

Taxation Laws Amendment Act, 1994 [No. 20 of 1994] - G 16104

Exemption from stamp duty or transfer duty relating to transfer of marketable securities or property or of rights or obligations under bonds under scheme for rationalisation of group of companies and assessment of companies in such group for income tax purposes in certain circumstances

39. (1) For the purposes of this section any word or expression to which a meaning has been assigned in the Transfer Duty Act, the Stamp Duties Act or the Income Tax Act, bears (having regard to the context within which such word or expression is used) the meaning so assigned, and-

"controlled company" means a company in relation to which another company is at the date and time referred to in the definition of "controlling company" the controlling company;

"controlling company", in relation to any other company, means a listed company which-

(a) on 4 November 1994, or, where such other company is incorporated after such date and the Commissioner is satisfied that such other company was incorporated to give effect to a rationalisation scheme, the date of incorporation of such other company; and

(b) at the time of any agreement referred to in the definition of "rationalisation scheme" to which such other company is a party, holds for its own benefit, whether directly or

indirectly through one or more companies in the group of companies of which all the companies in question are members, shares in such other company which, together with shares in that other company held by a trustee under a scheme referred to in section 38(2)(b) of the Companies Act, 1973 (Act No. 61 of 1973), constitutes not less than 75 per cent of the equity share capital of the said other company;

"group of companies" means a controlling company and one or more other companies which are controlled companies in relation to the controlling company at the date and time referred to in the definition of "controlling company";

"Income Tax Act" means the Income Tax Act, 1962 (Act No. 58 of 1962);

"listed company" means a company the equity share capital of which is listed on a licensed stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);

"marketable security" means a marketable security the registration of transfer of which would, but for the exemption under this section, be subject to stamp duty;

"rationalisation scheme" means any scheme effected in terms of a written agreement concluded on or after 4 November 1994 for the rationalisation of the activities of a group of companies where-

(a) such scheme was devised solely or mainly-

(i) in order to achieve substantial and enduring savings in operational expenditure or substantial and enduring operational or administrative advantages within the said group; or

(ii) in the furtherance of and for the purpose of benefiting some or all of the trading activities of the said group which before the transfer thereof were carried on by one or more companies of the said group and after the transfer thereof will be carried on by one or more other companies of the said group; or

(b) the Commissioner is, having regard to the circumstances of the case and subject to such conditions he may impose, satisfied that such scheme was devised solely or mainly to effect an unbundling transaction as contemplated in section 60 of the Income Tax Act, 1993 (Act No. 113 of 1993);

"Stamp Duties Act" means the Stamp Duties Act, 1968 (Act No. 77 of 1968); "stamp duty" means the stamp duty leviable under Item 15(3) of Schedule I

to the Stamp Duties Act in respect of the registration of transfer of any marketable security or the stamp duty leviable under Item 7(3), (4) or (5) of the said Schedule in respect of the cession of a mortgage bond or substitution of a debtor in respect of such bond;

"transfer duty" means the duty leviable under the Transfer Duty Act; "Transfer Duty Act" means the Transfer Duty Act, 1949 (Act No. 40 of

(2) Where, under any rationalisation scheme, any company (hereinafter referred to as the transferor company), disposes of (whether by way of sale, donation, cession, dividend or in any other form) or undertakes to dispose of any marketable security or property to any other company (hereinafter referred

to as the transferee company), or cedes or undertakes to cede any mortgage bond hypothecating property to the transferee company or the transferee company is or is to be substituted for the transferor company as the debtor under such a bond and both companies are at the time of such agreement and the implementation thereof members of one and the same group of companies-

(a) such disposal, transfer, cession or substitution of any marketable security, property or bond, as the case may be, where it gave rise to the distribution of a dividend, such dividend shall be deemed not to be a dividend for the purposes of Parts III and VII of Chapter 11 of the Income Tax Act;

(b) the controlling company involved in such scheme and the Commissioner may agree that, subject to such adjustments as may be necessary, the transferor company and the transferee company shall be deemed to be

one and the same company; and

(c) there shall be exempt from stamp duty the consequent registration of transfer to such transferee company of such marketable security or the cession of such bond or the substitution of the debtor in terms of agreement, in terms of such scheme and there shall be exempt transfer duty the acquisition by the transferee company of the prop in terms of such scheme, as the case may be.

(3) The provisions of subsections (2) and (6) shall only apply if-

(a) the agreement referred to in the definition of "rationalisation scheme" and a written statement setting forth details of the rationalisation scheme and any subsequent variation thereof, have been submitted by or on behalf of the controlling company of the relevant group of companies to the Commissioner, together with a mandate from each controlled company in such group which is a party to the agreement to act on its behalf for the purposes of this section, supported by a resolution of the directors or shareholders of such controlled company; and

(b) the Commissioner has issued a certificate to the effect that the registration of transfer of the relevant marketable security or the cession of the relevant bond or the substitution of the debtor under the relevant bond, is exempt from stamp duty under this section or that the acquisition of the relevant property is exempt from transfer duty under this section, as the case may be.

(4) Any exemption under subsection (2) shall lapse unless registration of transfer of the relevant marketable security or the registration of the cession of the relevant bond or the substitution of the debtor under the relevant bond or the registration of transfer of the relevant property, as the case may be, is effected not later than six months after the date of the certificate referred to in subsection (3)(b) or within such further period as the Commissioner, having regard to the circumstances of the case, may approve.

(5) Where the Commissioner is satisfied that-

(a) a certificate issued by him under subsection (3)(b) was obtained by fraud or was issued or obtained in consequence of any misrepresentation or failure to disclose any material fact by the controlling company or any other person; or

(b) the controlling company or any other person concerned failed to comply with the provisions of this section, he shall, if he is satisfied that in the light of the full facts the certificate should not have been issued, or that such provisions have not been complied with, withdraw such certificate, and-

(i) the exemption from stamp duty or transfer duty authorized by such certificate shall be deemed to have been withdrawn as from the date of issue of such certificate; and

(ii) the provisions of subsections (2) and (6) shall be deemed not to have applied.

(6) For the purposes of the taxation levied under the Income Tax Act and notwithstanding anything to the contrary in that Act, where on or after 4 November 1994 the whole or a part of any business undertaking is disposed of (whether by way of sale, donation, cession, dividend or in any other form) in terms of a rationalisation scheme by a company (hereinafter referred to as the transferor company) to any other company (hereinafter referred to as the transferee company) and both such companies are at the time of such disposal members of one and the same group of companies, the controlling company involved in such scheme and the Commissioner may agree that-

(a) any trading stock so disposed of shall be deemed to have been sold by the transferor company to the transferee company at a price equal to the value of such trading stock in the hands of the transferor

company as determined under the provisions of section 22(1) of the Income Tax Act, and shall be deemed to have been acquired by the transferee company as trading stock;

(b) any building, machinery, plant, implement, utensil or article so disposed of, the value of which is to be taken into account for purposes of the Income Tax Act, shall, in so far as the transferor company is concerned, be deemed to have been sold by it at a price equal to the tax value in its hands;

(c) the transferor company and the transferee company shall, subject to such adjustments as may be necessary, be deemed to be one and the same company: Provided that-

(i) the provisions of this paragraph shall not be interpreted as permitting the transferee company to set off against its income any assessed loss or balance of assessed loss incurred by the transferor company; and

(ii) the provisions of this paragraph shall not affect the liability for tax of the transferor company or the transferee company in respect of any income derived or expenditure incurred prior to the date on which the rationalisation scheme came into effect; and

(d) where any sale or disposal of any trading stock, asset or business undertaking or part thereof contemplated in paragraph

(a), (b) or (c) gives rise to the distribution of a dividend, such distribution shall be deemed not to be a dividend for the purposes of Parts III and VII of Chapter 11 of the Income Tax Act.

(7) The provisions of this section shall not apply if the main or one of the main purposes of a rationalisation scheme is the avoidance, postponement or reduction of liability for the payment of any tax, duty or levy, whether imposed under the Income Tax Act or any other law administered by the Commissioner, which, but for the provisions of this section, would have been payable in consequence of such scheme having been entered into.

(8) Any decision of the Commissioner in the exercise of his discretion under this section shall be subject to objection and appeal.