

**DRAFT BINDING GENERAL RULING (INCOME TAX)**

DATE:

**ACT: INCOME TAX ACT NO. 58 OF 1962**

**SECTION: SECTION 46(3)(a)(v)**

**SUBJECT: UNBUNDLING TRANSACTIONS: MEANING OF “AS AT THE END OF THE DAY AFTER THAT DISTRIBUTION”**

***Preamble***

For the purposes of this ruling –

- “**BGR**” means a binding general ruling issued under section 89 of the Tax Administration Act No. 28 of 2011;
- “**expenditure**” means expenditure as defined in section 46(3)(b);
- “**last day to trade**” bears the meaning as defined in the JSE Limited Listings Requirements, namely, “the last business day to trade in a security in order to settle by record date to be able to qualify for entitlements or to participate in an event. All trades done from commencement of trade on [last day to trade] + 1 will be excluding entitlements”;
- “**section 46**” means section 46 of the Act;
- “**the Act**” means the Income Tax Act No. 58 of 1962; and
- any word or expression bears the meaning ascribed to it in the Act.

**1. Purpose**

This BGR addresses the interpretation of the words “at the end of the day after that distribution” as used in section 46(3)(a)(v).

**2. Background**

Section 46 provides parties to an unbundling transaction with relief from various taxes that would otherwise become payable.

A shareholder who acquires unbundled shares through an unbundling transaction must allocate a portion of the expenditure and any market value on valuation date attributable to the unbundling shares to the unbundled shares under section 46(3)(a)(i)(aa).

In making this allocation, section 46(3)(a)(v) requires that the shareholder must use the ratio that the market value of the unbundled shares, “*as at the end of the day after that distribution*”, bears to the sum of the market values, as at the end of that day, of the unbundling shares and the unbundled shares.

### 3. Application of the law

In applying section 46(3)(a)(v) it must first be determined when the distribution of the unbundled shares occurs. Generally, a distribution will occur when the shareholder becomes unconditionally entitled to the distribution, that is, when the distribution accrues to the shareholder.

A holder of shares will become unconditionally entitled to a distribution under an unbundling transaction on the first day that the unbundling and the unbundled shares begin trading separately.

Section 59 of the Companies Act No. 71 of 2008 sets out what constitutes the record date for determining shareholder rights. Under section 59(1)(e) the board of a company may set a record date for determining which shareholders are entitled to receive a distribution. Under section 59(3) if the board does not set a record date, the record date will be the date of the action or event unless the memorandum of incorporation or rules of the company provide otherwise.

A holder of listed shares becomes unconditionally entitled to a distribution on the first business day<sup>1</sup> after the last day to trade, which is the first day on which the unbundling and unbundled shares begin trading independently of each other. The market value of the unbundling and unbundled shares as at the end of that first business day must be used when applying the ratio as specified in section 46(3)(a)(v). Thus if the last day to trade falls on a Friday, the first business day after the last day to trade will fall on the Monday of the next week and the closing price on the Monday must be used (assuming the Friday and Monday are both business days).

The date on which a holder of unlisted shares will become entitled to a distribution will depend on the facts and circumstances of the particular case. Generally the holder of such shares would become entitled to a distribution on the date on which the distribution is approved by the board of directors unless the board has determined that the distribution will be payable to shareholders registered in the company's share register on a specified date, in which case it will be on that date. Regard will therefore have to be had to the resolution approving the distribution. In the case of unlisted shares the market value of the unbundling and the unbundled shares as at the end of the day on which the shareholders become entitled to the distribution must be used when applying the ratio as specified in section 46(3)(a)(v).

### 4. Ruling

For purposes of section 46(3)(a)(v) and in relation to listed shares, "as at the end of the day after that distribution" means as at the end of the first business day after the last day to trade.

For purposes of section 46(3)(a)(v) and in relation to unlisted shares, "as at the end of the day after that distribution" means as at the end of the day on which shareholders become entitled to the distribution.

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<sup>1</sup> The term "business day" is defined in the JSE Limited Listings Requirements and means any day other than a Saturday, Sunday or any other day on which the JSE is closed.

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act No. 28 of 2011.

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

This ruling will apply from the date of issue of the final BGR and will apply until it is withdrawn, amended, the relevant legislation is amended or a decision of the courts differs materially from it.

**Group Executive: Interpretation and Rulings  
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