BINDING PRIVATE RULING: BPR 207

DATE: 7 October 2015

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 9H(6), 24BA AND 44
SUBJECT : MERGER OF TWO CONTROLLED FOREIGN COMPANIES (CFCs)

1. Summary

This ruling determines certain income tax consequences resulting from the merger of two CFCs which are wholly-owned by a resident company.

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 1 July 2015. 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 44(1) – the definition of "amalgamation transaction";
- section 44(2), (3), (4) and (6);
- section 9H(6); and
- section 24BA.

3. Parties to the proposed transaction

The Applicant:	A company incorporated in and a resident of South Africa
The First Co-Applicant:	A CFC incorporated in and a resident of a foreign country
The Second Co-Applicant:	A CFC incorporated in and a resident of another foreign country

4. Description of the proposed transaction

The Applicant directly wholly-owns the two Co-Applicants.

The First Co-Applicant is a listed holding company and its principal activity is to serve as and to conduct all activities of a passive holding company.

The Second Co-Applicant is a private company and serves as an intermediate holding company. The Applicant's group wants to consolidate the investments currently held through the First Co-Applicant under one holding company. In order to achieve the consolidation, all the assets and liabilities of the First Co-Applicant will be transferred to the Second Co-Applicant by way of a cross-border merger.

The First Co-Applicant has liabilities, but all of those have been incurred in the ordinary course of its business.

The salient terms of the merger are:

- The First Co-Applicant will be the transferor company and the Second Co-Applicant the transferee company.

- On the effective date of the merger, the First Co-Applicant will merge into the Second Co-Applicant. The ownership of all the assets of the First Co-Applicant as well as its liabilities will pass to the Second Co-Applicant by operation of law.

- Following the completion of the merger, the First Co-Applicant will automatically be dissolved (without going into liquidation) and will cease to exist.

- The Second Co-Applicant will issue one ordinary share at nominal value (the consideration share) to the Applicant in exchange for the transfer of all the assets and liabilities of the First Co-Applicant to the Second Co-Applicant. The consideration share will rank *pari passu* in all respects to the current issued share capital of the Second Co-Applicant, and will entitle the holder to participate, without restriction, in the profits of the Second Co-Applicant from the effective date of the merger.

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 merging of the First Co-Applicant in the Second Co-Applicant, resulting in the transfer of the assets and liabilities of the First Co-Applicant to the Second Co-Applicant, the dissolution of the First Co-Applicant and the issuing of one (1) ordinary share at nominal value in the share capital of the Second Co-Applicant to the Applicant, will be an amalgamation transaction as envisaged in paragraph (*c*) of the definition of "amalgamation transaction" in section 44(1) to which the provisions of section 44 will apply as follows:

    a) Section 44(2) and (3) will apply to the transferred assets. The issue of the consideration share and the assumption of the First Co-Applicant's liabilities by the Second Co-Applicant will not render those provisions inapplicable by virtue of section 44(4).

b) Under section 44(6)(*a*), the Applicant must be deemed to have disposed of the shares held by it in the First Co-Applicant (the FCA shares) at the base cost thereof and to have acquired the consideration share issued by the Second Co-Applicant at the base cost of the FCA shares.

c) Under section 44(6)(*c*), the consideration share acquired by the Applicant is deemed not to be an amount transferred or applied by the First Co-Applicant for the benefit or on behalf of the Applicant in respect of the FCA shares.

d) The provisions of section 9H(6)(*a*) will apply in respect of the merger of the First Co-Applicant in the Second Co-Applicant and the issue of the consideration share by the Second Co-Applicant.

e) The provisions of section 24BA will not apply in respect of the merger of the First Co-Applicant in the Second Co-Applicant and the issue of the consideration share by the Second Co-Applicant.

7. Period for which this ruling is valid

This binding private ruling is valid for 5 years from 1 July 2015.

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