

BINDING PRIVATE RULING: BPR 230

DATE: 4 May 2016

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 42(1) AND (2) AND 45(5)
SUBJECT : DISPOSAL OF AN ASSET IN TERMS OF AN ASSET-FOR-SHARE TRANSACTION WITHIN 18 MONTHS OF ITS ACQUISITION IN TERMS OF AN INTRA-GROUP TRANSACTION

1. Summary

This ruling determines the income tax consequences under section 45(5) in respect of the disposal of an asset in terms of an asset-for-share transaction, within 18 months of the acquisition of the asset in terms of an intra-group transaction.

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 are to sections of the Act applicable as at 2 March 2016. Unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This is a ruling on the interpretation and application of the provisions of –

- section 42(1), paragraph (a)(i)(aa) of the definition of “asset-for-share transaction”;
- section 42(2); and
- section 45(5).

3. Parties to the proposed transaction

The Applicant:	A company incorporated in and a resident of South Africa
Company A:	A company incorporated in and a resident of South Africa that is a wholly-owned subsidiary of the Applicant
Company B:	A company incorporated in and a resident of South Africa that is a wholly-owned subsidiary of the Applicant
Company C:	A company incorporated in and a resident of South Africa, in which the Applicant holds an equity interest

4. Description of the proposed transaction

Company A previously held an equity interest in Company C as a capital asset, that it transferred to the Applicant at market value. The transaction was treated as an intra-group transaction under section 45. The Applicant holds the shares in Company C as a capital asset.

In order to streamline the corporate and operational structure of the group in South Africa, the Applicant will transfer its shareholding in Company C to Company B by way of an asset-for-share transaction as contemplated by section 42.

5. Conditions and assumptions

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

6. Ruling

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

- The disposal by the Applicant of the shares in Company C in terms of the proposed transaction, within 18 months of the acquisition of those shares in terms of the “intra-group transaction”, will not result in a capital gain under section 45(5)(a)(i).

7. Period for which this ruling is valid

This binding private ruling is valid for the year of assessment during which the transaction takes place.