

**BINDING PRIVATE RULING: BPR 392**

DATE: 15 June 2023

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 9D(2A) AND 9H(3)(b)**  
**SUBJECT : SALE OF SHARES IN A CONTROLLED FOREIGN COMPANY (CFC)**

***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, 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 tax consequences for a resident shareholder disposing of its shares in a CFC.

**2. Relevant tax laws**

In this ruling, references to sections are to sections of the Act applicable as at 1 March 2023. 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 9D(2A); and
- section 9H(3)(b).

**3. Parties to the proposed transaction**

The Applicant: A resident company

Company B: A non-resident company, which is wholly owned by the Applicant

**4. Description of the proposed transaction**

The Applicant is the holding company for a group of companies and holds various subsidiaries and associates through various intermediary holding companies.

Company B is a CFC and holds the European group entities, which constitute various chains of CFCs.

The Applicant proposes to dispose of its interest in Company B (and thereby the underlying European entities therein), to a connected non-resident person in the group.

The result of the disposal will be that the European entities held by the Applicant will cease to be CFCs.

#### **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 deemed disposal as contemplated in section 9H(3)(b) must be considered when calculating the net income of the CFC for purposes of section 9D(2A).
- b) No regard must be had to the deemed disposal of assets as contemplated in section 9H(3)(b) for purposes of calculating the normal tax as contemplated in paragraph (i)(aa) of the second proviso to section 9D(2A).
- c) The net income calculated under the provisions of section 9D(2A) will be deemed to be nil, as contemplated in paragraph (i)(aa) of the second proviso to section 9D(2A), in the event that –
  - i) the CFC realised a taxable loss resulting in zero taxes on income payable by the CFC to all spheres of government of any country other than the Republic; and
  - ii) zero normal tax would have been payable on taxable income of the CFC had the CFC been a resident for that foreign tax year.

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

This binding private ruling is valid for a period of two years from 1 March 2023.