

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 041

DATE: 07 August 2009

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)

SECTION : SECTION 45(4)(a)

SUBJECT : IMPACT OF THE DE-GROUPING PROVISIONS WHERE THE TRANSFEROR IN THE FIRST INTRA-GROUP TRANSACTION AND THE TRANSFEREE IN THE SECOND INTRA-GROUP TRANSACTION ARE THE SAME COMPANY

1. Summary

This ruling deals with whether the de-grouping deemed disposal rules contained in section 45(4) of the Act will be applicable in circumstances where a company, which transferred certain identified assets (first intra-group transaction) and subsequently re-acquired some of the identified assets (second intra-group transaction) resulting in such company being the transferee of such re-acquired assets under the second intra-group transaction, intends to exit the “group of companies” of which it forms part during those two intra-group transactions.

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 Act, applicable as at 31 October 2007 and unless the context indicates otherwise, 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(4)(a).

3. Parties to the proposed transaction

HoldCo: A limited liability resident company, which holds 100% of the equity share capital of the Applicant and BCo

Applicant: A limited liability resident company, which is the transferor in the first intra-group transaction and the transferee in the second intra-group transaction

BCo: A limited liability resident company, which is the transferee in the first intra-group transaction and the transferor in the second intra-group transaction

4. Description of the proposed transactions

HoldCo intends transferring its shares in the Applicant to an unrelated third party (CCo) in exchange for shares in CCo. HoldCo further intends to unbundle the CCo shares to its shareholders. The unbundling transaction will result in that the Applicant will cease to form part of the same “group of companies” (as defined in section 1), *vis-à-vis* BCo.

The Applicant and BCo are both wholly owned subsidiaries of HoldCo. The Applicant disposed of a business to BCo (first intra-group transaction) in terms of the provisions of section 45. The business assets comprised of, *inter alia*, fixed assets, intangible assets, trade debtors, stock, and goodwill. Subsequently, the Applicant re-acquired a portion of the business assets which the Applicant previously disposed of to BCo (second intra-group transaction) in terms of the provisions of section 45. The business assets so re-acquired included similar assets which were previously disposed of to BCo.

5. Conditions and assumptions

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

- this ruling will only apply in relation to the assets transferred by BCo back to the Applicant under the second intra-group transaction.

6. Ruling

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

- In respect of the assets re-acquired by the Applicant from BCo, section 45(4)(a)(i) will only apply if there is no subsequent transfer of the relevant assets by the transferee in the first intra-group transaction (that is BCo) under the provisions of Part III in Chapter II of the Act.
- In order to determine whether the Applicant (transferor in the first intra-group transaction and which is also the transferee in the second intra-group transaction) will cease to form part of the same group of

companies as envisaged in section 45(4), in instances where there was a subsequent transfer in terms of Part III in Chapter II of the Act, consideration would only be given to the Applicant.

- As a consequence of the above, the provisions of section 45(4) will not apply to the Applicant in relation to the assets re-acquired from BCo in terms of the second intra-group transaction.
- The provisions of section 45(4) will apply to BCo in relation to the assets acquired from the Applicant pursuant to the first intra-group transaction and not subsequently disposed to the Applicant in terms of the second intra-group transaction.

7. Period for which this ruling is valid

This binding private ruling, issued in October 2007, is valid for purposes of the unbundling transaction in terms of which the Applicant will cease to form part of the same group of companies as BCo, that is, the agreement in terms of which the Applicant will exit the group of companies.

Issued by:

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