

**BINDING PRIVATE RULING: BPR 376**

DATE: 18 August 2022

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

**SECTION : SECTIONS 9C(6), 45, 54, 58(1) OF THE ACT AND PARAGRAPHS 4,  
12A, 13(1), 20(1), 32(2), 35(1), 38 AND 39 OF THE EIGHTH  
SCHEDULE TO THE ACT  
SECTION 8(1)(a) OF THE STT ACT**

**SUBJECT : CORPORATE RESTRUCTURING**

***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 and 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 capital gains tax, donations tax and securities transfer tax consequences of the applicants restructuring.

**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 April 2022. 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 9C(6);
  - section 45;
  - section 54;
  - section 58(1);
  - paragraph 4;
  - paragraph 12A;
  - paragraph 13(1);
  - paragraph 20(1);
  - paragraph 32(3);
  - paragraph 35(1);

- paragraph 38; and
- paragraph 39.
- the STT Act –
  - section 8(1)(a)(iii); and
  - section 8(1)(a)(iv)(C).

### 3. Parties to the proposed transaction

The applicant:	A resident company that is a wholly-owned subsidiary of co-applicant 1
Co-applicant 1:	A listed resident company
Co-applicant 2:	A resident company that is a wholly-owned subsidiary of the applicant

### 4. Description of the proposed transaction

The applicant is the main trading entity of the group.

Co-applicant 2 is a dormant company. The book value of its shares is R1.00 and the base cost of the shares exceeds that amount. Co-applicant 2 is not in an assessed loss position.

The applicant holds investments in South African subsidiaries, associates and cell captives and loan account claims (the investments). The market values of the investments exceed their book values and the base costs of some of the investments are less than their market values. Some of the investments have been impaired from an accounting perspective. The investments are held by the applicant as capital assets.

It is proposed that the shares in co-applicant 2 be transferred to co-applicant 1 and that all the investments be transferred from the applicant to co-applicant 2 so that the applicant will carry on trading entities only and co-applicant 2 will hold all the investments.

The proposed steps for implementing the restructuring are as follows:

- The applicant will sell all its shares in co-applicant 2 to co-applicant 1 for R1.00 with the result that the applicant and co-applicant 2 will both be wholly-owned subsidiaries of co-applicant 1.
- The applicant will transfer the investments to co-applicant 2 in accordance with section 45 for consideration equal to the book value of the investments. The purchase price will be left outstanding on loan account on an interest-free basis and the loan will be repaid over time.

The agreements to be concluded for the restructuring will contain suspensive conditions.

## 5. Conditions and assumptions

This binding private ruling is not subject to any additional conditions and assumptions.

## 6. Ruling

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

- a) The applicant will receive proceeds of R1.00 from co-applicant 1 for the disposal of the shares in co-applicant 2 in terms of paragraph 35(1).
- b) The applicant will realise a capital loss in respect of the disposal of the shares in co-applicant 2 to co-applicant 1 in terms of paragraph 4(a).
- c) Paragraph 13(1)(a)(i) will apply to determine the date of disposal of co-applicant 2's shares by the applicant.
- d) Paragraph 38 will not apply to the disposal by the applicant of the shares in co-applicant 2 to co-applicant 1.
- e) Paragraph 39 will apply to the applicant's resulting capital loss.
- f) Sections 54 and 58 of the Act will not apply to the disposal of the shares, by the applicant, in co-applicant 2 to co-applicant 1.
- g) In terms of paragraph 20(1)(a), co-applicant 1 will acquire a base cost of R1.00 in the shares of co-applicant 2. It may apply paragraph 32(3)(a) electing which method to use to determine the base cost of the shares and section 9C(6) will not apply.
- h) The transfer of the shares in co-applicant 2 will be exempt from securities transfer tax in terms of section 8(1)(a)(iv)(C) of the STT Act.
- i) The disposal, by the applicant, of the investments to co-applicant 2 will meet the requirements of paragraph (a) of the definition of "intra-group transaction" in section 45(1) of the Act.
- j) Section 45(2) of the Act will apply so that –
  - the applicant will be deemed to have disposed of the investments for an amount equal to the base costs of the investments on the date of disposal;
  - the applicant and co-applicant 2 must, for purposes of determining any capital gain or capital loss in respect of the disposal of the investments by co-applicant 2, be deemed to be one and the same person with respect to –
    - the date of acquisition of the investments by the applicant and the amount and date of incurral by the applicant of any expenditure in respect of the shares allowable in terms of paragraph 20;
    - any valuation of the investments effected by the applicant as contemplated in paragraph 29(4).

- k) The applicant will be deemed to have acquired the purchase price loan account for expenditure of Rnil in terms of section 45(3A)(b)(i) of the Act.
- l) The applicant may apply paragraph 32(3)(a) electing which method to use to determine the base cost of the shares and section 9C(6) will not apply.
- m) The aggregate base costs of the investments will constitute proceeds in the hands of the applicant in terms of section 45(2) of the Act read with paragraph 35(1).
- n) Paragraph 13(1)(a)(i) will apply to determine the date of disposal of the investments by the applicant.
- o) Paragraph 12A will not apply in respect of the transfer of debt claims which have been impaired by the applicant.
- p) Paragraph 38 will not apply on the disposal of the investments by the applicant to co-applicant 2.
- q) Sections 54 and 58 of the Act will not apply in respect of the disposal by the applicant of the investments to co-applicant 2.
- r) The transfer of investments that constitute shares will be exempt from securities transfer tax in terms of section 8(1)(a)(iii) 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 April 2022.