BINDING PRIVATE RULING: BPR 171

DATE: 9 June 2014

The principle confirmed in this ruling has been reviewed. This ruling should not be relied upon by anyone other than the Applicant(s)/class members to whom it was issued.

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
: SECURITIES TRANSFER TAX ACT NO. 25 OF 2007 (the STT Act)
SECTION : SECTION 44 AND PARAGRAPH 11 OF THE EIGHTH SCHEDULE TO THE ACT
: SECTION 8(1)(*a*)(ii) OF THE STT ACT
SUBJECT : AMALGAMATION TRANSACTION

1. Summary

This ruling deals with the income tax and securities transfer tax consequences for the parties concerned in a proposed amalgamation transaction intended to extinguish a layer of companies considered unnecessary in a holding structure.

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 and paragraphs are to sections of the relevant Acts and to paragraphs of the Eighth Schedule to the Act applicable as at 27 May 2014 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the relevant Act.

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

- section 44 of the Act;
- paragraph 11 of the Eighth Schedule to the Act; and
- section 8(1)(*a*)(ii) of the STT Act.

3. Parties to the proposed transaction

The Applicant:	A company incorporated in and a resident of South Africa
The First Co-Applicant:	A close corporation incorporated in and a resident of South Africa
The Second Co-Applicant:	A close corporation incorporated in and a resident of South Africa
The Third Co-Applicant:	A natural person who is a resident of South Africa and the sole member of the First Co-Applicant
The Fourth Co-Applicant:	A natural person who is a resident of South Africa and the sole member of the Second Co-Applicant

4. Description of the proposed transaction

The First and Second Co-Applicant each owns half of the issued share capital of the Applicant. The only liability of each of the First and Second Co-Applicants is a loan account in favour of the Third and Fourth Co-Applicants respectively.

The First and Second Co-Applicants are passive holding entities. The only functions they serve are as proxies for the Third and Fourth Co-Applicants who hold the respective members' interests through which those members indirectly exercise what they consider to be their interests in the Applicant. They had both been active in the manufacturing industry through the First and Second Co-Applicants, but some years ago decided to join forces.

The Applicant then became their business vehicle and was established with the First and Second Co-Applicants as its sole shareholders, the shareholding being their respective sole assets and the loan accounts their respective sole liabilities. For all practical purposes the Third and Fourth Co-Applicants, through their control of the First and Second Co-Applicants, operate as would the shareholders of the Applicant. They therefore consider the First and Second Co-Applicants an unnecessary additional layer between them and the Applicant operating company.

The purpose of the proposed transactions is to eliminate the close corporations. The First Co-Applicant will amalgamate with the Applicant. Upon completion of that amalgamation transaction, the Second Co-Applicant will do the same.

The First Co-Applicant will dispose of all its assets to the Applicant at their base cost, namely its shares in the Applicant and its loan account claim against the Applicant. In exchange, the Applicant will issue equity shares in its authorised capital to the First Co-Applicant with a market value equal to the base cost in the hands of the First Co-Applicant of the assets to be received by the Applicant. The First Co-Applicant will undertake to commence proceedings for its liquidation, winding up or de-registration immediately upon implementation of the transaction, and to distribute as a dividend *in specie* to the Third Co-Applicant as its sole member, the shares to be issued to it by the Applicant.

After the implementation of the foregoing transaction, a transaction in almost identical terms will take place between the Second Co-Applicant and the Applicant. The shares to be issued by the Applicant to the Second Co-Applicant will, however, be distributed to the Fourth Co-Applicant.

5. Conditions and assumptions

This ruling is subject to the following additional conditions and assumptions:

- The First and Second Co-Applicants hold the shares in the Applicant as capital assets.

- The First and Second Co-Applicants must, within 36 months after the date the proposed transaction is entered into by the Co-Applicant concerned, or within such further period as the Commissioner may allow, take steps to liquidate, wind up or deregister.

- No such step may, after it has been taken, be withdrawn at any stage or nothing may be done by the Co-Applicant concerned to invalidate any such step with the result that it will not be liquidated, wound up or deregistered.

6. Ruling

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

- The proposed transactions will qualify as amalgamation transactions as contemplated in section 44(2)(*a*).

- The First and Second Co-Applicants will be deemed to have disposed of the shares they hold in the Applicant for amounts equal to the base cost of those shares on the date of the disposals concerned. The First and Second Co-Applicants will not realise any capital gains on the shares transferred to the Applicant.

- The cancellation of the shares by the Applicant will not constitute a disposal as contemplated in paragraph 11.

- The contributed tax capital of the Applicant will increase after each proposed transaction by an amount equal to the contributed tax capital of the Co-Applicant concerned at the time of its termination, represented by the shares held in that Co-Applicant by the Third and Fourth Co-Applicants respectively.

- The Third and Fourth Co-Applicants will be deemed to have disposed of their respective members' interests in the First and Second Co-Applicants as a result of the proposed transactions for amounts equal to the expenditure incurred by them in respect of those interests allowable under paragraph 20.

- The Third and Fourth Co-Applicants will also be deemed to have acquired their shares in the Applicant on the date on which they acquired their erstwhile members' interests and for a cost equal to the expenditure incurred, as contemplated in the previous item, on the respective dates those costs were incurred in respect of those members' interests. Those costs must be treated as expenditure actually incurred by the Third and Fourth Co-Applicants in respect of the shares in the Applicant for the purposes of paragraph 20.

- Any valuation done in respect of the members' interests under paragraph 29 will be deemed to have been done in respect of the Third and Fourth Co-Applicants' shares in the Applicant.

- Those shares will not constitute amounts transferred or applied by the First and Second Co-Applicants for the benefit of the Third and Fourth Co-Applicants, respectively.

- The First and Second Co-Applicants must disregard the disposals of shares in the Applicant to the Third and Fourth Co-Applicants respectively for purposes of determining their respective taxable incomes or assessed losses.

- Securities transfer tax will not be payable in respect of the transfers of the shares and members' interests.

7. Period for which this ruling is valid

This binding private ruling is valid in respect of the proposed transactions as from 27 May 2014.

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