BINDING PRIVATE RULING: BPR 159

DATE: 16 January 2014

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)

SECTION : SECTIONS 1(1), DEFINITION OF "TRADING STOCK", 41(1), 42 AND 44(1)

SUBJECT : ASSET-FOR-SHARE AND AMALGAMATION TRANSACTIONS

1. Summary

This ruling deals with shares acquired in terms of an "asset-for-share transaction" as defined in section 42(1) of the Act and whether the merger of involved parties will be an "amalgamation transaction" as defined in section 44(1) of the Act.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 78(1) and published in accordance with section 87(2) of the Tax Administration Act No. 28 of 2011.

In this ruling references to sections are to sections of the Act applicable as at 22 May 2013 and 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 the provisions of –

- section 1(1), definition of "trading stock";
- section 41, definition of "asset" and "allowance asset";
- section 42(1), (5), and (8); and
- section 44(1), definition of "amalgamation transaction".

3. Parties to the proposed transaction

The Applicant:	A private company incorporated in and a resident of South Africa
The Co-Applicant:	A private company incorporated in and a resident of South Africa
NewCo:	A private company incorporated in and a resident of South Africa and a wholly owned subsidiary of the Co-Applicant

4. Description of the proposed transaction

The controlling interest in both the Applicant and the Co-Applicant is held by individuals and family trusts (the shareholders).

The Applicant and Co-Applicant do not form a "group of companies" as defined in section 1(1), read together with section 41(1).

The shareholders are in many cases a “connected person” as defined in section 1(1) and hold their shares in the Applicant and the Co-Applicant in exactly the same ratio.

The aforementioned shareholders wish to hold their investments in the Applicant and the Co-Applicant through a single company and propose to consolidate the businesses held under the two companies to enhance the group's cash flow management, credit rating, attractiveness to outside investors and future public listing potential.

In order to achieve this the Co-Applicant will incorporate a new wholly owned subsidiary (NewCo) and will dispose of its business to NewCo in return for equity shares in NewCo under an “asset-for-share transaction” as defined in section 42(1).

The tangible assets will be transferred to NewCo at their fair market value.

The sale of business agreement will ascribe the surplus of the fair value consideration, paid in excess of the net asset value of the tangible assets, to goodwill.

NewCo will recognise the aforementioned goodwill in its accounting records on acquisition of the business from the Co-Applicant.

The agreement between the Co-Applicant and NewCo will identify certain assets in relation to which NewCo will assume certain debts. The assumption of these debts by the Co-Applicant will serve as compensation for the selected and specified assets.

The Co-Applicant and NewCo will agree in writing that section 42 will not apply to the aforegoing debt assumption, as contemplated in section 42(8A).

The only assets that the Co-Applicant will hold after the aforementioned asset-for-share transaction will be the NewCo shares.

These newly acquired shares will be disposed of by the Co-Applicant to the Applicant in exchange for the issue of shares in the Applicant, this being the first step in the amalgamation transaction.

The Co-Applicant will distribute the newly acquired shares in the Applicant to its shareholders in anticipation of winding up its existence, as contemplated in section 44(1).

The directors of the Co-Applicant will take the necessary steps to liquidate the company.

5. Conditions and assumptions

This ruling is not subject to any additional conditions and assumptions.

6. Ruling

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

- Based on the specific facts of this application, the NewCo shares will be regarded as having been acquired and held by the Co-Applicant on capital account even though the equity shares in NewCo will be disposed of to the Applicant shortly after acquisition. The facts and circumstances of this matter, taking into account the proposed steps before and after the acquisition of the NewCo shares by the Co-Applicant, are very specific and, in the context of the corporate rules contained in Part III of Chapter II of the Act, indicate that the Co-Applicant and the group as a whole will not deal with the asset as trading stock.

- The Co-Applicant must take goodwill into consideration when calculating the ratio contemplated in section 42(5)*(b).* No ruling is issued on the value of the goodwill, or any asset for that matter.

- Section 42(6) will not find application to the proposed transaction.

- Section 42(8) will not find application to the proposed transaction to the extent that the Co-Applicant and NewCo agree in writing that section 42 will not apply to the assumption of the Co-Applicants debt, by NewCo, in return for certain assets of the Co-Applicant.

- The disposal of the shares in NewCo by the Co-Applicant to the Applicant will constitute an amalgamation or merger, as contemplated in paragraph (*a*)(i) of the definition of an “amalgamation transaction”’ in section 44(1).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 5 years from 22 May 2013

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