

**BINDING PRIVATE RULING: BPR 279**

DATE: 14 September 2017

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 1(1) – DEFINITION OF “CONNECTED PERSON”, 9D AND PARAGRAPH 64B(1) OF THE EIGHTH SCHEDULE TO THE ACT**  
**SUBJECT : CAPITAL GAINS TAX PARTICIPATION EXEMPTION IN RELATION TO CONTROLLED FOREIGN COMPANIES**

**1. Summary**

This ruling determines that the participation exemption from capital gains tax (CGT) is available in relation to the disposal of assets by a controlled foreign company (CFC) of the Applicant, because the parties are not connected persons in relation to each other at the time of the proposed transaction, albeit that such a relationship is created by the transaction.

**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 28 of 2011.

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 30 June 2017. 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 –

- section 1(1) – definition of “connected person”;
- section 9D; and
- paragraph 64B(1)(b).

**3. Parties to the proposed transaction**

The applicant: A vested trust established in and resident in South Africa with its main objective to invest in infrastructure development projects throughout the African continent

The co-applicant: A company incorporated and resident outside of South Africa which is a wholly-owned subsidiary of the applicant

Company A: A company incorporated and resident outside of South Africa which is a wholly-owned subsidiary of the co-applicant

Company B:	A company incorporated and resident outside of South Africa which is a wholly-owned subsidiary of the co-applicant
Counterparty:	A company incorporated and resident outside South Africa, which is a wholly-owned subsidiary of a multilateral development financial institution established by agreement between sovereign states, financial institutions and other investors
Newco:	A new company to be incorporated specifically for purposes of the proposed transaction as a wholly-owned subsidiary of the counterparty and resident outside of South Africa

#### **4. Description of the proposed transaction**

Both the applicant and the counterparty act as principal investors in multinational development projects, including investments in securities of entities owning, controlling, operating or managing such projects.

They intend to merge their investments in Newco. Due to the difference in the market values of the assets to be contributed to Newco the agreement will provide for the payment of an equalisation amount to Newco in exchange for shares by the counterparty, whose contribution has a lesser market value.

The proposed merger will be achieved by the following proposed transaction steps:

- The counterparty will incorporate Newco in a foreign jurisdiction. Newco will issue and the counterparty will subscribe for one share in Newco.
- The counterparty will transfer its assets to Newco in exchange for the issue of a second tranche of shares in Newco and make payment of the equalisation amount to Newco in subscribing for a third tranche of shares in Newco.
- The applicant's contribution will be made by its subsidiary, the co-applicant, by disposing of all of the co-applicant's shares held in Company A and Company B to Newco by way of a single and indivisible transaction at the prevailing market value of the assets underlying them, in exchange for shares in Newco.

Subsequent to the abovementioned steps, the co-applicant and the counterparty will each hold 50% of the issued equity shares in Newco.

#### **5. Conditions and assumptions**

This binding private ruling is subject to the following additional conditions and assumptions:

- a) Less than 80% of the market value of Company B is attributable, directly or indirectly, to immovable property situated in South Africa.
- b) Newco will be effectively managed outside South Africa.

- c) Both Company A and Company B have their places of effective management outside South Africa.
- d) The counterparty must pay the equalisation amount to Newco in exchange for the issue of a corresponding amount of additional shares in Newco and such payment, share issue and updating of the share register must occur before the disposal of the shares in Company A and Company B by the co-applicant to Newco.

## **6. Ruling**

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

- a) The requirement in item (b) of paragraph 64B(1) that the Co-Applicant and Newco must not be connected persons in relation to each other at the time of the disposal of the shares in Company A and Company B, will be met.
- b) Any capital gain or loss arising from the Co-Applicant's disposal of the shares in Company A and Company B must be ignored when determining the "net income" of the Co-Applicant for purposes of section 9D.

## **7. Period for which this ruling is valid**

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

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SOUTH AFRICAN REVENUE SERVICE**