

BINDING PRIVATE RULING: BPR 345

DATE: 30 June 2020

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECURITIES TRANSFER TAX ACT 25 OF 2007 (STT Act)**

**SECTION : SECTIONS 24BA, 42 AND 46 OF THE ACT
: SECTIONS 1 AND 8(1)(a)(i) and (iv) OF THE STT ACT**

**SUBJECT : ASSET-FOR-SHARE TRANSACTIONS FOLLOWED BY AN
UNBUNDLING TRANSACTION AND A SALE OF SHARES TO A
THIRD PARTY**

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 and 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 the tax relief for the parties involved in an internal restructuring involving corporate rules (section 42) followed by an unbundling (section 46) and a sale of shares to a third party.

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 –

- the Act –
 - section 24BA;
 - section 42; and
 - section 46.
- the STT Act –
 - section 1; and
 - section 8(1)(a)(i) and (iv).

3. Parties to the proposed transaction

The applicant: A resident listed company

Listco:	A resident company and a wholly-owned subsidiary of the applicant before the proposed transaction, which is to be listed
Company A:	A resident company which is a wholly-owned subsidiary of the applicant
Company B:	A resident company which is a subsidiary of the applicant
Company C	A non-resident company owned by members of the senior management of company B

4. 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:

Step	Description	Timing
1	The applicant establishes Listco.	6 months before Last Day to Trade (LDT).
2	The applicant holds 80% of the shares in company B. It will transfer circa 26.78% of those shares to company A, in exchange for the issue of at least one share by company A to the applicant in terms of section 42 of the Act.	LDT-1 will be the effective date of the sale.
3	The applicant transfers its remaining shares in company B to Listco in exchange for shares issued by Listco, also in terms of section 42 of the Act.	LDT-1 will be the effective date of the sale.
4	The applicant will distribute all its shares in Listco to its shareholders (applicant shareholders) as a distribution <i>in specie</i> in terms of section 46 of the Act.	After market close on LDT.

5	Company A will transfer circa 26.78% of the shares in company B to Listco at market value in exchange for shares issued at market value by Listco to Company A.	The effective date of the sale will be during the weekend between LDT and LDT +1.
6	The creation of a dual listed company (DLC) structure will take place. Special DLC shares in Listco will be issued to a South African trust.	The indicative date is the Listing Date.
7	Listco will be admitted to trade on the JSE and will make an initial public offering of shares. Company A will sell circa 11.69% of the Listco shares to the underwriters.	Listing Date (LDT+1) The effective date of the sale to the underwriters is anticipated to be the Listing Date.
8	The applicant will distribute its shares in Listco to the applicant shareholders.	Record Date (RD).
9	Company C will transfer its 20% (less one share) shareholding in company B to Listco in exchange for shares in Listco.	RD +2.

The distribution of unbundled shares in Listco to the applicant shareholders will in certain instances result in fractional entitlements for shareholders (fractional shareholders). The fractional entitlements will be rounded down to the nearest whole number and 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 receive a cash amount corresponding to the net proceeds from the sale of their applicant shares which they would otherwise have been entitled to receive following the unbundling, but which will be sold on their behalf and, with their consent, in the market.

(The rulings for the applicant shareholders are set out in BCR 070.)

5. Conditions and assumptions

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

- a) No single non-resident shareholder to whom shares will be unbundled will, either alone or together with a non-resident who is a connected person, hold an interest of 20% or more in the applicant.
- b) The parties to the proposed transaction will not elect that section 42 of the Act does not apply.

6. Ruling

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

Transaction Steps 2, 3, 5 and 7 –

- a) Each transaction will qualify as an “asset-for-share transaction” as defined in paragraph (a) of the definition in section 42(1) of the Act. Specifically:
 - i) On the basis that the transferor holds the shares in question as capital assets, in terms of section 42(2)(a)(i)(aa), that person will be deemed to have disposed of the shares to the transferee for amounts equal to the base costs of those shares. Accordingly, no capital gain will arise in the relevant transferor's hands in respect of the disposal.
 - ii) In terms of section 42(2)(a)(ii)(aa) the transferor's base costs in the shares so transferred will be transferred to the shares issued to it in exchange.
 - iii) In terms of section 42(2)(b)(ii), for the purposes of determining any capital gain or loss in respect of a disposal of the relevant asset, that person (transferor) and the company (transferee) which acquired the asset in terms of an “asset-for-share transaction”, must be deemed to be one and the same person with respect to the date of acquisition of the asset and the amount and date of incurral by that person of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule.
- b) The provisions of section 24BA of the Act will not apply in respect of these steps.
- c) The transfer of shares in terms of the “asset-for-share transaction” set out in steps 2, 3 and 5 will be exempt from STT under section 8(1)(a)(i) of the STT Act.
- d) The issue of shares in terms of the “asset-for-share transactions” set out in steps 2, 3 and 5 do not constitute a “transfer”, as defined in section 1 of the STT Act. Therefore, no STT liability will arise as a result of the issue of shares.
- e) When the applicant ceases to hold a qualifying interest in Listco on LDT when it distributes its shares to the applicant shareholders, this will be in terms of an “unbundling transaction” and therefore the provisions of section 42(6) will not apply.

- f) When company A transfers the company B shares to Listco acquired under step 2, the provisions of section 42(7) will apply as the disposal by company A of the company B shares will take place within 18 months of the acquisition of those shares in terms of the “asset-for-share transaction”. No gain will, however, arise.
- g) The disposal to the third party buyer by company A of circa 11.69% of the shares in Listco which it acquired in terms of section 42 within 18 months, will not result in sections 42(5) and (6) applying.
- h) Section 42(7) will apply to the capital gain realised when company A disposes of circa 11.69% of the Listco shares to the third party buyer. Such taxable capital gain may therefore not be set off against any assessed loss or balance of assessed loss of company A.

Transaction Step 4

- i) The transaction will constitute an “unbundling transaction” as defined in section 46(1)(a) of the Act and in particular:
 - i) The applicant will be regarded as having distributed “all” the shares in Listco, notwithstanding the fact that the:
 - shares held by restricted shareholders may, subsequent to the unbundling, have to be disposed of on behalf of and with the consent of the restricted shareholders; and
 - the “standard rounding convention” prescribed by the JSE Listings Requirements will be applied to the allocation of securities held by fractional shareholders.
 - ii) Listco shares will be distributed by the applicant to its shareholders in accordance with each shareholder’s effective interest in the unbundling company, notwithstanding the fact that the “standard rounding convention” in the JSE Listing Requirements will be applied to the fractional shareholders.
- j) The tax relief specified in sections 46(2), (3A), (5), and (5A) of the Act will therefore apply in respect of such transaction and in particular:
 - i) The applicant must disregard the distribution of the Listco shares for purposes of determining its taxable income or assessed loss in terms of section 46(2).
 - ii) The contributed tax capital of the applicant and Listco immediately after the distribution will be deemed to be the amounts as set out in section 46(3A).
 - iii) The distribution by the applicant in terms of the unbundling transaction will be disregarded in determining any liability for dividends tax in terms of section 46(5).
 - iv) In terms of section 46(5A) of the Act, paragraph 76B of the Eighth Schedule will not apply in respect of the distribution.
- k) Section 46(7) will not find application as company C (a non-resident) will not hold shares in Listco immediately after such distribution as it will only acquire shares in Listco on RD+2.

- l) The distribution of the Listco shares by the applicant will be exempt from STT in terms of section 8(1)(a)(iv) of the STT Act.
- m) The transfer of the shares in Listco to the applicant shareholders or realisation agent, on behalf of the restricted shareholders or the shareholders with a fractional entitlement, as the case may be, will be exempt from STT under section 8(1)(a)(iv) of the STT Act, as the distribution will be an “unbundling transaction” as referred to in section 46.
- n) No rulings are issued in relation to steps 1, 6, and 8.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 25 February 2020.

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