

BINDING PRIVATE RULING: BPR 194

DATE: 15 June 2015

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

SECTION : **SECTIONS 1(1), DEFINITIONS OF “GROSS INCOME” AND “DIVIDEND”, 18A, 54, 56(1)(h), 64D, DEFINITION OF “DIVIDEND”, AND PARAGRAPHS 2(1), 11(1) AND (2)(b) OF THE EIGHTH SCHEDULE TO THE ACT**
SECTIONS 2(1) AND 6 OF THE STT ACT

SUBJECT : **DISPOSAL OF SHARES THROUGH A SHARE BUY-BACK AND A DONATION**

1. Summary

This ruling deals with the disposal of shares through a share buy-back by a resident company from a non-resident person, and a donation of shares by the same non-resident person to another resident company, both for no consideration.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 78(1) and published in accordance with section 87(2) of the Tax Administration Act No. 28 of 2011.

In this ruling references to sections and paragraphs are to sections of the relevant Acts and paragraphs of the Eighth Schedule to the Act applicable as at 22 May 2015 and 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 the following provisions of –

- the Act –
 - section 1(1), definition of “gross income”; and “dividend”;
 - section 18A;
 - section 54;
 - section 56(1)(h);
 - section 64D, definition of “dividend”;
 - paragraph 2(1);
 - paragraph 11(1) and (2); and

- the STT Act –
 - section 2(1); and
 - section 6.

3. Parties to the proposed transaction

The Applicant:	A private company incorporated in and a resident of South Africa
The Co-Applicants:	<p>HoldCo, a private company incorporated in and a resident of South Africa</p> <p>Investor A, an individual who is a non-resident of South Africa</p>
Company B:	A broad-based black economic empowerment company whose shares are wholly owned by an employee trust whose aim is to address adverse socio-economic conditions in South Africa by fostering new business enterprises and employment opportunities

4. Description of the proposed transaction

Investor A holds 5.16% of the issued ordinary shares of HoldCo in a blocked account for South African exchange control purposes. HoldCo holds 68.2% of the ordinary shares in the Applicant and the balance is held by Company B (17.8%) and Company C, a private company incorporated in and a resident of South Africa, (14%).

The Applicant and Co-Applicants have committed themselves to sponsoring the education of potential South African entrepreneurs and fostering their ventures. They now wish to extend their benevolence to other social challenges and issues in South African communities as identified by the employees of the Applicant.

The Applicant will annually donate approximately 4% of its profits to charitable causes. The only eligible recipients of these donations will be entities qualifying under the criteria set out in section 18A(1) of the Act.

The annual donations will result in reduced profits available for distribution to the Applicant's shareholders. In order to facilitate the abovementioned donations and to compensate the shareholders of the Applicant for this economic dilution, HoldCo will repurchase a portion of the shares that Investor A hold in HoldCo (equal to approximately 4% of the issued shares of HoldCo) for no consideration.

The remaining shares held by Investor A in HoldCo (equal to approximately 1.6% of the issued shares of HoldCo) will be transferred to Company B for no consideration in order to ensure that Company B will effectively remain in the same economic position to be able to continue its socio-economic endeavours.

The shares repurchased by HoldCo will be cancelled, but they will remain as authorised shares, though unissued share capital.

5. Conditions and assumptions

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

6. Ruling

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

- There will be no amount that must be included in the gross income of HoldCo as a result of the repurchase by HoldCo of a portion of the HoldCo shares held by Investor A, for no consideration.
- There will be no disposal of an asset by HoldCo as a result of the cancellation of the HoldCo shares held by Investor A and repurchased by HoldCo. No capital gains tax implications will arise for HoldCo.
- Securities transfer tax (STT) will be payable on both (i) the repurchase by HoldCo of a portion of the HoldCo shares held by Investor A, and (ii) the transfer of the remaining HoldCo shares held by Investor A to Company B, at the rate of 0.25% on the market value of these shares immediately prior to the repurchase and transfer thereof. HoldCo will be liable for the payment of the STT.
- The disposal for no consideration by Investor A of the HoldCo shares (by way of the repurchase by HoldCo) and the transfer of the remaining HoldCo shares (by way of the transfer to Company B) will not result in an amount that must be included in Investor A's gross income for South African income tax purposes.
- The HoldCo shares held by Investor A do not constitute assets contemplated in paragraph 2(1)(b) of the Eighth Schedule to the Act, therefore, Investor A as a non-resident will not be liable for capital gains tax on the disposal of a portion of the HoldCo shares and the transfer of the remaining HoldCo shares.
- The repurchase by HoldCo of a portion of the HoldCo shares held by Investor A for no consideration will not constitute a "dividend" as defined in section 64D of the Act and accordingly there will be no dividends tax to be levied on such repurchase.
- The disposal and the transfer by Investor A of the HoldCo shares for no consideration will not be subject to donations tax as Investor A is a non-resident.
- The annual donations to be made by the Applicant of approximately 4% of its annual profits to entities qualifying with the criteria set out in section 18A(1)(a), (b) or (c) of the Act and which do not exceed 10% of the taxable income of the Applicant (prior to taking into account any deductions under section 18A) will be deductible from the taxable income of the Applicant.

- The donations made by the Applicant to entities qualifying under the criteria set out in section 18A(1)(a), (b) or (c) of the Act will be exempt from donations tax under section 56(1)(h) of the Act.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 5 years from 22 May 2015.

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