

BINDING PRIVATE RULING: BPR 365

DATE: 21 June 2021

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
: SECURITIES TRANSFER TAX ACT 25 OF 2007 (STT Act)
SECTION : SECTIONS 1(1) – DEFINITIONS OF “GROUP OF COMPANIES” AND
“CONTROLLING GROUP COMPANY”, 41(1) – DEFINITION OF
“GROUP OF COMPANIES” AND 45(4)(b) OF THE ACT
: SECTION 8(1)(a)(vi)(C) OF THE STT ACT
SUBJECT : INTERPRETATION AND APPLICATION OF THE DE-GROUPING
PROVISION IN SECTION 45(4)(b)

Preamble

This binding private ruling is published with the consent of the applicant(s) to which it has been issued. It is binding between SARS and the applicant and any co-applicant(s) only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines whether there is a de-grouping charge under section 45(4)(b) when a group of companies previously engaged in an intra-group transaction is transferred to form part of another group of companies which group is ultimately held by the same controlling group company. This ruling also considers the securities transfer tax consequences of the transfer of the shares.

2. Relevant tax laws

In this ruling references to sections are to sections of the relevant Act applicable as at 31 May 2021. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the relevant Act.

This is a ruling on the interpretation and application of –

- the Act
 - section 1(1) – definitions of “group of companies” and “controlling group company”;
 - section 41(1) – definition of “group of companies”; and
 - section 45(4)(b).
- STT Act
 - section 8(1)(a)(vi)(C).

3. Parties to the proposed transaction

The applicant:	A resident company
Company A:	A resident company that holds all of the shares in the applicant and 81% of the shares in company B
Company B:	A resident company
Company C	A resident company that holds 100% of the shares in company A
Company D	A resident company that holds 100% of the shares in company C
Company E	A resident listed company that holds 100% of the shares in company D
Company F	A resident company that is wholly-owned by company E

4. Description of the proposed transaction

In 2018, when company A was held 75% by company C, and company A held 100% of the shares in the applicant and company B, the applicant acquired the assets and business of a division of company B from company B in terms of an intra-group transaction as contemplated in section 45 of the Act. The applicant discharged the purchase price by assuming liabilities related to the division and settled the balance by way of a cash payment.

Subsequent to the intra-group transaction mentioned above –

- a third party acquired 19% of the shares in company B; and
- company C acquired the remaining 25% shares in company A. Company A is therefore currently a wholly-owned subsidiary of company C.

It is proposed that the shares in company A be transferred to company F. The proposed transaction will be implemented as follows:

- Company F will purchase the shares in company A from company C.
- Company C and company F will agree, as contemplated in section 45(6)(g), that section 45 will not apply to the transaction.

No ruling was requested and thus no opinion is expressed on any of the prior transactions and values at which the transactions were implemented.

5. Conditions and assumptions

This binding private ruling is not subject to any additional conditions and assumptions other than the one mentioned in 6.b) below.

6. Ruling

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

- a) The disposal by company C of the shares in company A to company F will not give rise to a de-grouping charge under section 45(4)(b) of the Act as the Applicant will remain part of the same group of companies as company E, the controlling company in relation to company B.
- b) The transfer by company C of the shares in company A to company F will be exempt from securities transfer tax in terms of section 8(1)(a)(vi)(C) of the STT Act, subject to the public officer of company C making the required sworn affidavit or solemn declaration.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 31 May 2021.

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