

BINDING PRIVATE RULING: BPR 400

DATE: 14 December 2023

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 54, 55, 56 AND 58
SUBJECT : DONATIONS TAX IMPLICATIONS ON THE ISSUE OF SHARES AT NOMINAL VALUE TO ENHANCE BBBEE CREDENTIALS

Preamble

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

1. Summary

This ruling determines whether donations tax will be payable on the amendment of a company's memorandum of incorporation (MOI) to allow for the issue of shares at nominal value to a Corporate Social Investment (CSI) trust in order to enhance the BBBEE status of a group of companies.

2. Relevant tax laws

In this ruling, references to sections are to sections of the Act applicable as at 14 August 2023. 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 54;
- section 55;
- section 56; and
- section 58.

3. Parties to the proposed transaction

The Applicant:	A resident trust benefitting employees of a group and who currently holds all the issued share capital in Company A
Company A:	A resident company who currently holds shares in the listed holding company of the group (Listco)
CSI Trust:	A resident CSI trust

4. Description of the proposed transaction

The Applicant and Company A were established with the principal objective of acquiring and holding (directly or indirectly) Listco shares. These shares shall be utilised directly or indirectly for the benefit of the beneficiaries of the broader group's BBBEE transaction.

The Applicant has not as yet nominated, identified and/or appointed specific beneficiaries.

The Applicant intends to enter into a transaction whereby cash and Listco shares currently held by Company A and additional Listco shares to be acquired by Company A will be allocated, by amending the MOI of Company A, as follows:

- Beneficiaries of the Applicant which will be the employees of the Group in terms of an employee share ownership plan (ESOP); and
- Beneficiaries of CSI Trust which will be Black People as envisaged in the definition of "Black Participants" in the trust deed of the Applicant (BEE Plan).

The ESOP will be established by way of the incorporation of the terms of the ESOP into the Applicant's founding documents and is intended to exist for a finite number of years. All the employees of the group who are in South Africa will participate in the ESOP.

The Applicant will subscribe for additional shares in Company A. Company A will in turn acquire additional Listco shares for the benefit of the Applicant. The Applicant will have an indirect interest in the Listco Shares.

For purposes of the BEE Plan, a new trust (CSI Trust) has been established as a discretionary *inter-vivos* trust. It is intended that CSI Trust will exist in perpetuity. CSI Trust will have an indirect interest in the Listco shares held by Company A, together with further Listco shares to be acquired by Company A for the benefit of CSI Trust's beneficiaries. In terms of the trust deed of CSI Trust, the majority of the value of benefits allocated by CSI Trust to its beneficiaries in any financial year, must accrue to Black Persons (as defined in the trust deed).

In terms of the ESOP, following the vesting period, the Listco shares will be distributed to the beneficiaries of the Applicant and the ESOP will terminate. CSI Trust will however continue to (indirectly) hold the remaining Listco shares on the basis that it is intended to be a perpetual scheme.

The Applicant and CSI Trust are not "connected persons", as defined in section 1(1) of the Act in relation to each other.

5. Conditions and assumptions

This binding private ruling is subject to the following additional conditions and assumptions:

- a) CSI Trust is a registered Public Benefit Organisation.
- b) No beneficiary of the CSI Trust is a connected person in relation to any beneficiary of the Applicant.

6. Ruling

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

- a) No donations tax liability arises under section 54 as a result of the proposed transaction comprising:
- the amendment of Company A's MOI;
 - the amendment of the Applicant's trust deed to incorporate the provisions of the ESOP; and
 - the issue of shares by Company A to CSI Trust for a nominal consideration.

7. General Note

No view is expressed in relation to the deductibility of the contributions to the Applicant or the capital gains tax consequences of the proposed transaction.

8. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 14 August 2023.