

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 059

DATE: 30 October 2009

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

SECTION : SECTIONS 42 AND 54 OF THE ACT
: SECTION 8(25) OF THE VAT ACT
: SECTION 9(15A) OF THE TRANSFER DUTY ACT

SUBJECT : CORPORATE RULES – TRANSFER OF THE ASSETS OF
BUSINESSES CONDUCTED BY A SOLE PROPRIETOR TO
COMPANIES AND CLOSE CORPORATIONS

1. Summary

This ruling deals with a sole trader who wishes to transfer the assets of his two businesses to companies and close corporations in terms of company formation transactions as envisaged in section 42 of the Act and the varying implications and effects ensuing therefrom. This ruling also deals with the VAT and Transfer Duty aspects relating to a company formation transaction.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling legislative references to sections are to sections of the relevant Acts applicable as at 31 July 2007 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in such Acts.

The ruling has been requested under the provisions of –

- sections 42 and 54 of the Act;
- section 8(25) of the VAT Act; and
- section 9(15A) of the Transfer Duty Act.

3. Parties to the proposed transaction

The Applicant: An individual who currently conducts two businesses as a sole trader

Co-Applicants: Companies A and C and Close Corporations B, D and E

4. Description of the proposed transaction

The Applicant conducts two separate manufacturing businesses as a sole trader.

Following significant growth in the size of the businesses, the Applicant deems it expedient to corporatise the businesses and wishes to engage in company formation transactions as envisaged in section 42 of the Act.

The restructure of the businesses will entail the transfer of various components of each business into separate companies or close corporations in which the Applicant is, or will immediately subsequent to the restructure, be the sole shareholder or member.

The current market value of the capital assets, other than allowance assets, exceeds the current base cost of the assets, and the current market value of the trading stock exceeds the deductions claimed under the provisions of sections 11(a), 22(1) and 22(2) of the Act in relation to such stock.

All the corporate entities into which the assets are to be transferred are currently dormant and have no assets or liabilities. Each corporate entity will be registered as a “vendor” as defined in section 1 of the VAT Act, for VAT purposes on the date the proposed transaction takes effect. Materially, all such corporate entities have been formed solely for the purpose of the restructure. There will be no goodwill or restraint of trade involved in the restructure.

The Applicant and each of the transferee companies and close corporations will make the election provided for in section 42(1)(c) of the Act at the time the proposed transaction takes effect. For purposes of section 9(15A) of the Transfer Duty Act, the public officer of each of the transferee companies or close corporations will also give a sworn affidavit or solemn declaration that the provisions of section 42 of the Act and section 8(25) of the VAT Act apply.

The only assets constituting financial instruments to be transferred are the trade debtors of the businesses, as envisaged by section 42(9)(a) of the Act.

5. Conditions and assumptions

This ruling is made subject to the conditions and assumptions that –

- shares will be issued in proportion to the market value of the assets;
- there is no intention to repay the share premium at the time of the company formation transactions.
- the proposed transfer of the assets is in compliance with the provisions of section 42 of the Act; and
- the public officer of Company A will give a sworn affidavit or solemn declaration that the acquisition of the property from the Applicant complies with the provisions of section 42 of the Act when furnishing transfer duty documents to the South African Revenue Service.

6. Ruling

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

- The proposed transactions will fall within the ambit of the provisions of section 42 of the Act.
- Further shares have to be issued in exchange for the assets disposed of to the companies.
- No further member's interest has to be issued in exchange for the assets disposed of to the close corporations. The fact that the Applicant's percentage interest remains unchanged will not affect the validity of the company formation transactions.
- The share premium account reflected in the records of the companies, representing the difference between the par value and the fair value of the shares issued as required under the provisions of section 76(2) of the Companies Act, No. 61 of 1973 does not constitute consideration other than equity shares as envisaged by section 42(4)(b) of the Act.
- The proposed transactions conducted in accordance with the provisions of section 42 of the Act will not attract donations tax under the provisions of section 54 of the Act.
- As long as the provisions of section 42 of the Act are complied with, no VAT will be imposed on the disposal of the assets to the transferee companies or close corporations, by virtue of section 8(25) of the VAT Act.
- Provided the respective sworn affidavits or solemn declarations are in place, no transfer duty will be payable by Company A under the provisions of section 9(15A) of the Transfer Duty Act on the acquisition of fixed property from the Applicant.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three (3) years as from 11 October 2007.

Issued by:

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