

BINDING PRIVATE RULING: BPR 337

DATE: 9 January 2020

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 44
SUBJECT : AMALGAMATION TRANSACTIONS INVOLVING THE ASSUMPTION OF LIABILITIES ONLY

Preamble

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

1. Summary

This ruling determines the income tax effect of an amalgamation transaction for consideration involving the assumption of liabilities only.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 16 July 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 44.

3. Parties to the proposed transaction

The applicant: A resident company

Co-applicant 1: A resident company

Co-applicant 2: A resident company

Co-applicant 3: A resident company

4. Description of the proposed transaction

The applicant and the co-applicants are resident companies and they are wholly-owned by a non-resident company.

All the co-applicants carry on active trades.

It is proposed that the co-applicants be restructured so that the assets and liabilities of the applicant and co-applicants 1 and 2 (the "sellers") are sold to and acquired by co-applicant 3.

The proposed transaction steps are as follows:

- Each of the sellers will dispose of all its assets to co-applicant 3 and in consideration co-applicant 3 will assume all of each Seller's liabilities (including contingent liabilities). The transactions will take the form of merger transactions and written sale of business agreements will be concluded.
- The sellers will take the necessary steps contemplated in section 44(13) read with section 41(4) to commence their liquidation within a period of 36 months of the sales transactions or within such further time as the Commissioner may permit.

No shares will be issued by co-applicant 3 in consideration for the assets it will acquire.

5. Conditions and assumptions

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

- a) The debt that each seller will transfer to co-applicant 3 as part of the proposed transactions, which was incurred within a period of 18 months before the disposal, is attributable to and arose in the ordinary course of each seller's business undertaking.
- b) All the debt that each seller will transfer to co-applicant 3 as part of the proposed transactions was not incurred by the seller concerned for the purpose of procuring, enabling, facilitating or funding the acquisition by co-applicant 3 of any asset in terms of the relevant proposed transaction.
- c) Each seller will within a period of 36 months after the date of the relevant transaction, or such further period as the Commissioner may allow, take the steps contemplated in section 41(4) to each liquidate, wind up or deregister.
- d) Neither seller will at any stage withdraw any step taken to liquidate, wind up or deregister or do anything to invalidate any step so taken with the result that it will not be liquidated, wound up or deregistered.

6. Ruling

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

- a) Each of the proposed transactions where the sellers dispose of all their assets (other than assets they may elect to use to settle any debts incurred in the ordinary course of their businesses and other than assets required to satisfy any reasonably anticipated liabilities to any sphere of government of any country and costs of administration relating to their liquidation) to co-applicant 3 constitutes an "amalgamation transaction" as defined in paragraph (a) of that definition in section 44(1).
- b) The sellers and co-applicant 3 will be entitled to the relief contemplated in section 44(2) and (3).
- c) Section 44(14) does not apply to the proposed transaction.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 16 July 2019.

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