

**BINDING PRIVATE RULING: BPR 331**

DATE: 5 November 2019

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : SECTION 45(4)(b)**  
**SUBJECT : DE-GROUPING CHARGE**

***Preamble***

This binding private ruling is published by consent of the applicant(s) to which it has been issued. It is binding as 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**

The transferee company in the proposed intra-group transaction was the transferor company in an earlier intra-group transaction. This ruling determines the applicability of the de-grouping charge.

**2. Relevant tax laws**

In this ruling references to sections are to sections of the Act applicable as at 2 July 2019. 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 45(4)(b).

**3. Parties to the proposed transaction**

The applicant:	A resident company and a wholly-owned subsidiary of company B
Company A:	A resident company
Company B:	A resident company and a wholly-owned subsidiary of company A
Company C:	A resident company and a wholly-owned subsidiary of company D
Company D:	A resident company and a wholly-owned subsidiary of company A

**4. Description of the proposed transaction**

Company A, a public company listed on the JSE, is the holding company of a group of companies (the group).

Before 1 June 2017 all the shares in the applicant and 57% of the shares in company C ("57% company C shares") were held by a third party. The remaining shares in company C was held by the applicant (43% company C shares).

Effective 1 June 2017 company D acquired the 57% company C shares for market value and the 43% company C shares from the applicant by way of an intra-group transaction (the first intra-group transaction), after which company D held all the company C shares.

The contemplated disposal of the shares in company D out of the group for market value cash consideration necessitates the proposed transaction.

The group does not want to dispose of company C as part of the aforementioned transaction. To retain company C within the group, company D proposes to transfer all the shares in company C to the applicant in exchange for consideration of R1, which will result in the applicant ceasing to form part of the same group of companies as company D (Proposed Transaction).

## **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 proposed transaction will not result in section 45(4)(b) applying to the applicant in respect of the 43% portion of the shares in company C that will be re-acquired by the applicant from company D in terms of the second section 45 transaction.
- b) The proposed transaction will result in section 45(4)(b)(i) applying to the applicant in respect of the 57% portion of the shares in company C that will be acquired by the applicant from company D, to the extent to which the 57% portion of the shares in company C are assets of which their market value is greater than their base cost. Section 45(4)(b)(i) will not apply to the applicant to the extent to which the 57% portion of the shares in company C are assets of which their market value is less than their base cost.

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

This binding private ruling is valid for a period of five years from the date of the ruling.