



South African Revenue Service

**BINDING CLASS RULING: BCR 070**

DATE: 30 June 2020

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)  
SECURITIES TRANSFER TAX ACT 25 OF 2007 (STT Act)**  
**SECTION : SECTION 46 OF THE ACT  
: SECTION 8(1)(a)(iv) OF THE STT ACT**  
**SUBJECT : RECIPIENTS OF SHARES IN AN “UNBUNDLED” COMPANY**

***Preamble***

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

**1. Summary**

This ruling determines tax consequences for the recipients of listed shares in a company, following an unbundling transaction of that company’s shares by its listed holding company.

**2. Relevant tax laws**

In this ruling references to sections are to sections of the Act and the STT Act applicable as at 25 February 2020. 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 –

- section 46 of the Act; and
- section 8(1)(a)(iv) of the STT Act.

**3. Class**

The class members to which this ruling applies are all resident and non-resident shareholders of listed shares in the applicant, as reflected on the applicant’s securities register on the last day to trade (LDT).

**4. Parties to the proposed transaction**

The applicant: A resident listed company

Listco: A resident company and a wholly-owned subsidiary of the applicant which is to be listed

Class members: The members of the class described in **3** above

## 5. Description of the proposed transaction

The applicant comprises of three principal business units. The purpose of the proposed transaction is to demerge and separately list one of these.

Listco will have a primary listing on the JSE.

The listing of the applicant will be retained.

To implement the transaction, the applicant will take several transaction steps. (See BPR 345 where the steps are set out in full). For purposes of this binding class ruling, the following steps are applicable:

Step	Description	Timing
1	The applicant establishes Listco.	Six months before LDT.
4	The applicant will distribute all its shares in Listco to its shareholders (class members) as a distribution <i>in specie</i> as contemplated in section 46 of the Act.	After market closure on LDT.
7	Listco will be admitted to trade on the JSE and will make an initial public offering of shares.	Listing Date.
8	The applicant will distribute its shares in Listco to the class members.	Record Date.

The distribution of shares in Listco (unbundled shares) to the class members will, in certain instances, result in fractional entitlements for shareholders (fractional shareholders), which will be rounded down to the nearest whole number. The aggregated excess fractions of the unbundled shares to which a shareholder would otherwise have been entitled will not be transferred to it following the unbundling, but will be sold on its behalf and with its consent in the market.

In addition, certain foreign shareholders of the applicant will not be entitled to receive the shares in Listco (restricted shareholders). The restricted shareholders will each receive a cash amount corresponding to the net proceeds from the sale of the unbundled shares to which they otherwise would have been entitled following the unbundling. Those shares will also be sold on their behalf and, with their consent, in the market.

## 6. Conditions and assumptions

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

## 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 shareholders and fractional shareholders with entitlements to unbundled

Listco shares, the distribution of the Listco shares to the class members will constitute an “unbundling transaction”, as defined in paragraph (a) of the definition of that term in section 46(1) of the Act.

- b) Provided that no single class member who is a “disqualified person”, either alone or together with any connected person, in relation to that class member that is or are a “disqualified person or persons”, holds or hold more than 20% of the Listco shares immediately after the distribution in terms of the “unbundling transaction”, section 46(7) of the Act will not apply to the unbundling.
- c) The tax consequences set out in section 46(3) of the Act will therefore apply in respect of this transaction and in particular:
  - i) Under section 46(3)(a)(i) the class members must allocate a portion of the expenditure and market value attributable to the applicant shares to the Listco shares acquired (in accordance with subparagraph (v)) and reduce the expenditure and market value attributable to the applicant shares by the amount so allocated to the Listco shares.
  - ii) The class members will, in terms of section 46(3)(a)(iii) and (iv), be regarded as having acquired the Listco shares on the same date as the applicant shares and with the same intention (that is, where the applicant shares were held as capital assets, the Listco shares must be regarded as acquired as capital assets and where their applicant shares were held as trading stock, the Listco shares must be regarded as acquired as trading stock).
  - iii) For the purposes of section 46(3)(a)(v) and with reference to the market values of the unbundling shares (applicant shares) and unbundled shares (Listco shares), the phrase “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 class members:
    - the closing price of the unbundling shares (applicant shares) on LDT+1; and
    - the closing price of the unbundled shares (Listco shares) on LDT+1.

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

- d) Each class member must also reduce the expenditure and market value attributable to its applicant shares by the amount so allocated to the Listco shares.

- e) The distribution of the Listco shares in terms of the unbundling by the applicant will, under section 46(5), be disregarded in determining any liability for dividends tax.
- f) Under section 46(5A), paragraph 76B of the Eighth Schedule to the Act will not apply in respect of the distribution.
- g) The transfer of the Listco shares to the class members or realisation agent, on behalf of restricted shareholders or fractional shareholders, where relevant, will be exempt from STT under section 8(1)(a)(iv) of the STT Act, as that distribution will be an “unbundling transaction” as referred to in section 46.
- h) The transfer of Listco shares, by a realisation agent on behalf of restricted shareholders or fractional shareholders 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 of assessment during which the proposed transaction is entered into.

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