

*SOUTH AFRICAN REVENUE SERVICE*

**BINDING PRIVATE RULING: BPR 026**

**DATE** : 19 February 2009

**ACT** : VALUE-ADDED TAX ACT, NO. 89 OF 1991 (the VAT Act)

**SECTION** : SECTIONS 10(4), 10(23), 11(1)(e) AND 18A(1)

**SUBJECT** : SALE OF LAND SUBJECT TO A LEASE WITH ASSIGNMENT  
OF THAT LEASE – GOING CONCERN  
: SUBDIVISION OF LAND AND THE SUBSEQUENT TRANSFER  
FOR NO CONSIDERATION  
: PORTION OF THE BUSINESS WHICH WILL BE ACQUIRED  
FOR PURPOSES OTHER THAN FOR USE, CONSUMPTION OR  
SUPPLY IN THE COURSE OF MAKING TAXABLE SUPPLIES

**1. Summary**

A company which is the registered owner of farmland intends to consolidate and partition the farmland. The company will conclude a lease with a third party, in respect of a certain portion of the farmland. The portion, together with another portion of farmland will thereafter be disposed of to a body of persons as a going concern.

The body of persons will further subdivide the acquired portions into various subdivisions and will transfer a subdivision to each of its 18 members. No consideration will be payable by the 18 members to the body of persons in respect of the transfer of the subdivisions.

This ruling deals with the value-added tax (VAT) implications regarding –

- the supply of the leased land together with the disposal of the leased portion together with another portion of farmland (the land) to the body of persons;
- the transfer of the subdivisions of the land by the body of persons to its members for no consideration, and

- the acquisition of the land as a going concern by the body of persons for purposes other than for use, consumption or supply in the course of making taxable supplies.

## **2. Relevant tax laws**

This is a binding private ruling issued in accordance with section 41A of the VAT Act read with section 76Q of the Income Tax Act, No. 58 of 1962 (the Act).

All legislative references are to sections of the VAT Act applicable at 13 March 2008 and unless the context otherwise indicates, any word or expression in this ruling bears the meaning ascribed to them in the VAT Act.

This ruling has been requested in relation to the provisions of –

- section 10(4);
- section 10(23);
- section 11(1)(e); and
- section 18A(1).

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

The Applicant: A VAT registered company incorporated in the Republic of South Africa

The Recipient: A Body of Persons comprising 18 members that will register as a vendor

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

The Applicant is the registered owner of farmland on which it currently conducts a farming enterprise, in respect of which it is registered as a vendor for VAT purposes.

Approval was granted by the Government that the Applicant may –

- consolidate the farmland into one agricultural unit; and

- subsequent thereto, subdivide the agricultural unit into 20 portions, namely –
  - 18 agricultural units (hereinafter referred to as area 1);
  - the farmland (hereinafter referred to as the leased land); and
  - one unit containing a technical centre of approximately 9 hectares (herein after referred to as area 2),

provided that the Applicant conclude a lease in favour of Company A over the leased land (excluding area 1 and area 2).

The aforesaid condition of consolidation and subdivision has prompted the proposed steps as set out below.

- The Applicant intends to remove area 1 (that is, being approximately 8 000 square metres) and area 2 (that is, being approximately 9 hectares) from use in its current farming enterprise. These areas comprise less than 5% (both in value and in size) of the total area of the farmland.
- The Applicant will then conclude a notarial lease agreement with Company A in respect of the leased land.
- Area 2 will remain in use in the Applicant's farming operations and will be consolidated with other land owned by the Applicant.
- The Applicant will, in accordance with a Sale Agreement, dispose of –
  - the rental enterprise, comprising the interest in the aforesaid lease;
  - the leased land; and
  - area 1,
 (hereinafter referred to as the business) as a going concern to the Recipient which will thereby become co-owners of the business.
- Area 1 will be acquired by the Recipient for purposes other than for use, consumption or supply in the course of making taxable supplies.

- The members have constituted themselves as the Body of Persons, in accordance with a Body of Persons Agreement, for the purposes of acquiring the business as a going concern from the Applicant and of acting collectively as landlord in respect of the lease agreement.
- After transfer of the leased land and area 1 into the names of the members as co-owners, the land will be further partitioned into various subdivisions, in accordance with an Agreement to Partition Land. Pursuant to the partition transfer, each member will become the registered sole owner of one individual subdivision, subject to the lease. No consideration will be payable by the members to the Body of Persons in respect of the transfer of the subdivisions.

The result of the above steps will be that the Recipient will be the landlord under the lease, will collect VAT on the rent and account for such VAT to the South African Revenue Service.

## **5. Conditions and assumptions**

This ruling is made subject to the following conditions and assumptions:

- The Recipient will register as a vendor for VAT purposes in respect of the leasing activity.
- The ratio of the intended use of the acquisition by the Recipient for purposes of making taxable supplies to the total intended use is equal to be not less than 95%, that is, the area of area 1 will be less than 5% of the total area of the land.
- The relationship between the Body of Persons and its 18 members does not constitute a partnership.

## **6. Ruling**

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

- The sale by the Applicant of its rental enterprise, comprising of a lease (the land which is let) and area 1, as a going concern in accordance with the Sale Agreement to the Recipient qualifies as a supply of a business

as a going concern and the supply may be charged with VAT at the rate of zero percent, in terms of section 11(1)(e) of the VAT Act .

- The transfer of the subdivisions by the Recipient to its 18 members may be effected for no consideration in terms of section 10(23) of the VAT Act, and the value of that supply shall be nil.
- The acquisition by the Recipient of the rental enterprise, is regarded as having been acquired wholly for purposes of use, consumption or supply in the course of making taxable supplies, in terms of section 18A(1) of the VAT Act read with the proviso to the said section.

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

This binding private ruling is valid until 31 March 2011.

Issued by:

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