

BINDING PRIVATE RULING: BPR 195

DATE: 26 June 2015

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

**SECTION : SECTION 8(1)(a) OF THE STT ACT
SECTIONS 1(1) DEFINITION OF “CONTRIBUTED TAX CAPITAL”,
AND “PERMANENT ESTABLISHMENT”, 40CA, AND 42 AND
PARAGRAPHS 2(1)(b) AND 20(1)(a) OF THE EIGHTH SCHEDULE TO
THE ACT**

**SUBJECT : SECURITIES TRANSFER TAX EXEMPTION WHERE ELECTION HAS
BEEN MADE THAT SECTION 42 OF THE ACT WILL NOT APPLY**

1. Summary

This ruling deals with the exemption from securities transfer tax of a share transfer in terms of an asset-for-share transaction under which the parties have elected that the relief provided for under section 42 of the Act will not apply.

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 Acts and paragraphs of the Eighth Schedule to the Act applicable as at 21 April 2015 and 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 STT Act –
 - section 8(1)(a); and
- the Act –
 - section 1(1), definition of “contributed tax capital” and “permanent establishment”;
 - section 40CA;
 - section 42; and
 - paragraphs 2(1)(b) and 20(1)(a) of the Eighth Schedule.

3. Parties to the proposed transaction

The Applicant:	A private company incorporated in and a resident of South Africa
The Co-Applicants:	HoldCo, a foreign incorporated company, and non-resident of South Africa
	Company A, a public company incorporated in and resident of South Africa
	Company X, a private company incorporated in and a resident of South Africa
	Company Y, a private company incorporated in and a resident of South Africa

4. Description of the proposed transaction

HoldCo is a non-resident for South African tax purposes as it is neither incorporated nor effectively managed in South Africa. HoldCo holds 100% of the shares in the Applicant, 100% of the shares in Company X, and 90% of the shares in Company Y.

HoldCo holds 57% of the shares in Company A through its subsidiaries, Company X and Company Y, which each holds 30% of the shares in Company A. For regulatory reasons it is required of HoldCo to consolidate its shareholding in Company A by creating one “significant owner” of Company A’s shares in the South African jurisdiction.

HoldCo therefore proposes to enter into an agreement with the Applicant in terms of which the Applicant is to acquire all of the shares held by HoldCo in Company X and Company Y (the Company X and Company Y shares), in exchange for the issue to HoldCo of new shares in the Applicant (the Applicant shares). The Applicant will become the controlling shareholder of Company A shares for regulatory purposes.

HoldCo and the Applicant will, in writing, agree that the provisions of section 42 will not apply.

5. Conditions and assumptions

This ruling is not made subject to any additional conditions and assumptions.

6. Ruling

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

- Section 8(1)(a)(i) of the STT Act will be applicable to the transfer of the Company X and Company Y shares to the Applicant pursuant to the proposed transaction.
- The Company X and Company Y shares held by HoldCo will not fall within the ambit of paragraph 2(1)(b) of the Eighth Schedule.

- The base cost of the Company X and Company Y shares to be acquired by the Applicant will equal the market value of the Applicant shares issued to HoldCo immediately after the proposed transaction.
- The market value of the Company X and Company Y shares to be acquired by the Applicant from HoldCo will constitute the amount of 'contributed tax capital' for the Applicant shares issued to HoldCo.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 2 years from 21 April 2015.

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