

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 037

DATE: 24 June 2009

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTION 45 AND PARAGRAPH 4(a) READ WITH PARAGRAPH 35, PARAGRAPH 12(5) READ WITH PARAGRAPH 56(1) AND PARAGRAPH 38 OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : DISPOSAL OF THE RIGHT TO RECEIVE ROYALTY INCOME – AN INTRA-GROUP TRANSACTION OR A DEBT CANCELLATION

1. Summary

This ruling deals with the capital gains tax implications for the transferor and transferee, which are connected persons, regarding the disposal of the right to receive royalty income.

2. Relevant tax laws

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

In this ruling legislative references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable at 31 October 2007 and unless the context otherwise indicates, 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 45;
- paragraph 4(a) read with paragraph 35;
- paragraph 12(5) read with paragraph 56(1); and
- paragraph 38.

3. Parties to the proposed transaction

The Applicants: A holding company (HoldCo) and its wholly owned subsidiary company (SubCo)

4. Description of the proposed transaction

In terms of an agreement concluded between the Applicants, HoldCo currently holds the right to receive royalty income from SubCo, equal to a percentage of the turnover generated by the business operations which SubCo manages. This payment is determined and paid over to HoldCo on an annual basis. HoldCo intends to dispose of this right to SubCo for Rnil consideration and both HoldCo and SubCo will, jointly, elect for section 45 to apply.

5. Conditions and assumptions

This ruling made is not subject to any condition and assumption.

6. Ruling

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

- The provisions of section 45 will not be applicable to the disposal of the right to receive royalty income by HoldCo to SubCo as SubCo will not hold the asset as envisaged in section 45(1)(b) as the asset will be extinguished.
- There will accordingly be no capital loss which will be made available for set off against any capital gain SubCo will make in that year of assessment or any subsequent year of assessment in terms of paragraph 4(a) read with paragraph 35, as section 45 will not be applicable to the proposed transaction.
- The right to receive royalty income is not a debt owed as envisaged in paragraph 12(5) read with paragraph 56(1) and, therefore, paragraph 12(5) will not be applicable to HoldCo and SubCo in respect of the proposed transaction.
- The provisions of paragraph 38 will be applicable to the disposal of the right to receive royalty income by HoldCo to SubCo.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three (3) years as from the date of this ruling until 30 October 2010.

Issued by:

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