

BINDING PRIVATE RULING: BPR 132

DATE: 14 January 2013

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 41(2) AND 42 AND PARAGRAPHS 11(1)(g) AND 12(5) OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : DISPOSAL OF A BUSINESS AS A GOING CONCERN BY A TRUST TO A COMPANY IN EXCHANGE FOR SHARES IN THE COMPANY

1. Summary

This ruling deals with the disposal of a business as a going concern by a trust to a company, in exchange for shares in the company, and whether the transaction will qualify for the relief provided for under section 42 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 and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 1 October 2012 and 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 the provisions of –

- section 41(2);
- section 42; and
- paragraphs 11(g) and 12(5) of the Eighth Schedule.

3. Parties to the proposed transaction

The Applicant: A trust established in and a resident of South Africa

The Co-Applicant: A company incorporated in and a resident of South Africa

4. Description of the proposed transaction

The Applicant (the Trust) operates a game farming business (the Business) on land co-owned by the beneficiaries of the Trust, the Co-Applicant and another company also incorporated in and a resident of South Africa.

The Business has become very successful since being established, far exceeding the original expectations of the founders of the Trust. The everyday management of the Business within the Trust's environment has, however, become cumbersome and complex.

The Trustees agreed that the existing structure of the Business should be transferred to a company, and the Co-Applicant was identified as the preferred vehicle for this transaction.

5 Conditions and assumptions

This ruling is not subject to any additional conditions and assumptions.

6 Ruling

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

- The disposal of the Business as a going concern, by the Applicant to the Co-Applicant, will constitute an asset-for-share transaction as envisaged in section 42.
- The provisions of paragraphs 11(1)(g) and 12(5) of the Eighth Schedule will not apply as a result of the provisions of section 41(2).
- No ruling is issued on the application of *Part V* of Chapter II of the Act.

7. Period for which this ruling is valid

This binding private ruling, issued in October 2012, applies to the year of assessment in which the proposed transaction is executed.

Issued by:

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