BINDING PRIVATE RULING: BPR 297

DATE: 8 March 2018

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

SECTION : SECTIONS 1(1) – DEFINITION OF "DIVIDEND" AND "REIT" AND SECTIONS 25BB, 44 AND PARAGRAPH 11 OF THE EIGHTH SCHEDULE

SUBJECT : AMALGAMATION TRANSACTION INVOLVING CONVERSION OF SHARE BLOCK COMPANIES TO PRIVATE COMPANIES

1. Summary

This ruling determines the tax consequences of an amalgamation transaction involving the conversion of share block companies to private companies in a group of companies controlled by a REIT.

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 19 January 2018. 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 1(1) – definition of "dividend" and "REIT";
- sections 25BB and 44; and
- paragraph 11.

3. Parties to the proposed transaction

The applicant:	A listed company incorporated in and a resident of South Africa operating as a REIT
Company A:	A company incorporated in and a resident of South Africa that is a wholly-owned subsidiary of the applicant
Company B:	A company incorporated in and a resident of South Africa that is a wholly-owned subsidiary of the applicant
Company C:	A company incorporated in and a resident of South Africa in which the applicant has a 50% shareholding. The remaining 50% of the shares are held by Company A

Company D: A company incorporated in and a resident of South Africa that is a wholly-owned subsidiary of Company A

4. Description of the proposed transaction

The applicant is a company listed as a REIT on the JSE.

It is proposed that various properties owned by some of the subsidiaries of the applicant will be transferred either from Company A or Company C (the amalgamated companies), to either Company B or Company D (the resultant companies), in pursuance of the rationalisation of the group of companies of which the applicant is the controlling company. All of the proposed transfers will be made to fellow subsidiaries, not by a subsidiary to its holding company.

The proposed transfers will be of all of the assets and liabilities of the amalgamated companies to the resultant companies, without the resultant companies issuing any shares as consideration for the transfers, which will be undertaken by way of mergers in accordance with sections 113 and 116 of the Companies Act 71 of 2008 (the Companies Act). It is intended that section 44 will apply to the above transactions.

Certain of the subsidiaries to be rationalised are share block companies regulated by the Share Blocks Control Act 59 of 1980. These share block companies will first be converted into for-profit companies before the merger transactions can be undertaken.

The proposed transaction is achieved through the following transaction steps:

Step 1 – Registration as vendors

- Each of the share block companies will be registered as a vendor under the Value-Added Tax Act 89 of 1991 (the VAT Act).

Step 2 – Adoption of new memorandum of incorporation (MOI)

- It is required that the share blocks be cancelled and the rights of use and occupation vested back in the relevant companies, therefore there will in each case be an adoption of a new MOI in accordance with section 16 of the Companies Act as follows:
    a) In terms of an agreement of assignment to be entered into between the holder of the share block and the share block company itself, the member will:
        i) assign its rights of use and occupation of the property and its obligations in respect thereof to the share block company; and
        ii) contemporaneously with the assignment, assign to the share block company all of the leases then in existence between the member (as landlord) and the tenants.
    b) Under sections 16(1)(*c*) and 16(5) of the Companies Act, the members will in each case pass special resolutions authorising the following:
        i) the conversion of the share block company to a private company;

ii) the adoption of a new MOI;

iii) a change of name to delete the reference to “Share Block Company” and to include the reference to “Proprietary Limited”; and

iv) the contemporaneous cancellation of shares in the share block company and the issue of new ordinary shares in the private company.

c) The special resolutions and the new MOIs will be lodged at the Companies and Intellectual Property Commission (CIPC). The CIPC is expected to amend the registration number of each converted company to reflect its new status.

Step 3 – Amalgamation transactions

- All the converted share block companies, together with those designated property-owning companies that were always for-profit companies, will transfer all of their assets and liabilities to the resultant companies, by way of mergers in accordance with sections 113 and 116 of the Companies Act and section 44, without the resultant companies issuing shares as consideration for the disposals.

The amalgamated companies will be deregistered by the CIPC in terms of section 116(5)(*b*) of the Companies Act as a result of the merger.

5. Conditions and assumptions

This binding private ruling is subject to the additional condition and assumption that the immovable properties are held as capital assets by the respective amalgamated companies.

6. Ruling

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

a) The cancellation of the share blocks in terms of section 16 of the Companies Act, with the corresponding transfer of the right of use and occupation from the share block holder in the share block company to the share block company, will in each case give rise to a disposal by the shareholders under paragraph 11. The capital gains or losses arising from the disposals must be disregarded in terms of section 25BB(5)(*c*).

b) The transfer of all of the assets and liabilities of each amalgamated company to each resultant company, namely, Company B and Company D respectively, will in each case qualify as an “amalgamation transaction” as defined in paragraph (*a*) of the definition of that term in section 44(1).

c) The transfer of the assets and liabilities of each amalgamated company as contemplated in (b) will not constitute a “dividend”, as defined in section 1(1).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 19 January 2018.

Legal Counsel: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE