

**BINDING PRIVATE RULING: BPR 320**

DATE: 6 June 2019

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)  
VALUE-ADDED TAX ACT 89 OF 1991 (the VAT Act)  
TRANSFER DUTY ACT 40 OF 1949 (the Transfer Duty Act)  
SECURITIES TRANSFER TAX ACT 25 OF 2007 (STT Act)**

**SECTION : SECTIONS 1(1) – DEFINITION OF “COMPANY”; 11(a) READ WITH  
23(g); 41(1) AND (4); 44 AND 56 OF THE ACT  
SECTION 8(25) OF THE VAT ACT  
SECTION 9(1)(l) OF THE TRANSFER DUTY ACT  
SECTION 8(1)(a)(ii) AND 8(1)(r) OF THE STT ACT**

**SUBJECT : CONVERSION OF ASSOCIATION TO PRIVATE COMPANY**

***Preamble***

This binding private ruling is published by consent of the applicant(s) to which it has been issued. It is binding as 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 the income tax, value-added tax (VAT), transfer duty and securities transfer tax (STT) consequences of the conversion of an unincorporated *universitas* to a newly formed private company and certain related matters.

**2. Relevant tax laws**

In this ruling references to sections are to sections of the relevant Act applicable as at 19 January 2019. 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 “company”;
  - section 11(a) read with section 23(g);
  - section 41(1) and (4);
  - section 44; and
  - section 56.
- the VAT Act –
  - section 8(25).

- the Transfer Duty Act –
  - section 9(1)(f).
- the STT Act –
  - section 8(1)(a)(ii); and
  - section 8(1)(r).

### 3. Parties to the proposed transaction

The applicant:	An unincorporated <i>universitas</i> that is a resident
Company A:	A new company that is a resident and a wholly-owned subsidiary of the applicant
Clubs:	32 clubs that are members of the applicant immediately before the proposed transaction takes place (Current Clubs) as well as such Clubs that hold A or B shares in Company A from time to time (Promoted/Relegated Clubs)

### 4. Description of the proposed transaction

The applicant intends to convert to a company, using the provisions of section 44 of the Act. To this end the following transaction steps will be implemented:

- The applicant will incorporate Company A as a subsidiary, subscribing for one (1) share (the Incorporation Share) at a nominal amount.
- The applicant will transfer its business assets (including the contracts) as a going concern to Company A, in exchange for an issue of thirty-two (32) shares by Company A (Consideration Shares) and the assumption of the applicant's liabilities by Company A.
- These liabilities comprise trade creditors, general operational liabilities and an amount due to a counterparty in consequence of a cumulative surplus on previous sponsored events which is payable on request or for the exclusive use in future sponsored events. The general operational liabilities include accruals, payments due to SARS, commissions and provisions relating to leave pay and bonuses.
- To the extent that capital assets, allowance assets and trading stock are transferred by the applicant to Company A, they will not change their usage and will be acquired by the latter as capital assets, allowance assets and trading stock.
- Company A will buy back the Incorporation Share for a nominal amount.
- The 32 Consideration Shares will be distributed by the applicant to the 32 Current Clubs.
- The applicant's existence will be terminated.

The applicant, which consists of two leagues, is organised in ascending tiers. The 16 club higher league is above the 16 club lower league. The right to compete in these leagues stems from sporting performance. A team in the lower league that wants to compete in the higher league has to be promoted into the higher league by winning the lower league in the previous season. Every season, the top two

teams of the lower league is promoted to the higher league, whilst the bottom two teams of the higher league is relegated to the lower league.

The applicant qualifies as a *universitas* in that it is a separate legal entity that has perpetual succession, existence independent from that of its members, the capacity to own property and the right to sue and be sued in its own name.

The applicant (as *universitas*) constitutes a “company”, as defined in the Act by virtue of paragraph (d) of the definition of that term which includes any “association ... formed in the Republic to serve a specified purpose, beneficial to the public or a section of the public;” and currently pays income tax at the corporate rate. The Applicant is also a registered VAT vendor.

The Current Clubs have voting rights and rights to participate in a distribution on liquidation as well as certain contractual rights. Voting rights are weighted in favour of higher league clubs.

Only clubs may be members of the applicant. The applicant is managed and controlled by an executive committee, comprised of members appointed by the clubs. Although these committee members are likely to be involved in the management and control of their respective clubs, they do not hold any interest in the applicant, nor will they hold shares in Company A after the restructuring. Their voting rights do not reach the 20% threshold for a connected person relationship to come about.

Current Clubs have the right to participate equally in a distribution on the liquidation of the applicant.

The applicant pays monthly grants and preparation fees to the member clubs. These amounts are paid to the clubs in consideration for and to facilitate their participation in the leagues, which in turn ensures income for the applicant in the form of sponsorships for the leagues, the sale of broadcasting rights and gate takings at the league matches. The services that the clubs render in exchange for the monthly grants and fees comprise the following –

- participation in league matches;
- provision of suitable venues, complying with the regulations relating to lighting, pitch dimensions, pitch conditions and designated areas for match officials, medical staff and substitutes;
- provision of equipment and services at match venues, including suitable substitution boards, availability of medical personnel and equipment, a match ball of suitable quality, access to dressing rooms and adequate security;
- provision of junior teams.

The applicant levies VAT on the service fees paid to member clubs.

The constitution of the applicant confers no membership rights that are capable of being traded by the member clubs. The clubs do not have the right to sell or otherwise deal in their membership rights in the applicant.

There are circumstances in which the member clubs may lose their membership rights. The most frequent manner in which this occurs is through relegation. At the

end of each season, the bottom-placed teams of the lower league are relegated, and lose their membership of the applicant. No compensation is paid to the two relegated teams for surrendering their membership rights in the applicant.

There are also other less frequent instances in which member clubs may surrender their membership rights. For instance, the applicant's executive committee may cancel the membership of a club if it is found that the club has misrepresented material information, either on its initial application or any subsequent application for renewal of membership. As with relegation, the (former) member clubs receive no financial benefit for the surrender of their membership rights. Lastly, clubs may choose to resign from the higher league.

It is intended that Company A will continue the business of the applicant seamlessly subsequent to the implementation of the proposed conversion. To this end, the draft Memorandum of Incorporation contains the following limitations:

- Company A has restrictions on the transferability of its shares, which echoes the applicant's constitution and provides that no shares of Company A will be transferred without the approval of a resolution of the Board, who will refuse such transfer unless it is in the context of promotion and relegation. There are also restrictions on the shareholders of Company A that provide that only persons registered as member clubs of the higher or lower leagues will be entitled to hold A and B shares, as appropriate.
- The price of A and B shares are fixed at R1 each for purposes of transfer.
- Company A is prohibited from offering any of its securities to the public.
- Company A is authorised to issue 16 A and 16 B shares, the holders of which participate proportionally with other A and B shareholders in any distribution made by Company A and in the net assets upon its liquidation.
- Company A may make distributions from time to time, provided that solvency and liquidity requirements are met.

## **5. Conditions and assumptions**

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

- a) Company A will be incorporated in terms of the Companies Act and will be a "resident", as defined in section 1(1) of the Act.
- b) The debt (including contingent liabilities) that the applicant will transfer to Company A is attributable to and arose in the ordinary course of the applicant's business undertaking and was not incurred by the applicant for the purpose of procuring, enabling, facilitating or funding the acquisition by Company A of any asset in terms of the proposed transaction.
- c) Company A will be a "vendor" as defined in section 1(1) of the VAT Act at the time of the proposed transfer of the applicant's assets to it as part of the proposed amalgamation transaction.
- d) In a general meeting the Current Clubs of the applicant will pass a resolution authorising the winding up and dissolution of the applicant. A

copy of such a resolution will be submitted to the Commissioner, as will all tax returns and other information required to be submitted in terms of any tax administered by the Commissioner, or arrangements will be made with the Commissioner to do so within 36 months of the amalgamation transaction or such longer period as the Commissioner may approve.

- e) The public officer of Company A will make a sworn affidavit or solemn declaration that the acquisition of immovable property from the applicant complies with the provisions of section 44 when furnishing transfer duty documents to the Commissioner.
- f) The public officer of the applicant and the Current Clubs (and such clubs that may hold A or B shares in Company A) will make the sworn affidavits or solemn declarations that the acquisition of securities in the Co-applicant complies with the provisions of sections 8(1)(a)(ii) and 8(1)(r) of the STT Act.
- g) The market value of the Consideration Shares that the Current Clubs will receive will be equal to the market value of the membership rights in the applicant immediately before the proposed transaction.

## 6. Ruling

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

- a) The proposed transaction will qualify as an “amalgamation transaction” as defined in paragraph (a) of the definition of that term in section 44(1) of the Act.
- b) The applicant may disregard, for purposes of determining its taxable income or assessed losses, the disposal of the Consideration Shares in Company A to the Current Clubs in terms of section 44(8) of the Act.
- c) The applicant will be regarded as having taken the necessary steps to terminate its corporate existence as required by the definition of an “amalgamation transaction” as defined in paragraph (a) of the definition in section 44(1), read with sections 44(13) and 41(4) of the Act, provided that –
  - The applicant passes a special resolution authorising its dissolution as envisaged in its founding document;
  - The applicant submits copies of the aforementioned resolution to the Commissioner;
  - All the returns or information required to be submitted or furnished to the Commissioner in terms of any Act administered by the Commissioner by the end of the relevant period within which the aforementioned steps must be taken are submitted or furnished or arrangements are made to the satisfaction of the Commissioner for the submission of any outstanding returns or furnishing of information; and
  - The aforementioned steps are taken within 36 months after the date of the proposed transaction, or such further period as the Commissioner may allow.

- d) No donations tax is payable in consequence of the transfer by the applicant of all its assets to Company A in terms of the amalgamation transaction.
- e) No VAT will be imposed on the disposal of the assets to Company A by virtue of section 8(25) of the VAT Act.
- f) No transfer duty will be payable by Company A on the acquisition of immovable property from the applicant by virtue of section 9(1)(j)(iB) of the Transfer Duty Act.
- g) No STT will be imposed on the transfer of the Consideration Shares from the applicant to the Current Clubs by virtue of section 8(1)(a)(ii) of the STT Act.
- h) It is not appropriate to place a value on the A and the B shares. Consequently, Company A will not be subject to STT when A or B shares are transferred between promoted or relegated clubs under section 8(1)(r).
- i) Provided that the amounts of the monthly fees and preparation fees paid by Company A to the clubs that hold A or B shares are not excessive with reference to the services to be rendered in exchange for such fees, the expenditure will be deductible under section 11(a), read with section 23(g), of the Act.
- j) Monthly fees paid by Company A to the clubs that hold A or B shares will constitute "gross income", as defined in section 1(1) of the Act, for those clubs and such gross income will accrue in their favour when the relevant resolution to pay is made.

**7. Period for which this ruling is valid**

This binding private ruling is valid for a period of three years from 19 January 2019.

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SOUTH AFRICAN REVENUE SERVICE**