



SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 058

DATE: 26 October 2009

**ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
VALUE-ADDED TAX ACT, NO. 89 OF 1991 (the VAT Act)**

**SECTION : SECTIONS 8C, 23(f) AND (g), 24J AND 45 AND
PARAGRAPH 20(1)(h)(i) OF THE EIGHTH SCHEDULE TO THE
ACT AND SECTION 8(25) OF THE VAT ACT**

**SUBJECT : ACQUISITION OF SHARES AS A RESULT OF COMPANY
RESTRUCTURING AND INTEREST ON A LOAN CREATED IN
THE RESTRUCTURING PROCESS**

1. Summary

This ruling deals with the tax implications linked to a restructuring process of a company whereby the business operations of that company are transferred into another company but with particular regard to –

- the tax consequences for the companies involved in the restructuring process;
- the deductibility of interest payable on loan funding created in the restructuring process; and
- the tax consequences for the directors who acquires shares in such other company as a result of the restructuring process.

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 and paragraphs are to sections of the relevant Acts and paragraphs of the Eighth Schedule to the Act 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 these Acts.

This ruling has been requested under the provisions of –

- section 45 of the Act;
- section 24J of the Act read with section 23(f) and (g) of the Act;

- section 8C of the Act read with paragraph 20(1)(h)(i) of the Eighth Schedule; and
- section 8(25) of the VAT Act;

3. **Parties to the proposed transaction**

The Applicant: A resident company which intends to restructure its business operations

Company A: A dormant resident company which is wholly owned by the Applicant

Directors: Directors of both the Applicant and Company A

Trusts: Trusts that will acquire 30% of the shares in Company A

4. **Description of the proposed transaction**

The Applicant was established many years ago and had three founding members. Two of the founding members have passed away in the interim and the only surviving member is currently a non-executive director of the business and is not involved in its day to day operations.

Although the founding members were always mindful of the need to have a clear and concise succession plan within their business this was not put in place. The need for a plan has become more apparent with the death of two of the founding members but also because the executive directors are becoming disillusioned with simply being employees of the Applicant as they have been intimately involved in the significant growth which the business of the Applicant has enjoyed over the last four years.

In order to retain certain key individuals who are directors within the Applicant and thereby ensuring the successful continuation of the Applicant's business operations, a succession plan is now being proposed.

The succession plan involves the identification of the key individuals with a view to aligning their interest with that of the existing shareholder of the Applicant and allowing them to acquire an interest in the business through the acquisition of shares in Company A.

In order to make the shares affordable to the Directors, the Applicant proposes to restructure its business operations by the proposed sale of its business as a going concern to Company A, which is not trading but owns four vacant stands. The market value of the shares in Company A after the restructuring will be less, due to the fact that Company A will owe a substantial amount to the Applicant.

The Directors of the Applicant will also become the Directors of Company A and will obtain 30% of the shares in Company A *via* Trusts. The Applicant will retain 70% of the shares in Company A.

Company A will be funded by the Applicant in the following manner –

- debt which will be interest bearing; and
- debt which will be interest-free.

A portion of the interest bearing debt will be repaid with monies raised against its debtor's funding facility. The repayment of the balance of the interest bearing debt would be effected in monthly instalments.

5. Conditions and assumptions

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

- the Applicant and Company A will, for VAT purposes, jointly elect that the provisions of section 45 of the Act will apply to the proposed sale of business; and
- the interest bearing debt and the interest-free debt will be repaid and will not be converted into shares or waived, reduced or written off.

6. Ruling

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

- The provisions of section 45 of the Act will apply to the sale of business by the Applicant to Company A.
- Under section 8(25) of the VAT Act the Applicant and Company A will be deemed to be one and the same person for purposes of the VAT Act in respect of the sale of the business by the Applicant to Company A, provided the provisions of section 45 of the Act are complied with.
- Company A will be entitled to the deduction under section 24J of the Act read with section 23(f) and (g) of the Act in respect of the interest incurred on the interest bearing debt made available by the Applicant.
- The base cost of the shares acquired by the Directors through means of the relevant Trusts will be dealt with as envisaged in paragraph 20(1)(h)(i) of the Eighth Schedule.
- Section 8C of the Act will be applicable to the acquisition of the shares in Company A by the Directors *via* the Trusts by virtue of the provisions of section 8C(5)(b) of the Act.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three (3) years as from 15 November 2007.

Issued by:

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