

BINDING PRIVATE RULING: BPR 294

DATE: 5 March 2018

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 44
SUBJECT : AMALGAMATION TRANSACTION BETWEEN NON-RESIDENT COMPANIES

1. Summary

This ruling determines whether the proposed merger under foreign law constitutes an amalgamation transaction.

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 28 of 2011.

In this ruling references to sections are to sections of the Act applicable as at 9 November 2017. 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 44(1) – paragraph (c) of the definition of “amalgamation transaction”; and
- section 44(2) and (3).

3. Parties to the proposed transaction

The applicant:	A resident company
Partnership A:	A foreign registered limited partnership
Partnership B:	A foreign registered limited partnership
Company A:	A non-resident company, which is wholly-owned by Partnership B
Company B:	A non-resident company, which is a wholly-owned subsidiary of Partnership B
Company C:	A non-resident company, which is wholly-owned by Company A

4. Description of the proposed transaction

The Applicant is a 100% limited partner in Partnership A. Partnership A is a 100% limited partner in Partnership B. Partnership B conducts trading activities in its own right.

Partnership B has two wholly-owned subsidiaries, Company A and Company B. Company A holds all of the shares in Company C.

Company A is a holding company. Companies B and C carry on manufacturing activities.

All of the non-residents referred to above are subject to group taxation.

Partnerships A and B each constitutes a “foreign partnership” as contemplated in paragraph (a) of the definition of that term in section 1(1). The income received by or accruing to the partnerships is therefore subject to South African income tax in the Applicant.

The Applicant proposes to rationalise its offshore investments by undertaking the following transaction steps:

- Step 1: Company B will transfer all of its assets and liabilities to Company C. No other consideration will be paid in respect of the disposal.
- Step 2: Company B will be terminated by the operation of law of its country of incorporation.

5. Conditions and assumptions

This binding private ruling is subject to the additional condition and assumption that the shares held in Companies B and C are all held as capital assets by the respective shareholders of these companies.

6. Ruling

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

- a) The disposal of assets by Company B to Company C will constitute an “amalgamation transaction” as contemplated in paragraph (c) of that definition in section 44(1).
- b) The roll-over relief provided for in section 44(2) and (3) will apply in respect of the disposal of assets by Company B to Company C.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 9 November 2017.