

BINDING PRIVATE RULING: BPR 096

DATE: 03 March 2011

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 46, 47 and 64B(5)(f)
SUBJECT : GROUP RESTRUCTURING TRANSACTIONS AND POSSIBLE RELIEF MEASURES

1. Summary

This ruling deals with the question as to whether the corporate group relief measures and secondary tax on companies (STC) relief measures will apply to a proposed group restructuring 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 22 June 2010 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 46(1), (the definition of “unbundling transaction”);
- section 47(1), (the definition of “liquidation distribution”); and
- section 64B(5)(f).

3. Parties to the proposed transactions

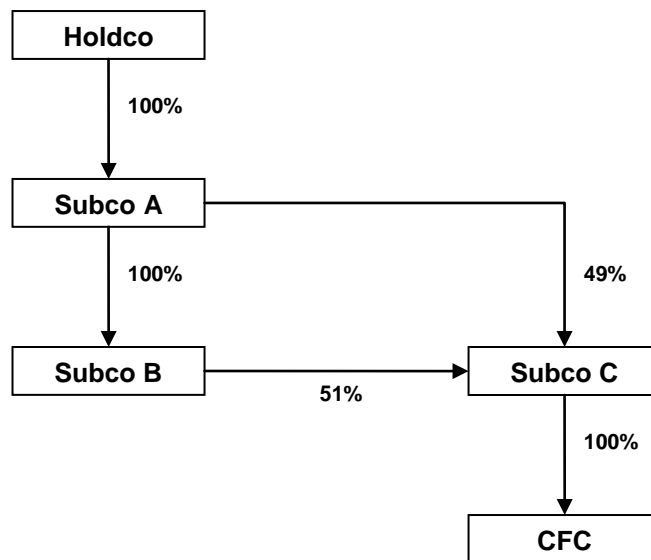
The Applicants: The direct and indirect subsidiaries of Holdco

Holdco: A company incorporated and resident in South Africa (SA)

Subco A: A company incorporated and resident in SA which is a 100% subsidiary of Holdco

- Subco B: A company incorporated and resident in SA which is a 100% subsidiary of Subco A
- Subco C: A company incorporated outside SA but resident in SA due to its effective management being in SA and whose shares are held by Subco A (49%) and by Subco B (51%)
- CFC: A controlled foreign company in relation to Subco C which is a 100% subsidiary of Subco C

Diagrammatic representation of the structure and shareholding of Holdco and its subsidiaries (the Group).



4. Description of the proposed transactions

The Group has a number of businesses all over the African continent and in selected markets in Europe and other parts of the world. The selling and distribution arm of the Group is complemented by a number of production facilities throughout Southern Africa.

The Group intends to simplify its structure by entering into the following transactions:

Step 1

- Subco B will distribute its 51% shareholding in Subco C to Subco A, its sole shareholder. Subsequent to the distribution, Subco A will hold 100% of the shares in Subco C.

Prior to the implementation of Step 2 all of Subco C's current liabilities owing directly to external creditors will be assumed by Holdco and will be set-off against the loan account owing by Holdco to Subco C.

Step 2

- Subco C will be wound up voluntarily and all its assets will be distributed to Subco A by way of a liquidation distribution. Subsequent to the liquidation distribution, Subco A will hold all the equity shares in CFC.

5. Conditions and assumptions

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

- Subco C remains resident in SA; and
- each one of the Applicants is an unlisted company, taxable in SA and not a “disqualified person” as defined in section 46(7) or a person listed in section 47(1)(a)(i).

6. Ruling

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

• Step 1

The proposed unbundling transaction by Subco B of its shares in Subco C to Subco A, will qualify as an “unbundling transaction” as defined in section 46(1).

For purposes of determining the taxable income of Subco B and Subco A respectively, and for purposes of determining the STC liability of Subco B:

- Subco B will be entitled to claim the relief available under section 46; and
- Subco A must treat the Subco C shares received in accordance with the provisions of section 46.

• Step 2

Subco C being wound up voluntarily and distributing all its assets to Subco A, will constitute a “liquidation distribution” as defined in section 47(1).

For purposes of determining the taxable income of Subco C and Subco A respectively, and for purposes of determining the STC liability of Subco C:

- Subco C will be entitled to claim the relief available under section 47;
- Subco A must treat the CFC shares received in accordance with the provisions of section 47;
- Subco A will be entitled to claim the relief available under section 47, and
- Subco C will be entitled to claim the exemption afforded by section 64B(5)(f) in respect of that distribution to the extent that the distribution qualifies as a “dividend” as defined in section 1.

7. Period for which this ruling is valid

This binding private ruling is valid in respect of the proposed transactions, provided the transactions are implemented within a period of three years as from June 2010.

Issued by:

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