Roll over relief on assets destroyed due to looting and unrest in South Africa

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During mid July 2021, businesses across South Africa was severely impacted with violent riots, arson, destruction of property and looting.

In Gauteng, an estimated R3.5 billion[1] in damages was recorded whereas, the looting in Kwa-Zulu Natal cost the province more than R20 billion[2]. Furthermore, it is estimated that 72% of all businesses affected fall within small and medium enterprises[3].

As a business owner, you may be entitled to a rollover relief in terms of Section 8(4)(e) and paragraph 65 of the Eight Schedule of the Income Tax Act in respect of recoupments of past allowances claimed and capital gains tax for assets that has been involuntarily disposed of during the looting and unrest in South Africa.

Rollover relief has the practical implication that the taxpayer does not need to immediately pay tax on income received for the destruction of the asset in excess of the tax value.

[1] News 24 https://www.news24.com/news24/southafrica/news/unrestsa-cost-of-damage-in-gauteng-at-least-r3bn-david-makhura-says-20210730
[2] Mail and Gaurdian https://mg.co.za/news/2021-07-20-riots-looting-cost-the-kwazulu-natal-economy-r20-billion/
[3] The Citizen https://citizen.co.za/business/business-news/2580356/unrest-small-businesses-will-take-economy-down-with-them/

The provision may be elected in order for the capital gains raised on the disposal to be rolled over until the replacement asset is sold or spread over the period in respect of which tax allowances on the new asset are claimed in the case of an allowance asset.

To qualify for the relief the following conditions must be met[4]:

- The asset is disposed by way of theft, destruction or fire.
- The proceeds were obtained by way of an insurance pay-out.
- The insurance pay-out must equal or exceed the tax value of the asset.
- The replacement asset must be brought into use for the same function as the disposed asset.
- The contract for the replacement asset has been or will be concluded within 12 months and the replacement asset must be brought into use within three years from the date of disposal.

However, the provision will not apply if:

- The timeframe is not adhered to;
- In the event that a capital loss arises; or
- If less than the insurance pay-out has been incurred to acquire a replacement asset.

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[4] Income Tax Act 58 of 1962