

BINDING CLASS RULING: BCR 087

DATE: 10 November 2023

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 8(4)(a), 9C(5), 12J AND 44
SUBJECT : CONSEQUENCES FOR SHAREHOLDERS UPON TERMINATION OF A VENTURE CAPITAL COMPANY

Preamble

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

1. Summary

This ruling determines the tax consequences for shareholders of a venture capital company upon termination of the company's corporate existence.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 5 July 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)(a);
- section 9C(5);
- section 12J; and
- section 44.

3. Class

The class members to whom this ruling will apply are the investors referred to in **4**.

4. Parties to the proposed transaction

The Applicant: A venture capital company

The Co-Applicant: A resident investment holding company

Investors: The shareholders of the Applicant

5. Description of the proposed transaction

The Applicant will transfer all its assets, primarily consisting of shares in qualifying companies to the Co-Applicant, by way of amalgamation.

The Applicant will distribute the ordinary shares in the Co-Applicant to its shareholders in accordance with their effective shareholdings in anticipation of the Applicant's winding-up and deregistration.

6. Conditions and assumptions

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

- a) The Applicant will within a period of 36 months after the date of the proposed transaction, or such further period as the Commissioner may allow, take the steps contemplated in section 41(4) to liquidate, wind-up or deregister.
- b) The Applicant will not at any stage withdraw any step taken to liquidate, wind-up or deregister or do anything to invalidate any step so taken with the result that it will not be liquidated, wound-up or deregistered.
- c) The class members held the equity shares in the Applicant on capital account and will acquire the equity shares in the Co-Applicant on capital account.

7. Ruling

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

- a) Shareholders of the Applicant that held their shares in the Applicant, for more than three years but less than five years, at the time of the amalgamation must include the amount, previously deducted under section 12J(2), in income under section 9C(5). The Applicant's shareholders are deemed, in terms of section 44(6)(b)(i), to dispose of their shares in the Applicant, for an amount equal to the base cost of their shares in terms of paragraph 20 of the Eighth Schedule, taking into account the deduction under section 12J(2) and any inclusion in income under section 9C(5).
- b) The Applicant's shareholders are deemed, in terms of section 44(6)(b)(ii), to acquire their shares in the Co-Applicant for an amount equal to the base cost of the Applicant shares referred to in (a) above.
- c) The distribution of the shares in the Co-Applicant by the Applicant to its shareholders will not constitute a dividend or return of capital under section 44(6)(c).
- d) If a former shareholder of the Applicant disposes of shares held in the Co-Applicant that it received following the amalgamation transaction, no recoupment or inclusion in income will arise under section 8(4)(a) or section 9C(5) in respect of deductions previously granted to that shareholder under section 12J(2) in respect of expenditure incurred to acquire the Applicant's shares.

8. Period for which this ruling is valid

This binding class ruling is valid in respect of the year of assessment ending 28 February 2025.

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