

BINDING PRIVATE RULING: BPR 336

DATE: 6 December 2019

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECURITIES TRANSFER TAX ACT 25 OF 2007 (STT Act)**

**SECTION : SECTIONS 1(1), - PARAGRAPH (k) OF THE DEFINITION OF “GROSS
INCOME”, 10(1)(k)(i), 47(1), 47(5), 64G(2)(b) AND
PARAGRAPHS 11(2)(b)(i), 12A(6)(e), 43A, and 77 OF THE EIGHTH
SCHEDULE TO THE ACT
SECTION 8(1)(a)(v) OF THE STT ACT**

SUBJECT : LIQUIDATION DISTRIBUTION

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 and the co-applicant only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines the income tax and securities transfer tax consequences of a liquidation distribution.

2. Relevant tax laws

In this ruling, unless stated otherwise, references to sections are to sections of the Act and references to paragraphs are to paragraphs of the Eighth Schedule to the Act applicable as at 22 July 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) – paragraph (k) of the definition of “gross income”;
 - section 10(1)(k)(i);
 - section 47(1) – paragraph (a) of the definition of “liquidation distribution”;
 - section 47(5);
 - section 64G(2)(b);
 - paragraph 11(2)(b)(i);
 - paragraph 12A(6)(e);
 - paragraph 43A; and

➤ paragraph 77.

- the STT Act –
 - section 8(1)(a)(v).

3. **Parties to the proposed transaction**

The applicant: A listed resident company

The co-applicant: A resident company that is a wholly-owned subsidiary of the applicant

4. **Description of the proposed transaction**

The co-applicant will make a liquidation distribution to the applicant by way of the following steps:

- The co-applicant will pass a resolution to distribute its assets, all the shares it holds in the applicant, as a dividend in specie to the applicant, in anticipation of the deregistration of the co-applicant.
- The distribution will be made as a liquidation distribution as contemplated in section 47.
- A loan the applicant granted to the co-applicant to facilitate the purchase of shares in the applicant by the co-applicant will be waived. The applicant will pass a resolution to waive the loan in anticipation of the deregistration of the co-applicant.
- The shares in the applicant distributed to the applicant will be cancelled and the co-applicant will be deregistered.

5. **Conditions and assumptions**

This binding private ruling is subject to the additional condition and assumption that the co-applicant must within a period of three years, or such longer period as the Commissioner may allow, take the steps contemplated in section 41(4) of the Act to liquidate, wind up or deregister and it may not at any stage withdraw any step taken to liquidate, wind up or deregister that company or do anything to invalidate any step already taken, with the result that the company will not be liquidated, wound up or deregistered.

6. **Ruling**

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

- a) The distribution of shares by the co-applicant to the applicant will constitute a “liquidation distribution” as defined in paragraph (a) of the definition in section 47(1).
- b) The co-applicant will be deemed to have disposed of the shares at their base cost and the applicant will be deemed to have acquired them at the same base cost and no capital gains tax consequences will result for the applicant and the co-applicant from the transfer of the equity shares.

- c) Section 47(5) will apply to the proposed transaction. The applicant must disregard the disposal or any return of capital for purposes of determining its taxable income, assessed loss, aggregate capital gain or aggregate capital loss.
- d) The liquidation distribution will constitute a dividend and must be included in the gross income of the applicant.
- e) The dividend will be exempt under the provisions of section 10(1)(k)(i).
- f) Section 64G(2)(b) will apply to the dividend. The co-applicant must not withhold any dividends tax.
- g) Paragraphs 77 and 43A will not apply to the proposed transaction.
- h) Paragraph 11(2)(b)(i) will apply. The cancellation of the shares received by the applicant will not constitute a disposal.
- i) Section 8(1)(a)(v) of the STT Act will apply. No securities transfer tax will arise on the transfer of shares from the co-applicant to the applicant.
- j) Paragraph 12A(6)(e) will apply to the loan which will be waived by the applicant.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from the date of the ruling.

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