

BINDING PRIVATE RULING: BPR 133

DATE: 15 January 2013

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
: TRANSFER DUTY ACT NO. 40 OF 1949 (the Transfer Duty Act)
SECTION : SECTION 64FA(1)(c) AND PARAGRAPH 51A OF THE EIGHTH SCHEDULE TO THE ACT
SECTION 9(20) OF THE TRANSFER DUTY ACT
SUBJECT : TRANSFER OF A RESIDENCE OUT OF A COMPANY TO A NATURAL PERSON

1. Summary

This ruling deals with the capital gains tax and transfer duty consequences, for both the transferor and transferee, in respect of a residence to be transferred out of a company to a natural person who is a qualified transferee for purposes of the relief measures provided for under the relevant legislation.

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 4 October 2012 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the relevant Act.

This is a ruling on the interpretation and application of the provisions of –

- section 64FA(1)(c);
- paragraph 51A of the Eighth Schedule; and
- section 9(20) of the Transfer Duty Act

3. Parties to the proposed transaction

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

Co-Applicant 1 A company incorporated in a foreign country, and not a resident of South Africa, that holds 100% of the share capital of the Applicant

Co-Applicant 2 A natural person who is a resident of South Africa, but who lives abroad, and holds 100% of the share capital of Co-Applicant 1

4. Description of the proposed transaction

Co-Applicant 2 purchased the property in December 1996 in the name of the Applicant. The purchase price was funded by way of shares that had been issued to Co-Applicant 1 to an amount of R599 401. The only asset held by the Applicant is the property and the only asset held by Co-Applicant 1 is the share capital of the Applicant.

Co-Applicant 2 has had the right to use the property since acquisition and at all material times he incurred the expenditure required for the property's maintenance. At times he let the property at arms' length as holiday accommodation to generate funds to enable him to defray expenses in relation to the property. Between 11 February 2009 and 31 May 2012, the property was so rented out for a total of 483 days, that is, for 40% of that time period. Accordingly, Co-Applicant 2 used the property for domestic purposes during the same period for 60% of the time.

No holding costs (as contemplated in paragraph 20 of the Eighth Schedule) or selling expenditure have been incurred by the Applicant in respect of the property after 1 October 2001 for purposes of adding such costs to the Applicant's base cost (as determined under Part V of the Eighth Schedule) of the property. A market value of R 900 000 was determined as valuation date value as at 1 October 2001. A decision was made, however, (under paragraph 26 of the Eighth Schedule) to determine the base cost of the property by using the time-apportionment method (as provided for in paragraph 30 of the Eighth Schedule), as this method yielded the more favourable result for the parties to the proposed transaction.

The present market value of the property is R2 750 000. The time-apportioned base cost is calculated as follows:

The initial purchase price	=	<u>R</u> 599 401
<u>Add:</u> Portion of the accounting profit relating to the pre-valuation and post valuation date period		
(Present market value – base cost = accounting profit		
R 2 750 000 – R 599 401 = R 2 150 599)		
5/16 x R2 150 299	=	<u>672 062</u>
Base cost		<u>1 271 463</u>

It is proposed that the Applicant dispose of the property to Co-Applicant 1 by way of a dividend *in specie*. The property will then be disposed of by Co-Applicant 1 to Co-Applicant 2 by way of a further dividend *in specie*. In terms of the proposal both distributions are to take place before 31 December 2012.

5. Conditions and assumptions

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

- Once the distribution of the property has taken place, the respective companies making the distribution will be wound up and deregistered. The steps to do so, as contemplated in section 41(4) of the Act, must be taken by each of them respectively within a period of less than six months of the proposed distribution.
- The distributions referred to in the rulings must both take place before 31 December 2012.

6. Ruling

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

- The proposed distribution of the property by way of a dividend *in specie* from the Applicant to Co-Applicant 1, and from Co-Applicant 1 to Co-Applicant 2 also by way of a dividend *in specie*, will be a disposal as contemplated in paragraph 51A of the Eighth Schedule to the Act.
- The Applicant and Co-Applicant 1 must be treated as if each of them disposed of the property at its base cost at the time of the disposal, being R1 271 463.
- Co-Applicant 2, the Applicant and Co-Applicant 1 must be treated as one and the same person with regard to –
 - the date of acquisition of the property own by the Applicant;
 - the amount and date of incurral by the Applicant of any expenditure in respect of the property allowable under paragraph 20 of the Eighth Schedule to the Act; and
 - any valuation of the property effected by the Applicant under paragraph 29(4) of the Eighth Schedule to the Act to determine the market value of the property on valuation date (1 October 2001).
- Neither distribution of the property will attract transfer duty.
- Neither distribution of the property will attract dividends tax.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 5 years from 4 October 2012.

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