

**BINDING PRIVATE RULING: BPR 258**

DATE: 17 January 2017

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)  
SECURITIES TRANSFER TAX ACT 25 OF 2007 (STT Act)**

**SECTION : SECTIONS 1(1) – DEFINITIONS OF “CONTRIBUTED TAX CAPITAL”,  
“FOREIGN RETURN OF CAPITAL”, “GROUP OF COMPANIES” AND  
“RETURN OF CAPITAL”, 9D, 24BA, 41 – DEFINITION OF “GROUP  
OF COMPANIES”, 42 AND 45 OF THE ACT, AND PARAGRAPHS 1 –  
DEFINITION OF “VALUE SHIFTING ARRANGEMENT”, 11(1)(g) AND  
(2)(b), 12(4), 24(1), 64B(4) AND 76B OF THE EIGHTH SCHEDULE TO  
THE ACT  
SECTION 2(1)(a)(ii) OF THE STT ACT**

**SUBJECT : CORPORATE GROUP RESTRUCTURING**

**1. Summary**

This ruling determines the tax consequences resulting from a group restructuring involving multiple transactions to be undertaken in terms of the corporate roll-over rules and the consequences of the controlled foreign company rules in relation to the restructuring.

**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 28 of 2011.

In this ruling references to sections and paragraphs are to sections of the relevant Act and paragraphs of the Eighth Schedule to the Act applicable as at 25 October 2016. 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 provisions of –

- the Act –
  - section 1(1) – definitions of “contributed tax capital”, “foreign return of capital”, “group of companies” and “return of capital”;
  - section 9D;
  - section 24BA;
  - section 41 – definition of “group of companies”;
  - section 42;
  - section 45;
  - paragraph 1 – definition of “value shifting arrangement”;
  - paragraph 11(1)(g) and (2)(b);

- paragraph 12(4);
- paragraph 24(1);
- paragraph 64B(4); and
- paragraph 76B.
- the STT Act –
  - section 2(1)(a)(ii).

### 3. Parties to the proposed transaction

The Applicant:	A company incorporated in and a resident of South Africa
First Co-Applicant:	A company incorporated outside South Africa and not a resident
Second Co-Applicant:	A company incorporated outside South Africa and not a resident
Third Co-Applicant:	A company incorporated outside South Africa but a resident

### 4. Description of the proposed transaction

The Applicant is the ultimate holding company for its group's offshore interests.

The Applicant holds all of the ordinary shares in the First Co-Applicant. The ordinary shares constitute "equity shares" as defined in section 1(1).

The First Co-Applicant holds the following shares:

- All of the ordinary shares in the Second Co-Applicant. The ordinary shares constitute "equity shares" as defined in section 1(1) and are held as capital assets. The market values of the shares exceed their respective base costs.
- A portion of the ordinary shares in the Third Co-Applicant. The ordinary shares constitute "equity shares" as defined in section 1(1) and are held as capital assets. The market values of these shares exceed their respective base costs.

The Applicant holds a portion of the ordinary shares in the Third Co-Applicant. The Second Co-Applicant holds the remainder of the ordinary shares in the Third Co-Applicant. These ordinary shares constitute "equity shares" as defined in section 1(1) and are held by the Applicant and the Second Co-Applicant as capital assets. The market values of the ordinary shares exceed their respective base costs.

The Applicant intends to simplify the shareholding structure of the Third Co-Applicant so that it becomes a wholly-owned subsidiary of the Applicant.

The proposed transaction steps to implement the restructuring will be as follows:

a) Transaction step 1

The First Co-Applicant will dispose of its entire shareholding in the Second Co-Applicant to the Applicant in terms of an “intra-group transaction” contemplated in paragraph (b) of the definition of that term in section 45(1) on loan account and at book value.

b) Transaction step 2

The Applicant will subscribe for and the Second Co-Applicant will issue ordinary shares to the Applicant.

c) Transaction step 3

The Second Co-Applicant will change its residence and will become a resident of South Africa.

d) Transaction step 4

The First Co-Applicant will dispose of its ordinary shares held in the Third Co-Applicant to the Second Co-Applicant in terms of an “asset-for-share transaction” contemplated in paragraph (a) of the definition of that term in section 42(1) at book value. The Second Co-Applicant will issue ordinary shares to the First Co-Applicant in consideration for the disposal of the shares in the Third Co-Applicant that will constitute more than 10% of the ordinary shares of the Second Co-Applicant.

e) Transaction step 5

The Second Co-Applicant will dispose of its ordinary shares held in the Third Co-Applicant to the Applicant in terms of an “intra-group transaction” contemplated in paragraph (a) of the definition of that term in section 45(1) on loan account and at book value.

f) Transaction step 6

- i) The Second Co-Applicant will partially reduce its share capital. Its directors will elect that the portion of its share capital to be returned to its shareholders should come out of contributed tax capital.
- ii) The amount payable in respect of the portion of the reduction of share capital attributable to the First Co-Applicant will be settled in cash.
- iii) The amount payable in respect of the portion of the reduction of share capital attributable to the Applicant will be set-off against the amount payable in respect of the loan account owing by the Applicant to the Second Co-Applicant in terms of transaction step 5.

g) Transaction step 7

- i) The First Co-Applicant will partially reduce its share capital. Its directors will elect that the portion of its share capital to be returned to the Applicant should come out of contributed tax capital.

- ii) The amount payable in respect of the portion of the reduction of share capital attributable to the Applicant will be set-off against the amount payable in respect of the loan account owing by the Applicant to the First Co-Applicant in terms of transaction step 1.

## 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) Transaction step 1

- i) The disposal by the First Co-Applicant of its shares held in the Second Co-Applicant to the Applicant on loan account and at book value will be an “intra-group transaction” as defined in paragraph (b) of the definition of that term in section 45(1). The roll-over relief set out in section 45(2) will apply to the disposal as follows –
  - aa) the First Co-Applicant will dispose of its shares in the Second Co-Applicant as capital assets and the Applicant will acquire the shares as capital assets;
  - bb) the First Co-Applicant will be deemed to have disposed of the shares in the Second Co-Applicant for amounts equal to the base costs of the shares on the date of that disposal; and
  - cc) the Applicant and the First Co-Applicant will, for purposes of determining any capital gain or capital loss in respect of the disposal of the shares in the Second Co-Applicant by the First Co-Applicant, be deemed to be one and the same person with respect to –
    - the date of acquisition of the shares in the Second Co-Applicant by the First Co-Applicant and the amount and date of incurral by the First Co-Applicant of expenditure in respect of the shares in the Second Co-Applicant allowable under paragraph 20; and
    - any valuation of the shares effected by the First Co-Applicant, as contemplated in paragraph 29(4).
- ii) The Applicant and the First Co-Applicant do not form part of the same “group of companies” as defined in section 41. In accordance with section 45(3A)(b), the First Co-Applicant will not be regarded as having acquired the debt owing in terms of the “intra-group transaction” contemplated in section 45(1) for a base cost of nil.

### b) Transaction step 2

- i) The subscription price to be paid for the subscription of shares by the Applicant in the Second Co-Applicant will be the contributed tax capital of the Second Co-Applicant.

- ii) The issue of the shares by the Second Co-Applicant to the Applicant will not be a disposal for purposes of paragraph 11.
- c) Transaction step 3
- i) The exclusions in section 9D(9A)(a)(iii) will not apply to transaction step 3. The Second Co-Applicant will not be regarded as having disposed of its assets and immediately re-acquired them at market value for purposes of paragraph 12(4) read with paragraph 24 as a result of its change of residence to South Africa.
  - ii) Paragraph 24(1) will not apply to the transaction in step 3.
- d) Transaction step 4
- i) The disposal by the First Co-Applicant of its ordinary shares held in the Third Co-Applicant to the Second Co-Applicant at book value will be an “asset-for-share transaction” as contemplated in paragraph (a) of the definition of that term in section 42(1). The roll-over relief provisions contained in section 42(2) will apply to the transaction as follows –
    - aa) the First Co-Applicant will be deemed to have disposed of its shares held in the Third Co-Applicant to the Second Co-Applicant for amounts equal to the base costs of the shares on the date of disposal;
    - bb) the First Co-Applicant will be deemed to have acquired the shares in the Second Co-Applicant on the date that it acquired the shares in the Third Co-Applicant and for a cost equal to any expenditure in respect of the shares in the Third Co-Applicant incurred by the First Co-Applicant that is allowable under paragraph 20 and to have incurred those costs at the date of incurral by the First Co-Applicant of such expenditure. Such costs must be treated as expenditure actually incurred and paid by the First Co-Applicant in respect of the shares in the Second Co-Applicant for the purposes of paragraph 20;
    - cc) the First Co-Applicant and the Second Co-Applicant will, for purposes of determining any capital gain or capital loss in respect of a disposal of the shares in the Third Co-Applicant by the First Co-Applicant, be deemed to be one and the same person with respect to –
      - the date of acquisition of the shares in the Third Co-Applicant by the First Co-Applicant and the amount and date of incurral by the First Co-Applicant of any expenditure in respect of those shares allowable under paragraph 20; and
      - any valuation of the shares effected by the First Co-Applicant within the period contemplated in paragraph 29(4); and

- dd) any valuation of the shares held by the First Co-Applicant in the Third Co-Applicant effected by the First Co-Applicant within the period contemplated in paragraph 29(4) will be deemed to have been effected in respect of the shares in the Second Co-Applicant acquired in terms of the asset-for-share transaction.
  - ii) The First Co-Applicant and the Second Co-Applicant will, immediately before and after the Second Co-Applicant acquires the shares in the Third Co-Applicant, form part of the same “group of companies” for purposes of the definition of that term in section 1(1). Section 24BA will not apply to the disposal by the First Co-Applicant of its shares held in the Third Co-Applicant to the Second Co-Applicant.
- e) Transaction step 5
- i) Based on the specific facts of this application, the shares acquired by the Second Co-Applicant in the Third Co-Applicant in terms of transaction step 4 will have been acquired and held by the Second Co-Applicant on capital account even though they will be disposed of to the Applicant shortly after acquisition and the Applicant will acquire them as capital assets.
  - ii) The disposal by the Second Co-Applicant of its shares held in the Third Co-Applicant to the Applicant at book value will be an “intra-group transaction” as defined in paragraph (a) of the definition of that term in section 45(1). The following roll-over relief provided for in section 45(2) will apply to transaction step 5 –
    - aa) the Second Co-Applicant will be deemed to have disposed of its shares held in the Third Co-Applicant for amounts equal to the base costs of those shares on the date of that disposal; and
    - bb) the Second Co-Applicant and the Applicant must, for purposes of determining any capital gain or capital loss in respect of a disposal of the shares held in the Third Co-Applicant by the Second Co-Applicant, be deemed to be one and the same person with respect to –
      - the date of acquisition of the shares by the Second Co-Applicant and the amount and date of incurral by the Second Co-Applicant of expenditure in respect of the shares allowable under paragraph 20; and
      - any valuation of the shares effected by the Second Co-Applicant, as contemplated in paragraph 29(4).
  - iii) The Applicant and the Second Co-Applicant form part of the same “group of companies” as defined in section 1(1). In accordance with section 45(3A)(b), the Second Co-Applicant will be regarded as having acquired the debt owing in terms of the intra-group transaction for a base cost of nil.
  - iv) Section 42(7) will not apply to transaction step 5.

## f) Transaction step 6

- i) The amount payable by the Second Co-Applicant to the Applicant and First Co-Applicant will constitute a “return of capital” as defined in section 1(1) and a reduction of “contributed tax capital” as defined in section 1(1).
- ii) The amount of the return of capital payable by the Second Co-Applicant to the Applicant which will be set-off against the loan amount that will be owed by the Applicant in terms of transaction step 5 will discharge the Applicant’s obligations to the Second Co-Applicant in terms of the loan account.
- iii) The amount of the return of capital payable to the Applicant and the First Co-Applicant respectively will reduce the base costs of the shares to which the return of capital relates in accordance with paragraph 76B(2). As the amount of the return of capital will not exceed the base costs of those shares, no capital gains tax liability will arise for the Applicant and the First Co-Applicant in respect of the reduction of the Second Co-Applicant’s share capital.
- iv) The return of capital which will be set-off against the amount payable by the Applicant in respect of the loan account to be owed to the Second Co-Applicant in terms of transaction step 5 will discharge the loan account and in accordance with section 45(3A)(c), the amount of the return of capital equal to the face value of the loan amount payable must be disregarded in determining the Second Co-Applicant’s aggregate capital gain and the nil base cost determined under section 45(3A)(b) will not apply.

## g) Transaction step 7

- i) The amount payable by the First Co-Applicant to the Applicant will constitute a “foreign return of capital” as defined in section 1(1) and a reduction of “contributed tax capital” as defined in section 1(1).
- ii) The amount of the foreign return of capital payable by the First Co-Applicant to the Applicant which will be set-off against the loan amount to be owed by the Applicant in terms of transaction step 1 will discharge the Applicant’s obligations to the First Co-Applicant in terms of the loan account.
- iii) The amount payable by the First Co-Applicant in respect of the foreign return of capital to the Applicant will reduce the base costs of the shares to which the foreign return of capital relates in accordance with paragraph 76B(2). As the amount of the foreign return of capital will not exceed the base costs of the shares, no capital gains tax liability will arise for the Applicant in respect of the reduction of the First Co-Applicant’s share capital. If, for any reason, the amount of the foreign return of capital exceeds the base costs of the shares, any capital gain in respect of the foreign return of capital will be disregarded under paragraph 64B(4).

- iv) The Applicant and the First Co-Applicant do not form part of the same “group of companies” as defined in section 41(1). Section 45(3A)(b) and (c) will not apply to the loan account of the First Co-Applicant that will arise in transaction step 1 and the settlement of the loan account by way of set-off in this transaction step.
- h) Transaction steps 1, 2, 4 and 5
  - i) The disposals at book value in terms of the asset-for-share transaction and the intra-group transactions in transactions steps 1, 4 and 5 will each not result in a “value shifting arrangement” as defined in paragraph 1 and therefore a disposal for purposes of paragraph 11(1)(g).
  - ii) No STT will be payable on the –
    - aa) disposal by the First Co-Applicant of its shares in the Second Co-Applicant to the Applicant in terms of transaction step 1;
    - bb) issue of shares by the Second Co-Applicant to the Applicant in terms of transaction step 2;
    - cc) disposal by the First Co-Applicant of its shares in the Third Co-Applicant to the Second Co-Applicant in terms of transaction step 4; and
    - dd) disposal by the Second Co-Applicant of its shares in the Third Co-Applicant to the Applicant in terms of transaction step 5.

**7. Period for which this ruling is valid**

This binding private ruling is valid for a period of 5 years from 25 October 2016.

**Legal Counsel: Advance Tax Rulings  
SOUTH AFRICAN REVENUE SERVICE**