

**BINDING CLASS RULING: BCR 066**

DATE: 24 May 2019

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

**SECTION : SECTIONS 46(1) – PARAGRAPH (a) OF THE DEFINITION OF  
“UNBUNDLING TRANSACTION”, 46(3)(a)(v), 46(7) OF THE ACT,  
PARAGRAPH 76B OF THE EIGHTH SCHEDULE TO THE ACT AND  
BINDING GENERAL RULING (INCOME TAX) 29 (ISSUE 2) DATED  
1 FEBRUARY 2017 (BGR 29)  
SECTION 8(1)(a)(iv) OF THE STT ACT**

**SUBJECT : TAX CONSEQUENCES FOR RECIPIENTS OF SHARES IN AN  
UNBUNDLED COMPANY**

***Preamble***

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

**1. Summary**

This ruling determines the income tax consequences for the recipients of listed shares in a company, following an unbundling of that company by its listed parent company.

**2. Relevant tax laws**

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 18 February 2019. 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 46(1) – paragraph (a) of the definition of “unbundling transaction”;
  - section 46(3)(a)(v);
  - section 46(7);
  - paragraph 76B; and
  - BGR 29.
- the STT Act –
  - section 8(1)(a)(iv) of the STT Act.

### 3. Class

All resident and non-resident shareholders of listed shares and unlisted shares in the applicant that are reflected on the applicant's securities register on the last day to trade (LDT) in the case of listed shares and the record date (as defined in the JSE Listings Requirements) in the case of unlisted shares; and consequently entitled to participate in the proposed unbundling.

### 4. Parties to the proposed transaction

The applicant: A listed company that is a resident of South Africa

Company A: A resident of South Africa and a wholly-owned subsidiary of the applicant, to be listed just prior to the proposed unbundling

Class members: All the members of the class as described in 3

### 5. Description of the proposed transaction

Company A is a new company which was incorporated to facilitate the proposed unbundling. Immediately before the unbundling, the applicant will hold 100% of the shares in Company A.

The applicant will unbundle, by way of a distribution *in specie*, all its shares in Company A to the class members. Company A has a single class of shares, unlimited in respect of the right to participate in dividends and capital. Company A is anticipated to list on the JSE at the commencement of trade on the day following LDT in the applicant's shares to participate in the unbundling, subject to the approval of the requisite regulatory authorities.

Record time and date is estimated to occur at the close of business on LDT+3. The shareholders of the applicant will be entitled to one unbundled share in Company A for every one listed share and one unbundled share for every five unlisted shares. This ratio is in keeping with the participation rights of the unlisted shares. The distribution of unbundled shares in Company A to the applicant's shareholders holding unlisted shares could result in fractional entitlements for such shareholders.

Fractional entitlements will be rounded down to the whole number and the aggregated excess fractions of the unbundled shares to which a shareholder would otherwise have been entitled will not be transferred to them following the unbundling, but will instead be sold on their behalf in the market as soon as practicable after the unbundling.

Certain foreign shareholders holding shares in the applicant constitute "restricted overseas shareholders", who are unable to take transfer of the unbundled shares because of the laws of the jurisdiction of these shareholders. Unbundled shares that would otherwise have been transferred to these shareholders will be sold on their behalf, with the net proceeds of such sale to be paid to the restricted overseas shareholders. Restricted overseas shareholders will, in respect of their entitlements to the unbundled shares, receive the average consideration per unbundled share (net of transaction and currency conversion costs) received by the transfer secretaries pursuant to the sale process as set out in the preceding

paragraph. The average consideration per unbundled share due to each restricted overseas shareholder will only be paid once all such unbundled shares have been disposed of.

The applicant's board resolution (in respect of the unbundling) clarifies that the entitlements to the unbundled shares will vest in the class members and ownership will pass to such class members upon the unbundling. Any sale of the unbundled shares prior to transfer will therefore be on behalf of such class members and the proceeds realised will be paid to them.

The applicant and Company A will remain South African residents subsequent to the unbundling.

## **6. Conditions and assumptions**

This binding class ruling is subject to the additional condition that the scope of this ruling excludes all the steps leading up to the point immediately prior to the proposed unbundling. Furthermore, in particular, no loans involving South African companies were capitalised or waived prior to the proposed unbundling and the shares in the applicant's subsidiaries prior to their contribution to Company A, secured no debt.

## **7. Ruling**

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

- a) Notwithstanding the disposal of shares on behalf of the restricted overseas shareholders and shareholders with fractional entitlements to unbundled shares in Company A, the distribution of the shares in Company A to the class members will constitute an "unbundling transaction" as defined in paragraph (a) of the definition of that term in section 46(1).
- b) Provided that no class member who is a "disqualified person", either alone or together with a connected person in relation to that class member that is or are a "disqualified person"(s), holds more than 20% of the shares in company A immediately after the distribution in terms of the "unbundling transaction", section 46(7) will not apply to the "unbundling transaction".
- c) The distribution of equity shares in terms of the "unbundling transaction" by the applicant will be disregarded in determining any liability for dividends tax.
- d) Paragraph 76B will not apply to the "unbundling transaction".
- e) For the purposes of section 46(3)(a)(v) and with reference to the market values of the unbundling shares (applicant's listed shares) and unbundled shares (shares in Company A), "as at the end of the day after that distribution" means, in relation to the shares unbundled under section 46 by the applicant and which are acquired by the holders of listed shares in the applicant:
  - the closing price of the unbundling shares (listed shares in applicant) on LDT+1; and

- the closing price of the unbundled shares (shares in Company A) on LDT+1.

Therefore, each class member that holds a listed share must allocate a portion of the expenditure and any market value attributable to the listed shares held in the applicant to the unbundled shares in Company A. The proportionate amount of the expenditure and market value to be allocated to the shares in Company A must be determined in accordance with the ratio that the market value of these shares in Company A, using the closing price on LDT+1, bears to the sum of the market value, using the closing price on LDT+1, of the listed shares in the applicant and of the shares in Company A.

Each class member must also reduce the expenditure and market value attributable to the listed shares in the applicant, by the amount so allocated to the shares in Company A.

- f) For the purposes of section 46(3)(a)(v) and with reference to the market values of the unbundling shares (applicant's unlisted shares) and unbundled shares (shares in Company A), "as at the end of the day after that distribution" means, in relation to the shares unbundled under section 46 by the applicant and acquired by the holders of unlisted shares in the applicant, the closing price on the business day following the record time and date.

Therefore, each class member that holds unlisted shares in the applicant must allocate a portion of the expenditure and any market value attributable to these unlisted shares held in the applicant to the shares in Company A. The proportionate amount of the expenditure and market value to be allocated to the shares in Company A must be determined in accordance with the ratio that the market value of these Company A shares, using the closing price on the business day after the record time and date, bears to the sum of the market value, using the closing price on the business day after the record time and date, of the unlisted shares in the applicant and of the shares in Company A.

Each class member must also reduce the expenditure and market value attributable to the unlisted shares in the applicant, by the amount so allocated to the shares in Company A.

- g) The transfer of the shares in Company A to the class members or realisation agent, on behalf of a restricted overseas shareholder or a shareholder with a fractional entitlement, where relevant, will be exempt from securities transfer tax (STT) under section 8(1)(a)(iv) of the STT Act, as the distribution will be an "unbundling transaction" as referred to in section 46.
- h) The transfer of shares in Company A by a realisation agent on behalf of restricted overseas shareholders or shareholders with fractional entitlements to purchasers in the market, will not be exempt under section 8(1)(a)(iv) of the STT Act.

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

This binding class ruling is valid in respect of the year(s) of assessment during which the proposed transaction is implemented.

**Legal Counsel: Advance Tax Rulings  
SOUTH AFRICAN REVENUE SERVICE**