

BINDING PRIVATE RULING: BPR 235

DATE: 31 May 2016

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1) – DEFINITION OF “COMPANY”, “FOREIGN COMPANY” AND “RESIDENT”, 9D, 9H, 42 AND 46 OF THE ACT AND PARAGRAPH 12 OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : INCOME TAX CONSEQUENCES FOR PARTIES TO AN UNBUNDLING TRANSACTION

1. Summary

This ruling determines certain income tax consequences for the parties to an unbundling transaction that follows asset-for-share transactions.

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 and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule thereto, applicable as at 13 April 2016. 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 1(1) – definition of “company”, “foreign company” and “resident”;
- section 9D;
- section 9H;
- section 42;
- section 46; and
- paragraph 12.

3. Parties to the proposed transaction

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

The Co-Applicant: A public company incorporated in and a resident of South Africa and a wholly-owned subsidiary of the Applicant, to be listed pursuant to the proposed transaction

4. Description of the proposed transaction

The Applicant intends to unbundle the shares in the Co-Applicant.

The steps to implement the proposed transaction are as follows:

- a) The Applicant will unbundle all the shares in the Co-Applicant to the Applicant's shareholders.
- b) The JSE Listing Requirements and specifically the "standard rounding convention" will be applied to the proposed transaction, resulting in the allocation of whole securities and no fractional entitlements.
- c) The Co-Applicant will be listed at the commencement of trade on the day following the last day to trade of the proposed transaction.
- d) The Applicant and the Co-Applicant will remain South African residents subsequent to the proposed transaction.

Prior to the proposed transaction, several asset-for-share transactions as referred to in section 42 and other unbundling transactions as referred to in section 46 are to take place in order to consolidate industry specific local and international businesses under the Co-Applicant. It is specifically noted that these transactions fall outside the scope of this binding private ruling.

5. Conditions and assumptions

This binding private ruling is not subject to any additional conditions and assumptions.

6. Ruling

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

- a) If the asset-for-share transactions met the requirements of the definition of an "asset-for-share transaction" in section 42(1) of the Act, section 42(5) and (6) will not apply to the disposal of equity shares in terms of the proposed transaction, as it is an unbundling transaction as referred to in section 46 of the Act and, therefore, specifically excluded from the ambit of section 42(5) and (6).
- b) The proposed transaction will not result in controlled foreign companies (CFCs) of the Co-Applicant and their subsidiaries ceasing to be CFCs for purposes of section 9D(1) and (2)(b) of the Act. Subsequent to the proposed transaction the Co-Applicant will remain a resident and will continue to hold the same interests in these specified companies.
- c) The proposed transaction will not result in a deemed disposal of the assets of specified CFCs at their market value for purposes of section 9H(3)(b) and (d) of the Act as those companies that qualify as CFCs will not cease to be CFCs subsequent to the proposed transaction.
- d) The proposed transaction will not result in deemed disposals of assets by specified CFCs or their subsidiaries for purposes of paragraph 12 of the Eighth Schedule to the Act.

7. Period for which this ruling is valid

This binding private ruling is valid for the year of assessment during which the proposed transaction takes place.

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