

BINDING PRIVATE RULING: BPR 408

DATE: 2 August 2024

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECURITIES TRANSFER TAX ACT 25 OF 2007 (STT Act)**

**SECTION : SECTIONS 1(1) – DEFINITIONS OF “CONTRIBUTED TAX CAPITAL”
AND “TRADING STOCK”, 24BA, 40CA, 41(1) AND 42 OF THE ACT
AND PARAGRAPHS 1 – DEFINITION OF ‘CAPITAL ASSET’ AND
20(1)(a) OF THE EIGHTH SCHEDULE TO THE ACT
SECTIONS 1 – DEFINITIONS OF “TAXABLE AMOUNT” AND
“TRANSFER”, 2, 3 AND 8(1)(a)(i) of the STT Act**

SUBJECT : CORPORATE RESTRUCTURING USING SECTION 42 OF THE ACT

Preamble

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

1. Summary

This ruling determines the tax consequences of a corporate restructuring involving the disposal of shares in terms of section 42 of the Act.

2. Relevant tax laws

In this ruling references to sections and paragraphs are to sections of the relevant Act and paragraphs of the Eighth Schedule to the Act applicable as at 25 March 2024. 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 Act –
 - section 1(1) – definitions of “contributed tax capital” and “trading stock”;
 - section 24BA;
 - section 40CA;
 - section 41(1);
 - section 42;
 - paragraph 1 – definition of “capital asset”; and
 - paragraph 20(1)(a).

- the STT Act –
 - section 1 – definitions of “taxable amount” and “transfer”;
 - section 2;
 - section 3; and
 - section 8(1)(a)(i).

3. Parties to the proposed transaction

The Applicant:	A resident company
Company A:	A resident company
Company B:	A resident company
Company C:	A resident company

4. Description of the proposed transaction

The Applicant and Company A are investment holding companies.

The Applicant holds all the shares in Company B.

The Applicant and Company A hold shares in Company C as capital assets.

For what the Applicants advise are commercial reasons, the Applicant and Company A propose to hold their investments in the shares of Company C through a single entity namely, Company B.

The proposed steps for implementing the restructuring are as follows:

- The Applicant and Company A will raise preference share funding.
- The Applicant and Company A will apply the preference share funding raised to subscribe for equity shares in Company B.
- Company B will raise preference share funding.
- Company B will apply the preference share funding to acquire shares in Company C.
- The Applicant and Company A will each dispose of their shares held in Company C to Company B in exchange for equity shares in Company B using section 42 of the Act. At the end of this transaction step Company B will hold more than 25% of the shares in Company C.

5. Conditions and assumptions

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

- a) The market values of the Company C shares to be disposed of by the Applicant and Company A in terms of section 42 will exceed the base costs of the shares as contemplated in item (aa) of the definition of “asset-for-share transaction” in section 42(1)(a)(i).

- b) The shares to be issued by Company B to the Applicant and Company A in terms of section 42 will each constitute an “equity share” as defined in section 1(1).

6. Ruling

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

- a) The subscription prices to be paid by the Applicant and Company A, respectively, for the acquisition of shares in Company B, will constitute the base costs of the shares for the Applicant and Company A as contemplated in paragraph 20(1)(a) of the Eighth Schedule.
- b) The contributed tax capital of Company B will increase by the aggregate subscription amounts paid by the Applicant and Company A as contemplated in paragraph (b) of the definition of “contributed tax capital” in section 1(1).
- c) The purchase price paid by Company B for the acquisition of shares in Company C will be the base costs of the shares as contemplated in paragraph 20(1)(a).
- d) The disposals of Company C shares by the Applicant and Company A to Company B will each meet the requirements of an “asset-for-share transaction” in paragraph (a) of that definition in section 42(1). The *provisos* to –
- the definition of “asset-for-share transaction” in paragraph (a)(ii) of section 42(1);
 - section 42(2)(b)(ii); and
 - section 42(3A),

will apply to the Applicant, Company A and Company B so that –

- the requirement that Company B must acquire the Company C shares as capital assets (in paragraph (a)(ii) of the definition of “asset-for-share transaction”) will not apply;
 - Company B will not acquire the Company C shares from the Applicant and Company A at their historical base costs but will acquire market value base costs in the shares in terms of section 40CA(a). Section 42(2)(b)(ii) will not apply to the transaction; and
 - the contributed tax capital in Company B for the issue of equity shares to the Applicant and Company A will be determined in terms of paragraph (b)(ii) of the definition of “contributed tax capital” in section 1(1) as the market value of the equity shares to be issued to the Applicant and Company A. Section 42(3A) will not apply to determine Company B’s contributed tax capital.
- e) Section 42(2)(a)(i)(aa), (a)(ii)(aa) and (c) will apply to the Applicant and Company A.
- f) Section 24BA will not apply to the Applicant, Company A and Company B.

- g) The purchase of shares in Company C by Company B will be subject to securities transfer tax (STT) in accordance with section 2(1) of the STT Act.
- h) There will be no STT payable on the issue of shares by the Applicant, Company A and Company B.
- i) The exemption in section 8(1)(a)(i) of the STT Act will apply in respect of the transfer of shares in Company C by the Applicant and Company A to Company B in terms of section 42.

7. Additional Note

This ruling does not cover the application of any general anti-avoidance provisions to the proposed transaction.

8. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 27 March 2024.