

BINDING PRIVATE RULING: BPR 253

DATE: 19 October 2016

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 54, 55(1) – DEFINITION OF “DONATION”, 57 AND 58
SUBJECT : DONATIONS TAX CONSEQUENCES OF A TRANSACTION TO INTRODUCE A BEE SHAREHOLDER INTO A GROUP

1. Summary

This ruling determines whether the disposal of shares in a company at a discount and the subsequent acquisition of shares by the seller in the acquiring company at a nominal subscription price, to introduce the acquiring company into the seller's existing group structure for Black Economic Empowerment (BEE) purposes, will constitute a donation.

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 are to sections of the Act applicable as at 2 September 2016. 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 54;
- section 55(1) – definition of “donation”;
- section 57; and
- section 58.

3. Parties to the proposed transaction

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

The Seller: A trust founded in and a resident of South Africa that holds all the shares in the Applicant

Company A: A non-profit company incorporated in and a resident of South Africa

The Acquirer: A company incorporated in and a resident of South Africa whose shares are wholly owned by Company A

4. Description of the proposed transaction

The Applicant and the Seller wish to introduce the Acquirer into their group structure as a BEE shareholder. The purpose is to benefit the Applicant and the group as a whole from a BEE scorecard perspective and to increase the Applicant's profitability.

The Acquirer has no assets or liabilities. The Seller and the Acquirer propose to enter into the following transactions as an indivisible transaction:

- a) While the Acquirer is still a wholly-owned subsidiary of Company A, the Seller will dispose of 26% of the issued equity shares in the Applicant to the Acquirer for a purchase price which is the lower of–
 - (i) the market value of the shares at the date of disposal less a 10% discount; or
 - (ii) a capital sum of 40% of the Applicant's future dividends that will be received by or accrued to the Acquirer over the eight year period following the disposal.

The Seller's outstanding claim for the capital sum of the purchase price will be payable in instalments over those eight years and will not attract interest.

- b) Immediately after the disposal by the Seller of 26% of the issued equity shares in the Applicant to the Acquirer but as part of the same indivisible transaction, the Seller will subscribe for 49% of the issued equity shares in the Acquirer for a nominal subscription price.

5. Conditions and assumptions

This binding private ruling is subject to the additional condition and assumption that the Seller and the Acquirer are independent parties dealing at arm's length.

6. Ruling

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

- a) Neither the disposal by the Seller of 26% of the issued equity shares in the Applicant to the Acquirer at a discount as contemplated in 4 a)(i) or (ii) nor the subsequent acquisition by the Seller of 49% of the equity shares in the Acquirer at a nominal subscription price will constitute a "donation" as defined in section 55(1). Neither of these transactions will be deemed to be a donation as envisaged in section 58(1).
- b) Section 57 will not be applicable to the proposed transaction.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of two years from 2 September 2016.