

BINDING PRIVATE RULING: BPR 416

DATE: 13 November 2025

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)
VALUE ADDED TAX ACT 89 OF 1991 (VAT Act)**

**SECTION : SECTIONS 1(1) – DEFINITION OF “GROSS INCOME” AND
“DIVIDEND”, 11(a), 28, 29A, 64D – DEFINITION OF “DIVIDEND” AND
PARAGRAPHS 3,4, 11(1) and 11(2)(a) OF THE EIGHTH SCHEDULE
TO THE ACT
SECTIONS 1(1) – DEFINITION OF “SUPPLY”, 8(7), 10(4), 11(1)(e),
16(3)(h) OF THE VAT ACT**

**SUBJECT : TRANSFER OF REINSURANCE BUSINESS FROM A RESIDENT
COMPANY TO A LOCAL BRANCH OF A FOREIGN COMPANY**

Preamble

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

1. Summary

This ruling determines the tax implications of the transfer of a reinsurance business from a resident reinsurer to a local branch of a foreign company.

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 9 April 2025. 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) – definition of “gross income” and “dividend”;
 - section 11(a);
 - section 28;
 - section 29A;
 - section 64D – definition of “dividend”;
 - paragraph 3;
 - paragraph 4;
 - paragraph 11(1); and

- paragraph 11(2)(a).
- the VAT Act –
 - section 1(1) – definition of “supply”;
 - section 8(7);
 - section 10(4);
 - section 11(1)(e); and
 - section 16(3)(h).

3. Parties to the proposed transaction

The Applicant:	A private company and a resident of South Africa
Company A:	A foreign company and a non-resident of South Africa, that holds all the issued share capital in the Applicant
The Co-Applicant:	A permanent establishment of Company A in South Africa
The Trust:	A resident trust established for insurance regulatory purposes as required by section 40 of the Insurance Act 18 of 2017

4. Description of the proposed transaction

The Applicant has active business operations (including employees, facilities, and infrastructure) in South Africa. Its main business is short-term and long-term reinsurance and it retrocedes a significant portion of its business with foreign group companies.

Company A wishes to convert the ownership of its operations in South Africa from a subsidiary (the Applicant) to a branch (the Co-Applicant). Company A, incorporating the Co-Applicant, will be a foreign connected person in relation to the Applicant.

The Applicant intends to implement the restructuring by transferring its entire business, consisting of all its assets and liabilities, to Company A in exchange for Company A returning all but one of its shares in the Applicant as consideration for the transfer of the business. The assets and liabilities acquired by Company A will be attributable to its branch in South Africa, the Co-Applicant.

Prior to the transfer of business, the Applicant will dispose of any non-cash assets used to back the net policyholder liabilities, with the effect that it will have cash on its balance sheet instead of non-cash assets to back the net policyholder liabilities when the transfer takes place, which will also be reported to the Prudential Authority as such. The disposal of the non-cash assets will attract income tax and capital gains tax consequences in the various tax funds of the Applicant depending on the nature of the asset disposed and the tax fund the asset is allocated to for the purposes of section 29A of the Act.

The detailed steps include:

- As part of the transfer of its business, the Applicant will delegate its liabilities to the Co-Applicant net of any insurance and reinsurance contract assets and insurance-related financial instruments. The assets transferred as part of the business by the Applicant to the Co-Applicant to back these net liabilities, will constitute cash with a value equal to the market value of the net liabilities delegated to the Co-Applicant. The remainder of the assets transferred, in excess of the market value of the net liabilities delegated, will constitute cash as well as certain non-cash assets; and
- The consideration for the transfer of business will be all but one share in the Applicant, all of which are currently held by Company A. As the shares will be transferred to the issuer (i.e. the Applicant) this element of the transaction will amount to a share repurchase. The consideration in respect of the repurchase of shares is regarded as a distribution of the value of the business, which comprises assets less liabilities. The Applicant will distribute its remaining assets (including cash, fixed assets, investments, receivables, contracts including those related to employees, intellectual property, and intangible assets), in excess of the market value of the net liabilities delegated to the Co-Applicant, to Company A.

The value of the business is recorded for purposes of the transaction as in the Applicant's audited annual financial statements at the end of its 2024 financial year.

Regulatory approval is required from the Prudential Authority to proceed with the license for the Co-Applicant in South Africa as well as the transfer of the business from the Applicant to the Co-Applicant in South Africa. In addition, it is a regulatory requirement that a South African trust (the Trust) be established to hold certain assets of the Co-Applicant as security. The legal structure of the Trust must be approved by the Prudential Authority and must comply with the legislative requirements of the Trust Property Control Act 57 of 1988 and the Insurance Act 18 of 2017.

The Co-Applicant will continue to carry on the business previously conducted by the Applicant in South Africa in the same manner as the Applicant, as a foreign reinsurer conducting reinsurance business in South Africa in terms of section 6 of the Insurance Act.

The Applicant will dispose of its assets and liabilities to the Co-Applicant, but certain assets required to be held in trust for regulatory purposes will be delivered to the Trust and be held by the Trust for the benefit of the Co-Applicant.

The Co-Applicant will own the assets held as security in the Trust and the income accruing in respect of those assets will accrue to and for the benefit of the Co-Applicant. However, the Insurance Act requires that the Co-Applicant must comply with all requirements under the Insurance Act before giving instruction to the trustee(s) to release assets, claims, and rights comprised in the security held in trust to the Co-Applicant, including the requirement that the Co-Applicant may not access or withdraw funds held in the Trust without the approval of the Prudential Authority.

The Co-Applicant will be required to ensure that assets are held in the Trust at all times, such that such assets are at least equal to the technical provisions (after certain allowances) for the reinsurance business of the Co-Applicant calculated in

accordance with the Insurance Act, as contemplated in section 40(1) of the Insurance Act. For these purposes, it is envisaged that the Co-Applicant may transfer further assets to the Trust to ensure this requirement is satisfied. The Trust may return excess assets to the Co-Applicant, subject to the required approvals in terms of the Insurance Act.

The Applicant makes both taxable and non-taxable supplies for VAT purposes and its main business (i.e. more than 50%) relates to gross premium income on non-life reinsurance, retrocession commission for retroceded non-life business, zero rated premium income from life reinsurance (non-residents) and non-life retrocession recoveries received from local reinsurers, which are all taxable supplies for VAT purposes. The Applicant is in possession of a VAT ruling issued under section 41B of the VAT Act, which allows the Applicant to use a special method of apportionment to determine its apportionment ratio for purposes of section 17(1) of the VAT Act. The Applicant is further permitted under the said ruling to calculate and apply apportionment ratios in respect of each of its three different business areas.

Company A is currently registered for VAT as an electronic services supplier in South Africa. This registration is because of electronic services supplied by Company A to the Applicant. For purposes of this transaction, the intention is to use the current Company A VAT registration number. The Applicant and Company A have agreed in writing that the business is being transferred or disposed of as a going concern for VAT purposes.

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:

Income Tax

- a) Only the transfer of the net assets (i.e. the value of assets exceeding the value of net liabilities delegated by the Applicant to the Co-Applicant) of the Applicant to the Co-Applicant will constitute a dividend for the purposes of sections 1(1) and 64D of the Act, to the extent that the transfer is not made from available contributed tax capital.
- b) The receipt of the cash by the Co-Applicant from the Applicant equal to the value of the net liabilities assumed constitutes a receipt of a capital nature and is therefore not included in the gross income of the Co-Applicant in terms of the definition of "gross income" in section 1(1) of the Act. The receipt also does not give rise to any Capital Gains Tax (CGT) consequences in the hands of the Co-Applicant, as the amount paid does not constitute expenditure incurred in respect of the acquisition of an asset. However, an amount that is equal to the amount to be deducted by the Applicant under section 28(3B)(a) must be included in the income of the Co-Applicant, as provided for by section 28(3B)(b) of the Act.

- c) The Co-Applicant will constitute a short-term insurer conducting short-term insurance business in terms of section 28 of the Act and therefore the provisions of section 28(2), 28(3), 28(3A), 28(3B) and 28(4) will be applicable. Accordingly, the Co-Applicant will be entitled to section 11(a) deductions read with section 28(2), for claims paid in respect of long-term and short-term insurance policies newly written, as well as those existing policies assumed from the Applicant, within the context of section 28 of the Act and the definitions of short-term policy and branch policy included in that section.
- d) Premiums received by the Co-Applicant in respect of its short-term insurance business, which included its long-term insurance business, constitute premiums as defined in section 28 with the effect that section 28(2)(a) will also apply to the premium income received in respect of the long-term insurance business deeming it to be equal to insurance revenue for insurance contracts and net earned premiums for investment contracts, under International Financial Reporting Standards.
- e) The Co-Applicant will be entitled to deduct from its income the closing balance of its liabilities determined in terms of section 28(3) in relation to its short-term insurance business only.
- f) The Co-Applicant will be entitled to deduct from its income the closing balance of its liabilities determined in terms of section 28(3A) in relation to its long-term insurance business only.
- g) The Applicant will be allowed a deduction from its income, in terms of section 28(3B)(a), for both the liability for incurred claims and the liability for remaining coverage components of the liabilities relating to the short-term insurance book of business transferred to the Co-Applicant.
- h) Insofar as the cash amount transferred by the Applicant to the Co-Applicant relates to operational liabilities assumed by the Co-Applicant that have been actually incurred by the Applicant (but not yet paid) which are not contingent in any way, that cash payment will constitute deductible expenditure under section 11(a), read with section 23(g) of the Act.
- i) Any gains and losses on the assets held in security in the Trust on behalf of and for the benefit of the Co-Applicant and the income accruing on such assets will be attributed to the Co-Applicant in terms of the definition of gross income in section 1(1) of the Act and paragraphs 3 and 4 of the Eighth Schedule to the Act with the result that the Trust will derive no taxable income in respect of such amounts.
- j) The transfer of assets by the Co-Applicant to the Trust to ensure the required level of assets are held in security by the Trust for regulatory purposes will not be considered disposals for CGT purposes.

Value-added Tax

- k) The disposal of the Applicant's enterprise as a going concern, forming part of the transfer of its business to the Co-Applicant, will constitute a supply that is subject to VAT at the zero rate under section 11(1)(e) of the VAT Act. The disposal of goods or services applied mainly (that is, more than 50%)

for purposes of the Applicant's enterprise, as part of this transfer of the business, will also be deemed to form part of the enterprise disposed of as a going concern which is subject to VAT at the zero rate. The zero rate in this regard applies only to the supply of those goods and/or services forming part of the enterprise being disposed of as a going concern.

This ruling is not an expression of an opinion on the intention by the Co-Applicant to use the VAT registration number of Company A for purposes of the transaction in this case.

- l) The disposal of the Applicant's enterprise as a going concern, forming part of the transfer of the business by the Applicant to the Co-Applicant, is deemed to be a supply of goods in the course of the Applicant's enterprise under section 8(7) of the VAT Act. This deeming provision does not apply to the portion of the business transferred that is not considered to form part of such enterprise.
- m) The Applicant is entitled to make an adjustment in terms of section 16(3)(h) of the VAT Act, in respect of each item of the goods and/or services forming part of the supply of an enterprise that is a going concern for purposes of section 11(1)(e) of the VAT Act (where applicable) and by applying the formula set out in the said section in calculating the adjustment amount. The Applicant may make this adjustment by determining, for purposes of the formula, the non-taxable portion of the apportionment ratio of the specific business area from where the item is transferred, at the time the original input tax deduction was made, taking into account the ratio of any subsequent change in use adjustments, and claim an adjustment using the tax fraction prevailing at the time of making the adjustment.
- n) There is no separate supply made by the Co-Applicant to the Applicant where it assumes the insurance liabilities (net of any "negative liabilities") of the Applicant together with the cash that backs these liabilities.
- o) A separate supply is considered to be made by the Co-Applicant where it assumes all of the Applicant's other free-standing liabilities together with the cash that backs these liabilities. The supply is however considered to fall outside of the scope of VAT and therefore has no VAT consequences from an output tax perspective.
- p) The "negative liability" is merely an adjustment and a means of arriving at the market value of the liabilities transferred to the Co-Applicant and for VAT purposes does not constitute a separate supply of goods or services from the Applicant to the Co-Applicant or from the Co-Applicant to the Applicant.
- q) The bonds, shares, loans or cash transferred to the Trust do not constitute supplies made by the Co-Applicant for VAT purposes, as the Trust merely holds the assets for regulatory purposes and there is no underlying supply made or consideration being paid. As there is no supply, the value of supply rules in section 10 of the VAT Act, including those for connected parties envisaged in section 10(4) of the VAT Act, do not apply.

- r) Non-cash assets transferred from the Co-Applicant to the Trust do not constitute supplies made by the Co-Applicant for VAT purposes, as the Trust merely holds the assets for regulatory purposes and there is no underlying supply made or consideration being paid. As there is no supply, the value of supply rules in section 10 of the VAT Act, including those for connected parties envisaged in section 10(4) of the VAT Act, do not apply.

7. Period for which this ruling is valid

This binding private ruling is valid in respect of the 2024 and 2025 years of assessment.

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