

**BINDING PRIVATE RULING: BPR 393**

DATE: 15 June 2023

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 1(1) – DEFINITION OF “TRADING STOCK”, 41(1) – DEFINITION OF “CAPITAL ASSET”, 42(1) – DEFINITION OF “ASSET-FOR-SHARE TRANSACTION”, 42(2), (7), and (8) AND PARAGRAPH 1 OF THE EIGHTH SCHEDULE TO THE ACT – DEFINITION OF “ASSET” AND “CAPITAL ASSET”**  
**SUBJECT : INCOME TAX CONSEQUENCES RESULTING FROM CONSECUTIVE ASSET-FOR-SHARE TRANSACTIONS**

***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 income tax consequences resulting from two consecutive asset-for-share transactions in terms of which two separate business operations of a resident company will be disposed of as part of a restructuring within a group of companies.

**2. Relevant tax laws**

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 10 March 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 –

- section 1(1) – definition of “trading stock”;
- section 41(1) – definition of “capital asset”;
- section 42(1) – paragraph (a) of the definition of “asset-for-share transaction”;
- section 42(2), (7) and (8); and
- paragraph 1 of the Eighth Schedule to the Act – definition of “asset” and “capital asset”.

**3. Parties to the proposed transaction**

The Applicant: A resident company

Company X:	A resident company that is the holding company of the Applicant and the group of companies of which the Applicant forms part of
New Holdco:	A newly-formed resident company that is wholly-owned by the Applicant
Subco A:	A newly-formed resident company that is wholly-owned by New Holdco which will be carrying on the business of a financial services provider
Subco B:	A newly-formed resident company that is wholly-owned by New Holdco which will be carrying on an insurance business

#### **4. Description of the proposed transaction**

The Applicant carries on the business of a financial services provider and also conducts a separate insurance business.

The current shareholding structure is as follows:

- Mr X, the founder of the Applicant holds all the equity shares in Company X.
- Company X in turn holds all the equity shares in the Applicant.
- The Applicant will incorporate and hold all the equity shares in New Holdco and New Holdco will in turn incorporate Subco A and Subco B.

The Applicant proposes to restructure its business operations by separating and transferring the financial services and insurance businesses out of the Applicant into new separate entities, namely Subco A and Subco B respectively, to be held by a new holding company, New Holdco.

The financial services business and the insurance business will be sold as two separate going concerns in terms of two separate asset-for-share transactions as defined in paragraph (a) of the definition of that term in section 42(1). No active business be conducted by the Applicant after the proposed restructuring has been completed.

#### **Steps of the proposed transaction**

##### **Step 1A**

The Applicant will sell its cash and loan books at market value to Subco A on loan account. This transaction will not be done in terms of section 42.

##### **Step 1B**

The remainder of the financial services business assets that will then be held by the Applicant will be transferred from the Applicant to New Holdco as a going concern in terms of an asset-for-share transaction as provided for in section 42.

##### **Step 1C**

New Holdco will in turn immediately transfer the financial service business assets as a going concern in terms of an asset-for-share transaction as provided for in section 42 to Subco A.

**Step 1D**

The insurance business assets that are currently held by the Applicant will be transferred by the Applicant to New Holdco as a going concern in terms of an asset-for-share transaction as provided for in section 42.

**Step 1E**

New Holdco will in turn immediately transfer the same insurance assets as a going concern in terms of an asset-for-share transaction as provided for in section 42 to Subco B.

**Step 2**

A large number of unrelated black economic empowerment investors will subscribe for approximately 32% of the share capital (equity shares) in New Holdco. New Holdco will utilise the proceeds to subscribe for additional equity shares in Subco A.

After the subscription for shares, Subco A will apply a portion of the subscription proceeds to settle the loan account that originated as a result of the disposal under **Step 1A** of the cash and loan books by the Applicant to Subco A.

**Step 3**

After the completion of the transactions envisaged in **Step 2**, it is anticipated that after a period exceeding 18 months, that:

- The Applicant will unbundle its shareholding in New Holdco in terms of section 46 as a dividend *in specie* to Company X.
- The Applicant will in due course be liquidated or amalgamated with another group company once all its debts have been paid.

**5. Conditions and assumptions**

This binding private ruling is subject to the additional condition and assumption that the market values of the assets transferred under the section 42 transactions will exceed their base costs.

**6. Ruling**

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

- a) The proposed transactions contemplated under **Steps 1B, 1C, 1D** and **1E** respectively will meet the requirements of paragraph (a) of the definition of “asset-for-share transaction” in section 42(1).
- b) Based on the specific facts of this application, New Holdco will hold the financial services assets and the insurance assets acquired from the Applicant under **Steps 1B** and **1D** on capital account even though these assets will be disposed of to Subco A and Subco B respectively shortly after their acquisition.

- c) The facts and circumstances of this matter, taking into account the proposed steps after the acquisition of the financial services and insurance assets of the Applicant are very specific and, in the context of the corporate rules contained in Part III of Chapter II of the Act, indicate that New Holdco will not deal with the assets as trading stock.
- d) Section 42(7) will apply to the asset-for-share transactions under **Steps 1C** and **1E** in terms of which New Holdco will transfer the financial services and the insurance assets to Subco A and Subco B respectively in exchange for the issue of shares in terms of an asset-for-share transaction as defined in paragraph (a) of that term in section 42(1). No gain or loss will arise on those disposals as the assets disposed of will be deemed to be disposed of at their base costs or tax costs under section 42(2).
- e) Section 42(8) will not apply to the future disposal of the consideration shares received under **Steps 1B, 1C, 1D** and **1E** of the proposed section 42 transactions.

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

This binding private ruling is valid for a period of one year from 10 March 2023.

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