BINDING PRIVATE RULING: BPR 112

DATE: 13 March 2012

The deletion of sections 10(1)(k)(ii) and 24B, insertion of section 10B(2), and amendments to paragraph 64B must be noted.

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 10(1)(*k*)(ii)(*dd*), 24B AND PARAGRAPH 64B OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : INTERPOSING A CO-OPERATIVE BETWEEN A SOUTH AFRICAN HOLDING COMPANY AND ITS FOREIGN SUBSIDIARIES

1. Summary

This ruling deals with the income tax consequences arising from the sale of the shares held by a holding company in its foreign subsidiary to a Co-Operative to be incorporated, for an interest in that Co-Operative.

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 and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 7 October 2011 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 10(1)(*k*)(ii)(*dd*);
- section 24B; and
- paragraph 64B of the Eighth Schedule.

3. Parties to the proposed transaction

The Applicant:	A company that is incorporated in and a resident of South Africa
The Co-Operative:	A Co-Operative to be incorporated in and a resident of a foreign country
Subco:	A wholly owned subsidiary of the Applicant and a resident of the same foreign country as the Co-Operative

4. Description of the proposed transaction

The Applicant currently holds 100% of the shares issued by Subco and has held these shares for more than 18 months. Subco currently holds the foreign interests of the Applicant.

The Applicant intends to interpose a Co-Operative between itself and Subco, which will then act as the holding vehicle for the Applicant's foreign interests. The Co-Operative will be established as part of the proposed transaction.

The Applicant will sell its 100% shareholding in Subco to the Co-Operative in return for the issue of 99% of the contributed capital of the Co-Operative to the Applicant.

The Applicant will, therefore, hold 99% of the interest in the Co-Operative whereas the Co-Operative will hold 100% interest in Subco. The remaining 1% interest in the Co-Operative will be held by another foreign company which is 100% held by the Applicant. This is a statutory requirement in the foreign jurisdiction where the Co-Operative is registered.

The Co-Operative will not be effectively managed in South Africa and it is not the intention of the group to dispose of its interest in the Co-Operative or Subco within the next five (5) years.

5. Conditions and assumptions

This binding private ruling is subject to the conditions and assumptions that –

- no opinion, conclusion or determination is expressed or made in this ruling in relation to the application or interpretation of the laws of the foreign jurisdiction concerned;

- the ruling is issued on the assumption that the profit to be distributed by the Co-Operative will be treated by the Co-Operative as a dividend or similar payment for purposes of the laws relating to tax on income in the foreign jurisdiction concerned;

- Subco is not a "foreign financial instrument holding company" as defined in section 41; and

- the participating members of the Co-Operative will have an unlimited right to distributions when declared, and return of capital on the winding-up of the company.

6. Ruling

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

- Any capital gain or capital loss arising on disposal by the Applicant of its shares in Subco to the Co-Operative will be disregarded under paragraph 64B(2) of the Eighth Schedule.

- The Co-Operative will be deemed to have actually incurred an amount of expenditure in respect of the acquisition of Subco's shares, which will be equal to the lesser of the market value of Subco's shares immediately after acquisition or the market value of the Applicant's interest in the Co-Operative immediately after the acquisition.

- The Applicant will, under section 24B(1)(*b*), be deemed to have disposed of the shares in Subco for an amount equal to the market value of its interest in the Co-Operative immediately after the acquisition.

- The Co-Operative will be a "foreign company" as defined in section 1.

- The Applicant's interest in the Co-Operative will constitute equity shares as defined in section 1.

- Any distributions by the Co-Operative to the Applicant in the form of dividends will be exempt under section 10(1)(*k*)(ii)(*dd*).

- The shares in Subco, which the Applicant will sell to the Co-Operative, will be considered to be contributed tax capital as defined in section 1.

- Any capital gain or loss arising on a return of contributed tax capital, as contemplated in paragraphs 76 and 76A of the Eighth Schedule, will be disregarded under paragraph 64B(5) of the Eighth Schedule.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five (5) years as from 7 October 2011.

Issued by:

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