

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 035

DATE: 18 June 2009

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)

SECTION : SECTION 1

SUBJECT : DEFINITION OF GROUP OF COMPANIES AND CONNECTED PERSON

1. Summary

This ruling deals with whether the fact that a corporate partner that beneficially holds equity shares of the requisite percentage in another company *via* an unincorporated partnership will result in the partnership being disregarded –

- in applying the definition of “group of companies” in section 1 of the Act; and
- for purposes of paragraph (d)(i) of the definition of “connected person” in section 1 of the 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 Act, applicable as at 9 January 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 1, the definition of –
 - “group of companies”;
 - “connected person” paragraph (d)(i);

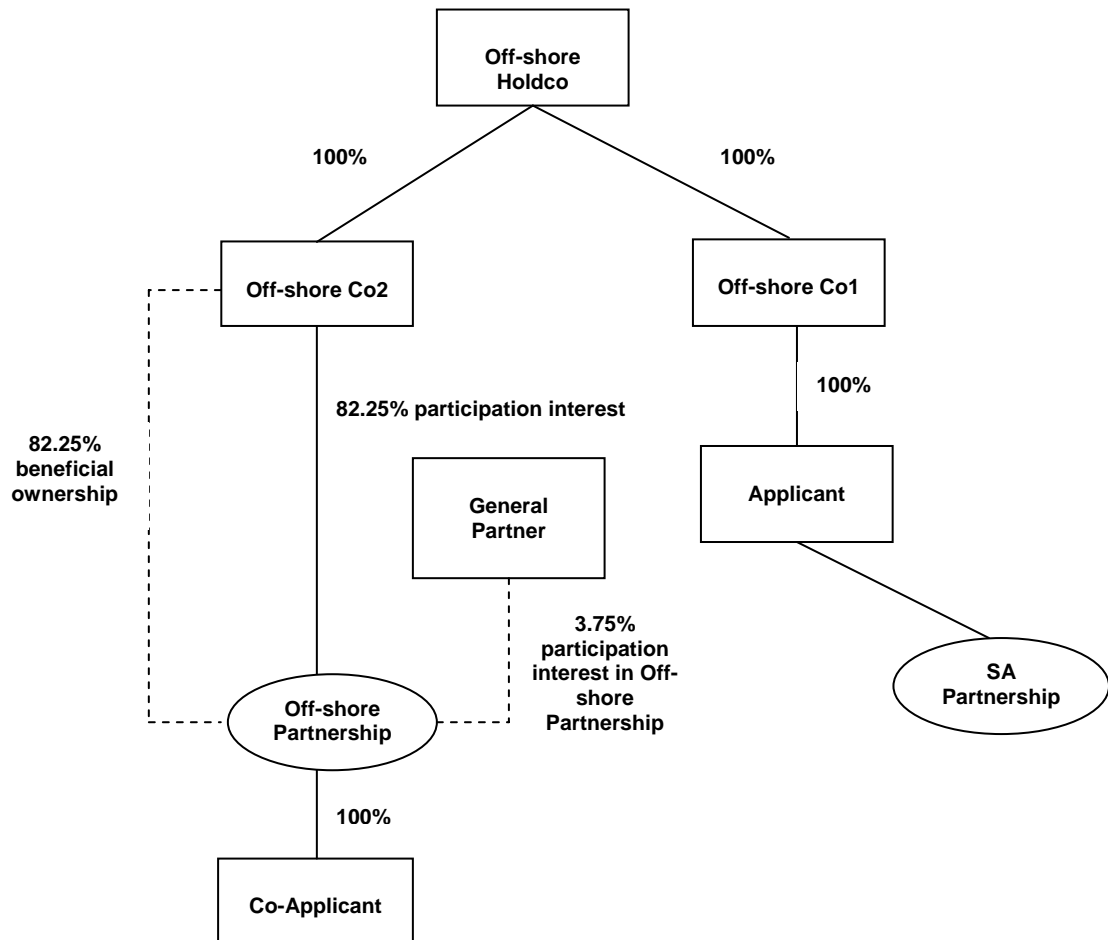
- “company” paragraph (b);
- “shareholder”; and
- “equity share capital”, and
- section 41(1), the definition of “hold”.

3. Parties to the proposed transaction

The Applicant:	A South African resident company
The Co-Applicant:	A newly incorporated South African resident company
The Off-shore Partnership:	A non-resident limited partnership which holds 100% of the shares in the Co-Applicant
The General Partner:	A non-resident company which holds legal title to the assets of the Off-shore Partnership
Off-shore Holdco:	A non-resident company which holds 100% of the shares in Off-shore Co1 and 100% of the shares in Off-shore Co2 and is the ultimate holding company in the group
Off-shore Co1:	A non-resident company which holds 100% of the shares in the Applicant
Off-shore Co2:	A non-resident company which holds an 82.25% partnership interest in the Off-shore Partnership
The South African Partnership:	A resident South African partnership in which the Applicant holds a partnership interest

4. Description of the proposed transaction

The diagram below illustrates the respective holdings in the Applicant and the Co-Applicant and reflects an abridged version of the current group structure.



The Applicant wishes to sell all or a part of its existing partnership interest in the South African Partnership to the Co-Applicant.

Off-shore Holdco holds indirectly –

- 100% of the shares in the Applicant, as Off-shore Holdco holds 100% of the shares in Off-shore Co 1 which holds 100% of the shares in the Applicant; and
- 82.25% of the shares in the Co-Applicant, as Off-shore Holdco holds 100% of the shares in Off-shore Co 2 which has a participation interest of 82.25% in the Off-shore Partnership which holds 100% of the shares in the Co-Applicant.

The Off-shore Partnership is not an incorporated entity. Thus, at law, it constitutes a partnership that lacks a legal/juristic personality and requires a legal person to act as the legal owner of its assets. The General Partner holds, *inter alia*, legal title to the assets of the Off-shore Partnership.

The rights held by the limited partners (other than the General Partner), with respect to the assets of the Off-shore Partnership (that is, rights to

proceeds, rights upon dissolution of the Off-Shore Partnership, etc.) follow from their partnership agreements, and therefore are of a contractual nature.

The legal ownership of the assets of the Off-shore Partnership is separated from the beneficial (economic) ownership of the assets. Thus, while the General Partner has legal ownership of the assets, the beneficial (economic) ownership is held by the limited partners.

For illustrative purposes the beneficial ownership of the assets of the Off-shore Partnership (which includes the shares held in the Co-Applicant) is held by the limited partners (which include Off-shore Co 2) as follows:

- Off-shore Co2 – 82.25%;
- General Partner – 3.75 %; and
- Other partners – 14%.

5. Conditions and assumptions

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

- The Off-shore Partnership is a limited partnership, which is not incorporated or registered. It, therefore, has no legal personality separate from its members, as contemplated in South African Law and as such is not a “company” as defined in section 1;
- The limited partners with a participation interest in the assets of Off-shore Partnership are “companies” as defined in section 1; and
- Off-shore Co2’s beneficial ownership of a proportionate undivided share in the assets of the Off-shore Partnership (which includes the shares held in the Co-Applicant) is not limited in respect to the right to participate in dividends and the right to participate in capital.

6. Ruling

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

- The Applicant and the Co-Applicant form part of the same “group of companies” as defined in section 1, to the extent that this definition relates to Part III of Chapter II of the Act.
- The Applicant and the Co-applicant are connected persons as contemplated in paragraph (d)(i) of the definition of “connected persons” in section 1.

7. Period for which this ruling is valid

This binding private ruling is valid until 1 January 2009, the date on which the amendment to section 41 as set out in section 52(1)(c) of the Revenue Laws Amendment Act, No. 35 of 2007, to the extent that it applies to Part III of Chapter II of the Act, comes into operation.

Issued by:

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