

BINDING CLASS RULING: BCR 052

DATE: 31 May 2016

**ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECURITIES TRANSFER TAX ACT NO. 25 OF 2007 (the STT Act)**

**SECTION : SECTION 46 OF THE ACT AND PARAGRAPH 76B OF THE EIGHTH
SCHEDULE TO THE ACT
SECTION 8(1)(a)(iv) OF THE STT ACT**

**SUBJECT : INCOME TAX AND SECURITIES TRANSFER TAX CONSEQUENCES
FOR THE SHAREHOLDERS OF A LISTED COMPANY FOLLOWING
AN UNBUNDLING TRANSACTION**

1. Summary

This ruling determines the tax consequences for resident and non-resident shareholders of a listed company in terms of an unbundling transaction in relation to the shares of the Co-Applicant company.

2. Relevant tax laws

This is a binding class ruling issued in accordance with section 78(2) 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 relevant Act and paragraphs of the Eighth Schedule to the Act applicable as at 11 April 2016. 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 –

- the Act –
 - section 46; and
 - paragraph 76B.
- the STT Act –
 - section 8(1)(a)(iv).

3. Class

The class members to whom this ruling will apply are the resident and non-resident shareholders of the Applicant on the last day to trade for shareholders to participate in the proposed transaction.

4. Parties to the proposed transaction

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

The Co-Applicant: A public company incorporated in and a resident of South Africa and a wholly-owned subsidiary of the Applicant to be listed as part of the proposed transaction

Class members: The shareholders as described in 3.

5. Description of the proposed transaction

The Applicant intends to unbundle the shares in the Co-Applicant.

The steps to implement the proposed transaction are as follows:

- a) The Applicant will unbundle all the shares in the Co-Applicant to the Class members.
- b) The JSE Listing Requirements and specifically the "standard rounding convention" will be applied to the unbundling transaction, resulting in the allocation of whole securities and no fractional entitlements.
- c) The Co-Applicant will be listed at the commencement of trade on the day following the last day to trade (LDT+1) for shareholders to participate in the unbundling.
- d) The Applicant and the Co-applicant will remain South African residents subsequent to the unbundling transaction.

It is intended that immediately prior to the unbundling transaction the separately identifiable and industry specific local and international businesses will be housed under the Co-applicant, in several sub-groups.

As at 31 December 2015, more than 50% of the shareholders of the Applicant were non-residents for tax purposes.

6. Conditions and assumptions

This binding class ruling is subject to the following additional condition:

- The shares in the Co-Applicant are to be listed at the commencement of trade on LDT+1 in relation to the unbundling transaction.

7. Ruling

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

- a) The distribution of the shares in the Co-Applicant to the Class members will constitute an "unbundling transaction", as defined in paragraph (a) of the definition of that term in section 46(1) of the Act.
- b) The unbundling of the equity shares in the Co-Applicant will be effected in terms of paragraph (a) of the definition of an "unbundling transaction" in section 46(1) of the Act, notwithstanding the fact that the "standard rounding convention" prescribed by the JSE Listings Requirements will be applied to the allocation of securities.

- c) Provided that no Class member that is a disqualified person, either alone or together with a connected person(s) in relation to that Class member, that is or are a disqualified person(s) holds more than 20% of the shares in the Co-Applicant, section 46(7) will not apply to the unbundling transaction.
- d) In the light of the particular circumstances of this unbundling transaction, for the purposes of section 46(3)(a)(v) of the Act and with reference to the market values of the unbundling shares (Applicant's shares) and unbundled shares (Co-Applicant's shares), "as at the end of the day after that distribution" means in relation to the shares unbundled under section 46 of the Act by the Applicant –
 - i) the closing price of the unbundling shares (Applicant's shares) on LDT+1; and
 - ii) the closing price of the unbundled shares (Co-Applicant's shares) on LDT+1.

Therefore, each Class member must allocate a portion of the expenditure and any market value attributable to the equity shares held in the Applicant to the unbundled shares in the Co-Applicant. The proportionate amount of the expenditure and market value to be allocated to the unbundled shares in the Co-Applicant must be determined in accordance with the ratio that the market value of these shares in the Co-Applicant, using the closing price on LDT+1, bears to the sum of the market value, using the closing price on LDT+1, of the Applicant's shares and of the unbundled shares in the Co-Applicant.

Each Class member must also reduce the expenditure and market value attributable to the Applicant's shares by the amount so allocated to the unbundled shares in the Co-Applicant.

- e) The distribution of equity shares in terms of the unbundling transaction by the Applicant will be disregarded in determining any liability for dividends tax.
- f) Paragraph 76B of the Eighth Schedule to the Act will not apply to the unbundling transaction.
- g) The transfer of the equity shares in the Co-Applicant to the Class members will be exempt from securities transfer tax under section 8(1)(a)(iv) of the STT Act, as the unbundling transaction will be an unbundling transaction as referred to in section 46 of the Act.

8. Period for which this ruling is valid

This binding class ruling is valid for the year of assessment of every Class member during which the unbundling transaction takes place.