

BINDING PRIVATE RULING: BPR 399

DATE: 12 December 2023

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 8(4)(e), 12C AND 42(7) AND PARAGRAPHS 10 AND 66 OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : ASSET-FOR-SHARE TRANSACTION AND REPLACEMENT ASSET

Preamble

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

1. Summary

This ruling determines the consequences where, almost simultaneously, an asset acquired in an asset-for-share transaction is disposed of and an election is made under paragraph 66 for its replacement with another asset.

2. Relevant tax laws

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 14 August 2023. 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 –

- section 8(4)(e);
- section 12C;
- section 42(7);
- paragraph 10; and
- paragraph 66.

3. Parties to the proposed transaction

The Applicant: A resident company

4. Description of the proposed transaction

The Applicant is held 100% by Mr X.

Mr X operates a business as a sole proprietor through diverse locations throughout South Africa.

One of the assets that Mr X owns for purposes of his business is an aircraft (the Existing Aircraft). Mr X is in the process of selling the Existing Aircraft and purchasing a new aircraft (the New Aircraft) to replace the Existing Aircraft. He has already entered into an agreement –

- of sale for the sale of the Existing Aircraft. The agreement is governed by foreign law. It will become effective upon closing which is expected to be on or about 15 August 2023; and
- for the purchase of the New Aircraft which will be delivered in August 2023.

It is proposed that Mr X transfer his entire business to the Applicant, including the Existing Aircraft, by way of an asset-for-share transaction contemplated in section 42, effective from 1 August 2023.

The proposed transaction will be achieved as follows:

- Mr X will transfer his entire business to the Applicant in exchange for shares in the Applicant in terms of an “asset-for-share transaction” as defined in paragraph (a) of that definition in section 42(1). The asset-for-share agreement to be entered into on 1 August 2023 will not contain any suspensive conditions.
- One of the assets to be transferred to the Applicant is the Existing Aircraft which is the subject matter of the agreement of sale mentioned above. The closing of the agreement of sale will occur after the conclusion of the asset-for-share transaction. The deemed disposals and acquisitions under section 42, read with paragraph 13, would by then have occurred. Accordingly, pursuant to the asset-for-share transaction, the Applicant will be substituted as the –
 - seller in the agreement of sale of the Existing Aircraft (currently the seller is Mr X) in terms of a deed of assignment; and
 - purchaser in the agreement for the purchase of the New Aircraft (currently the purchaser is Mr X) in terms of a deed of assignment.
- Within a period of 18 months after the Applicant has entered into the asset-for-share transaction, the Applicant will dispose of the Existing Aircraft and acquire the New Aircraft. The Applicant will make an election for the application of paragraph 66 to the disposal of the Existing Aircraft in its return for the 2024 year of assessment.

The disposal of the Existing Aircraft will give rise to a recoupment of the allowances previously claimed by Mr X under section 12C, as well as to a capital gain under the Eighth Schedule.

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:

- a) The Applicant will satisfy the requirements of paragraph 66(1) in relation to the disposal of the Existing Aircraft and may make the election under that provision.
- b) The Applicant will be entitled to claim an allowance under section 12C in respect of the New Aircraft.
- c) Section 8(4)(e) will apply to the recoupment that arises as a result of the disposal of the Existing Aircraft.
- d) Paragraph 66(2) of the Eighth Schedule will apply to disregard the capital gain derived from the disposal of the Existing Aircraft when determining the Applicant's aggregate capital gain or the aggregate capital loss but paragraph 66(4), subject to subparagraphs (5), (6) and (7) of paragraph 66 will apply to that disregarded capital gain.
- e) Section 42(7) will apply to the disposal of the Existing Aircraft by the Applicant but will have no adverse consequences due to the rulings in paragraphs (c) and (d) above.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 14 August 2023.