

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 009

Policy guidance on the subject provided in Interpretation Note 57: "Sale of an enterprise or part thereof as a going concern".

DATE : 6 March 2008

ACT : VALUE-ADDED TAX ACT, 89 OF 1991 ("the VAT Act")
SECTION : SECTION 11(1)(e)
SUBJECT : SALE OF AN ADMINISTRATION BUSINESS

1. Summary

The issue considered in this ruling is whether the sale of an administration business qualifies in terms of the provisions of section 11(1)(e) of the VAT Act as the disposal of an enterprise as a going concern and therefore such sale is subject to VAT at the rate of zero percent.

2. Relevant tax laws

This ruling is a binding private ruling which was requested by the Applicant in accordance with the requirements of section 41A of the VAT Act and issued by the Legal and Policy Division: Advance Tax Rulings in accordance with section 41B of the VAT Act read with section 76Q of the Income Tax Act, 58 of 1962.

All legislative references are to sections of the VAT Act applicable at 31 July 2007 and unless the context otherwise indicates, any word or expression in this ruling bears the meaning ascribed to it in the VAT Act.

The relevant provision of the VAT Act is section 11(1)(e).

3. Parties to the transaction

Applicant: A VAT registered company incorporated in the Republic of South Africa, supplying its administration business

Purchaser: To be determined through an invitation process and who will be registered as a vendor for VAT purposes

4. Description of the proposed transaction

The Applicant historically had a division which provided administration services ("the administration business") to the Applicant's superannuation funds, in terms of service agreements.

The Applicant elicited offers from interested parties for the provision of the administration services, together with a buyout of the administration business as a going concern, and the transfer of all employees currently employed by the administration business.

On the effective date of the "Sale of Administration Business Agreement" and simultaneously with the transfer of the administration business to the Purchaser as a going concern, the current service agreements will terminate and new service agreements between the Purchaser and each of the superannuation funds will take effect.

The above transactions are interdependent on one another. That is, the sale of the administration business will not be affected unless the Purchaser is appointed to render the administration services and therefore new service agreements are concluded with the superannuation funds, and *vice versa*.

5. Specific conditions and assumptions

This binding private ruling is made subject to the following conditions and assumptions –

- the Purchaser will be registered as a vendor for VAT purposes at the time of supply of the administration business; and
- all the assets necessary for carrying on the administration business will be disposed of by the Applicant to the Purchaser.

6. Specific ruling

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

- That the sale of the Applicant's administration business to the Purchaser qualifies as the disposal of an enterprise as a going concern as

contemplated in section 11(1)(e), and that the supply of the Applicant's administration business will therefore be subject to VAT at the rate of zero percent.

7. Period for which this ruling letter is valid

This binding private ruling will remain valid until 31 December 2009.

Issued by:

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