

BINDING PRIVATE RULING: BPR 128

DATE: 10 December 2012

The guidance contained in this ruling is affected by subsequent law changes. Refer to the repeal of the definitions of “associated group of companies” and “foreign financial instrument holding company” in section 41(1).

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1), DEFINITION OF “FINANCIAL INSTRUMENT” AND 41(1), DEFINITION OF “ASSOCIATED GROUP COMPANIES” AND “FOREIGN FINANCIAL INSTRUMENT HOLDING COMPANY”
SUBJECT : DISPOSAL OF EQUITY SHARES IN A FOREIGN COMPANY

1. Summary

This ruling deals with the disposal of equity shares in a foreign company, taking into account the calculation of the prescribed portion of assets held by that foreign company as contemplated in the definition of “foreign financial instrument holding company” in section 41(1) of the Act and relevance to paragraph 64B of the Eighth Schedule to the Act.

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 31 January 2012 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 –

- section 1(1), definition of “financial instrument”; and
- section 41(1), definition of “foreign financial instrument holding company” and “associated group companies”.

3. Parties to the proposed transaction

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

The Holding Company: A company incorporated in and a resident of France, which holds all the ordinary shares in the Applicant

4. Description of the proposed transaction

The Applicant is held by the Holding Company as an intermediary holding company.

The Applicant in turn holds 75% of the ordinary issued share capital of ABC Ltd, a company incorporated in Mauritius and not a resident of South Africa. ABC Ltd is

an investment holding company which does not conduct trading activities in Mauritius and it is not a bank, insurance company or a collective investment scheme.

ABC Ltd's assets consist only of ordinary shares held in three subsidiary companies, each resident in a different foreign country. The percentage shareholding held in each of these three subsidiaries is as follows:

- 100% of the ordinary issued share capital of operating Company A, resident in foreign country A;
- 51% of the ordinary issued share capital of operating Company B, resident in foreign country B; and
- 50.1% of the ordinary issued share capital of operating Company C, resident in foreign country C.

These subsidiary companies have independent operations.

The Applicant, the Holding Company, ABC Ltd and Company A (a wholly owned subsidiary of Company ABC) form a group of companies (the Group) and ABC Ltd and its three subsidiary companies form an associated group of companies.

The Applicant proposes to dispose of the shares it holds in ABC Ltd to the Holding Company in accordance with a reorganisation scheme being contemplated by the Group.

5. Conditions and assumptions

This ruling is not subject to any additional conditions or assumptions.

6. Ruling

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

- In determining whether ABC Ltd qualifies as a "foreign financial instrument holding company" as defined in section 41(1), the Applicant must, in accordance with proviso (i)(aa) to the definition of "foreign financial instrument holding company" in section 41(1), wholly disregard ABC Ltd's direct shareholding in the three subsidiary companies.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 3 years from 31 January 2012.

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**Legal and Policy Division: Advance Tax Rulings
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