

BINDING PRIVATE RULING: BPR 358

DATE: 15 March 2021

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 11(a) READ WITH SECTIONS 23(g), 28 AND 44
SUBJECT : AMALGAMATION OF SHORT AND LONG-TERM INSURERS

Preamble

This binding private ruling is published with the consent of the applicant(s) to which it has been issued. It is binding between SARS and the applicant and any co-applicant(s) only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines the tax consequences of an amalgamation of life and non-life reinsurers.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 29 January 2021. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the Act.

3. Parties to the proposed transaction

The applicant: A South African resident company providing short-term reinsurance services

Co-applicant 1: A South African resident company holding all the shares in the applicant and co-applicant 2

Co-applicant 2: A South African resident company providing long-term reinsurance services

4. Description of the proposed transaction

The applicant and co-applicant 2 carry on business under separate insurance licences. They wish to reorganise their corporate structure to combine their short-term and long-term reinsurance businesses from 1 January 2021.

The proposed transaction steps are as follows:

- The applicant will transfer all its assets to co-applicant 2 in anticipation of its liquidation or deregistration (as the case may be) in terms of section 44. The assets that will be transferred include investments in subsidiaries, other invested assets, fixed income securities, funds withheld, property and equipment, other balance receivables and accounts receivable. In addition,

all the employees in the employ of the applicant will be transferred to co-applicant 2.

- As consideration for the assets transferred, the applicant will transfer and delegate its liabilities to co-applicant 2. The liabilities that will be transferred include insurance liabilities relating to premiums; insurance assets relating to reinsurance premiums; insurance liabilities relating to claims; insurance assets relating to reinsurance claims; deferred acquisition costs conditionally incurred by the applicant; reinsurance deferred acquisition costs to which the applicant is conditionally entitled; retrocession recoverables on provision for profit commissions; provisions for recoverables; contingent commissions and provision for contingent commissions.
- For the balance of the purchase consideration not discharged by the liabilities assumed, co-applicant 2 will issue the applicant with equity shares equal to the net asset value of the business.
- In anticipation of its liquidation or deregistration, the applicant will distribute the shares it obtained in co-applicant 2 to co-applicant 1.
- The applicant will commence with the steps to deregister or liquidate within 36 months.

5. Conditions and assumptions

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

- a) Nothing contained in this ruling may be construed as an opinion with regards to the matching of any future deductions that co-applicant 2 may seek with the particular assets of which the purchase price is or was settled by the assumption of that specific liability.
- b) The applicant will within a period of 36 months after the date of the proposed transaction, or such further period as the Commissioner may allow, take the steps contemplated in section 41(4) to liquidate, wind up or deregister.
- c) The applicant will not at any stage withdraw any step taken to liquidate, wind up or deregister or do anything to invalidate any step so taken with the result that it will not be liquidated, wound up or deregistered.
- d) None of the exclusions listed in section 44(14) apply to the proposed transaction.

6. Ruling

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

- a) The proposed transaction will constitute an “amalgamation transaction” as defined in paragraph (a) of that definition in section 44(1).
- b) The applicant and co-applicant 2 will qualify for the relief contemplated in sections 44(2) and 44(3).

- c) Sections 44(2) and 44(3) will not be precluded from applying to the proposed transaction since the liabilities assumed by co-applicant 2 qualify as debt envisaged in section 44(4)(b).
- d) The tax consequences of the assumed contingent liabilities will be determined in accordance with the provisions of section 11(a) read with section 23(g) and any other relevant provisions when they materialise. Co-applicant 2 will have to ensure that the requirements of the relevant provision are satisfied before claiming any deductions when the assumed contingent liabilities materialise.
- e) Subject to the rulings contained in f) and g) below, no tax adjustments as contemplated in section 28 will be required at implementation date of the proposed transaction.
- f) Sections 28(2) and 28(3) will apply in determining the tax treatment of the short-term insurance business in the hands of co-applicant 2 from 1 January 2021.
- g) The applicant will be required to add back the provisions and estimated amounts previously deducted under section 28(3) for the year of assessment to 31 December 2020 in the 2021 year of assessment, as contemplated in section 28(4).

7. Period for which this ruling is valid

This binding private ruling is valid in respect of the year of assessment ending 31 December 2021.

**Leveraged Legal Products: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**