

**BINDING PRIVATE RULING: BPR 329**

DATE: 27 September 2019

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 1(1) – DEFINITION OF “GROSS INCOME” AND “TRADING STOCK”, 41(1) – DEFINITION OF “ASSET”, “CAPITAL ASSET” AND “TRADING STOCK” AND 45**  
**SUBJECT : TAX CONSEQUENCES OF INTRA-GROUP RESTRUCTURING AND SUBSEQUENT SALE OF ASSETS TO THIRD PARTY**

***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 tax consequences of an internal restructuring involving an intra-group transaction followed by a sale of assets to a third party.

**2. Relevant tax laws**

In this ruling references to sections are to sections of the Act applicable as at 13 June 2019. 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 1(1) – definitions of “gross income” and “trading stock”;
- section 41(1) – definition of “asset”, “capital asset” and “trading stock”; and
- section 45(1) – paragraph (a) of the definition of “intra-group transaction”.

**3. Parties to the proposed transaction**

The applicant: A listed resident company

The co-applicants: Private resident companies, wholly owned by the applicant

The third party: A black-owned and controlled resident company

**4. Description of the proposed transaction**

The applicant intends to implement a Broad-Based Black Economic Empowerment transaction in terms of which immovable properties owned by the applicant and the co-applicants will be transferred to a newly established black-owned and controlled property entity (the third party).

The shareholders of the third party will be limited to the applicant's staff, communities and the broader black public as participants. The third party is not intended to form part of the applicant's group.

The co-applicants are not tax exempt and are all effectively managed in South Africa.

The proposed transaction is an asset-based transaction, in terms of Statement 102, issued under section 9 of the Broad-Based Black Economic Empowerment Act 53 of 2003. A B-BBEE verification agency has concurred with a preliminary legal view obtained by the applicant that the applicant must itself be the seller of the properties to qualify under Statement 102. Accordingly, the applicant considers it necessary for the group to undertake an internal restructuring, in the terms set out below, for the applicant to acquire the properties from the co-applicants and to be the entity that transfers ownership of all of the properties to the third party.

The proposed transaction will be achieved through the following transaction steps:

- Step 1: The co-applicants will sell the properties to the applicant, leaving the purchase price outstanding on loan account.
- Step 2: The applicant will enter into lease agreements with two of the co-applicants (who are the main operating companies for two distinct business segments within the group) as respective lessees of the properties. These two co-applicants will then sub-let the properties to the relevant group company that occupies each respective property. In this way, the third party will acquire existing income streams in addition to ownership of the capital assets.
- Step 3: The properties will be transferred from the applicant to the third party pursuant to a sale of property and rental enterprise agreement for cash consideration. This sale will result in a capital gain for the applicant, part of which will be ring-fenced in terms of section 45(5).

Following the proposed transaction, the applicant will settle the loan accounts with the property subsidiaries within 30 days of receiving consideration from the third party and the third party will lease the properties to the main operating lessees (see step 2), having taken over the existing lease obligations from the applicant, as part of the rental enterprise.

## **5. Conditions and assumptions**

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

## **6. Ruling**

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

- a) Pursuant to paragraph (a)(i)(aa) of the definition of an intra-group transaction in section 45(1), the applicant will acquire the properties as capital assets from the co-applicants, which held the properties as capital assets; and

- b) The proceeds on the disposal of the properties by the applicant to the third party will not constitute gross income as defined in section 1(1).

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

This binding private ruling is valid in respect of the year of assessment ending during which the proposed transaction takes place.

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SOUTH AFRICAN REVENUE SERVICE**