

BINDING PRIVATE RULING: BPR 287

DATE: 30 November 2017

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 42(1) – PARAGRAPH (a) OF THE DEFINITION OF “ASSET-FOR-SHARE TRANSACTION”
SUBJECT : DISPOSAL OF VACANT LAND IN EXCHANGE FOR SHARES

1. Summary

This ruling determines the tax consequences of the disposal of vacant land in exchange for shares.

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 28 of 2011.

In this ruling references to sections are to sections of the Act applicable as at 26 October 2017. 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 42(1) – paragraph (a) of the definition of “asset-for-share transaction”.

3. Parties to the proposed transaction

The applicant: A private property holding company incorporated in and a resident of South Africa

The co-applicant: A company incorporated in and a resident of South Africa

Company A: A company incorporated in and a resident of South Africa

4. Description of the proposed transaction

The applicant will dispose of undeveloped vacant land (the property) to the co-applicant in exchange for 250 shares in the co-applicant. Apart from the property to be disposed of in terms of the proposed transaction, the applicant also owns other undeveloped land. The market value of the property exceeds its base cost. The property will be developed as a convenience retail centre and the development will be managed by Company A. To this end, the applicant and Company A have agreed that the project will be undertaken vesting the property in a separate entity, the co-applicant.

Company A's role will be to –

- design a deal structure based on its knowledge and expertise;
- procure the rezoning of the property for business purposes;
- execute technical and impact studies;
- coordinate a professional team that will include architects, engineers, and quantity surveyors to design “a comprehensive building package”;
- market the intended convenience retail centre to potential lessors and secure lessors for it;
- prepare financial feasibility studies and compile a detailed financial plan;
- identify the potential development company that will purchase the property for further development into a convenience retail centre and to secure a purchase agreement in respect of the property and the comprehensive building package with that development company;
- oversee critical negotiations; and
- ensure that the co-applicant can meet the suspensive conditions of the transaction.

It is the intention that the co-applicant will sell the undeveloped property with a comprehensive building package to a development company after it had been rezoned for such development.

In exchange for its expertise and services to be rendered, the co-applicant will also issue shares to Company A as follows –

- 125 shares at the close of business on the day that the property is transferred from the applicant to the co-applicant; and
- 125 shares on the day the property is transferred from the co-applicant to a development company that will undertake the comprehensive development of the property.

Following the sale of the property to a development company the intention is that –

- the applicant and Company A will be equal shareholders in the co-applicant after the transfer of the property to that development company; and
- the co-applicant will invest in the development company to the extent that it will obtain an estimated 20% of the shares in that development company.

5. Conditions and assumptions

This binding private ruling is subject to the additional condition and assumption that the property is a capital asset in the hands of the applicant and there has been no change of intention on the part of the applicant that will result in a disposal under any provision of the Eighth Schedule.

6. Ruling

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

The disposal of the property by the applicant to the co-applicant in exchange for the issue of equity shares in the co-applicant in terms of the agreement between the parties will constitute an “asset-for-share transaction” as defined in paragraph (a) of the definition of that term in section 42(1) of the Act. Consequently:

- a) The applicant will be deemed to have disposed of the property for an amount equal to its base cost on the date of disposal.
- b) The applicant will be deemed to have acquired the equity shares in the co-applicant on the date the applicant acquired the property and for a cost equal to the base cost of the property.
- c) The applicant and co-applicant must, for purposes of determining any taxable income derived by the co-applicant from a trade carried on by the co-applicant, be deemed to be one and the same person with respect to the date of acquisition and base cost of the property for the applicant, or the market value on valuation date for the applicant, which amount must be treated as the amount to be taken into account by the co-applicant for purposes of sections 11(a) or 22(1) or (2) as the case may require.
- d) The amount received by or accrued to the co-applicant for the issue of the shares to the applicant will be deemed to be equal to the base cost of the property at the time of disposal by the applicant.
- e) If the co-applicant disposes of the property within a period of 18 months after acquiring it, so much of the amount received or accrued in respect of the disposal of that trading stock as does not exceed the market value of that trading stock as at the beginning of that period of 18 months and so much of the amount taken into account in respect of that trading stock in terms of sections 11(a) or 22(1) or (2), as the case may require, as is equal to the amount so taken into account in terms of section 42(2)(b) must be deemed to be attributable to a separate trade carried on by the co-applicant, the taxable income from which trade may not be set-off against any assessed loss or balance of assessed loss of the co-applicant.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 26 October 2017.