

BINDING PRIVATE RULING: BPR 293

DATE: 1 February 2018

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

**SECTION : SECTION 9C
PARAGRAPH 2(1)(b) READ WITH PARAGRAPH 2(2) OF THE
EIGHTH SCHEDULE TO THE ACT
SECTIONS 2, 6 AND 7 OF THE STT ACT**

SUBJECT : DISPOSAL OF SHARES BY A NON-RESIDENT INDIVIDUAL

1. Summary

This ruling determines some of the tax consequences of the disposal of shares held by a non-resident individual.

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 relevant Act and paragraphs of the Eighth Schedule to the Act applicable as at 16 November 2017. 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;
 - paragraph 2(1)(b) read with paragraph 2(2) of the Eighth Schedule to the Act.
- the STT Act –
 - section 2;
 - section 6; and
 - section 7.

2. Parties to the proposed transaction

The applicant: A natural person who is not a resident of South Africa

The co-applicant: A private company incorporated in and a resident of South Africa, which owns no immovable property, but leases the premises on which it carries on business

The purchasers: Two natural persons who are residents of South Africa (A and B)

3. Description of the proposed transaction

On 1 March 2007, the applicant acquired 330 shares in the co-applicant. It has been resolved that the shares held by the applicant be purchased by the purchasers who, together with the applicant, are fellow directors of the co-applicant.

The shares will be purchased as follows:

- A will purchase 170 shares and payment will be effected 30 days after conclusion of the purchase and sale agreement.
- B will purchase the remaining 160 shares. The purchase price will be paid to the applicant in 48 equal monthly instalments commencing on the 1st day of the month following the month in which the purchase and sale agreement will take effect.
- The co-applicant will pay the Securities Transfer Tax in respect of each transaction and recover it from the respective purchasers.

4. Conditions and assumptions

This binding private ruling is subject to the additional condition and assumption that the co-applicant did not, during the last three years before the proposed disposal of the shares, acquire any asset in respect of which amounts were paid or are payable by any person to any other person other than the co-applicant in respect of the use of that asset, as contemplated in section 9C(3)(b).

5. Ruling

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

- a) The amounts received by or accrued to the applicant from the disposal of his shares in the co-applicant will be deemed to be of a capital nature under the provisions of Section 9C(2).
- b) The disposal of the shares will not be subject to the Eighth Schedule by virtue of paragraph 2(1)(b) read with paragraph 2(2).
- c) Despite that the consideration in terms of one of the transactions will be payable in instalments, Securities Transfer Tax will be payable by the co-applicant in full in respect of each transfer of shares from the applicant to the purchasers.
- d) The tax will be calculated at a rate of 0.25% on the consideration in respect of each transaction unless the market value of the shares exceeds the consideration, in which case it must be calculated on the market value.

6. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 16 November 2017.

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