

BINDING PRIVATE RULING: BPR 164

DATE: 12 March 2014

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 55(1), DEFINITION OF “DONATION” AND 58(1), AND PARAGRAPH 38 OF THE EIGHTH SCHEDULE
SUBJECT : BUYBACK OF SHARES AT A PURCHASE PRICE IN EXCESS OF THEIR MARKET VALUE

1. Summary

This ruling deals with the buy-back of ordinary shares by a company at an amount that is in excess of the market value of the shares.

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 13 September 2013 and 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 55(1), definition of “donation”;
- section 58(1); and
- paragraph 38 of the Eighth Schedule.

3. Parties to the proposed transaction

The Applicant: A company incorporated in and a resident of South Africa
Company A: A company incorporated in and a resident of South Africa whose shareholders are a broad based black economic empowerment (BBBEE) consortium

4. Description of the proposed transaction

Company A concluded a BBBEE transaction in terms of which it acquired 40 percent of the ordinary shares of the Applicant (the shares). Company A financed the acquisition through the issue of different classes of cumulative redeemable preference shares to various investors, the majority of which were subscribed for by a financing house. The shares were used as security for the issue of the preference shares. In terms of the security arrangement, should Company A fail to redeem the preference shares when due, the preference shareholders may take cession of the shares in the Applicant held by Company A in satisfaction of the redemption obligations.

The first of the preference share funding periods is coming to a close and the Applicant wishes to ensure that Company A does not default on its redemption obligations which could lead to the possible loss of the Applicant's favourable BBBEE status.

To avoid such a loss of status the Applicant proposes to buy-back a portion of the shares held by Company A, representing approximately 20% of the entire issued share capital of the Applicant, at an amount in excess of the market value thereof. The purpose of the share buy-back is to enable Company A to pay outstanding dividends accumulated over the period and to enable Company A to redeem all of the preference shares. Company A will then hold 25.1 percent of the Applicant's ordinary shares after the proposed share buy-back.

5. Conditions and assumptions

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

6. Ruling

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

- The proposed buy-back of the shares by the Applicant at an amount in excess of the market value thereof will not constitute a "donation" as defined in section 55(1), nor a deemed donation as envisaged in section 58(1).
- Paragraph 38 of the Eighth Schedule will not be applicable to the proposed buy-back of the shares.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 1 year from 13 September 2013.

Issued by:

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