

BINDING PRIVATE RULING: BPR 237

DATE: 7 June 2016

**ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
VALUE ADDED TAX ACT NO. 89 OF 1991 (VAT Act)
TRANSFER DUTY ACT NO. 40 OF 1949 (Transfer Duty Act)**

**SECTION : SECTION 44(13) OF THE ACT
SECTION 8(25) OF THE VAT ACT
SECTION 9(1)(l)(iB) OF THE TRANSFER DUTY ACT**

**SUBJECT : REINSTATEMENT OF A DEREGISTERED COMPANY TO TRANSFER
IMMOVABLE PROPERTIES**

1. Summary

This ruling determines that the re-instatement of a deregistered company in order to complete the transfer of immovable properties pursuant to an amalgamation transaction will not be a step taken to withdraw or invalidate the deregistration of that company as envisaged in section 44(13) of the Act.

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 No. 28 of 2011.

In this ruling references to sections are to sections of the relevant Act applicable as at 24 February 2016. 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 provisions of –

- section 44(13) of the Act;
- section 8(25) of the VAT Act; and
- section 9(1)(l)(iB) of the Transfer Duty Act.

3. Parties to the proposed transaction

The Applicant: A company incorporated in and a resident of South Africa with which Company A amalgamated in terms of an amalgamation transaction

Company A: A company incorporated in and a resident of South Africa and formally deregistered as a result of an amalgamation transaction entered into with the Applicant

4. Description of the proposed transaction

The parties wish to reinstate Company A after it was deregistered pursuant to an “amalgamation transaction” as defined in section 44(1)(a) of the Act. The purpose of the reinstatement of Company A is to give effect to the transfer of immovable properties which was not previously attended to by the parties due to a *bona fide* error.

During 2013 Company A sold its entire business together with all its assets, including immovable properties, as a going-concern to the Applicant in terms of the amalgamation transaction.

As a necessary element of the amalgamation transaction, Company A was required to deregister. Company A was formally deregistered during 2014 by the Companies and Intellectual Properties Commission (CIPC).

The Deeds registry still reflects Company A as the owner of the immovable properties, notwithstanding the conclusion of the amalgamation transaction. The re-instatement of Company A will be subject to the completion of the following steps:

- a) The Applicant will approach National Treasury and the Department of Public Works to ensure that there is no objection to the re-instatement of Company A, as any assets (including immovable property) of a de-registered company are forfeited to the state as *bona vacantia* at the time of deregistration.
- b) The Applicant will advertise its application to the CIPC for the re-instatement of Company A in a local newspaper (giving 21 days’ notice for any third party objections to the re-instatement of Company A).
- c) Thereafter, the Applicant will apply for the re-instatement of Company A. The requirements for re-instatement in terms of the Companies Act No. 71 of 2008 are set out in the CIPC Practice Note No. 6 of 2012.

Once Company A has been re-instated the immovable properties will be transferred to the Applicant in terms of the existing sale of business agreement. Following completion of the conveyance of the immovable properties Company A will be deregistered.

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 transfer of the immovable properties from Company A to the Applicant forms part of the amalgamation transaction already concluded in terms of section 44 of the Act and, accordingly, the “rollover relief” set out in section 44 will continue to apply.
- b) Due to the circumstances under consideration the 36 month period allowed by section 44(13)(a) to complete the steps contemplated in section 41(4) to

liquidate, wind up or deregister will be extended by 6 months ending on 31 December 2016.

- c) The reinstatement and subsequent deregistration of Company A will not be a step to invalidate or withdraw any of the steps to liquidate, wind up or deregister Company A as contemplated in section 44(13)(b) of the Act, as it will not result in Company A not being liquidated, wound up or deregistered.
- d) Section 8(25) of the VAT Act will continue to apply to the amalgamation transaction as the immovable properties were intended to be transferred from Company A to the Applicant pursuant to the amalgamation transaction.
- e) Section 9(1)(f)(iB) of the Transfer Duty Act will apply to the transfer of the immovable properties which were intended to be transferred from Company A to the Applicant pursuant to the amalgamation transaction.

7. Period for which this ruling is valid

This binding private ruling is valid until 31 December 2016.

**Legal and Policy Division: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**