

BINDING PRIVATE RULING: BPR 375

DATE: 5 August 2022

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 9D, 46(1), 46(2) and 46(5)
SUBJECT : UNBUNDLING OF SHARES IN A 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 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 tax consequences of an unbundling transaction of the shares in a controlled foreign company.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 28 March 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 46(1) – paragraph (b) of the definition of “unbundling transaction”;
- section 46(2); and
- section 46(5).

3. Parties to the proposed transaction

The applicant:	A resident company
Company A:	A controlled foreign company that is a resident of country X and a wholly owned subsidiary of the applicant
Company B:	A controlled foreign company that is a resident of country Y and 70 per cent held by Company A

4. Description of the proposed transaction

The applicant and its subsidiaries would like to restructure the group as there is no economic benefit for the applicant holding Company B via Company A. The applicant prefers to exercise direct control over its investment in Company B and the revised structure will place all the applicant’s subsidiaries at the same level

without administrative hurdles. The proposed transaction entails Company A unbundling all its shares in Company B to the applicant.

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 distribution by Company A of the shares held in Company B to the applicant will constitute an “unbundling transaction” as defined in paragraph (b) of the definition of that term in section 46(1).
- (b) In terms of section 46(2) Company A must disregard the distribution of the shares in Company B for purposes of determining its taxable income or assessed loss or its net income as contemplated in section 9D.
- (c) The distribution of the shares by Company A must be disregarded in determining any liability for dividends tax in terms of section 46(5).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of one year from 28 March 2022.