

BINDING PRIVATE RULING: BPR 319

DATE: 20 March 2019

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

SECTION : **SECTIONS 1(1) – DEFINITION OF “DIVIDEND” AND 7B(2)(b), 10(1)(k)(i), 11(a), 22(8)(b)(ii), 23(g), 42, 45(6)(e), 47, 64F(1)(a), 64FA(1)(b) AND 64G(2)(b)**
SECTION 8(1)(a)(i) OF THE STT ACT
SECTION 8(25) OF THE VAT ACT

SUBJECT : **TAX IMPLICATIONS OF GROUP RESTRUCTURING TRANSACTIONS**

Preamble

This binding private ruling is published by consent of the applicant to which it has been issued. It is binding as between SARS and the applicant only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines the tax consequences of a group restructuring.

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 and paragraphs are to sections of the Act, the STT Act and the VAT Act and paragraphs of the Eighth Schedule to the Act applicable as at 27 March 2018. 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 –

- the Act –
 - section 1(1) – definition of “dividend”;
 - section 7B(2)(b);
 - section 10(1)(k)(i);
 - section 11(a);
 - section 22(8)(b)(ii);
 - section 23(g);
 - section 42;

- section 45(6)(e);
 - section 47;
 - section 64F(1)(a);
 - section 64FA; and
 - section 64G(2)(b).
- the STT Act –
 - section 8(1)(a)(i).
 - the VAT Act –
 - section 8(25).

3. Parties to the proposed transaction

The applicant: A resident company

Companies A, B, C and D: Resident companies forming part of the same group of companies as the applicant

4. Description of the proposed transaction

The applicant conducts a number of related businesses which are managed in different geographic locations. Each of these businesses has its own on-site management and own plant and equipment. Some of them are accounted for as divisions of the applicant while others are housed in company B, C, and D. The applicant directly holds shares in these companies. The applicant holds all the shares in company A.

The applicant proposes to reorganise the group, which will involve –

- the transfer of businesses from the applicant to company A; and
- the transfer of businesses from company B, C and D to company A subsequent to which company B, C and D will in due course be liquidated and deregistered.

The proposed transaction will be effected by way of the proposed steps set out below:

Step 1

The applicant will dispose of all its shares in company B, C and D to company A in exchange for additional equity shares in company A by way of an asset-for-share transaction as defined in paragraph (a) of the definition of that term in section 42(1) of the Act.

Step 2

Company B, C and D will each dispose of its business undertaking as a going concern to company A for a nominal cash consideration and for the assumption by company A of the liabilities of each company, including certain contingent liabilities. The parties to each transaction will agree that section 45 of the Act apply to that transaction.

The contingent liabilities will in each case consist of provisions for leave pay and future staff incentive bonuses.

Step 3

Companies B, C and D will distribute the cash received for the disposal of their businesses to company A as a dividend to their shareholders. Steps will be taken to commence the deregistration or liquidation of those companies.

Step 4

The applicant will dispose of its businesses to company A in a composite transaction on the same day. The above-mentioned transfers of the businesses as going concerns will occur on the basis that all the assets are transferred in exchange for the assumption of all the liabilities and contingent liabilities of each business and the issue of additional equity shares in company A by way of an "asset-for-share transaction", as defined in paragraph (a) of the definition of that term in section 42(1) of the Act. The contingent liabilities will include provisions for leave pay and provisions for future staff incentive bonuses.

5. Conditions and assumptions

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

- a) In respect of proposed transaction steps 1 and 4, the market value of the assets transferred under each step will exceed or equal the base cost of the assets so transferred.
- b) The debt that will be assumed by company A under step 4 is debt that is attributable to and arose in the normal course of the business undertakings of the businesses of the applicant that are transferred to company A.

6. Ruling

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

In respect of step 1

- a) Each disposal by the applicant of its shares in company B, C and D to company A in return for the issue of additional company A equity shares 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.
- b) The transfers of the shares in company B, C and D to company A will be exempt from securities transfer tax under section 8(1)(a)(i) of the STT Act.
- c) For purposes of determining any capital gain or loss on disposal of the acquired equity shares, the applicant and company A will be deemed to be one and the same person with respect to the date of acquisition of the shares by company A and the amount of any allowable base cost expenditure under paragraph 20 of the Eighth Schedule to the Act (and any paragraph 29(4) valuation of the shares).

In respect of step 2

- d) Section 45(6)(e) will apply to the disposals of the businesses of company B, C and D (the transferors) to company A for cash as each disposal will constitute a “liquidation distribution” as defined in paragraph (a) of the definition of that term in section 47(1) of the Act rather than an “intra-group transaction” as defined in paragraph (a) of that definition in section 45(1).
- e) The difference between the market value of the assets transferred by each transferor and the consideration in respect of the disposals will in each case constitute a “dividend”, as defined in section 1(1) of the Act, paid by each transferor to company A.
- f) The dividend will in each case be exempt from dividends tax under section 64F(1)(a) read with sections 64G(2)(b) and 64FA(1)(b) of the Act.
- g) The date of each dividend will be the same date as that of the relevant liquidation distribution transaction.
- h) The dividends so accruing to company A will be exempt from normal tax under section 10(1)(k)(i) of the Act.
- i) Company A will be entitled to a deduction of the contingent liabilities of each transferor assumed under the transactions that are in respect of provisions for leave pay and future staff incentive bonuses as and when they are incurred by it under section 11(a) read with sections 7B and 23(g) of the Act.
- j) For purposes of determining the taxable income derived from trade or any capital gain or loss on disposal of an acquired asset, each transferor and company A are deemed to be one and the same person with respect to the following –
- where a transferor disposes of a capital asset and company A acquires it as such, the date of acquisition of the asset by company A and the amount of any allowable base cost expenditure under paragraph 20 of the Eighth Schedule to the Act (and any paragraph 29(4) valuation of the asset);
 - where a transferor disposes of an asset which constitutes trading stock and it is acquired by company A as such, the date of acquisition by company A and the amount and date of incurrence by company A of the amount taken into account for purposes of section 11(a) or section 22(1) or (2) of the Act; and
 - each transferor and company A are deemed, in respect of an allowance asset disposed of, to be one and the same person for purposes of determining the amount of any allowance or deduction in respect of that asset to which company A may be entitled, or the amount of any allowance or deduction in respect of that asset to be recovered, recouped or included in its income.

In respect of step 4

- k) The disposals by the applicant of the assets of the various businesses as going concerns to company A in return for the issue of additional company A equity shares and the assumption of liabilities that are attributable to and arose in the normal course of the businesses will each constitute an “asset-for-share transaction”, as defined in paragraph (a) of the definition of that term in section 42(1) of the Act.
- l) Section 42(8)(b) of the Act will apply to the disposals of the businesses by the applicant to company A in respect of the liabilities of the applicant assumed by company A that were attributable to and incurred in the normal course of the undertaking of the businesses transferred.
- m) Company A will be entitled to a deduction of the contingent liabilities assumed in respect of provisions for leave pay and future bonuses as and when they are incurred by it under section 11(a) read with sections 7B and 23(g) of the Act.
- n) Section 22(8)(b)(ii) of the Act will not apply in respect of the disposal of trading stock by the applicant to company A at book value as part of the sale of a going concern.
- o) For purposes of determining the taxable income derived from trade or any capital gain or loss on disposal of the acquired asset, the applicant and company A are deemed to be one and the same person with respect to the following –
- where the applicant disposes of a capital asset and company A acquires it as such, the date of acquisition of the asset by company A and the amount of any allowable base cost expenditure under paragraph 20 of the Eighth Schedule to the Act (and any paragraph 29(4) valuation of the asset); and
 - where the applicant disposes of an asset which constitutes trading stock and it is acquired by company A as such, the date of acquisition by company A and the amount and date of incurral by company A of the amount taken into account for purposes of section 11(a) or section 22(1) or (2) of the Act; and
 - the applicant and company A are deemed, in respect of an allowance asset disposed of, to be one and the same person for purposes of determining the amount of any allowance or deduction in respect of that asset to which company A may be entitled, or the amount of any allowance or deduction in respect of that asset to be recovered, recouped or included in its income.
- p) Section 8(25) of the VAT Act will apply to the disposal in step 4, subject to the transaction complying with all the provisions of section 42 of the Act.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of one year from 27 March 2018.

**Legal Counsel: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**