



SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 015

DATE : 6 March 2008

The guidance contained in this ruling is affected by subsequent law changes and policy guidance on the subject provided in Interpretation Note 57: "Sale of an enterprise or part thereof as a going concern".

**ACT : VALUE-ADDED TAX ACT, NO. 89 OF 1991 ("the VAT Act")
TRANSFER DUTY ACT, NO. 40 OF 1949 ("the Transfer Duty Act")**

**SECTION : SECTION 8(25) OF THE VAT ACT
SECTION 9(1)(ℓ) OF THE TRANSFER DUTY ACT**

**SUBJECT : SUPPLY OF GOODS OR SERVICES: VENDORS ONE AND THE
SAME PERSON – SECTION 8(25) OF THE VAT ACT:
ACQUISITION OF FIXED PROPERTY – EXEMPTION FROM
TRANSFER DUTY – SECTION 9(1)(ℓ) OF THE TRANSFER DUTY
ACT**

1. Summary

The issues considered in this ruling are:

- Whether a holding company and its subsidiary companies are deemed to be one and the same person, in terms of section 8(25) of the VAT Act, in respect of the disposal of the business of the subsidiaries to the holding company where section 42 of the Income Tax Act, No. 58 of 1962 ("the Act") applies.
- Whether the acquisition of fixed property by a holding company from its subsidiary company, being an amalgamation transaction as contemplated in section 44 of the Act, is exempt from transfer duty, where the public officer of the holding company has made a sworn affidavit that such acquisition complies with section 44 of the Act.

2. Relevant tax laws

This ruling is a binding private ruling which was requested by the Applicant/Recipient in accordance with the requirements of section 41A of the VAT Act and issued by the Legal and Policy Division: Advance Tax Rulings in accordance with section 41B of the VAT Act read with section 76Q of the Act.

All legislative references are to sections of the VAT Act, the Transfer Duty Act or the Act applicable at 31 July 2007 and unless the context otherwise indicates, any word or expression in this ruling bears the meaning ascribed to it in the VAT Act, the Transfer Duty Act or the Act.

The relevant provisions of the various Acts are –

- section 8(25) of the VAT Act; and
- section 9(1)(f) of the Transfer Duty Act.

3. Parties to the transaction

Applicant/Recipient: A company incorporated in the Republic of South Africa and registered for value-added tax (“VAT”) acquiring the businesses and assets of its subsidiary companies

SubCo 1, 2, 3, 4: Various subsidiary companies of the Applicant

4. Description of the proposed transactions

The Applicant is in the process to be listed on the Johannesburg Stock Exchange.

The transactions as set out below will be concluded as part of the restructuring of the holding company and its subsidiaries for purposes to be listed:

- The business of SubCo 1 will be disposed of to the Applicant, in accordance with a “Sale of Business Agreement 1” which is to be concluded between SubCo 1 and the Applicant.
- The business of SubCo 2 will be disposed of to the Applicant, in accordance with a “Sale of Business Agreement 2” which is to be concluded between SubCo 2 and the Applicant.
- The assets (immovable properties) of SubCo 3 will be disposed of to the Applicant, in accordance with a “Sale of Immovable Property Agreement” which is to be concluded between SubCo 3 and the Applicant.

- The assets (not forming part of the “Sale of Business Agreement 1” between SubCo 1 and the Applicant) of SubCo 1 will be disposed of to SubCo 4, in accordance with a “Sale of Assets Agreement” which is to be concluded between SubCo 1 and SubCo 4.

The businesses of SubCo 1 and SubCo 2 will be disposed of to the Applicant in terms of section 42 of the Act as contemplated in the Sale of Business Agreement 1 and the Sale of Business Agreement 2 respectively.

The immovable property of SubCo 3 will be disposed of to the Applicant in terms of section 44 of the Act as contemplated in the Sale of Immovable Property Agreement.

The assets of SubCo 1 will be disposed of to SubCo 4 in terms of section 42 of the Act as contemplated in the Sale of Assets Agreement.

SubCo 1, SubCo 2, SubCo 4 and the Applicant will therefore enjoy the so-called roll-over relief under sections 42 and 44 of the Act, in respect of any income tax liability.

The transactions between the Applicant and SubCo 2 and the Applicant and SubCo 1, cannot be charged with VAT at the rate of zero percent, in terms of section 11(1)(e) of the VAT Act, as the supply of the various businesses will be to the tenant/lessee thereof, namely the Applicant. Consequently, the income earning activity, being the rental income, will no longer exist.

5. Specific conditions and assumptions

This binding private ruling is made subject to the following conditions and assumptions –

- each proposed transaction, in its entirety, is not part of or connected with any other transaction, operation or scheme;
- each transactions contemplated in the –
 - (a) Sale of Business Agreement 1;
 - (b) Sale of Business Agreement 2; and
 - (c) Sale of Assets Agreement,complies with section 42 of the Act;

- the Sale of Immovable Property Agreement complies with section 44 of the Act; and
- the public officer of the Applicant will make a sworn affidavit or solemn declaration that the acquisition of the property from SubCo 3 complies with section 44 of the Act, when furnishing such transfer duty documents to the South African Revenue Service as required in section 9(1)(f) of the Transfer Duty Act.

6. Specific ruling

This specific ruling made in connection with the proposed transactions is as follows:

Value-Added Tax

- The Applicant, SubCo 1, SubCo 2 and SubCo 4 are deemed to be one and the same person as envisaged in section 8(25) of the VAT Act in respect of the supplies contemplated in the –
 - (a) Sale of Business Agreement 1;
 - (b) Sale of Business Agreement 2; and
 - (c) Sale of Assets Agreement,
 being company formation transactions in terms of section 42 of the Act.

Transfer Duty

- The acquisition of the property, as contemplated in the Sale of Immovable Property Agreement by the Applicant from SubCo 3 is exempt from transfer duty in terms of section 9(1)(f) of the Transfer Duty Act being an amalgamation transaction in terms of section 44 of the Act.

7. Period for which this ruling letter is valid

This binding private ruling will remain valid until 31 December 2009.

Issued by:

Legal and Policy Division: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE