

BINDING PRIVATE RULING: BPR 302

DATE: 26 April 2018

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECURITIES TRANSFER TAX ACT 25 OF 2007 (STT Act)**

**SECTION : SECTIONS 24BA, 40CA, 41(4), 42(1), 42(2)(b), 42(3A), 42(8A), 45(1),
45(2), 45(6), 46(1), 46(7), 47(1)(b), 47(2)(a)(i) OF THE ACT AND
PARAGRAPHS 12(2)(a), 12(2)(b) AND 75(1)(a) OF THE EIGHTH
SCHEDULE TO THE ACT
SECTION 8(1)(a)(i), (iii) AND (v) OF THE STT ACT**

**SUBJECT : CORPORATE RESTRUCTURING AND UNBUNDLING OF LISTED
SHARES**

1. Summary

This ruling determines the tax consequences for the Applicant and the Co-applicants of the proposed corporate restructuring and unbundling of listed shares to shareholders.

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 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 6 April 2018. 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 Act –
 - section 24BA;
 - section 40CA;
 - section 41(4);
 - section 42(1), 42(2)(b), 42(3A) and 42(8A);
 - section 45(1), 45(2) and 45(6);
 - section 47(1)(b) and 47(2)(a)(i); and
 - Paragraph 12(2)(a), 12(2)(b) and 75(1)(a).
- the STT Act –
 - section 8(1)(a)(i), (iii) and (v).

3. Parties to the proposed transaction

The applicant:	A public company and a resident of South Africa
Company A:	A foreign company that is listed on several stock exchanges including the JSE
Company B:	A foreign company that is a wholly-owned subsidiary of Company A
Company C:	A company that is a resident of South Africa and is a wholly-owned subsidiary of Company B
Company D:	A company that is a resident of South Africa and a wholly-owned subsidiary of Company C
Company D1:	A company that is a resident of South Africa and a wholly-owned subsidiary of Company D
Company E:	A company that is a resident of South Africa and a wholly-owned subsidiary of Company C
Company F:	A public company that is a resident of South Africa and listed on the JSE

4. Description of the proposed transaction

Company A intends to separate its main areas of business. The proposed steps to implement the restructuring are as follows:

- a) Step 1: Company A and its shareholders will enter into a scheme of arrangement, for which they must seek judicial approval in Company A's jurisdiction, pursuant to which Company A will become a wholly-owned subsidiary of the applicant. In respect of the shareholders holding their shares on the South African register (SA Shareholders), the scheme of arrangement will be implemented in terms of an "asset-for-share transaction" as contemplated in paragraph (a) of that definition in section 42(1) – to the extent that a SA Shareholder qualifies for the relief under section 42. With respect to the remaining shareholders (foreign shareholders), the transaction will not be implemented as an asset-for-share transaction contemplated in section 42.
 - i) The shares will be reclassified into "A" ordinary shares (A Ords) in order to facilitate their cancellation on the foreign register. The rights of the A Ords and the shares of Company A on the SA register will be identical, save that the rights of the A Ords will provide for the shares to be cancelled under the scheme.
 - ii) The share capital of Company A will be reduced by the cancellation of the A Ords.
 - iii) The reserves arising as a result of the cancellation will be capitalised and applied to paying up the same number of new shares in Company A. The new shares will be allotted and issued to the applicant and in exchange for the cancellation of the A Ords,

the applicant will allot and issue new ordinary shares to the foreign shareholders.

- b) Step 2: Company A will transfer its entire shareholding in Company B to the Applicant as a distribution *in specie*.
- c) Step 3: Company B will distribute its shares in Company C to the applicant as a liquidation distribution contemplated in section 47.
- d) Step 4: Company E will transfer, by way of an intra-group transaction as contemplated in section 45, a maximum of 4.7% of the shares it holds in Company F to a wholly-owned subsidiary of Company D (Company D1) in exchange for the reduction of its existing loan account owing by Company E.
- e) Step 5: Company E will unbundle all of its remaining shares (approximately 32%) in Company F to Company C by way of an unbundling transaction contemplated in section 46.
- f) Step 6: Company C will unbundle all of its shares in Company F to the applicant by way of an unbundling transaction contemplated in section 46.
- g) Step 7: The applicant will unbundle all of its shares in Company F to its shareholders, including the SA Shareholders and foreign shareholders, by way of an unbundling transaction contemplated in section 46.

5. Conditions and assumptions

This binding private ruling is subject to the following additional conditions and assumptions:

- a) In relation to Step 1:
 - o The SA Shareholders and the applicant will not agree in writing that section 42 will not apply to their transactions comprising the scheme of arrangement.
 - o The market values of the shares which are held by the SA Shareholders on capital account will exceed their base costs determined under paragraph 20 on the date of implementation of the asset-for-share transactions contemplated in section 42.
 - o The market values of the shares which are held by the SA Shareholders as trading stock will exceed the tax costs, determined under sections 11(a), 22(1) or 22(2), of the shares on the date of implementation of the asset-for-share transactions contemplated in section 42.
- b) In relation to Step 3:
 - o Company B and the applicant will not agree that the provisions of section 47 will not apply to the proposed liquidation distribution by Company B of its shares held in Company C to the applicant.
 - o Company B's sole asset is its investment in the shares of Company C.

- The shares held by Company B in Company C are held on capital account.
 - The Applicant will acquire the shares in Company C as capital assets.
 - Company B's base costs in the shares of Company C will not exceed the market values of the Company C shares as at the date of the liquidation distribution to the Applicant.
 - The steps contemplated in section 41(4) will be taken within the required timeframes to liquidate, wind-up or deregister Company B pursuant to the liquidation distribution of its shares held in Company C, and none of those steps will be withdrawn or invalidated.
- c) In relation to Step 4:
- Company D1 and Company E will not agree that the provisions of section 45 will not apply to the transfer by Company E of its shares in Company F to Company D1.
 - The shares held by Company E in Company F are held on capital account.
 - Company D1 will acquire the shares in Company F as capital assets and hold them in its Corporate Fund contemplated in section 29A.
- d) In relation to Step 5 and 6:
- No "disqualified person" as defined in section 46(7)(b) will hold 20% or more of the shares in Company F, either alone or together with any connected person (who is a disqualified person as defined) in relation to that disqualified person, immediately after the unbundling of the shares in Company F by Company E to Company C and subsequently by Company C to the applicant.
 - At the time of the unbundling of the shares in Company F by Company E, no other shareholder in Company F will hold the same number of equity shares or more in Company F, than Company E.
 - At the time of the unbundling of the shares in Company F by Company C, no other shareholder will hold the same number of equity shares in Company F or more, than Company C.
 - At the time of the unbundling of the shares in Company F by Company E and by Company C, at least 25% of the equity shares in Company F will be unbundled in terms of the unbundling transaction contemplated in section 46.
- e) In relation to Step 7:
- No "disqualified person" as defined in section 46(7)(b) will hold 20% or more of the shares in Company F, either alone or together with any connected person (who is a disqualified person as defined) in relation to that disqualified person, immediately after the unbundling of the shares in Company F by the applicant to the SA Shareholders and the foreign shareholders.

- At the time of the unbundling of the shares in Company F by the applicant, no other shareholder will hold the same number of equity shares in Company F or more, than the applicant.
- At the time of the unbundling of the shares in Company F by the applicant, at least 25% of the equity shares in Company F will be unbundled in terms of the unbundling transaction contemplated in section 46.

6. Ruling

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

Step 1

- a) If section 42(8A)(b) does not apply to a SA Shareholder, the transfer by that SA Shareholder of its shares in Company A to the applicant will constitute an “asset-for-share transaction”, as defined in paragraph (a) of that definition in section 42(1).
- b) Section 42(2)(b) will not apply, because the proviso to that subsection will be fulfilled. Consequently, the applicant will be deemed to acquire the shares in Company A for an amount which will be equal to the market value of the applicant’s shares to be issued to SA Shareholders, under section 40CA(a).
- c) Section 42(3A) will not apply because the proviso to that subsection will be fulfilled. Consequently, the contributed tax capital (CTC) created in relation to the applicant’s issue of ordinary shares to the SA Shareholders will be equal to the market value of the ordinary shares in Company A issued to the applicant.
- d) Section 24BA will not apply to the transfer by the SA Shareholders of their shares in Company A to the applicant in exchange for the issue of shares.
- e) The transfer of shares by a SA Shareholder will be exempt from securities transfer tax (STT) in terms of section 8(1)(a)(i) of the STT Act.
- f) With respect to the scheme of arrangement involving the foreign shareholders, section 40CA will apply to the issue of shares in Company A to the applicant in exchange for the issue and allotment of shares in the applicant to the foreign shareholders. Consequently, the base cost of the shares in Company A acquired by the applicant will be equal to the market value of the new ordinary shares issued by the applicant.
- g) The CTC created in the applicant on the issue of the new ordinary shares to the foreign shareholders will be equal to the market value of the shares in Company A acquired by the applicant in terms of the scheme of arrangement.
- h) Company A will, on becoming a controlled foreign company (CFC) in relation to the applicant, be deemed to have disposed of and re-acquired all of its assets, including its shares in Company B, at market value under paragraph 12(2)(a).

Step 2

- a) Company A will be deemed to dispose of its shares in Company B to the applicant for proceeds equal to the market values of those shares under paragraph 75(1)(a). Consequently, a capital gain of Rnil will be realised by Company A as the base cost of the shares will be equal to the proceeds received or accrued.

Step 3

- a) The distribution of the shares in Company C by Company B to the applicant will constitute a "liquidation distribution", as defined in paragraph (b) of that definition in section 47(1).
- b) Under section 47(2)(a), the shares in Company C will be deemed to be disposed of by Company B at their base costs and the applicant will be deemed to acquire the shares at the same base costs.
- c) The distribution of the shares in Company C by Company B to the applicant will be exempt from STT in accordance with section 8(1)(a)(v) of the STT Act.

Step 4

- a) The disposal of the shares in Company F by Company E to Company D1, to be held in its Corporate Fund, will qualify as an "intra-group transaction" as contemplated in paragraph (a) of that definition in section 45(1).
- b) Under section 45(2)(a), the shares in Company F will be deemed to be disposed of by Company E at their base cost and Company D1, in its Corporate Fund, will be deemed to acquire the shares at the same base cost.
- c) No ruling is issued on the potential application of sections 45(4), 45(4A) and 45(5) in the future.
- d) The disposal of the shares in Company F by Company E to Company D1 will be exempt from STT under section 8(1)(a)(iii) of the STT Act.

Steps 5 and 6

- a) The distribution of the shares in Company F to Company C by Company E will be an "unbundling transaction" as defined in paragraph (a) of that definition in section 46(1).
- b) The distribution of the shares in Company F to the Applicant by Company C will be an "unbundling transaction" as defined in paragraph (a) of that definition in section 46(1).

Step 7

- a) The distribution of the shares in Company F to the shareholders of the Applicant will be an "unbundling transaction" as defined in paragraph (a) of that definition in section 46(1).

7. Period for which this ruling is valid

This binding private ruling is valid in respect of the year(s) of assessment during which the proposed transactions will be implemented.

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