

BINDING PRIVATE RULING: BPR 249

DATE: 27 September 2016

**ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECURITIES TRANSFER TAX ACT NO. 25 OF 2007 (STT Act)**

**SECTION : SECTIONS 1(1) – DEFINITION OF “CONTRIBUTED TAX CAPITAL”,
42, 44 AND 46 OF THE ACT, AND PARAGRAPHS 1 – DEFINITION OF
“BASE COST”, 13 AND 20(1)(a) OF THE EIGHTH SCHEDULE TO
THE ACT
SECTIONS 1 – DEFINITION OF “SECURITY”, 2(1) AND 8(1)(a)(i), (ii)
AND (iv) OF THE STT ACT**

**SUBJECT : CORPORATE GROUP RESTRUCTURING INVOLVING MULTIPLE
TRANSACTIONS**

1. Summary

This ruling determines the tax consequences of a corporate group restructuring involving multiple transactions including successive asset-for-share transactions, an amalgamation transaction and unbundling transactions as contemplated in the Act.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 78(1) and published in accordance with section 87(2) of the Tax Administration Act No. 28 of 2011.

In this ruling references to sections and paragraphs are to sections of the relevant Act and paragraphs of the Eighth Schedule to the Act applicable as at 14 December 2015. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the relevant Act.

This is a ruling on the interpretation and application of the provisions of –

- the Act –
 - section 1(1) – definition of “contributed tax capital”;
 - section 42;
 - section 44;
 - section 46;
 - paragraph 1 – definition of “base cost”;
 - paragraph 13; and
 - paragraph 20(1)(a).

- the STT Act –
 - section 1 – definition of “security”;
 - section 2(1); and
 - section 8(1)(a)(i), (ii) and (iv).

3. Parties to the proposed transaction

The proposed transaction involves numerous resident and non-resident companies, some of which are Co-Applicants and others not. The Applicant and Co-Applicants are:

The Applicant:	A company incorporated in and a resident of South Africa
Co-Applicant 1:	A company incorporated outside of South Africa but a resident of South Africa that will be used as an intermediary holding company
Co-Applicant 2:	A company incorporated in and a resident of South Africa
Co-Applicant 3:	A company incorporated in and a resident of South Africa that will become the ultimate holding company
Co-Applicant 4:	A company incorporated outside of South Africa and not a resident of South Africa that is indirectly held by Company I
Co-Applicant 5:	A company incorporated in and a resident of South Africa that is a subsidiary of Co-Applicant 2
Co-Applicant 6:	A company incorporated outside of South Africa and not a resident of South Africa that is wholly-owned by Co-Applicant 5
Co-Applicant 7:	A company incorporated in and a resident of South Africa that is a wholly-owned subsidiary of the Applicant
Co-Applicant 8:	A company incorporated in and a resident of South Africa

The other parties to the proposed transaction that are not the Applicant or Co-Applicants are:

Company A:	A company incorporated outside of South Africa and not a resident of South Africa
Company B:	A company incorporated in and a resident of South Africa that is wholly-owned by Company G
Company C:	A company incorporated in and a resident of South Africa that is indirectly held by Company A
Company D:	A company incorporated in and a resident of South Africa that is a wholly-owned subsidiary of Company B
Company E:	A company incorporated in and a resident of South Africa

Company F:	A company incorporated in and a resident of South Africa that is wholly-owned by Company B
Company G:	A company incorporated in and a resident of South Africa that is indirectly held by Company A
Company H:	A company incorporated in and a resident of South Africa that is wholly-owned by Company B
Company I:	A company incorporated and listed outside of South Africa and not a resident of South Africa
Company J:	A company incorporated in and a resident of South Africa that is wholly owned by the Applicant
Company K:	A company incorporated in and a resident of South Africa in which 32.4% of its issued share capital is held by the Applicant

4. Description of the proposed transaction

Company A is a multinational owner of numerous brands and operates a distribution model in various jurisdictions. Company I is also a multinational company that operates in various jurisdictions.

Company A intends to consolidate certain of its operations on the African continent to separate the ownership of brands from its distribution operations.

Company A, Company I and Co-Applicant 2 will consolidate their various interests, held directly or indirectly on the African continent, into one South African holding company, Co-Applicant 3.

The proposed transaction will be preceded by two pre-acquisition transactions.

- a) The first pre-acquisition transaction will consolidate certain companies held indirectly by Company A into Co-Applicant 1. The steps for this transaction will be the following:
 - i) Company B will incorporate Company D and contribute one of its businesses to Company D in exchange for the issue of shares in Company D, in terms of an asset-for-share transaction as contemplated in section 42.
 - ii) Company B will contribute certain other business assets to Company H in exchange for the issue of shares in Company H in terms of an asset-for-share transaction as contemplated in section 42.
 - iii) Company B will contribute certain other business assets to Company F in exchange for the issue of shares in Company F in terms of an asset-for-share transaction as contemplated in section 42.
 - iv) The subsidiaries of Company A that are not residents of South Africa will dispose of their shares in Co-Applicant 5, Company C and Company G to Co-Applicant 1 at market value, in exchange for the issue of shares in Co-Applicant 1.

- v) Company B will unbundle its shares in each of Company D, Company F and Company H to Company G in terms of an unbundling transaction as contemplated in section 46.
 - vi) Company G will unbundle its shares in Company B to Co-Applicant 1 in terms of an unbundling transaction as contemplated in section 46.
- b) The second pre-acquisition transaction will consolidate certain companies held indirectly by Company I directly and indirectly into Co-Applicant 4 and transfer a division of the Applicant and other assets held by the Applicant to Co-Applicant 7. The steps for this transaction will be the following:
 - i) Co-Applicant 4 will be incorporated and capitalised by a wholly-owned subsidiary of Company I.
 - ii) Co-Applicant 4 will acquire shares held in businesses in various African jurisdictions (phase 1B assets).
 - iii) The Applicant will dispose of some of the assets of one of its divisions (division assets) in terms of an asset-for-share transaction as contemplated in section 42 to Co-Applicant 7 in exchange for the issue of shares in Co-Applicant 7. The disposal of the remainder of the division assets will not be made subject to section 42.
 - iv) The Applicant will dispose of all of its shares held in Company J to Co-Applicant 7 in exchange for the issue of shares in Co-Applicant 7 in terms of an asset-for-share transaction as contemplated in section 42.
 - v) The Applicant will dispose of its 32.4% shareholding in Company K to Co-Applicant 7 in exchange for the issue of shares in Co-Applicant 7 in terms of an asset-for-share transaction as contemplated in section 42.
- c) The proposed transaction will consolidate certain of the companies acquired by Co-Applicant 1, in terms of the first pre-acquisition transaction and the restructured companies under Company I, into Co-Applicant 3 together with companies held by Co-Applicant 2. The proposed transaction will be implemented as follows:
 - i) Co-Applicant 4 will incorporate and capitalise Co-Applicant 3 in South Africa. Co-Applicant 3 will issue 'D' class shares to Co-Applicant 4.
 - ii) Foreign affiliate companies of the Applicant will sell all brands related to the distribution model to affiliate companies of Company A incorporated outside of South Africa that will acquire the brands and trademarks in exchange for cash.
 - iii) Co-Applicant 4 will dispose of the phase 1B assets to Co-Applicant 3 in exchange for the issue of 'D' class shares in Co-Applicant 3 and will immediately thereafter move its place of effective management to South Africa.
 - iv) Co-Applicant 1 will dispose of its 100% shareholding in Company B and its 30% shareholding in Company C to Co-Applicant 3 in exchange for the issue of 'A' class shares in Co-Applicant 3 in

terms of an asset-for-share transaction as contemplated in section 42.

- v) Co-Applicant 1 and Co-Applicant 2 will each dispose of their shares held in Co-Applicant 5 to Co-Applicant 3 in exchange for the issue of 'A' and 'B' class shares respectively in terms of an asset-for-share transaction as contemplated in section 42.
- vi) The Applicant will dispose of its shares held in Co-Applicant 7 to Co-Applicant 3 in exchange for the issue of 'C' class shares in terms of an asset-for-share transaction as contemplated in section 42.
- vii) Co-Applicant 5 will unbundle its shares in Co-Applicant 6 to Co-Applicant 3 in terms of an unbundling transaction as contemplated in section 46.
- viii) Co-Applicant 3 will contribute its phase 1B assets to Co-Applicant 6 in exchange for the issue of shares in Co-Applicant 6 in terms of an asset-for-share transaction as contemplated in section 42.
- ix) Co-Applicant 3 will dispose of its shares held in Co-Applicant 7, Company B and Company C to Co-Applicant 5 in exchange for the issue of shares in Co-Applicant 5 in terms of an asset-for-share transaction as contemplated in section 42.
- x) Co-Applicant 5 will dispose of its shares held in Co-Applicant 7 and Company B to Company E in exchange for the issue of shares in Company E in terms of an asset-for-share transaction as contemplated in section 42.
- xi) Co-Applicant 5 will incorporate Co-Applicant 8. Co-Applicant 1 and Co-Applicant 5 will each dispose of their shares held in Company C to Co-Applicant 8 in exchange for the issue of shares in Co-Applicant 8 in terms of an asset-for-share transaction as contemplated in section 42.
- xii) Co-Applicant 8 will dispose of its shares held in Company C to Company E in exchange for the issue of shares in Company E in terms of an amalgamation transaction as contemplated in section 44. Co-Applicant 8 will dispose of the shares acquired in Company E to Co-Applicant 1 and Co-Applicant 5 respectively in anticipation of liquidation.
- xiii) Co-Applicant 1 will acquire the 30% shareholding of Co-Applicant 5 held in Co-Applicant 8 for nominal consideration prior to the de-registration of Co-Applicant 8.
- xiv) Co-Applicant 3 will acquire shares in the indirect subsidiary companies of Co-Applicant 4 from affiliates of Co-Applicant 4 in exchange for the issue of 'D' class shares in Applicant 3.

5. Conditions and assumptions

This binding private ruling is subject to the following additional conditions and assumptions:

- a) The market value of each asset to be disposed of in terms of an asset-for-share transaction will be equal to or exceed the base cost of that asset.

- b) The consideration given in the asset-for-share transactions, amalgamation transaction and unbundling transactions will be determined between independent parties dealing at arm's length.

6. Ruling

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

- a) The shares acquired by Co-Applicant 1 in Company B and Company C in terms of the first pre-acquisition transaction will be regarded as having been acquired and held by Co-Applicant 1 on capital account, even though they will be disposed of to Co-Applicant 3 shortly after acquisition. The facts and circumstances of this transaction indicate that Co-Applicant 1 and Co-Applicant 3 will not acquire the assets as trading stock.

Section 42(2) will apply to this transaction and –

- i) Co-Applicant 1 will be deemed to have disposed of its shares held in Company B and Company C for an amount equal to their respective base costs;
 - ii) Co-Applicant 1 and Co-Applicant 3 will be deemed to be 'one and the same person' for purposes of determining the base cost of the shares in Company B which Co-Applicant 3 will acquire;
 - iii) Co-Applicant 1 and Co-Applicant 3 will be deemed to be 'one and the same person' for purposes of determining the base cost of the shares in Company C which Co-Applicant 3 will acquire; and
 - iv) the transfer of the shares in Company B and Company C will be exempt from securities transfer tax (STT).
- b) The shares acquired by Co-Applicant 1 in Co-Applicant 5 in terms of the first pre-acquisition transaction will be regarded as having been acquired and held by Co-Applicant 1 on capital account, even though they will be disposed of to Co-Applicant 3 shortly after acquisition. The facts and circumstances of this transaction indicate that Co-Applicant 1 and Co-Applicant 3 will not acquire the assets as trading stock.

Section 42(2) will apply to this transaction and –

- i) Co-Applicant 1 and Co-Applicant 2 will be deemed to have disposed of their shares held in Co-Applicant 5 for an amount equal to their respective base costs;
 - ii) Co-Applicant 1 and Co-Applicant 3 will be deemed to be 'one and the same person' for purposes of determining the base cost of the shares in Co-Applicant 5 which Co-Applicant 3 will acquire;
 - iii) Co-Applicant 2 and Co-Applicant 3 will be deemed to be 'one and the same person' for purposes of determining the base cost of the shares in Co-Applicant 5 which Co-Applicant 3 will acquire; and
 - iv) the transfer of the shares in Co-Applicant 5 will be exempt from STT.

- c) The shares acquired by the Applicant in Co-Applicant 7 in terms of the second pre-acquisition transaction will be regarded as having been acquired and held by the Applicant on capital account, even though they will be disposed of to Co-Applicant 3 shortly after acquisition. The facts and circumstances of this transaction indicate that the Applicant and Co-Applicant 3 will not acquire the assets as trading stock.

Section 42(2) will apply to this transaction and –

- i) the Applicant will be deemed to have disposed of its shares held in Co-Applicant 7 for an amount equal to their base cost;
 - ii) the Applicant and Co-Applicant 3 will be deemed to be 'one and the same person' for purposes of determining the base cost of the shares in Co-Applicant 7 which Co-Applicant 3 will acquire; and
 - iii) the transfer of the shares in Co-Applicant 7 will be exempt from STT.
- d) The contributed tax capital (CTC) created by Co-Applicant 3 will be 'ring-fenced' in respect of each class of share so that:
- i) The CTC of the 'A' class shares issued by Co-Applicant 3 to Co-Applicant 1 in exchange for 100% of the shares in Company B, 20% of the shares in Co-Applicant 5 and 30% of the shares in Company C, will be an amount equal to the base cost of all the shares disposed of by Co-Applicant 1 to Co-Applicant 3.
 - ii) The CTC of the 'B' class shares issued by Co-Applicant 3 to Co-Applicant 2 in exchange for 80% of the shares in Co-Applicant 5 will be an amount equal to the base cost of all of the shares disposed of by Co-Applicant 2 to Co-Applicant 3.
 - iii) The 'C' class shares issued by Co-Applicant 3 to the Applicant in exchange for 100% of the shares in Co-Applicant 7 will be an amount equal to the base cost of all the shares disposed of by the Applicant to Co-Applicant 3.
- e) Section 46(2) will apply when Co-Applicant 5 unbundles its shares in Co-Applicant 6 to Co-Applicant 3 in terms of the unbundling transaction and –
- i) Co-Applicant 5 must disregard the distribution of the shares in Co-Applicant 6 for purposes of determining its taxable income, as well as any liability for dividends tax;
 - ii) Co-Applicant 3 must allocate a portion of the base cost of its shares in Co-Applicant 5 to the shares in Co-Applicant 6 as follows: The proportionate amount of the expenditure and market value to be allocated to the shares in Co-Applicant 6 will be determined in accordance with the ratio that the market value of the shares in Co-Applicant 6, as at the end of the day after the distribution, bears to the sum of the market value, as at the end of that day, of the shares in Co-Applicant 5 and the shares in Co-Applicant 6; and
 - iii) The CTC of Co-Applicant 5 immediately after the distribution of the shares in Co-Applicant 6 will be deemed to be an amount which bears to the CTC of the shares of Co-Applicant 5 immediately prior to the distribution the same ratio as the aggregate market value,

immediately after the distribution of the shares in Co-Applicant 5, bears to the aggregate market value of the shares in Co-Applicant 5 immediately before the distribution.

- f) The shares acquired by the Applicant in Co-Applicant 7 in terms of the second pre-acquisition transaction will be regarded as having been acquired and held by the Applicant on capital account, even though they will be disposed of to Co-Applicant 3 shortly after acquisition. The facts and circumstances of this transaction indicate that the Applicant and Co-Applicant 3 will not acquire the assets as trading stock.

Section 42(2) will apply to this transaction and Co-Applicant 3 and Co-Applicant 6 will be deemed to be 'one and the same person' in respect of the base cost which Co-Applicant 6 will acquire in the phase 1B assets.

- g) The shares acquired by Co-Applicant 3 in Co-Applicant 7, Company B and Company C in terms of the proposed transaction will be regarded as having been acquired and held by Co-Applicant 3 on capital account even though they will be disposed of to Co-Applicant 5 shortly after acquisition. The facts and circumstances of this transaction indicate that Co-Applicant 3 and Co-Applicant 5 will not acquire the assets as trading stock.

Section 42(2) will apply to this transaction, and –

- i) Co-Applicant 3 will be deemed to have disposed of its shares held in Co-Applicant 7, Company B and Company C for an amount equal to their respective base costs;
 - ii) Co-Applicant 5 and Co-Applicant 3 will be deemed to be 'one and the same person' for purposes of determining the base cost of the shares in Co-Applicant 7, Company B and Company C which Co-Applicant 3 will acquire; and
 - iii) the transfer of the shares in Co-Applicant 7, Company B and Company C will be exempt from STT.
- h) The shares acquired by Co-Applicant 5 in Co-Applicant 7 and Company B in terms of the proposed transaction will be regarded as having been acquired and held by Co-Applicant 5 on capital account, even though they will be disposed of to Company E shortly after acquisition. The facts and circumstances of this transaction indicate that Co-Applicant 5 and Company E will not acquire the assets as trading stock.

Section 42(2) will apply to this transaction and –

- i) Co-Applicant 5 will be deemed to have disposed of its shares in Co-Applicant 7 and Company B for an amount equal to their respective base costs;
- ii) Company E and Co-Applicant 5 will be deemed to be 'one and the same person' for purposes of determining the base cost of the shares in Co-Applicant 7 and Company B which Company E will acquire; and
- iii) the transfer of the shares in Co-Applicant 7 and Company B will be exempt from STT.

- i) The contracts embodying the 'asset-for-share transactions' mentioned in point 4 paragraph (c)(vi), (ix) and (x) above will give rise to disposals of the relevant assets on the date on which they are concluded.
- j) The shares acquired by Co-Applicant 1 and Co-Applicant 5 in Company C in terms of the first pre-acquisition transaction and the proposed transaction will be regarded as having been acquired and held by Co-Applicant 1 and Co-Applicant 5 on capital account, even though they will be disposed of to Co-Applicant 8 shortly after acquisition. The facts and circumstances of this transaction indicate that Co-Applicant 1, Co-Applicant 5 and Co-Applicant 8 will not acquire the assets as trading stock.

Section 42(2) will apply to this transaction and –

- i) Co-Applicant 1 and Co-Applicant 5 will be deemed to have disposed of their shares in Company C for an amount equal to their respective base cost;
 - ii) Co-Applicant 8 and Co-Applicant 5 will be deemed to be 'one and the same person' for purposes of determining the base cost of the shares in Company C which Co-Applicant 8 will acquire;
 - iii) Co-Applicant 8 and Co-Applicant 1 will be deemed to be 'one and the same person' for purposes of determining the base cost of the shares in Company C which Co-Applicant 8 will acquire; and
 - iv) the transfer of the shares in Company C from Co-Applicant 5 and Co-Applicant 1 will be exempt from STT.
- k) The shares acquired by Co-Applicant 8 in Company C in terms of the proposed transaction will be regarded as having been acquired and held by Co-Applicant 8 on capital account, even though they will be disposed of to Company E shortly after acquisition. The facts and circumstances of this transaction indicate that Co-Applicant 8 and Company E will not acquire the assets as trading stock.

Section 44(2) will apply to this transaction and –

- i) Co-Applicant 8 will be deemed to have disposed of its shares in Company C for an amount equal to their base cost;
- ii) Company E and Co-Applicant 8 will be deemed to be 'one and the same person' for purposes of determining the base cost of the shares in Company C which Company E will acquire; and
- iii) the transfer of the shares in Company C from Co-Applicant 8 to Company E will be exempt from STT.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 14 December 2015.