

## **BINDING PRIVATE RULING: BPR 281**

DATE: 20 October 2017

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : PARAGRAPH 65B OF THE EIGHTH SCHEDULE TO THE ACT**  
**SUBJECT : DISPOSAL OF A PORTION OF LAND OWNED BY A RECREATIONAL CLUB**

### **1. Summary**

This ruling determines the availability of roll-over relief under paragraph 65B to a recreational club which sub-divides and disposes of part of its land and utilises the proceeds to effect improvements to the remaining portion of the land.

### **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 paragraphs are to paragraphs of the Eighth Schedule to the Act applicable as at 14 August 2017. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the Act.

This is a ruling on the interpretation and application of paragraph 65B.

### **3. Parties to the proposed transaction**

The applicant: A recreational club established in and a resident of South Africa

Club B: A recreational club established in and a resident of South Africa

### **4. Description of the proposed transaction**

Historically, an agreement was concluded between the applicant and Club B, in terms of which Club B disposed of a sports club enterprise to the applicant, who acquired the sole and exclusive rights to it (the "Separation Agreement").

Included in the sports club enterprise acquired by the applicant are three adjoining separately registered portions of land, (the property). The applicant became the registered owner of the property.

The consideration due to Club B is payable by way of annual instalments. The applicant is not permitted to sell any portion of the property without the prior written consent of Club B and, in the event that a portion is sold, the proceeds derived from such sale must be apportioned between the parties. The portion of

the proceeds payable to Club B depends on the amount of time that has elapsed from the date of the acquisition of the sports club enterprise.

The applicant experienced difficulties meeting its payment obligations towards Club B. In order to settle the remaining balance of the consideration owing to Club B, the applicant raised funding by issuing debentures on the basis, amongst others, that the debenture holders will be repaid on the earlier of five years from their issue date or the disposal of any portion of the property.

It was resolved by the MEC for the Department of Economic Development that a township had to be established on the property. Having consulted with the relevant municipal officials, it was agreed that it was not necessary that a township be established on the whole of the property.

The applicant will consolidate the three portions comprising the property into one portion and thereafter will effect a division of the property in order to facilitate the disposal of a portion of the property. The property will be divided in such a manner as to ensure the following:

- The applicant will retain control of so much of the land that will be required by it to continue with its activities as a recreational club with a complete sports facility and related recreation facilities. This will necessitate a redesign of the sports field to accommodate the loss of certain land and the relocation of other club facilities.
- The applicant will be able to alienate the balance of the land which will have been subdivided into various portions to approved third parties.

The applicant will enter into three separate sale agreements to sell three separate portions of the land to three unrelated persons (the first, second and third disposals). The proceeds of the first and second disposals will be apportioned on a 50:50 basis, whilst the proceeds from the third disposal will be apportioned so that the applicant will receive between 35% and 50%, once the amount has been determined finally. The proceeds from the disposals are earmarked to be utilised as follows:

- The first disposal – the portion not payable to Club B will be applied to settle the amounts owing to debenture holders.
- The second disposal – the portion not payable to Club B will be utilised to settle the remaining balance owing to the debenture holders.
- The third disposal – the portion not payable to Club B will be used to cover costs of the redesign of the sports facilities, the installation of a new irrigation system and the construction of new recreational facilities.

The redesign of the sports facilities requires that the entire irrigation system is to be replaced. The existing irrigation system is no longer effective and based on outdated technologies incompatible with the new system.

The existing clubhouse straddles a portion of the property to be sold and that portion of the property to be retained by the applicant. It follows that the construction of the Clubhouse will replace the existing clubhouse in its entirety.

The budgeted expenses in respect of the redesign, irrigation system and club facilities will be equal to or exceed the expected proceeds from the third disposal available to the applicant.

**5. Conditions and assumptions**

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

- a) The contracts for the acquisition of the replacement assets have been or will be concluded within 12 months after the date of the disposal of the relevant portions of the property.
- b) The replacement assets will be brought into use within three years of the disposal of the relevant portions of the property.
- c) The actual costs to acquire the replacement assets will be equal to or exceed the proceeds, excluding the portion payable to Club B, in respect of the third disposal and the proceeds received by the applicant will be used to replace facilities lost by the applicant as a result of the third disposal.

**6. Ruling**

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

- a) There is no accrual in favour of the applicant of the portion of the proceeds payable to Club B.
- b) There is an accrual in favour of the applicant of that portion of the proceeds payable to debenture holders.
- c) The first and second disposals will result in capital gains.
- d) Paragraph 65B will apply to the third disposal.

**7. Period for which this ruling is valid**

This binding private ruling is valid for a period of five years from 16 August 2017.