BINDING PRIVATE RULING: BPR 328

DATE: 20 September 2019

ACT	:	**INCOME TAX ACT 58 OF 1962 (the Act)**
SECTION	:	**SECTIONS 42(1) - PARAGRAPH (*a*)(ii) OF THE DEFINITION OF "ASSET-FOR-SHARE TRANSACTION", 42(2)(*a*) AND (*b*) AND 42(7)**
SUBJECT	:	**CONSECUTIVE ASSET-FOR-SHARE TRANSACTIONS**

Preamble

This binding private ruling is published by consent of the applicant to which it has been issued. It is binding as between SARS and the applicant only and published for general information. It does not constitute a practice generally prevailing.

1. **Summary**

This ruling determines the income tax consequences of consecutive asset-for-share transactions within a period of 18 months.

2. **Relevant tax laws**

In this ruling references to sections are to sections of the Act applicable as at 3 June 2019. 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 –

- section 42(1) – paragraph (*a*)(ii) of the definition of "asset-for-share transaction";

- section 42(2)(*a*) and (*b*); and

- section 42(7).

3. **Parties to the proposed transaction**

The applicant:	A resident company
BEE participant:	A resident company
Company A:	A resident company
Fund Manager:	A black-owned private equity fund
InvestCo:	A special purpose vehicle, which is a resident company
Original shareholders:	Those shareholders who hold 100% of the equity shares, in equal proportions, in Company A prior to the implementation of the transaction

4. Description of the proposed transaction

Company A will introduce a new BEE participant by implementing the following transaction steps:

- Company A will allot and issue shares to the BEE participant giving it a single-digit equity interest in company A. This transaction will take place for market value consideration which will be discharged by way of a loan account in favour of company A. The Original Shareholders retain the majority of the shares in company A.

- The BEE participant will transfer the equity interest in Company A to InvestCo at market value for a 100% stake in InvestCo.

- The original shareholders will dispose of an 18.69% interest in Company A to the applicant by way of an asset-for-share transaction contemplated in section 42. These shares have a market value which exceeds their base cost. In exchange, the original shareholders will receive shares in the applicant giving them 100% of the economic interest, but only 49% of the voting interest, in the applicant. The fund manager will retain 51% of the voting interest in the applicant.

- The applicant will dispose of the recently acquired 18.69% stake in company A to InvestCo by way of an asset-for-share transaction contemplated in section 42. After this transaction the Applicant will hold 75% of the issued share capital of InvestCo.

5. Conditions and assumptions

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

6. Ruling

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

a) The shares in company A will be regarded as having been acquired and held by the applicant on capital account even though these shares will be disposed of to InvestCo shortly after acquisition. The facts and circumstances of this matter, taking into account the proposed steps before and after the acquisition of the shares in company A by InvestCo, are very specific and, in the context of the corporate rules, indicate that the applicant and the group as a whole will not deal with the shares in Company A as trading stock.

b) Section 42(7) will apply to the proposed transaction, but will have no tax implications.

c) The base cost of the shares in company A, on the date of their disposal to the Applicant and InvestCo, will remain the same as the base costs of those shares for the original shareholders.

7.   Period for which this ruling is valid

This binding private ruling is valid for a period of five years from the date of the ruling.

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