

BINDING PRIVATE RULING: BPR 316

DATE: 11 February 2019

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)
VALUE-ADDED TAX ACT 89 OF 1991 (VAT Act)**
**SECTION : SECTION 44 OF THE ACT
SECTION 8(25) OF THE VAT ACT**
**SUBJECT : AMALGAMATION OF COMPANIES IN TERMS OF BUSINESS
RESCUE PLAN**

Preamble

This binding private ruling is published by consent of the applicant(s) to which it has been issued. It is binding as 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 income tax and value-added tax effect of an amalgamation transaction for consideration involving the assumption of liabilities only.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act and VAT Act applicable as at 5 November 2018. 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 –

- section 44 of the Act;
- section 8(25) of the VAT Act.

3. Parties to the proposed transaction

The applicant: A resident company

The co-applicant: A resident company

4. Description of the proposed transaction

The applicant and co-applicant have the same shareholders and directors and have both been placed under business rescue in terms of Chapter 6 of the Companies Act 71 of 2008. The one carries on mixed farming activities with an emphasis on cattle farming; the other conducts a piggery.

The business rescue plan provides for the merger of the applicant into the co-applicant to form a mixed farming entity with a piggery focus, to simplify the corporate structure as the businesses are similar.

The proposed transaction will be achieved by way of the following transaction steps:

The applicant will transfer all of its assets to the co-applicant as a going concern. As consideration the co-applicant will assume all of the applicant's liabilities.

Within a period of 36 months of the date of the proposed transaction or within such further period as the Commissioner may allow, the existence of the applicant will be terminated.

5. Conditions and assumptions

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

- a) The debt that the applicant will transfer to the co-applicant as part of the amalgamation transaction which was incurred within a period of 18 months before the disposal –
 - i) does not constitute the refinancing of any debt incurred more than 18 months before the disposal; and
 - ii) is attributable to and arose in the ordinary course of the applicant's business undertaking.
- b) All of the debt that the applicant will transfer to the co-applicant as part of the amalgamation transaction was not incurred by the applicant for the purpose of procuring, enabling, facilitating or funding the acquisition by the co-applicant of any asset in terms of the amalgamation transaction.
- c) The applicant will within a period of 36 months after the date of the amalgamation transaction, or such further period as the Commissioner may allow, take the steps contemplated in section 41(4) to liquidate, wind up or deregister.
- d) The applicant will not at any stage withdraw any step taken to liquidate, wind up or deregister or do anything to invalidate any step so taken with the result that the applicant will not be liquidated, wound up or deregistered.

6. Ruling

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

- a) The transfer of all of the applicant's assets to the co-applicant will constitute an "amalgamation transaction" as defined in paragraph (a) of that definition in section 44(1).
- b) The applicant and the co-applicant will qualify for the relief contemplated in section 44(2) and (3).

- c) The debt that the applicant will transfer to the co-applicant will comply with the requirements of section 44(4)(b).
- d) The applicant and the co-applicant will, in accordance with section 8(25) of the VAT Act, be deemed to be one and the same person.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from the date of the ruling.

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