

BINDING CLASS RULING: BCR 083

DATE: 31 October 2022

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 46 AND PARAGRAPH 75 READ WITH PARAGRAPH 31(1)(a) OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : SIMULTANEOUS UNBUNDLING OF SHARES HELD IN MORE THAN ONE LISTED 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 the tax implications arising from the simultaneous unbundling of shares held by the applicant in more than one listed company.

2. Relevant tax laws

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 1 August 2022. 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 –

- section 46; and
- paragraph 75 read with paragraph 31(1)(a)(i).

3. Class

The class members to whom this ruling will apply are the shareholders referred to in 4.

4. Parties to the proposed transaction

The applicant: A listed resident company, holding listed shares as well as unlisted shares

The co-applicants: Listed resident companies, in which the applicant holds shares which are being unbundled under the proposed transaction

The shareholders: Shareholders of the applicant at the record date of the unbundling transaction, which includes a “disqualified person” as defined in section 46(7)(b)

5. Description of the proposed transaction

The share price of the applicant has traded at a significant discount to the value of its underlying investments over recent years. The applicant proposes to unlock value for its shareholders by the simultaneous unbundling of all the shares held in the co-applicants.

Subsequent to the unbundling transaction the applicant will, by way of a specific repurchase of shares, repurchase (and cancel) its issued ordinary shares held by the general public for cash using cash reserves and borrowings. The applicant's current management and its founders will remain as shareholders. The applicant will not issue any new shares and no contributed tax capital (CTC) will be used to repurchase the shares.

The applicant will delist from the JSE and retain the unlisted shares as well as shares in the listed company that was excluded from the unbundling transaction.

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) Pursuant to the proposed simultaneous unbundling transactions, for purposes of determining the expenditure and market values of the shares of the applicant and the co-applicants in terms of section 46(3)(a), the proportionate amount of the expenditure and market value to be allocated to the unbundled shares must be determined in accordance with the ratio that the market value of all the unbundled shares in a specific co-applicant, as at the end of the day after that distribution, bears to the sum of the market value as at the end of that day, of the unbundling shares and the unbundled shares in all the other co-applicants plus the market value, as at the end of that day, of the unbundled shares in the specific co-applicant.
- b) Pursuant to the proposed simultaneous unbundling transactions, the CTC of the applicant immediately after the distribution, is deemed under section 46(3A)(a), to be an amount which bears to the CTC of the applicant immediately before the distribution, the same ratio as the aggregate market value immediately after the distribution of the applicant's shares bears to the aggregate market value of the shares immediately before the distribution.
- c) Pursuant to the simultaneous unbundling transactions, the CTC of each unbundled company is determined as $A + B$; wherein –
 - A is determined as a two-fold process by first determining the CTC of the applicant immediately before the distribution. Secondly, such amount is allocated to the relevant co-applicant based on the ratio that the aggregate market value of the unbundled shares in the relevant co-applicant before the distribution bears to the aggregate

market value of the shares in the applicant immediately before the distribution; and

- B is the amount which bears to the CTC of the relevant co-applicant immediately before the distribution the same ratio as the shares held in the relevant co-applicant immediately before the distribution by persons other than the applicant bear to the total of the shares held in that co-applicant immediately before the distribution.
- d) The meaning of “market value, immediately before the distribution” in section 46(3A) is the closing price as at the last date to trade (LDT) and “market value, immediately after the distribution” in the same section is the closing price as at LDT+1.
- e) Each shareholder receiving shares under an unbundling transaction to which the provisions of section 46 apply, must determine the portion of tax paid by the unbundling company in respect of the distribution of its shares in a specific unbundled company in the simultaneous unbundling transactions to a “disqualified person” as contemplated in section 46(7) that is relevant to it, in accordance with item (iii) of the definition of “expenditure” in section 46(3)(b), namely the ratio that the number of equity shares held by that shareholder in the unbundling company bears to the number of all the issued equity shares in that unbundling company immediately before that unbundling transaction.
- f) The portion of the tax calculated in ruling (e) must be allocated to the unbundled shares in the specific co-applicant in accordance with section 46(3)(a)(v), namely the ratio that the market value of the unbundled shares in the specific co-applicant, as at the end of the day after that distribution, bears to the sum of the market value as at the end of that day, of the unbundling shares and the unbundled shares in the specific co-applicant. The allocated amount will form part of the expenditure in relation to the shares in the specific co-applicant.
- g) The balance of the tax remaining, that is, the portion of the tax calculated in ruling (e) not allocated to the unbundled shares in the specific co-applicant in ruling (f), may not be allocated to the shares in the unbundling company as such allocation is not provided for in section 46(3)(a)(i)(bb).
- h) The tax paid by the applicant in respect of the unbundling of its shares to a “disqualified person” must be determined at LDT+1 with reference to the market value of the shares at LDT as provided for by paragraph 75(1) read with paragraph 31(1)(a).

8. Period for which this ruling is valid

This binding class ruling is valid for a period of three years from 1 August 2022.