SARS South African Revenue Service

BINDING PRIVATE RULING: BPR 210

DATE: 11 November 2015

ACT	**:**	**INCOME TAX ACT NO. 58 OF 1962 (the Act)**
SECTION	**:**	**44 AND 47**
SUBJECT	**:**	**LIQUIDATION DISTRIBUTION FOLLOWED BY AN AMALGAMATION TRANSACTION**

1. Summary

This ruling determines the tax consequences of a liquidation distribution followed immediately by an amalgamation transaction.

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 are to sections of the Act applicable as at 27 August 2015. 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 44; and
- section 47.

3. Parties to the proposed transaction

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

4. Description of the proposed transaction

The Applicant and the Co-Applicant are fellow subsidiaries and have common shareholders. Subco is a wholly owned subsidiary of the Applicant. The proposed transaction is to amalgamate the Applicant and the Co-Applicant in order to consolidate their operations, as there is no longer any commercial rationale for the operation of separate companies.

The transaction steps to achieve the amalgamation will be as follows:

Step 1: Subco, which does not have any liabilities, will first distribute all its assets to the Applicant as a "liquidation distribution" as defined in section 47(1), thereafter its corporate existence will be voluntarily terminated within 36 months.

Step 2: The Applicant and the Co-Applicant will be amalgamated in terms of an amalgamation agreement under section 113 of the Companies Act 2008, as follows:

- The Applicant will transfer its business and all of its assets to the Co-Applicant as a going concern.
- The Co-Applicant will, as consideration for the transfer of the Applicant's business and all of its assets to the Co-Applicant –
  - assume all debts (including the intra-group loans currently owing by the Applicant to the Co-Applicant) and the contingent liabilities of the Applicant; and
  - issue equity shares to the Applicant.
- The Applicant will distribute the Co-Applicant shares, received as consideration, to its shareholders *pro rata* to their shareholding in the Applicant.
- The Applicant will be deregistered under section 116 of the Companies Act.

5. Conditions and assumptions

This ruling is subject to the additional condition and assumption that the shareholders of the Applicant hold the shares in the Applicant on capital account.

6. Ruling

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

(A) The distribution of Subco's assets (the distributed assets) to the Applicant will be a "liquidation distribution" as contemplated in paragraph (*a*) of the definition thereof in section 47(1) and consequently:

- Subco will not –
  - (i) recover or recoup allowances previously deducted by it in respect of the applicable allowance assets as contemplated in section 47(3)(*a*)(i), or
  - (ii) realise any capital gain arising out of the transfer of those assets as contemplated in section 47(2)(*a*).
- The Applicant and Subco will, under section 47(3)(*a*)(ii), be deemed to be one and the same person for the purposes of –
  - (i) claiming allowances on allowance assets in the future; and

(ii) the recovery or recoupment of allowances in respect of allowance assets on the future disposal of those assets by the Applicant.

- The Applicant must, under section 47(5), disregard, for the purposes of determining it's taxable income, assessed tax loss, aggregate capital gain or aggregate capital loss resulting from –

  (i) the disposal of the equity shares held by the Applicant in Subco as a consequence of the liquidation, winding-up or deregistration of Subco; and

  (ii) any return of capital which the Applicant receives from Subco by way of a distribution of cash or an asset *in specie*.

(B) The transfer by the Applicant of all its assets to the Co-Applicant in terms of the amalgamation agreement will constitute an "amalgamation transaction" as contemplated in paragraph (*a*) of the definition thereof in section 44(1) and, accordingly:

- The Applicant will not –

  (i) recover or recoup any allowances previously deducted by either the Applicant or Subco in respect of the applicable allowance assets, as contemplated in section 44(3)(*a*); or

  (ii) realise a taxable capital gain as a result of the transfer of any capital assets, as contemplated in section 44(2)(*a*)(i).

- The transfer by the Applicant of the distributed assets to the Co-Applicant will not result in the application of section 47(4).

- The Co-Applicant will be entitled to the same capital allowances in respect of the applicable allowance assets to which the Applicant was previously entitled, as contemplated in section 44(3)(*a*)(ii).

- The shareholders of the Applicant will be deemed to have disposed of their shares in the Applicant for their base cost amount, as contemplated in section 44(6)(*b*)(i).

- The shareholders of the Applicant will be deemed to have acquired the equity shares in the Co-Applicant at the base cost value of the Applicant's shares, as contemplated in section 44(6)(*b*)(ii).

- The shareholders of the Applicant will be deemed to have acquired the equity shares in the Co-Applicant on the date that they had acquired the shares in the Applicant, as contemplated in section 44(6)(*b*)(iii).

- The equity shares acquired in the Co-Applicant by a shareholder of the Applicant will be deemed not to be an amount transferred or applied by the Applicant for the benefit or on behalf of that person in respect of the shares held by that person in the Applicant, as contemplated in section 44(6)(*c*). The acquisition of equity shares in the Co-Applicant will therefore not be subject to dividends tax or normal tax in the shareholder's hands.

- All the liabilities to be assumed by the Co-Applicant in terms of the amalgamation agreement, including –
  (i) the contingent liabilities;
  (ii) the liabilities under contracts; and
  (iii) the debts currently owed by the Applicant to the Co-Applicant that will be discharged by merger,

  will qualify as "debts" assumed by the Co-Applicant as consideration for purposes of section 44(4).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 3 years from 27 August 2015.

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