SOUTH AFRICAN REVENUE SERVICE

The guidance contained in this ruling is affected by subsequent law changes. Refer to BPR 234 in respect of the security transfer tax consequences of an unbundling transaction.

BINDING PRIVATE RULING: BPR 039

DATE: 29 July 2009

ACT	**:**	**INCOME TAX ACT, NO. 58 OF 1962 (the Act)**
SECTION	**:**	**SECTION 46**
SUBJECT	**:**	**CONSEQUENCES OF AN UNBUNDLING TRANSACTION REGARDING THE NUMBER OF SHARES TO BE DISTRIBUTED AND THE DISTRIBUTION OF SHARES TO SHAREHOLDERS WHO ARE RESIDENT IN CERTAIN FOREIGN JURISDICTIONS**

1. Summary

This ruling deals with the practical consequences that arise when a company distributes shares held in another company in an unbundling transaction and the number of shares to be distributed to the shareholders end up being fractions of shares. It also deals with the situation where the company cannot distribute shares to shareholders in certain foreign jurisdictions due to statutory requirements in such foreign jurisdictions.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling legislative references to sections are to sections of the Act applicable as at 31 July 2007 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested under the provisions of section 46.

3. Parties to the proposed transaction

The Applicant:	A company listed on the JSE which is a “resident” as defined in section 1 (unbundling company)
Company B:	A company listed on the JSE which is a “resident” as defined in section 1 and a subsidiary of the Applicant (unbundled company)

4. Description of the proposed transaction

The Applicant and its subsidiary, Company B, jointly announced that the Applicant intends to, subject to shareholder and other regulatory consents, unbundle its investment in Company B.

Rounding off of shares to be distributed

- Section 46(1) of the Act requires, *inter alia*, that all the distributable shares be distributed by the unbundling company to its shareholders in accordance with such shareholders' effective interest in the unbundling company.
- It will only be possible to determine the unbundling ratio, that is, the number of Company B shares which will be distributed to each shareholder of the Applicant for each share held in the Applicant, shortly before the close of business on the record date, being the date upon which all shareholders of the Applicant participating in the unbundling transaction are to be registered as shareholders of the Applicant.
- The Applicant wishes to round off the share entitlements to the nearest full number, as fractional shares cannot be distributed.
- Although the effect of the rounding off on each shareholder's effective interest will be insignificant, the distribution of the Company B shares to each shareholder will not, strictly speaking, be exactly in accordance with such shareholder's effective interest in the Applicant.

Distribution to shareholders who are resident in certain foreign jurisdictions and unable to take delivery of the shares

- The possibility exists that the Applicant may be unable to distribute Company B shares to such shareholders as a result of statutory requirements in such foreign jurisdictions prohibiting such distributions.
- In these circumstances, the Applicant's transfer secretary will be required to liquidate the Company B shares to which such shareholders will become entitled in terms of the unbundling transaction and to distribute the net proceeds to such shareholders.
- The Applicant will, through its transfer secretary, merely be acting as an agent on behalf of such shareholders in disposing of the Company B shares and distributing the net proceeds realised.

5. Conditions and assumptions

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

Rounding off of shares to be distributed

- This ruling is issued having regard to the fact that the proposed unbundled company is a listed company and to the quantum of the shares in issue.

Distribution to shareholders who are resident in certain foreign jurisdictions and unable to take delivery of the shares

- The Company B shares will only be liquidated after such shareholders become entitled to these shares.
- The Company B shares will have to be disposed of on behalf of such shareholders after they become entitled to these shares in terms of the unbundling transaction.
- The Company B shares will have to be disposed of within six months from the date of the unbundling transaction or such further period as agreed with the Commissioner.

6. Ruling

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

In the context of the Applicant's unbundling of its investment in Company B, it is confirmed that:

Rounding off of shares to be distributed

- The Applicant will be regarded as having unbundled Company B by distributing the distributable shares in Company B to its shareholders. Such distribution will be regarded as being in accordance with each shareholder's effective interest in the Applicant, notwithstanding the fact that fractional entitlements to the Company B shares, calculated in accordance with the unbundling ratio, will result in the number of Company B shares distributed to each shareholder being rounded up or rounded down to the nearest full number.

Distribution to shareholders who are resident in certain foreign jurisdictions and unable to take delivery of the shares

- Should the Applicant be unable to deliver any unbundled Company B shares to such shareholders, the Applicant will be regarded as an agent acting on behalf of such shareholders. The Applicant will, after the unbundling transaction, procure the disposal of the Company B shares through its transfer secretary and distribute the net proceeds, derived by its share transfer secretary on the disposal of the Company B shares, to such shareholders.

7. Other issues

The transfer of the Company B shares to shareholders in terms of the unbundling transaction, will be exempt from uncertified securities tax under section 6(1)((*b*)((ix)(*ee*) of the Uncertified Securities Tax Act, No. 31 of 1998, however, such exemption will not be applicable to the transfer of the Company B shares to be sold on behalf of the shareholders who are resident in certain foreign jurisdictions and are unable to take delivery of the shares.

8. Period for which this ruling is valid

This binding private ruling is valid as from the date of implementation of the proposed transaction until the date of the last distribution of the net proceeds in respect of the proposed transaction.

Issued by:

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