South African Revenue Service

BINDING PRIVATE RULING: BPR 397

DATE: 15 November 2023

ACT	**:**	**INCOME TAX ACT 58 OF 1962 (the Act)** **SECURITIES TRANSFER TAX ACT 25 OF 2007 (STT Act)**
SECTION	**:**	**SECTIONS 1(1) – DEFINITION OF "TRADING STOCK", 41(1) – DEFINITION OF "CAPITAL ASSET" AND "DISPOSAL"; 44(1) – PARAGRAPH (*a*) OF THE DEFINITION OF "AMALGAMATION TRANSACTION", 44(2), 44(3), 44(4A), 44(8), 44(13), AND PARAGRAPH 11 OF THE EIGHTH SCHEDULE TO THE ACT**
SECTION	**:**	**SECTIONS 1(1) – DEFINITION OF "TRANSFER" AND 8(1)(*a*)(ii) OF THE STT ACT**
SUBJECT	**:**	**INCOME TAX AND SECURITIES TRANSFER TAX CONSEQUENCES RESULTING FROM AN AMALGAMATION TRANSACTION**

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 and securities transfer tax consequences resulting from an amalgamation transaction entered into between a holding company and its subsidiary.

2. Relevant tax laws

In this ruling references to sections and paragraphs are to sections of the relevant Act and paragraphs of the Eighth Schedule to the Act applicable as at 7 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 1(1) – definition of "trading stock";
  - section 41(1) – definition of "capital asset" and "disposal";
  - section 44(1), – paragraph (*a*) of the definition of "amalgamation transaction";
  - section 44(2);
  - section 44(3);
  - section 44(4A);

- section 44(8);
- section 44(13); and
- paragraph 11 of the Eighth Schedule to the Act.

- the STT Act –
  - section 1(1) – definition of "transfer"; and
  - section 8(1)(*a*)(ii).

3. Parties to the proposed transaction

The Applicant	A resident company
The Co-Applicant	A resident company that is a wholly-owned subsidiary of the Applicant

4. Description of the proposed transaction

The Applicant is an importer of pharmaceutical products. Its operations comprise the marketing and selling of the imported products. The Co-Applicant holds the product registrations and marketing authorisations required to import and sell the products in the Republic.

The Applicant and the Co-Applicant propose to amalgamate. The Applicant will contribute the operating assets of its business and the Co-Applicant will contribute the product registrations and marketing authorizations of the products sold by the Applicant.

The proposed transaction will be implemented in terms of the following transaction steps:

Step 1:

The Applicant will dispose of all its assets (including the shares in the Co-Applicant) and liabilities to the Co-Applicant by means of an amalgamation as contemplated in paragraph (*a*) of the definition of that term in section 44(1). In exchange, the Co-Applicant will issue new shares to the Applicant.

Step 2:

The Applicant will distribute the new shares in the Co-Applicant acquired in terms of **Step 1** as a dividend *in specie* to its sole shareholder.

Step 3:

The Applicant will then liquidate, wind-up or deregister.

5. Conditions and assumptions

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

a) The ruling will apply to the extent that the liabilities of the Applicant assumed by the Co-Applicant comply with section 44(4)(*b*) of the Act.

b) The Applicant must 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) of the Act to liquidate, wind-up or deregister. 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 disposal by the Applicant of its assets and liabilities to the Co-Applicant will constitute an "amalgamation transaction" as defined in paragraph (*a*) of that definition in section 44(1) of the Act.

b) Section 44(2) and (3) of the Act will apply to the disposal of the Applicant's assets to the Co-Applicant.

c) The contributed tax capital of the Co-Applicant will increase by an amount equal to the contributed tax capital of the Applicant at the time of its termination as envisaged in **Step 3** in respect of the issue of the new shares by the Co-Applicant as contemplated in section 44(4A) of the Act.

d) The Applicant must disregard the disposal of the shares in the Co-Applicant under **Step 2** in determining the taxable income or losses of the Applicant as contemplated in section 44(8) of the Act.

e) The cancellation by the Co-Applicant of its own shares following the receipt thereof under **Step 1** will not constitute a disposal for purposes of paragraph 11 of the Eighth Schedule.

f) No securities transfer tax will be payable in respect of the transfer of shares in the Co-Applicant in **Step 1** under section 8(1)(*a*)(ii) of the STT Act.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 7 July 2023.

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