

BINDING PRIVATE RULING: BPR 374

DATE: 24 May 2022

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 1(1) – DEFINITION OF “GROUP OF COMPANIES”
SUBJECT : DETERMINATION OF GROUP OF COMPANIES

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 the manner in which the definition of group of companies should be applied.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 2 February 2022. 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 “group of companies”.

3. Parties to the proposed transaction

| | |
|-----------------|--|
| The applicant: | A resident company |
| Co-applicant 1: | A resident company |
| Co-applicant 2: | A resident company and a wholly-owned subsidiary of the Co-applicant 1 |
| Company A: | A resident company |

4. Description of the proposed transaction

The applicant holds 75% of the ordinary shares in co-applicant 1. Co-applicant 1 holds all of the ordinary shares in co-applicant 2.

It is proposed that co-applicant 2 will acquire shares in a number of companies held by company A (collectively the sale shares). Co-applicant 2 will issue ordinary shares and preference shares to company A in exchange for the acquisition of the sale shares (initial issue shares) on the effective date of the transaction (effective date) and may become liable for deferred compensation comprising of the issue of

further preference shares on the first anniversary of the effective date (deferred issue shares) and cash (if any).

The initial issue shares and deferred issue shares (collectively, the issue shares) to be issued to company A may not exceed an agreed maximum percentage which percentage is less than 20% (maximum shareholding) of co-applicant 2's total issued shares on the deferred date.

The terms attaching to the preference shares provide, amongst others, for the automatic conversion of the preference shares to equity shares on the third anniversary of the issue date (interim conversion date). The preference shares not converted on the interim conversion date are convertible to equity shares on the fifth anniversary of their issue (final conversion date).

Depending on the number of issue shares (ordinary and preference shares) issued by co-applicant 2 to company A, and preference shares converted by the final conversion date, company A may hold the maximum shareholding at the end of the day on the final conversion date. Company A may not hold more than the maximum shareholding in co-applicant 2 at any given time from the effective date to the final conversion date.

5. Conditions and assumptions

This binding private ruling is not subject to any additional conditions and assumptions.

6. Ruling

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

- a) The applicant, co-applicant 1 and co-applicant 2 form part of a "group of companies" as defined in section 1(1) and will, pursuant to the proposed transaction, continue to form part of the same "group of companies" as at the effective date, deferred date, interim conversion date and final conversion date.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 2 February 2022.