

BINDING PRIVATE RULING: BPR 418

DATE: 18 November 2025

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)
VALUE-ADDED TAX ACT 89 OF 1991 (VAT Act)
TRANSFER DUTY ACT 40 OF 1949 (Transfer Duty Act)**

**SECTION : SECTIONS 1(1) – PARAGRAPH (f) OF THE DEFINITION OF
“COMPANY” AND THE DEFINITION OF “TRADING STOCK”, 24BA,
41(1) – DEFINITION OF “BASE COST”, 41(7), 42, 55(1) – DEFINITION
OF “DONATION”, 58(1) OF THE ACT AND PARAGRAPH 1 –
DEFINITIONS OF “ASSET”, “BASE COST” AND “PRE-VALUATION
DATE ASSET” OF THE EIGHTH SCHEDULE TO THE ACT AND
PARAGRAPH 14(1) OF THE FIRST SCHEDULE TO THE ACT
SECTIONS 8(7) AND 11(1)(e) OF THE VAT ACT
SECTION 9(1)(l) OF THE TRANSFER DUTY ACT**

SUBJECT : ASSET-FOR-SHARE TRANSFER INVOLVING CLOSE CORPORATION

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, value-added tax (VAT) and transfer duty consequences of the disposal in accordance with section 42 of the Act by a natural person of assets to a close corporation of which he is the sole member.

2. Relevant tax laws

In this ruling references to sections are to sections of the relevant Act and references to schedules are to schedules to the Act applicable as at 19 May 2025. 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) – paragraph (f) of the definition of “company” and the definition of “trading stock”;
 - section 24BA;
 - section 41(1) – definition of “base cost”;
 - section 41(7);

- section 42;
- section 55(1) – definition of “donation”;
- section 58(1);
- paragraph 1 of the Eighth Schedule – definitions of “asset” “base cost” and “pre-valuation date asset”;
- paragraph 14(1) of the First Schedule.
- the VAT Act –
 - section 8(7); and
 - section 11(1)(e).
- the Transfer Duty Act –
 - section 9(1)(l).

3. Parties to the proposed transaction

The Applicant: A resident close corporation.

Co-Applicant: A resident natural person.

4. Description of the proposed transaction

The Co-Applicant is a sole proprietor conducting a timber farming operation in South Africa. The Co-Applicant is the owner of movable and immovable assets which he uses in this farming operation. The Co-Applicant’s immovable asset consists of land on which there are standing timber and buildings, including buildings used for residential purposes. The movable and immovable assets are referred to in the proposed transaction as the Sale Assets. They are all held on capital account by the Co-Applicant.

Some of the Sale Assets are pre-valuation date assets as defined in paragraph 1 of the Eighth Schedule.

The Applicant is a close corporation registered in terms of the Close Corporations Act 69 of 1984. The Co-Applicant is the sole member of the Applicant and thus holds all the member’s interest in the Applicant. The Applicant also conducts a timber farming operation on its own land separate from the Co-Applicant’s land.

The Co-Applicant proposes to streamline the two timber farming operations by disposing of the Sale Assets (held in person) to the Applicant so that the farming operations may be conducted solely through the Applicant.

The proposed steps to implement the restructuring are as follows:

- The Co-Applicant will dispose of the Sale Assets to the Applicant as a going concern in exchange for the Exchange Share (defined below) by the Applicant in terms of an “asset-for-share transaction” as defined in paragraph (a) of that definition in section 42(1). The Sale Assets will be disposed of without debt and the Co-Applicant will not be entitled to additional consideration other than the Exchange Share.

- The Co-Applicant will be engaged on a full-time basis in the business of the Applicant by rendering a service.

The salient terms of the agreement between the Applicant and Co-Applicant will include the following:

- The words “Exchange Share” are defined in the agreement – they mean the additional member’s contribution, equivalent to the market value of the Sale Assets, credited to the Applicant’s capital and reserve account, representing 31.86% of the member’s contribution once the Sale Assets have been transferred, registered and delivered.
- The Applicant and Co-Applicant agree that at the effective date, the Co-Applicant shall transfer the right, title and interest in and to the Sale Assets to the Applicant. In exchange, the Applicant shall record the Exchange Share against the Co-Applicant’s member’s contribution on the effective date.
- The –
 - i) Co-Applicant is a registered value-added tax (VAT) vendor;
 - ii) Applicant is a registered VAT vendor;
 - iii) Sale Assets to be transferred constitute part of the Co-Applicant’s income-earning enterprise as of the commencement date and will continue to be so at the effective date;
 - iv) Applicant and Co-Applicant understand that the transaction will be subject to VAT at the zero rate; and
 - v) transaction will, by virtue of the provisions of section 9 of the Transfer Duty Act and the provisions of section 42, result in no Transfer Duty or VAT payable.

The Applicant and Co-Applicant will not elect out of section 42.

5. Conditions and assumptions

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

- a) The Applicant will acquire the Sale Assets currently held by the Co-Applicant as capital assets.
- b) The market values of the individual Sale Assets will be equal to or exceed their base costs at the time of disposal by the Co-Applicant.

6. Ruling

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

- a) The disposal of the Sale Assets by the Co-Applicant to the Applicant as a going concern in exchange for the Exchange Share by the Applicant will meet the requirements of paragraph (a) of the definition of “asset-for-share transaction” in section 42(1).

- b) The Co-Applicant will, in terms of section 42(2)(a)(i), be deemed to have disposed of each of the Sale Assets to the Applicant for an amount equal to the base cost of each asset on the date of disposal taking into consideration the definition of “base cost” in section 41(1).
- c) The Co-Applicant will be deemed, in terms of section 42(2)(a)(ii), to have acquired the Exchange Share on the date that the Co-Applicant acquired the Sale Assets (other than for purposes of section 9C) and for a cost equal to any expenditure in respect of the Sale Assets incurred by the Co-Applicant that is allowable in terms of paragraph 20 of the Eighth Schedule, and to have incurred such cost at the date of incurral by the Co-Applicant of such expenditure. The cost mentioned above must be treated as expenditure actually incurred and paid by the Co-Applicant in respect of the Exchange Share for purposes of paragraph 20 of the Eighth Schedule.
- d) In terms of section 42(2)(c), any valuation of the individual Sale Assets effected by the Co-Applicant within the period contemplated in paragraph 29(4) of the Eighth Schedule must be deemed to have been effected in respect of the Exchange Share acquired by the Co-Applicant.
- e) The disposal of the timber plantation will not result in any recoupment for the Co-Applicant in terms of section 42(3)(a)(i) read with section 41(7) and paragraph 14(1) of the First Schedule.
- f) The disposal of any other allowance assets will not result in any recoupment for the Co-Applicant in terms of section 42(3)(a)(i).
- g) The Applicant will be deemed in terms of section 42(2)(b) to be one and the same person as the Co-Applicant in determining any taxable income or capital gains or capital losses in respect of the future disposal of the Sale Assets.
- h) The Applicant will be deemed to be one and the same person as the Co-Applicant in determining the amount of any allowance or deduction to which the Applicant may be entitled in respect of the timber plantation and any other allowance asset acquired from the Co-Applicant, or that is to be recovered or recouped by or included in the income of the Applicant in respect of the timber plantation or any other allowance asset in terms of section 42(3)(a)(ii).
- i) Section 42(3A) will apply in respect of the increase in the Applicant's contributed tax capital. The Applicant's contributed tax capital must be increased by the aggregate base costs (as determined above) of the Sale Assets at the time of the asset-for-share transaction.
- j) Section 24BA will not apply to the proposed transaction.
- k) The disposal by the Co-Applicant of his farming enterprise as a going concern will constitute a supply that is subject to VAT at the zero rate under section 11(1)(e) of the VAT Act. The zero rate will not apply in respect of the consideration for the residential buildings located on the farm.

- l) There will be no transfer duty payable by the Applicant in terms of section 9(1)(l) of the Transfer Duty Act provided that the public officer of the Applicant makes a sworn affidavit or solemn declaration that the acquisition of the Sale Assets complies with the provisions of section 9(1)(l)(i).
- m) There will be no donations tax implications.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 19 May 2025.

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