

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 027

DATE: 6 March 2009

The guidance contained in this ruling is affected by subsequent law changes.

ACT : INCOME TAX ACT, NO. 58 of 1962 (the Act)
SECTION : SECTION 44(1)
SUBJECT : TAXATION ASPECTS OF AN AMALGAMATION TRANSACTION

1. Summary

This ruling deals with whether the proposed transaction between the parties will qualify as an “**amalgamation transaction**” as defined in section 44(1) of the Act. To the extent that the proposed transaction qualifies as an amalgamation transaction, this ruling confirms the application of the tax rollover relief provided for in section 44 of the Act, read with section 8(25) of the Value-Added Tax Act, No. 89 of 1991 (the VAT Act), section 9(1)(l)(i) of the Transfer Duty Act, No. 40 of 1949 (the Transfer Duty Act) and Item 15(3)(x)(iii) of the First Schedule to the Stamp Duties Act, No. 77 of 1968 (the Stamp Duties Act).

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 relevant Acts applicable as at 12 December 2007 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to them in those Acts.

This ruling has been requested under the provisions of –

- section 44 of the Act;
- section 8(25) of the VAT Act;
- item 15(3)(x)(iii) of the First Schedule to the Stamp Duties Act; and
- section 9(1)(l)(i) of the Transfer Duty Act.

3. Parties to the proposed transaction

Foreign Holdings:	A company incorporated in and a resident of a foreign country
SA Sub1:	A company incorporated in and a resident of South Africa
SA Sub2:	A company incorporated in and a resident of South Africa
SA Sub3:	A company incorporated in and a resident of South Africa.

4. Description of the proposed transaction

Foreign Holdings directly holds all the shares in SA Sub1, SA Sub2 and SA Sub3. In order to simplify its structure, the group intends to undertake the following –

- (a) SA Sub2 and SA Sub3 will transfer all their assets, at book value, to SA Sub1;
- (b) in return or as consideration for the assets so acquired, SA Sub1 will issue shares to SA Sub2 and SA Sub3; and
- (c) eventually, SA Sub2 and SA Sub3 will be liquidated or deregistered and their shares in SA Sub1 will be distributed to their shareholder, Foreign Holdings.

Following the aforementioned transactions, Foreign Holdings will remain the sole shareholder of SA Sub1.

To the extent that capital assets, allowance assets and trading stock are transferred by SA Sub2 and SA Sub3 to SA Sub1, they will not change their usage and will be acquired by the latter as capital assets, allowance assets and trading stock.

The amount of equity to be held by SA Sub2 and SA Sub3 in SA Sub1 will be less than 20% of the equity shares and voting rights of SA Sub1. In view of the fact that Foreign Holdings holds all the equity shares in SA Sub1, upon liquidation or deregistration of SA Sub2 and SA Sub3, Foreign Holdings will nevertheless continue to hold more than 20% of the equity shares and voting rights of SA Sub1.

5. Conditions and assumptions

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

- SA Sub2 and SA Sub3 will dispose of all their assets to SA Sub1, other than assets which each company elects to retain for the purposes of settling debts incurred by such company in the ordinary course of its trade;
- SA Sub1 is a resident as defined in section 1 of the Act; and
- SA Sub2 and SA Sub3 will take the necessary steps as contemplated in section 41(4) of the Act to liquidate, wind up or deregister within a period of eighteen (18) months after the date of the proposed amalgamation transaction or such further period as the Commissioner may allow.

6. Ruling

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

- The proposed transaction between SA Sub1, SA Sub2 and SA Sub3 will qualify as an “**amalgamation transaction**” as defined in section 44(1) of the Act. SA Sub2 and SA Sub3 will, be amalgamated companies and SA Sub1, the resultant company for the purposes of the definition of an amalgamation transaction.
- SA Sub2 and SA Sub3 may transfer all their assets, other than assets which each company elects to retain for the purposes of settling debts incurred by such company in the ordinary course of its trade, to SA Sub1 in terms of the proposed transaction for an amount equals to the book value of such assets.
- Foreign Holdings, SA Sub1, SA Sub2 and SA Sub3 will be entitled and subject to the relief provided for in the provisions of the following sections –
 - (a) section 44 of the Act;
 - (b) section 8(25) of the VAT Act;
 - (c) item 15(3)(x)(iii) of the First Schedule to the Stamp Duties Act; and
 - (d) section 9(1)(l)(i) of the Transfer Duty Act.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of two (2) years as from the date of this ruling or eighteen (18) months after the date of the proposed amalgamation transaction, whichever occurs first.

Issued by:

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