of one year from 1 June 2012.

Issued by:

**Legal and Policy Division: Advance Tax Rulings
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