

BINDING PRIVATE RULING: BPR 168

DATE: 17 April 2014

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 42(7) AND 45(2) AND (3)
SUBJECT : CORPORATE RULES: DISPOSAL OF ASSETS WITHIN 18 MONTHS OF ACQUISITION

1. Summary

This ruling deals with the effect of section 42(7) on the disposal of assets in terms of an “intra-group transaction” as defined in section 45(1) when the disposal will take place within 18 months of the assets having been acquired in terms of an “asset-for-share transaction” as defined in section 42(1).

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 14 May 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 sections 42(7) and 45(2) and (3).

3. Parties to the proposed transaction

The Applicant: A company incorporated in and a resident of South Africa
Company X: A company incorporated in and a resident of South Africa
Subco: A company incorporated in and a resident of South Africa and a subsidiary of the Applicant.

4. Description of the proposed transaction

The Applicant acquired assets from Company X in exchange for equity shares in the Applicant in terms of an “asset-for-share transaction” as defined in section 42(1). As a result of this “asset-for-share transaction”, Company X holds 94% of the equity shares in the Applicant.

The Applicant intends disposing of the assets acquired to Subco in terms of an “intra-group transaction” as defined in section 45(1). This disposal will take place within 18 months of the assets having been originally acquired by the Applicant.

The Applicant holds 74% of the equity shares in Subco. The purchase price will be settled by Subco by means of an interest free loan account.

5. Conditions and assumptions

This binding private ruling is subject to the additional condition and assumption that:

- The disposal of the assets by Company X to the Applicant in exchange for equity shares in the Applicant does in fact constitute an “asset-for-share transaction” as defined in section 42(1) and will qualify for relief as provided for in section 42(7).

6. Ruling

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

- The Applicant will not be subject to tax on any recoupment on the disposal of the assets it acquired from Company X disposed to Subco, including the recoupment of any allowances claimed by Company X and the Applicant in respect of such assets.
- Section 42(7) will have a nil effect on the disposal of the assets by the Applicant to Subco under section 45 notwithstanding the fact that the disposal may take place within 18 months of having been acquired by the Applicant *via* an “asset-for-share transaction”.
- To the extent that Subco acquires the assets from the Applicant under section 45, the income tax value of such assets will be equal to the income tax value of the assets for the Applicant on the date of disposal to Subco. This being the income tax value of the assets for Company X on the date of the disposal of the assets under section 42 to the Applicant less any subsequent allowances claimed by the Applicant.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 5 years from 14 May 2013.

Issued by:

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