

BINDING PRIVATE RULING: BPR 390

DATE: 15 June 2023

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)
VALUE-ADDED TAX ACT 89 OF 1991 (the VAT Act)
TRANSFER DUTY ACT 40 OF 1949 (the TD Act)**

**SECTION : SECTION 47 AND PARAGRAPH 12A OF THE EIGHTH SCHEDULE
TO THE ACT
SECTION 8(25) OF THE VAT ACT
SECTION 9(1)(l) OF THE TRANSFER DUTY ACT**

SUBJECT : DISPOSAL IN ANTICIPATION OF LIQUIDATION

Preamble

This binding private ruling is published with the consent of the Applicants to which it has been issued. It is binding between SARS, the Applicant and the Co-Applicant only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines the tax consequences of a disposal, by a resident, of its business to its shareholder in anticipation of or in the course of liquidation of that company, as contemplated in section 47(1) of the Act.

2. Relevant tax laws

In this ruling, references to sections and paragraphs are to sections of the relevant Acts and paragraphs of the Eighth Schedule to the Act applicable as at 17 February 2023.

Unless the context indicates otherwise any words 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 Act –
 - section 47; and
 - paragraph 12A(6)(e).
- the VAT Act –
 - section 8(25).
- the TD Act –
 - section 9(1)(l).

3. Parties to the proposed transaction

The Applicant: A listed resident company

The Co-Applicant: A resident company that is a wholly-owned subsidiary of the Applicant

4. Description of the proposed transaction

The Co-Applicant, a wholly owned subsidiary of the Applicant, owns properties which it lets.

The Co-Applicant financed the purchase of the property by way of a secured mortgage loan, which the Applicant later repaid on behalf of the Co-Applicant, establishing an intercompany loan in favour of the Applicant.

The Co-Applicant will dispose of the aforementioned property and the associated commercial property business as a going concern to the Applicant in anticipation of the Co-Applicant's liquidation.

The proposed steps for implementing the proposed transaction are as follows:

- The consideration payable by the Applicant is to be set off against the balance of the outstanding intercompany loan.
- Within 36 months of the effective date of the disposal the Co-Applicant will take the steps contemplated in section 41(4) to liquidate, wind-up or deregister itself.
- The Co-Applicant will agree to deliver the business to the Applicant on the effective date, from when the ownership thereof shall pass to the Applicant, except for the property which will be transferred to the Applicant on the date of transfer.
- All the Co-Applicant's rights in terms of the lease agreements are also sold and made over to the Applicant. On the date of transfer the Co-Applicant will cede all its rights in terms of those lease agreements to the Applicant, and the Applicant, from date of transfer, will have all the rights and obligations as the landlord instead of the Co-Applicant in respect of the tenants.

5. Conditions and assumptions

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

- a) The Co-Applicant will take the steps contemplated in section 41(4) of the Act to wind-up, liquidate or deregister within 36 months of the liquidation distribution or within such further period as the Commissioner may allow;
- b) The Co-Applicant will not at any stage withdraw or do anything to invalidate any step taken to liquidate, wind-up, deregister or finally terminate its existence; and
- c) The Applicant will make the required sworn statements or solemn affirmations that the acquisition of the immovable property complies with section 9(1)(f) of the TD Act.

6. Ruling

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

- a) The disposal of the immovable rental property by the Co-Applicant to the Applicant will constitute a “liquidation distribution” in terms of paragraph (a) of that definition in section 47(1) of the Act.
- b) The Co-Applicant will be deemed to have disposed of the property at its base cost and no capital gains tax consequences will result from the transfer of the property for the Applicant and the Co-Applicant.
- c) The Applicant and the Co-Applicant will be treated as one and the same person for the purpose of determining the base cost, for the Applicant, in respect of the property.
- d) Section 47(5) of the Act will apply to the proposed transaction whereby the Applicant must disregard the disposal of its shares in the Co-Applicant on liquidation.
- e) The Applicant’s assumption of the Co-Applicant’s liability will not give rise to any capital gains, as contemplated in paragraph 12A(6)(e) of the Eighth Schedule to the Act.
- f) No transfer duty will be payable on the transfer of the property from the Co-Applicant to the Applicant, as contemplated in section 9(1)(l)(iii) of the TD Act.
- g) The disposal of the property from the Co-Applicant to the Applicant is not subject to value-added tax as the Co-Applicant and the Applicant are deemed to be one and the same person in terms of section 8(25) of the VAT Act for the purposes of such sale.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of one year from the effective date of the purchase and sale agreement.