

BINDING PRIVATE RULING: BPR 395

DATE: 10 November 2023

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

**SECTION : SECTIONS 12J AND 44 OF THE ACT
SECTION 8(1)(a) OF THE STT ACT**

SUBJECT : TERMINATION OF A VENTURE CAPITAL COMPANY

Preamble

This binding private ruling is published with the consent of the Applicant to which it has been issued. It is binding between SARS, the Applicant and any Co-Applicant only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines the tax consequences of the termination of a venture capital company.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act and the STT Act applicable as at 5 July 2023. 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 12J; and
 - section 44.
- the STT Act –
 - section 8(1)(a).

3. Parties to the proposed transaction

The Applicant: A venture capital company

Co-Applicant: A resident investment holding company

4. Description of the proposed transaction

The Applicant will transfer all its assets, primarily consisting of shares in qualifying companies, to the Co-Applicant by way of amalgamation.

The Applicant will distribute the ordinary shares in the Co-Applicant to its shareholders in accordance with their effective shareholdings in anticipation of the Applicant's winding-up and deregistration.

5. Conditions and assumptions

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

- a) The Applicant will within a period of 36 months after the date of the proposed transaction, or such further period as the Commissioner may allow, take the steps contemplated in section 41(4) to liquidate, wind-up or deregister.
- b) The Applicant will not 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) The Applicant will be deemed to have disposed of its shares in the qualifying companies to the Co-Applicant at their respective base costs in terms of section 44(2)(a)(i) of the Act.
- b) The Co-Applicant will be deemed to acquire the shares in the qualifying companies on the same dates and for the expenditure previously allowable to the Applicant under paragraph 20 of the Eighth Schedule, in respect of the assets as contemplated in section 44(2)(a)(ii).
- c) The Co-Applicant's contributed tax capital will increase by an amount equal to the Applicant's contributed tax capital at the time of termination under section 44(4A).
- d) The transfer of the shares in the qualifying companies by the Applicant to the Co-Applicant will not be subject to securities transfer tax under section 8(1)(a) of the STT Act.
- e) Neither the disposal of the shares held in the qualifying companies nor the termination of the Applicant's existence will be regarded as a transgression of the sole objective requirement in section 12J(5), and sections 12J(6) and (8) will not be triggered.
- f) In determining its taxable income, the Applicant must disregard the disposal of shares in the Co-Applicant to its shareholders in accordance with the provisions of section 44(8).
- g) The distribution of the shares in the Co-Applicant by the Applicant to its shareholders will not constitute a dividend or return of capital under section 44(6)(c).
- h) The distribution of the Co-Applicant's shares and cancellation of the Applicant's shares will be exempt from securities transfer tax under section 8(1)(a) of the STT Act.

7. Period for which this ruling is valid

This binding private ruling is valid in respect of the year of assessment ending 28 February 2025.

**Leveraged Legal Products: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**