

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 003

DATE : 3 September 2007

ACT : **INCOME TAX ACT, NO 58 OF 1962 (“the Act”)**

SECTION : **SECTION 9D, PARAGRAPHS 1, 26 and 29 OF THE EIGHTH SCHEDULE**

SUBJECT : **METHOD FOR DETERMINATION OF THE VALUATION DATE VALUE OF FINANCIAL INSTRUMENTS LISTED ON A RECOGNISED EXCHANGE TO BE USED FOR CAPITAL GAINS TAX PURPOSES**

1. Summary

The issues considered in this ruling are –

- How to calculate capital gains arising in the hands of a controlled foreign company whose taxable income is required to be imputed in that of a qualifying resident company in terms of section 9D of the Act; and
- How to translate proceeds and expenditure incurred from foreign currency into rands in the context of sections 9D and 25D of the Act.

2. Relevant tax laws

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

All legislative references are to sections of the Act applicable as at 31 July 2007 and unless the context otherwise indicates, any word or expression in this ruling bears the meaning ascribed to them in the Act.

Relevant provisions of the Act –

- Section 9D and 25D;
- Subparagraph (c) of the definition of “Recognised Exchange” in paragraph 1 of the Eighth Schedule; and
- Paragraphs 26, 29 and 43 of the Eighth Schedule to the Act.

3. Parties to the transaction

The Applicant: A company with a primary listing on a Recognised Exchange and a secondary listing on the JSE. The applicant is a resident for the purposes of the Act.

Company A: Foreign intermediate holding company which is held by the Applicant. The company is a controlled foreign company in relation to the Applicant and would be required to calculate its net income in terms of section 9D.

Company B: An operating subsidiary which is indirectly held by the Applicant through Company A. The company is listed on a Recognised Exchange.

4. Description of the proposed transaction

The Applicant is a large multi-national company. The Applicant has a number of foreign operating subsidiaries and intermediate holding companies in Europe, the United Kingdom, United States of America, Australia and Asia. The group structure is a consequence of various acquisitions made over the years. A decision has been made to simplify the current group structure in order to reduce the administrative burden of maintaining intermediate holding companies and the costs related thereto. The proposed restructure will also facilitate the declaration of dividends to the Applicant and its shareholders.

The restructure will be carried out in a number of phases, the first being the restructure of Applicant’s indirect holding in Company B.

In order to simplify the group structure, it is proposed that Company A transfers its shares in Company B to the Applicant. To calculate the capital gains tax, Company A is treated as though it is a taxpayer as defined in section 1 of the Act and the resultant capital gain or loss must be determined in accordance with the Eighth Schedule to the Act.

5. Specific conditions and assumptions

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

- The ruling is only valid in relation to shares listed on a Recognised Exchange; and
- Proceeds from the disposal of Company B's shares exceed the allowable expenditure incurred by Company A in terms of paragraph 20 of the Eighth Schedule to the Act in respect of those shares.

6. Specific ruling

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

- In determining the capital gain or capital loss on disposal of Company B's shares, the Applicant may adopt the market value of those shares in terms of paragraph 26(1)(a) of the Eighth Schedule to the Act as the valuation date value;
- The market value to be used for this purpose is the ruling price of Company B's shares at close of business of the Recognised Exchange on the last business day prior to 1 October 2001;
- Any capital loss determined using the market value basis described above is subject to the limitation provided for in paragraph 26(3) of the Eighth Schedule to the Act; and
- In translating the proceeds and expenditure incurred from foreign currency into rands, paragraph 43(4) of the Eighth Schedule read with sections 9D and 25D must be applied.

7. Period for which this ruling letter is valid

This binding private ruling, issued in January 2007, is only valid for the year of assessment during which the transaction takes place.

Issued by:

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