

**BINDING CLASS RULING: BCR 038**

DATE: 14 March 2013

**ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)**  
**: SECURITIES TRANSFER TAX ACT NO. 25 OF 2007 (the STT ACT)**

**SECTION : SECTIONS 8C AND 42 OF THE ACT**  
**: SECTION 8 OF THE STT ACT**

**SUBJECT : EXCHANGE OF ONE RESTRICTED EQUITY INSTRUMENT FOR ANOTHER**

**1. Summary**

This ruling deals with the tax consequences under sections 8C and 42 of the Act in respect of the exchange of one restricted equity instrument for another.

**2. Relevant tax laws**

This is a binding class ruling issued in accordance with section 78(2) and published in accordance with section 87(2) of the Tax Administration Act No. 28 of 2011.

In this ruling references to sections are to sections of the relevant Acts applicable as at 20 December 2012 and 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 the provisions of –

- section 8C of the Act;
- section 42 of the Act; and
- section 8 of the STT Act.

**3. Class**

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

**4. Parties to the proposed transaction**

The Applicant: A company that is the controlling group company, the shares of which are listed on the Johannesburg Stock exchange

The Co-Applicants: Empowerco, a controlled group company to be used as a special purpose vehicle to hold empowerment shares in the Applicant

Employee Trust, an employee share ownership scheme trust

The Beneficiaries: The Employee Trust's beneficiaries, a certain group of employees of the Applicant's group of companies

## 5. Description of the proposed transaction

The Applicant proposes to enter into a Broad Based Black Economic Empowerment (BBBEE) transaction in terms of which it will transfer ownership of shares in itself, representing a portion of its South African (SA) operations, to a certain group of employees through the Employee Trust.

A summary of the proposed transaction is set out in the steps below:

- The Applicant will issue a new class of shares (class B shares) to Empowerco under section 42 of the Act, representing 20% of its SA operations.
- Empowerco will issue shares to the Employee Trust, equalling 50.1% of its ordinary shares, at a nominal value. It will be a term of issue of these shares that Empowerco will have an option to repurchase some of the shares at the end of a 10 year lock-in period (maturity date) at the same nominal value. The number of shares to be repurchased will be based on a compound growth formula.
- The remaining Empowerco shares held by the Employee Trust after execution of the repurchase agreement will be distributed by the Employee Trust to its beneficiaries subject to a disposal restriction for a period of 7 days.
- During the 7 day restriction period the Empowerco shares will immediately be exchanged under section 42 of the Act for shares in the Applicant.

## 6. Conditions and assumptions

This ruling is not subject to any additional conditions and assumptions.

## 7. Ruling

The ruling made in connection with the proposed transaction, with particular regard to the distribution of the Empowerco shares by the Employee Trust to the Beneficiaries, and the exchange of these shares by the Beneficiaries for shares in the Applicant under section 42 of the Act, is as follows:

- For purposes of sections 8C and 42 of the Act, the date of acquisition of the Empowerco shares by the Beneficiaries will be the distribution date which will be the maturity date.
- The exchange of Empowerco shares by the Beneficiaries for shares in the Applicant will be deemed as fulfilling the requirements of item (bb) of paragraph (a)(ii) of the definition of "asset-for-share transaction" in section 42 of the Act.
- The exchange of Empowerco shares by the Beneficiaries for shares in the Applicant will qualify for roll-over relief as contemplated in section 42 of the Act.
- The Beneficiaries will be taxed on the market value of the Applicant's shares under section 8C of the Act.

- No securities transfer tax will be payable on the transfer of the Empowerco shares under section 42 of the Act by virtue of the application of section 8(1)(a) of the STT Act

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

This binding class ruling is valid for a period of 10 years from 20 December 2012.

Issued by:

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