

BINDING PRIVATE RULING: BPR 326

DATE: 19 September 2019

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1) – DEFINITION OF “TRADING STOCK”, 42(1) – PARAGRAPH (b) OF THE DEFINITION OF “ASSET-FOR-SHARE TRANSACTION”, 47(1) – PARAGRAPH (b) OF THE DEFINITION OF “LIQUIDATION DISTRIBUTION”, AND 47(2)
SUBJECT : GROUP RESTRUCTURING TRANSACTIONS IN A FOREIGN JURISDICTION

Preamble

This binding private ruling is published by consent of the applicant to which it has been issued. It is binding as between SARS and the applicant only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines certain tax consequences of a proposed group restructuring.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 14 January 2019. 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 “trading stock”;
- section 42(1) – paragraph (b) of the definition of “asset-for-share transaction”;
- section 47(1) – paragraph (b) of the definition of “liquidation distribution”; and
- section 47(2).

3. Parties to the proposed transaction

All the mentioned companies are in the same group of companies.

The applicant: A listed resident company and the parent company

Co-applicant A: A company and resident of country B. Its shares are owned by the applicant

Co-applicant B:	A company and a resident of country B. Its shares are 99.6% held by co-applicant A and 0.4% by company A
Co-applicant C:	A company and resident of country A. Its shares are owned by co-applicant B
Company A:	A company and resident of country B
Company D:	A company and resident of country A. Its shares are owned by the applicant
Newco:	A company to be incorporated in country A. It will serve as the new holding company in country A
Holdco:	A company and resident of country A. Its shares are owned by the applicant. It is the holding company of one of the applicant's operations in country A

4. Description of the proposed transaction

The applicant has decided to simplify the holding structure of its foreign operating companies in country A. It currently holds its investments in its operating companies in country A through multiple intermediate investment holding companies, some of which are resident in foreign countries other than country A. It proposes to establish Newco as its holding company for its investments in country A.

The proposed transaction concerns the restructuring of the applicant's investment in Opco, which it indirectly holds through its wholly owned subsidiaries, co-applicant C and company D. Opco's shares are 88% held by co-applicant C and 12% by company D. As already mentioned, co-applicant A holds 99.6% of co-applicant B which, in turn, holds all the shares in co-applicant C.

The proposed transaction steps are as follows:

Phase 1

Step 1: Co-applicant B will capitalise amounts payable to company A and co-applicant A by issuing additional shares to them in proportion to the values of their respective debts.

Step 2: Company A will sell its 0.4% interest in co-applicant B to the applicant at a market value price that will be left outstanding on loan account.

Step 3: Co-applicant A will distribute its assets, comprising its 99.6% interest in co-applicant B, to the applicant as a liquidation distribution.

Step 4: Company D will sell its 12% interest in Opco to the applicant for market value consideration, which will be settled by the applicant ceding a loan claim of equivalent value against Holdco to company D.

Step 5: The applicant will incorporate Newco.

Step 6: The applicant will sell its 100% interest in company D to Holdco at market value and the purchase price will be paid in cash.

Step 7: The applicant will transfer its 100% interest in Holdco to NewCo at market value. The consideration will be given by way of an issue of new ordinary shares in NewCo.

Step 8: The applicant will transfer its 12% interest in Opco to Newco at market value in exchange for an issue of additional ordinary shares in NewCo.

Phase 2

Step 9: Co-applicant B will sell its assets, comprising its 100% interest in co-applicant C, to the applicant for a market value purchase price that will be left outstanding on loan account.

Step 10: The applicant will transfer its 100% interest in co-applicant C to Newco for a market value consideration, by way of an issue of additional ordinary shares in Newco.

Step 11: Co-applicant B will distribute its remaining assets, comprising the balance of its loan claim against the applicant, as a liquidation distribution, and will be wound-up. This balance will be made up of the loan claim acquired in step 9 less a prior loan balance which was payable by co-applicant B to the applicant which will be set off against the loan claim.

Phase 3

Step 12: Co-applicant C will distribute its assets, which will include its 88% interest in Opco, to NewCo in anticipation of its liquidation. Co-applicant C's existence will be terminated in due course.

5. Conditions and assumptions

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

- a) All the relevant shares are at the commencement of the proposed transaction held on capital account, and it will at all material times not be the intention of any of the parties to the proposed transaction to dispose of any of their shares to the relevant parties as part of a scheme of profit-making.
- b) All the co-applicants, as well as Holdco, Newco and company A, are controlled foreign companies in relation to the applicant.
- c) The disposal by the applicant of its 100% interest in co-applicant A, when its existence is terminated, will occur after the coming into effect of section 80(1)(b), (e), and (f) and section 54(b) of the Taxation Laws Amendment Act 23 of 2018.

6. Ruling

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

- a) Co-applicant A must be regarded as having acquired the additional shares in co-applicant B on capital account for purposes of section 47(2), notwithstanding that co-applicant A will be disposing of those shares within a short period to the applicant.
- b) The applicant will acquire a 99.6% interest in co-applicant B on capital account for purposes of section 47(2), notwithstanding that the applicant will be disposing of its shares in co-applicant B within a short period when co-applicant B is wound up.
- c) The applicant will acquire the 12% interest in Opco from company D on capital account for purposes of paragraph (b) of the definition of an “asset-for-share transaction” in section 42(1), notwithstanding that the applicant will be disposing of that interest within a short period to Newco.
- d) The applicant will acquire a 0.4% shareholding in co-applicant B and the remaining 99.6% of the shares in co-applicant B in terms of the liquidation distribution on capital account for purposes of paragraph (b)(ii) of the definition of “liquidation distribution” in section 47(1), notwithstanding that the applicant will be disposing of its 100% interest in co-applicant B within a short period by operation of law when co-applicant B’s existence is terminated.
- e) The applicant will acquire its 100% interest in co-applicant C on capital account for purposes of section 47(2) and paragraph (b) of the definition of an “asset-for-share transaction” in section 42(1), notwithstanding that the applicant will be disposing of that interest to Newco within a short period in terms of an “asset-for-share transaction” under section 42.
- f) The disposal by co-applicant B of its remaining assets, including its 100% interest in co-applicant C, to the applicant in the form of a sale in anticipation of co-applicant B’s winding-up, resulting in the latter acquiring a loan claim against the applicant, will constitute a “liquidation distribution” as defined in paragraph (b) of the definition in section 47(1).
- g) Co-applicant B will acquire the loan claim against the applicant on capital account and the applicant will acquire the balance of the loan claim against itself on capital account for purposes of section 47(2)(a), notwithstanding that co-applicant B will be disposing of it to the applicant within a short period, after which it will be extinguished by operation of law.
- h) The distribution by co-applicant B of the balance of the loan claim against the applicant, still in anticipation of co-applicant B’s termination, will also constitute a “liquidation distribution”, as defined in paragraph (b) of the definition in section 47(1).
- i) Newco will acquire a 100% interest in co-applicant C on capital account for purposes of paragraph (b)(ii) of the definition of “liquidation distribution” in section 47(1), notwithstanding that it will be disposing of its interest in co-applicant C within a short period when the existence of co-applicant C is terminated.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of four years from 14 January 2019.

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