

BINDING PRIVATE RULING: BPR 391

DATE: 15 June 2023

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : PARAGRAPH 1 – DEFINITION OF “ASSET”, “DISPOSAL” AND “VALUE SHIFTING ARRANGEMENT”, AND PARAGRAPH 11 OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : TAX CONSEQUENCES OF THE TERMINATION OF AN EN COMMANDITE PARTNERSHIP

Preamble

This binding private ruling is published with the consent of the Applicant(s) to which it has been issued. It is binding between SARS, 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 for the partners in an *en commandite* partnership (the Partnership) following the termination of the Partnership and associated distribution of partnership assets in accordance with their interests in the Partnership.

2. Relevant tax laws

In this ruling, references to paragraphs are to paragraphs of the Eighth Schedule to the Act applicable as at 28 February 2023. 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 –

- paragraph 1 – definitions of “asset”, “disposal” and “value shifting arrangement”; and
- paragraph 11.

3. Parties to the proposed transaction

The Applicant: A resident private company that is the limited partner in the Partnership

GP: A resident private company that is the general partner in the Partnership

Investco: A resident private company

4. Description of the proposed transaction

The purpose of the Partnership is to acquire and hold shares (Investco Shares) in the share capital of Investco. The Investco Shares currently constitute 27.01% of the issued ordinary share capital of Investco. The Partnership is not permitted to make any other investments or engage, directly or indirectly, in any other business or undertaking of any nature whatsoever (unless otherwise agreed between the partners in writing).

The Applicant and GP hold the investment in the Investco Shares via the Partnership as capital assets.

The interests of the partners in the Partnership are as follows:

- GP holds a 15% interest in the Partnership, that is a 15% undivided share in the Investco Shares; and
- The Applicant holds an 85% interest in the Partnership, that is an 85% undivided share in the Investco Shares.

The partnership agreement provides that all amounts received by the Partnership from time to time net of expenses and provisions for anticipated expenses are apportioned among the partners in the above ratio.

The Partnership will continue for an indefinite period unless it is dissolved as a consequence of the occurrence of one of the events described in the partnership agreement. None of these events have occurred nor are any expected to occur.

The Applicant wishes to dissolve the Partnership in order that each partner can obtain a direct investment in Investco rather than holding its investment through the Partnership.

The Applicant will seek to dissolve the partnership agreement in one of the following ways:

- a) By mutual agreement with GP; or
- b) Failing such mutual agreement, either:
 - i) by notice to GP dissolving the Partnership; or
 - ii) by an order of the High Court of South Africa dissolving the Partnership.

There will not be any change to each partner's bundle of rights in the Investco Shares pre- and post-dissolution of the Partnership as a result of the termination of the Partnership.

After the dissolution of the Partnership and the division of the Investco Shares between the partners:

- The Applicant will hold 22.96% of Investco directly; and
- GP will hold 4.05% of Investco directly.

No payments will be made by the Applicant to GP nor will any payments be made by GP to the Applicant in connection with the dissolution of the Partnership or the division of the Investco Shares between the partners, other than professional or legal fees associated with the termination of the Partnership.

5. Conditions and assumptions

This binding private ruling is subject to the additional condition and assumption that in terminating the Partnership the Investco Shares are distributed to the partners strictly in accordance with their interests in the Partnership.

6. Ruling

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

- a) The dissolution of the Partnership pursuant to the termination of the partnership agreement, which will result in the Applicant taking ownership of 85% of the Investco Shares, will not be treated as a “disposal” as defined in paragraph 1 of the Eighth Schedule.
- b) The proposed dissolution of the Partnership will not constitute a “value shifting arrangement”, as defined.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 28 February 2023.