

BINDING PRIVATE RULING: BPR 140

DATE: 27 March 2013

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

SECTION : SECTION 46

SUBJECT : UNBUNDLING TRANSACTION

1. Summary

This ruling deals with an unbundling transaction with specific reference to the application of section 46(1), (7) and (8) of the Act.

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 are to sections of the Act applicable as at 08 February 2013 and 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 section 46.

3. Parties to the proposed transaction

The Applicant: A company incorporated in and a resident of South Africa that is a wholly owned subsidiary of the Co-Applicant

The Co-Applicant: An investment holding company incorporated in and a resident of South Africa

The Unbundled Companies: Nine companies that are wholly owned subsidiaries of the Applicant, one of which is not a resident of South Africa

4. Description of the proposed transaction

The Applicant and Co-Applicant form part of the same group of companies. The Co-Applicant is a wholly owned subsidiary of an investment holding company that is not a resident of South Africa (non-resident shareholder).

The non-resident shareholder wishes to establish a headquarter company for its African investments. As a result of the Applicant and Co-Applicant's presence in South Africa as well as South Africa's headquarter holding company regime, the parties intend to establish a headquarter company in South Africa.

In order to establish such a headquarter company in South Africa the following steps are envisaged for the proposed transaction:

- In year one the Applicant will distribute all the shares held in the Unbundled Companies to the Co-Applicant in terms of an unbundling transaction.
- In year two the Co-Applicant will elect under section 9I to be a “headquarter company” as defined in section 1(1).

5. Conditions and assumptions

This ruling is subject to the additional condition and assumption that, at the time of the unbundling transaction, the Co-Applicant is not a “disqualified person” as defined in section 46(7)(b).

6. Ruling

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

- The proposed distribution by the Applicant of the shares held in the Unbundled Companies to the Co-Applicant will be an “unbundling transaction” as defined in section 46(1).
- Section 46 will apply to the proposed distribution, provided that an election contemplated in section 46(8) is not made by the Applicant and the Co-Applicant.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 2 years from 08 February 2013.

Issued by:

**Legal and Policy Division: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**