

**BINDING PRIVATE RULING: BPR 388**

DATE: 16 January 2023

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 1(1) – DEFINITIONS OF “GROUP OF COMPANIES”, “CONTROLLING GROUP COMPANY” AND “CONTROLLED GROUP COMPANY”, 9D(1) – DEFINITION OF “CONTROLLED FOREIGN COMPANY”, 41(1) – DEFINITION OF “GROUP OF COMPANIES”, 45(1) – PARAGRAPHS (a) AND (b) OF THE DEFINITION OF “INTRA-GROUP TRANSACTION”, 45(4)(a), (b) and (bA)**  
**SUBJECT : APPLICATION OF THE DE-GROUPING RULE FOLLOWING PREVIOUS INTRA-GROUP TRANSACTIONS UNDER SECTION 45**

***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 for the Applicants following the proposed distribution by a holding company of shares in an intermediate holding company to its shareholders in terms of the de-grouping rules in section 45(4).

**2. Relevant tax laws**

In this ruling references to sections are to sections of the Act applicable as at 13 December 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), – definitions of “group of companies”, “controlling group company”, and “controlled group company”;
- section 9D(1), – definition of “controlled foreign company”;
- section 41(1), – definition of “group of companies”;
- section 45(1) – paragraphs (a) and (b) of the definition of “intra-group transaction”; and
- section 45(4)(a), (b) and (bA).

### 3. Parties

The Applicant:	A resident company
Holdco 1:	A resident company and a wholly owned subsidiary of the Applicant
Holdco 2:	A resident company and a wholly owned subsidiary of Holdco 1
Company A:	A resident company, held more than 70% by Company B, with the remainder of the shares held by a minority shareholder
Foreign Holdco:	A non-resident company that is a wholly owned subsidiary of Company B
Foreign Opco 1:	A non-resident company that is a wholly owned subsidiary of Foreign Holdco
Company B:	A resident company that is a 100% subsidiary of Holdco 2
Company C:	A wholly owned resident subsidiary of Company A
Holdco 3:	A resident intermediate holding company and wholly owned subsidiary of Company A
Foreign Opco 2:	A non-resident company that is a wholly owned subsidiary of Foreign Holdco
Foreign Opco 3:	A non-resident company that is a wholly owned subsidiary of Foreign Holdco
S.45 Entities:	Company C and five other companies, all South African resident companies controlled by Company A

### 4. Description of the proposed transaction

The Applicant received an offer from a purchaser to acquire the entire issued share capital of the Applicant. In preparation for the sale to this purchaser, the Applicant will undertake an internal restructuring as set out below, to be followed by the sale.

As the last step of the internal restructuring, the Applicant intends to distribute all the shares in Holdco 1 to its shareholders (the Distribution).

#### *Historic intra-group transactions*

During the six years before the Distribution, there were several intra-group transactions implemented under section 45 (Intra-group Transactions) that are relevant. The following list summarises these Intra-group transactions:

- Item 1: Company A transferred 100% of Foreign Opco 1 to Foreign Holdco five years before the Distribution.
- Item 2: Company C transferred 10% of the issued share capital of a non-resident company (the Minority Interest) to Foreign Holdco three years before the Distribution.

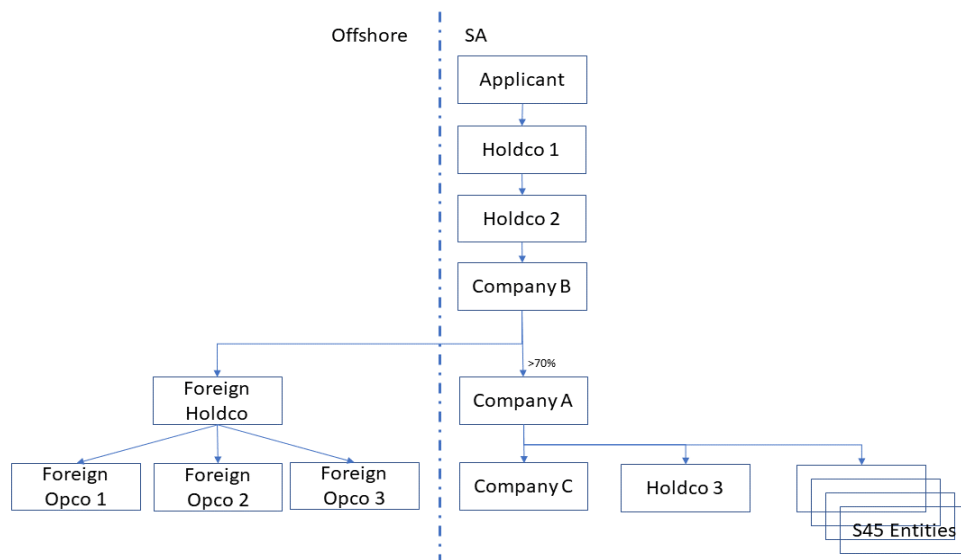
- Item 3: Holdco 3 transferred 100% of Foreign Opco 2 to Foreign Holdco four years before the Distribution.
- Item 4: Holdco 3 transferred 99.9% of Foreign Opco 3 to Foreign Holdco three years before the Distribution.
- Item 5: The S.45 Entities transferred business assets, other than equity shares, amongst one another within six years before the Distribution.

Items 1 to 4 involved Intra-group Transactions in respect of shares held in foreign companies by the relevant transferors to Foreign Holdco. All the transferors were South African tax resident companies. These transactions all qualified as “intra-group transactions” under paragraph (b) of the definition of that term in section 45(1).

Item 5 involved various Intra-group Transactions in respect of the group’s business assets amongst the S.45 Entities. These transactions qualified as “intra-group transactions” under paragraph (a) of the same definition.

For purposes of the proposed Distribution, the past Intra-group Transactions listed above require further consideration, considering the effect of some of the steps forming part of the internal restructuring.

*Diagram of group prior to the internal restructuring*



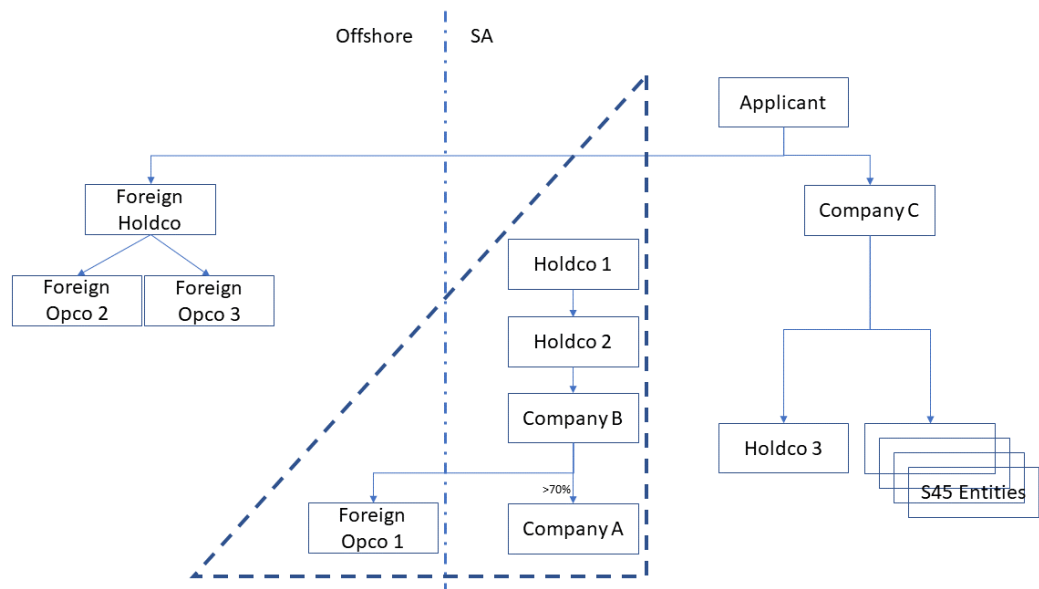
It is important to note that the above structure came about as a result of previous restructurings. At the time of the Item 1 Intra-Group Transaction, the only controlling group company in relation to the transferor was Company B. Holdco 1, Holdco 2 and the Applicant were not yet controlling group companies. In relation to the Intra-Group Transactions that comprise Item 5 and at the time of those transactions, only

Company A and Company B were controlling group companies in relation to the transferors in those Intra-group Transactions.

The proposed internal restructuring will be achieved through the following transaction steps:

- Step 1: Foreign Holdco will distribute the shares in Foreign Opco 1 to Company B.
- Step 2: Company A will consolidate Holdco 3 and the S.45 Entities under Company C.
- Step 3: Company A will distribute the shares in Company C to Company B and the minority shareholder.
- Step 4: Company B will distribute the shares in Foreign Holdco and Company C to Holdco 2, which will distribute them to Holdco 1, which will distribute them to the Applicant.
- Step 5: The Applicant will distribute the shares in Holdco 1 to its shareholders.

*Group structure after the proposed internal restructuring*



## 5. Conditions and assumptions

This binding private ruling is subject to the additional condition and assumption that at all relevant times the assets that were subject to relief under section 45 under Items 1 to 5 are held on capital account by their various holders.

## 6. Ruling

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

*In respect of Item 1*

- Section 45(4)(b) will not apply because the Intra-group Transaction in Item 1 occurred under paragraph (b) of the definition of "intra-group transaction" and consequently section 45(4)(bA) is relevant.

- b) Section 45(4)(bA) will not apply in consequence of the Distribution, on the basis that —
- o under section 45(4)(a)(ii), Company B is considered to be the transferee company as contemplated in paragraph (b) of the definition of “intra-group transaction”; and
  - o Company B will not cease to form part of the group of companies in relation to the transferor (Company A) or a controlling group company (Company B) in relation to the transferor when the shares in Holdco 1 are distributed by the Applicant.

*In respect of Items 2, 3 and 4:*

- c) Section 45(4)(b) will not find application upon the Distribution as all the Intra-group Transactions comprising Items 2, 3 and 4, were transactions contemplated in paragraph (b) of the definition of “intra-group transaction” in section 45(1).
- d) Section 45(4)(bA) will find application upon the Distribution by the Applicant on the basis that this distribution results in Foreign Holdco (section 45 transferee) exiting the groups of companies of which Company A, Company B, Holdco 2 and Holdco 1 were controlling group companies. This de-grouping will trigger the de-grouping charge for Foreign Holdco for purposes of section 9D. Consequent upon the de-grouping, the base cost of the Minority Interest, the shares in Foreign Opco 2 and Foreign Opco 3 must be increased by a proportionate allocation of the de-grouping charge paid by Foreign Holdco.

*In respect of Item 5:*

- e) Section 45(4)(b) will apply upon the Distribution on the basis that this distribution results in Company C and the S.45 Entities that are section 45 transferees exiting the groups of companies of which Company A, Company B, Holdco 2 and Holdco 1 were controlling group companies. Consequent upon the de-grouping, the base cost of the relevant section 45 assets must be increased by a proportionate allocation of the de-grouping charge paid.
- f) Section 45(4)(bA) will not find application upon the Distribution, on the basis that none of the transferee companies are companies as contemplated in paragraph (b) of the definition of “intra-group transaction” in section 45(1).

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

This binding private ruling is valid in respect of the 2023 year of assessment.