BINDING CLASS RULING: BCR 032

DATE: 27 February 2012

ACTS	**:**	**INCOME TAX ACT, NO. 58 OF 1962 (the Act)**
	:	**SECURITIES TRANSFER TAX ACT, NO. 25 OF 2007 (the STT Act)**
SECTIONS	**:**	**SECTION 46 OF THE ACT**
		SECTION 8 OF THE STT ACT
SUBJECT	**:**	**DISTRIBUTION OF CERTAIN SHARES TO CERTAIN FOREIGN SHAREHOLDERS AS A RESULT OF RESTRUCTURING**

1. Summary

This ruling deals with the tax consequences that will arise from –

- the distribution of shares to shareholders in terms of an unbundling transaction; and
- the disposal of certain of the shares available for distribution in terms of the unbundling transaction on behalf of certain foreign shareholders as well as the distribution of the net proceeds thereof to such foreign shareholders.

This ruling also deals with the question as to whether the transfer of the shares to shareholders will be exempt from securities transfer tax.

2. Relevant tax laws

This is a binding class ruling issued in accordance with section 76R of the Act.

In this ruling legislative references to sections are to sections of the relevant Acts applicable as at 02 February 2011 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the relevant Act.

This ruling has been requested under the provisions of section 46 of the Act and section 8(1)(*a*)(iv) of the STT Act.

3. Class

The class members to whom this ruling will apply will be the Class A shareholders as described in point 4 below.

4. Parties to the proposed transaction

The Applicant:	A wholly owned subsidiary of the Holding Company mentioned as one of the Co-Applicants below
The Co-Applicants:	The Holding Company of the Applicant A private company in which the Applicant holds shares
The Class A shareholders:	Certain foreign shareholders of the Holding Company

5. Description of the proposed transaction

The Applicant and its Holding Company form a group of companies (the Group). The Applicant owns three businesses, (A, B and C) in South Africa. The Applicant intends to incorporate Newco as a wholly owned subsidiary of the Applicant and to move the business of C as a going concern (including all assets and liabilities of C) to Newco in exchange for additional shares in Newco.

The businesses of A and B are neighbouring operations and have the same operational methods and standards. The business of C is located a few hundred kilometres away from A and B. C adopts different operational methods and support standards from those tailored to A and B and its productivity is generally higher.

Given the particular requirements of C and the operation of the business of C, it is envisaged that it will be necessary to address the particular operational requirements of C separately from those of A and B. In particular, it is highlighted that –

- from an operational perspective, C requires a specific skill set and management aligned with the operational requirements of C;
- from a geographic perspective, C requires regional services appropriate to its specific needs; and
- from a commercial perspective, there is significant potential for C to grow production through the acquisition of businesses of a similar nature to that of C and undeveloped business properties in the area in which it is located.

Based on the above information it is clear that C will commercially be in a better position as a separate entity.

The introduction of a Black Economic Empowerment (BEE) consortium will further benefit both C and the rest of the Group. It is proposed that the BEE consortium subscribes for a certain percentage shareholding in Newco.

From the perspective of C and Newco the introduction of a BEE consortium will –

- introduce capital of hundreds of millions of rands into C; and
- provide a BEE shareholder which will significantly enhance the ability of C to do further transactions in its business area and will enhance the relationship between C and other stakeholders.

The following steps are envisaged in order to execute the proposed transaction:

- Step 1: The Applicant will incorporate Newco as a wholly owned subsidiary.
- Step 2: The Applicant will transfer the business of C as a going concern (including all assets and liabilities of C) in exchange for additional shares in Newco under section 42 of the Act.
- Step 3: The Applicant will transfer all ancillary assets comprising 100% of the shares held by the Applicant in a private company (mentioned as one of the Co-Applicants) in exchange for additional shares in Newco under section 42 of the Act.
- Step 4: The BEE partner will subscribe for a certain percentage shareholding in Newco for a cash consideration.
- Step 5: Newco will issue an effective percentage of its issued share capital to a newly incorporated C Management Trust.
- Step 6: The Applicant will distribute its shareholding in Newco to its Holding company under section 46 of the Act.
- Step 7: As part of the Holding Company's unbundling, it will distribute its shareholding in Newco to its shareholders under section 46 of the Act.
- Step 8: Newco will be listed on the JSE on the day of distribution as contemplated in Step 6 above.
- Step 9: Newco shares that will be due to the shareholders in a specific foreign country [other than that specific foreign country's qualified institutional buyers (QIBs)] will be retained by the Applicant or delivered, following the unbundling, to a third party in South Africa nominated by the Applicant, who will coordinate the disposal of the

Newco shares due to that specific foreign country's shareholders for cash in South Africa and distribute the cash (net of costs) due to the specific foreign country's shareholders in proportion to their entitlement to the Applicant's shares.

In addition, the specific foreign country's depository will dispose of the Newco shares due to the Applicant's specific foreign country's depository receipt (DR) holders (other than DR holders that qualify as QIBs) for cash in South Africa either independently or in combination with the disposal of the Newco shares due to the specific foreign country's shareholders and any other ineligible foreign shareholders. The specific foreign country's depository will distribute the cash proceeds (net of costs) to the Applicant's relevant DR holders in proportion to their respective entitlements to Newco shares.

6. Conditions and assumptions

This ruling is made subject to the conditions and assumptions that:

- Newco will be a resident company.
- On the date of disposal, the market value of the assets will be equal to or exceed the cost of the assets to be disposed of.
- The Applicant holds the assets (that is, the business of C and the shares mentioned in Step 3 above) as capital assets and not trading stock as the Applicant's main business.
- Newco will hold the assets in the business of C in the same capacity as it was previously held by the Applicant.
- Newco will acquire the ancillary assets, that is, the shares mentioned in Step 3 above as capital assets and not as trading stock.
- The proposed disposal of the shares mentioned in Step 3 above and the business of C in exchange for Newco shares will constitute an asset-for-share transaction under section 42 of the Act.

7. Ruling

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

- The distribution of Newco shares by the Holding Company to the Holding Company's shareholders will constitute an unbundling transaction under section 46 of the Act.
- The disposal by the Holding Company, acting as an agent on behalf of certain foreign shareholders, of relevant shares in Newco available for distribution to those shareholders and the distribution of the net proceeds thereof, will comply with section 46 of the Act.
- The transfer of Newco shares by the Applicant to its shareholders, in terms of the constituted unbundling transaction under section 46 of the Act, will be exempt from securities transfer tax under section 8(1)(*a*)(iv) of the STT Act.

8. Other issues

The securities transfer tax exemption will not be applicable to the transfer of Newco shares to be sold on behalf of the shareholders (other than the specific foreign country's shareholders mentioned in point 7 above) who are resident in other foreign jurisdictions and are unable to take delivery of the shares.

9. Period for which this ruling is valid

This binding class ruling is valid in respect of the proposed transaction, provided the transaction is concluded within a period of three (3) years as from February 2011.

Issued by:

Legal and Policy Division: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE