

BINDING PRIVATE RULING: BPR 084

DATE: 26 May 2010

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

SECTION : SECTION 45(4)

SUBJECT : THE “GROUP OF COMPANIES” CONCEPT FOR THE PURPOSES OF SECTION 45(4)

1. Summary

This ruling deals with the concept of “group of companies” for the purposes of section 45(4) of the Act and whether it is to be interpreted narrowly, to mean a sub-group within a group of companies or widely, to mean the bigger group of companies itself.

2. Relevant tax laws

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

In this ruling legislative references to sections are to sections of the Act applicable as at 19 February 2009 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 under the provisions of section 45(4).

3. Parties to the proposed transaction

Company A: The ultimate holding company of Company B and Company C that holds 100% of the ordinary shares in Company B and 15% of the ordinary shares in Company C

Company B: A company that holds 85% of the ordinary shares in Company C

Company C: A company whose ordinary shares are held 15% by Company A and 85% by Company B

The Group of companies: Companies A, B and C are all “resident” as defined in section 1 and collectively form the Group of companies

4. Description of the proposed transaction

In a prior year of assessment Company B disposed of assets to Company C in terms of an intra-group transaction under the provisions of section 45. Company A was at that stage the ultimate holding company of both Company B and Company C.

The Group of companies intends introducing a Broad-based Black Economic Empowerment (BBBEE) compliant shareholder at Company B shareholding level. The BBBEE shareholder will not hold more than 30% of the shares in Company B.

Prior to introducing the BBBEE shareholder, Company B intends to unbundle its entire shareholding in Company C to Company A in terms of the provisions of section 46.

Subsequent to this unbundling, Company A will hold 100% of the shares in both Company B and Company C. The companies will accordingly continue to remain members of the same “group of companies” as defined in section 1.

5. Conditions and assumptions

This ruling is made subject to the conditions and assumptions that this ruling only relates to the tax consequences following the unbundling transaction.

6. Ruling

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

- Following the unbundling by Company B of its entire shareholding of 85% of the ordinary shares in Company C to Company A, Company C (as transferee company) will not cease to form part of the Group of companies in relation to Company B (as transferor company) as contemplated in section 45(4)(a)(i) read together with section 45(4)(b) or in relation to Company A as the controlling group company in relation to the transferor company (Company B) as contemplated in section 45(4)(b).

7. Period for which this ruling is valid

This binding private ruling, issued in February 2009, is valid in respect of the proposed unbundling transaction.

Issued by:

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