

*SOUTH AFRICAN REVENUE SERVICE*

**BINDING PRIVATE RULING: BPR 044**

DATE: 23 September 2009

**ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)**  
**SECTION : SECTION 9D(10)(a)(iv)**  
**SUBJECT : FOREIGN BUSINESS ESTABLISHMENT EXCLUSION**

**1. Summary**

This ruling deals with the question as to whether the applicant may, under section 9D(10)(a)(iv) of the Act, disregard the provisions of section 9D(9)(b)(ii) of the Act when relying on the 'foreign business establishment' exclusion in section 9D(9)(b) of the Act on the basis that –

- (a) the relevant income on the sale of goods or the performance of services will be subject to tax by another sphere of government of countries other than the Republic of South Africa; and
- (b) the amount of tax contemplated in item (a) will equal at least two-thirds of the normal tax that would otherwise arise in connection with that income if section 9D(9)(b)(ii) were to apply on that income.

**2. Relevant tax laws**

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling legislative references to sections are to sections of the Act applicable as at 31 July 2008 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested under the provisions of section 9D(10)(a)(iv).

**3. Parties to the proposed transaction**

- The Applicant: A listed company which is a resident and which forms part of a Group of Companies
- C: A controlled foreign company to be incorporated in a country outside South Africa by the applicant as a wholly owned subsidiary of the Applicant

**4. Description of the proposed transaction**

The Group of Companies intends setting up an international marketing hub. The Applicant will incorporate a wholly owned subsidiary, C, in order to house the

current branch operations of the Applicant. The Applicant intends transferring its branch operations as a going concern to C in exchange for shares in C.

As part of C's ongoing operations it will purchase supplies from the Applicant and then sell these supplies to third party customers.

## **5. Conditions and assumptions**

This ruling is made subject to the following conditions and assumptions –

- C will be a resident in the country in which its is incorporated and will have its place of effective management in that country;
- C will constitute a "controlled foreign company" as defined in section 9D(1), in relation to the Applicant;
- C will comply with the requirements of a "foreign business establishment" as defined in section 9D(1);
- C will prepare the tax calculation as contemplated in section 9D(10)(a)(iv)(bb) on an annual basis and will have the said calculation available for submission to the Commissioner for SARS when so requested; and
- the ruling will not apply to C in any year of assessment where the amount of tax in its country of incorporation, as calculated under section 9D(10)(a)(iv)(bb) in relation to C, is less than two-thirds of the normal tax that would otherwise arise in South Africa.

## **6. Ruling**

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

- In terms of section 9D(10)(a)(iv) the Applicant may disregard the provisions of section 9D(9)(b)(ii) in relation to the 'foreign business establishment' exclusion in section 9D(9)(b) when determining the net income of C for purposes of section 9D(2).

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

This binding private ruling is valid for a period of five (5) years as from 23 October 2008.

Issued by:

**Legal and Policy Division: Advance Tax Rulings**  
**SOUTH AFRICAN REVENUE SERVICE**