

## **BINDING PRIVATE RULING: BPR 104**

DATE: 23 May 2011

**ACTS** : **INCOME TAX ACT, NO. 58 OF 1962 (the Act)**  
: **SECURITIES TRANSFER TAX ACT, NO. 25 OF 2007 (the STT Act)**  
**SECTIONS** : **SECTION 45 OF THE ACT AND SECTION 8(1)(a) OF THE STT ACT**  
**SUBJECT** : **INTRA-GROUP TRANSFER OF SHARES AS A RESULT OF RESTRUCTURING**

### **1. Summary**

This ruling deals with the transfer of shares as a result of a group restructuring and whether such transfer will fall within the ambit of section 45 of the Act with the result that –

- no capital gains tax will be payable in respect of the disposal of investment shares;
- the transferee companies will be deemed to have acquired the shares at base cost even if the shares were disposed of by the transferor companies at market value; and
- no securities transfer tax will be payable in respect of the transfers.

### **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 relevant Acts applicable as at 02 February 2011 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the relevant Act.

This ruling has been requested under the provisions of –

- section 45 of the Act; and
- section 8(1)(a) of the STT Act.

### 3. Parties to the proposed transaction

The Applicant: Company B, a listed company incorporated in South Africa

Co-Applicants: Company C and Company D are both incorporated in South Africa and wholly owned subsidiaries of Company B

### 4. Description of the proposed transaction

The Applicant and the Co-Applicants constitute a group of companies (the B Group).

Company B wishes to restructure the B Group. The main reasons for the restructure are –

- the revaluation of certain investments to market value (and subsequent sale);
- the relocation of the trading side of the B Group to Company C;
- the relocation of the investment side of the B Group to Company D;
- to realign the B Group into different operating streams; and
- to realise the value of the shares held at cost.

Company B will dispose of certain shares to Company C and Company D, and Company C will dispose of certain shares to Company D.

Most of the shares will be sold at market value. In order to ascertain the market value of the shares, Company B and Company C will undertake a specific exercise to value such shares, and may make use of outside consultants for such valuation.

Neither Company C nor Company D has assessed capital losses to offset against any aggregate capital gain that could arise in respect of the proposed subsequent disposal of the investment shares.

It is envisaged that the transaction will be funded *via* a loan account or the issue of preference shares.

## 5. Conditions and assumptions

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

- the proposed transaction will not be part of any tax avoidance scheme or arrangement;
- the transferee companies will acquire the investment shares as capital assets and not as trading stock;
- the public officers of the transferee companies will state on oath or solemn affirmation that the acquisition of the investment shares complies with the provisions of section 8(1)(a) of the STT Act; and
- the ruling does not include any financing structure used to facilitate the proposed transaction.

## 6. Ruling

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

- The proposed disposal of the investment shares by Company B and Company C will be tax neutral for Company B and Company C.
- The transferor companies' shares will be deemed to have been disposed of at base cost even if the shares are disposed of at market value and the transferee companies will be deemed to have acquired the shares at the same base cost, under section 45(2)(a) of the Act.
- Should Company C and/or Company D cease to form part of the B Group prior to the disposal of the investment shares, Company C or Company D or both of them will be deemed to have realised a capital gain under section 45(4) of the Act.
- Should Company C or Company D or both of them dispose of the investment shares within 18 months of the proposed intra-group transaction, the transaction(s) will be subject to income tax under section 45(5)(a) of the Act.
- No securities transfer tax will be payable in respect of the proposed transfer of shares.

**7. Period for which this ruling is valid**

This binding private ruling is valid in respect of the proposed transaction provided the transaction is concluded within a period of three (3) years as from February 2011.

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