

**BINDING PRIVATE RULING: BPR 343**

DATE: 14 May 2020

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 55(1) AND 58(1)**  
**SUBJECT : DONATIONS TAX IMPLICATIONS OF SUBSCRIBING FOR SHARES AT A DISCOUNT**

***Preamble***

This binding private ruling is published by consent of the applicant to which it has been issued. It is binding as between SARS and the applicant and published for general information. It does not constitute a practice generally prevailing.

**1. Summary**

This ruling determines that there are no donations tax implications resulting from a broad-based black economic empowerment trust subscribing for shares at a discount.

**2. Relevant tax laws**

In this ruling references to sections are to sections of the Act applicable as at 9 December 2019. 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 –

- section 55(1); and
- section 58(1).

**3. Parties to the proposed transaction**

The applicant: A resident company

The trust: A trust to be established by the Applicant to comply with codes published under legislation regulating black economic empowerment

Company A: A resident company that owns all the shares in the applicant

Company B: A resident company to be incorporated by Company A

**4. Description of the proposed transaction**

The applicant wishes to introduce a minority shareholder, the trust, in order to enhance its broad-based black economic empowerment status. The object of the

trust will be to facilitate the education, training, development and/or upskilling of the eligible beneficiaries.

The trust will be entirely funded by the applicant. Eligible beneficiaries of the trust will be black women under the age of 35 who are studying or will be studying at higher-education or tertiary institutions in South Africa.

The trust is not a public benefit organisation as envisaged in section 30(1).

The transaction will be implemented as follows:

Disposal of the applicant's export business

- Company A will subscribe for 100% of the ordinary shares in company B.
- The applicant will dispose of its export business to company B at market value in terms of an intra-group transaction as contemplated in section 45, with the purchase consideration left outstanding on loan account. The loan will be repaid from available cash reserves.

The trust and subscription for ordinary shares in the applicant

- The applicant will settle the trust and fund it by way of a donation.
- The trust will subscribe for a minority interest in the applicant at a nominal value compared to the current market value of the shares.

**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 that the subscription for shares at a discount by the trust will not constitute a “donation” as defined in section 55(1) and will not be deemed to have been disposed of under a donation by the Applicant as envisaged in section 58(1).

**7. Period for which this ruling is valid**

This binding private ruling is valid for a period of three years from 9 December 2019.