BINDING PRIVATE RULING: BPR 265

DATE: 3 February 2017

ACT : INCOME TAX ACT 58 OF 1962 (the Act)

SECTION : SECTIONS 19 AND 44 AND PARAGRAPH 12A OF THE EIGHTH SCHEDULE

SUBJECT : AMALGAMATION TRANSACTION

1. Summary

This ruling determines the tax consequences for a company that intends to dispose of its assets in terms of an "amalgamation transaction" as defined in section 44(1). The company holds loans and preference shares in the company that will acquire the assets.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 78(1) and published in accordance with section 87(2) of the Tax Administration Act 28 of 2011.

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 7 November 2016. 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 19;
- section 44; and
- paragraph 12A.

3. Parties to the proposed transaction

The Applicant:	A private company incorporated in and a resident of South Africa
The Co-Applicant:	A company incorporated in and a resident of South Africa
Company A:	A company incorporated in and effectively managed outside South Africa, the sole shareholder of the Applicant and the majority shareholder of the Co-Applicant
Company B:	A company incorporated in and a resident of South Africa that is dormant

4. Description of the proposed transaction

The Applicant sold its business to the Co-Applicant a number of years ago as a going concern in terms of an intra-group transaction, to introduce a BEE shareholding into its structure. The Co-Applicant settled the purchase price by way of –

- a payment in cash;
- issuing redeemable preference shares to the Applicant; and
- creating an interest bearing loan in favour of the Applicant.

Currently, the only assets of the Applicant are –

- loans to the group companies of the Applicant which includes the Co-Applicant;
- preference shares held in the Co-Applicant; and
- shares held in Company B which have a nil value.

The Applicant does not have any liabilities.

A few years after the Applicant sold its business to the Co-Applicant, a portion of the interest bearing loan to the Co-Applicant was settled with the proceeds from the issue of preference shares. The interest payable on the outstanding loan is currently not being serviced. The Co-Applicant has been making a loss because of this for the last few years. Therefore the Co-Applicant proposes to take steps to improve the company's statement of financial position.

As the parties are currently anticipating the exit of the BEE shareholders, there will no longer be a need to have two separate companies. The business of the Applicant and the Co-Applicant will therefore be amalgamated.

The Applicant and the Co-Applicant are both registered as vendors for value-added tax purposes. The latest annual financial statements of the Co-Applicant reflect a positive shareholder's equity balance.

The proposed steps for implementing the amalgamation transaction are as follows:

- The Applicant will dispose of all of its assets (other than assets to be used to settle debts incurred in the normal course of trade, if any) to the Co-Applicant. The Co-Applicant will acquire the capital assets of the Applicant as capital assets.
- In consideration for the assets so acquired the Co-Applicant will issue ordinary shares to the Applicant with a value equal to the face value of the loan and the market value of the preference shares. The market value of the portion of the shares to be issued by the Co-Applicant relating to the loan will be equal to the face value of the loan. It has not been impaired in terms of the annual financial statements.
- The Applicant will distribute the ordinary shares to be obtained in the Co-Applicant to Company A as a distribution *in specie*, to enable it to dispose of all its assets in order to be deregistered, liquidated or wound up.

- The Applicant will take the steps prescribed by section 44(13)(*a*) to liquidate, wind up or deregister within 36 months of the date of the amalgamation transaction.

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:

- The proposed transaction will comply with paragraph (*a*) of the definition of an "amalgamation transaction" as defined in section 44(1).

- Section 44(2) will apply to the proposed transaction: The Applicant will be deemed to have disposed of the assets for amounts equal to their respective base costs on the date of disposal. The Co-Applicant and the Applicant must, for purposes of determining any capital gain or capital loss in respect of a disposal of any of those assets by the Co-Applicant, be deemed to be one and the same person in respect of the date of acquisition of the asset in question by the Applicant and the amount and date of incurral by the Applicant of any expenditure in respect of that asset allowable under paragraph 20 and any valuation effected in respect of the asset by the Applicant under paragraph 29.

- No "reduction amount" as defined in section 19(1) and paragraph 12A(1) will result from the proposed transaction.

7. Additional note

This ruling does not cover the application of any general anti-avoidance provision to the proposed transaction.

8. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 7 November 2016.

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