

BINDING PRIVATE RULING: BPR 190

DATE: 9 March 2015

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

**SECTION : SECTION 24J AND PARAGRAPHS 11(1)(a) AND 35 OF THE EIGHTH
SCHEDULE TO THE ACT
SECTION 1 OF THE STT ACT, DEFINITION OF “TRANSFER”**

**SUBJECT : NOTIONAL FUNDING ARRANGEMENT: THE ISSUE AND
POTENTIAL REPURCHASE OF ORDINARY SHARES**

1. Summary

This ruling deals with the issue and repurchase of ordinary shares. The proposed arrangement is based on contractual rights and restrictions established separately from any class provisions applicable to those shares in terms of the Applicant company's memorandum of incorporation.

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 relevant Act and paragraphs of the Eighth Schedule to the Act applicable as at 19 February 2015 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 24J of the Act;
- paragraphs 11(1)(a) and 35 of the Eighth Schedule to the Act; and
- section 1, definition of “transfer” of the STT Act.

3. Parties to the proposed transaction

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

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

4. Description of the proposed transaction

The Applicant will establish two trusts which will become shareholders in the Co-Applicant for the purpose of the Co-Applicant acquiring ordinary shares in the Applicant.

The two trusts will subscribe for 51% and 49% respectively of the Co-Applicant's issued share capital at nominal value and will then be and remain the sole shareholders of the Co-Applicant.

The Co-Applicant will subscribe at a nominal value for ordinary shares in the Applicant which will, after their issue, constitute 26% of its entire issued share capital.

The ordinary shares to be subscribed for by the Co-Applicant will have exactly the same rights and privileges attached to the rest of the ordinary shares issued by the Applicant. However, it will be contractually agreed (in a subscription and repurchase agreement) between the parties that –

- the Applicant will, on the fifth anniversary of the subscription date (the repurchase date), repurchase a determinable number of ordinary shares held by the Co-Applicant at a nominal amount;
- the Co-Applicant will not be entitled to dispose of the ordinary shares until after the repurchase date;
- the ordinary shares shall be held by the Applicant in safe custody until the repurchase date; and
- the number of ordinary shares to be repurchased by the Applicant will be determined in accordance with a pre-determined notional vendor funding formula which will take into consideration the following –
 - a) the initial market value of the ordinary shares in the Applicant not subject to the subscription and repurchase agreement;
 - b) the market value of the ordinary shares in the Applicant not subject to the subscription and repurchase agreement, on the repurchase date;
 - c) an escalation factor; and
 - d) the period of time that has elapsed since the subscription date to the repurchase date.

Subsequent to the repurchase of the determined number of ordinary shares from the Co-Applicant, the remaining shares will be released from safe custody and their share certificates will be delivered to the Co-Applicant.

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:

- Section 24J of the Act will not be applicable to the proposed transaction.
- There will be no "disposal", as contemplated in paragraph 11 in respect of the remaining ordinary shares held by the Co-Applicant following the repurchase transaction.

- The creation of the repurchase and restriction rights in terms of the subscription and repurchase agreement will not give rise to any capital gain or loss as contemplated in paragraphs 3 and 4 for the Applicant or Co-Applicant.
- The repurchase of a portion of the ordinary shares from the Co-Applicant by the Applicant at a nominal price will not give rise to a capital gain or loss for the Co-Applicant.
- No securities transfer tax will be levied in respect of the remaining ordinary shares held by the Co-Applicant following the repurchase transaction.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of six years from 19 February 2015.

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