

BINDING PRIVATE RULING: BPR 347

DATE: 29 July 2020

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECURITIES TRANSFER TAX ACT 25 OF 2007 (STT Act)
VALUE-ADDED TAX ACT 89 OF 1991 (VAT Act)**

**SECTION : SECTION 47(6)(c)(ii) OF THE ACT
SECTION 8(25) OF THE VAT ACT
SECTION 8(1)(a)(v) OF THE STT ACT**

**SUBJECT : WHEN THE TEMPORARY SETTING ASIDE OF VOLUNTARY
LIQUIDATION PROCEEDINGS WILL NOT JEOPARDISE ROLL-OVER
RELIEF**

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 whether the setting aside of a voluntary liquidation, by order of court, would be a withdrawal or invalidation of any steps to liquidate, wind-up or deregister the applicant, within the meaning of section 47(6)(c)(ii).

2. Relevant tax laws

In this ruling references to sections are to sections of the relevant Act applicable as at 18 March 2020. 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 section 47(6)(c)(ii) of the Act.

3. Parties to the proposed transaction

The applicant: A resident private company that is a wholly-owned subsidiary of the co-applicant

The co-applicant: A resident private company

4. Description of the proposed transaction

As part of a group restructuring, the entire business of the applicant, including all the shares in subsidiary companies (subco shares), were distributed to the co-applicant as a dividend *in specie* in anticipation of the applicant's liquidation (the distribution) early in 2017. The applicant and co-applicant applied the provisions of section 47 to the distribution.

After the voluntary liquidation process the applicant commenced with the registration of the special resolution passed by the co-applicant as sole member of the applicant, with the Companies and Intellectual Property Commission (CIPC), towards the end of 2019. Before the liquidator was appointed, the applicant became aware that some of the subco shares were not formally transferred to the co-applicant. The share registers of these subsidiaries have not been updated to reflect the change in ownership. The failure to transfer the subco shares and update the share registers of these subsidiaries was an oversight, which the applicants now seek to correct.

The notice of the voluntary liquidation of the applicant was published in the *Government Gazette*, but CIPC had not yet deregistered the applicant.

The applicant does not have any assets or liabilities and the parties merely seek a mechanism to take the necessary steps to transfer the subco shares to the co-applicant and to correct the failure to update the share registers, without adversely affecting the tax group relief provisions that applied to the distribution.

The co-applicant has prepared a court application, supported by an affidavit that sets out the material facts demonstrating why continuation of the winding-up is undesirable. If the court so orders, the voluntary liquidation will be set aside. Once the subco shares have been successfully transferred to the co-applicant, a new special resolution will be passed and registered with CIPC, authorising the voluntary liquidation of the applicant. This intention is confirmed by the fact that the South African operations of the group have been carried on by the co-applicant since the date of the distribution, in early 2017. No operations or business activities have been conducted by the applicant following the distribution to the co-applicant.

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 suspension or setting aside of the voluntary liquidation of the applicant, in the specific circumstances, will not constitute a withdrawal or invalidation of any steps to liquidate, wind up or deregister the applicant, as contemplated in section 47(6)(c)(ii), as it will facilitate the ultimate deregistration of the applicant. Thus, in so far as section 47 of the Act, section 8(25) of the VAT Act and section 8(1)(a)(v) of the STT Act applied to the distribution, section 47(6)(c)(ii) will not have any effect.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 18 March 2020.