

*"Life is 10% what happens to us and 90% how we react to it" –
Dennis P. Kimbro*

THE 'DEBT REDUCTION' – LIFELINE

Debt reduction measures have become more prominent considering the difficulty with which obligations towards creditors of a company are honoured. One of the most common transactions resulting in debt reduction / debt relief is the issuance of shares by a company – i.e. a company issues shares and utilises the subscription price paid for such shares to settle its debts. Another alternative is to capitalise shareholders' loans.

Although, companies should be cautious when issuing shares in lieu of payment. Notice should be had to section 19 (the "debt reduction rules") of the Income Tax Act, 58 of 1962 ("**ITA**") and the Binding Private Ruling 246 ("**BPR**") issued by SARS. The relevant facts of the **BPR** are summarised as follows:

1. A Partnership holding ordinary shares in a private company provided funding to the company via unsecured, fixed rate debentures. The Partnership subsequently agreed to assist the company in restructuring its debt as follows:
 - 1.1. The company, by way of bridging finance, would redeem the debentures at full value (including accrued and unpaid interest), and make transfer of the amount owing to the Partnership;
 - 1.2. The Partnership would then subscribe for preference shares in the company by utilising the redemption proceeds;
 - 1.3. The Company would repay the bridging finance by utilising the preference shares subscription price proceeds.

The question at hand was whether the redemption of the debentures at full value would be subject to the provisions of section 19 of the **ITA**. SARS ruled that these provisions would not apply, as the amount so reduced would not be an amount 'received' or 'recouped' by the company. The debt reduction rules must therefore be applied with a great degree of consideration and only after obtaining professional advice.

Law & Laughter

Joke: What's wrong with Lawyer jokes?
Answer: Lawyers don't think they're funny and nobody else thinks they are jokes