



# July 2020 TAX UPDATE

Monthly Tax Update series

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# What we are covering today...

- 2020 filing season
- SARS documents
  - BPR 343: Donations tax when subscribing for shares at a discount
  - BGR 53: Taxation of interest payable by SARS
  - BGR 54, BCR 070 & BPR 345: Unbundling transactions
  - IN18 (Issue 4): Foreign tax rebate/deduction (*not discussed*)



# 2020 filing season

- Phases
- Who has to submit a tax return?



# 2020 filing season

## 4 phases

1. Employers and 3<sup>rd</sup>-party data providers: by 31 May 2020
2. SARS validation of 3<sup>rd</sup>-party data
3. Auto-assessment process starts 1 August 2020
4. Taxpayer filing from 1 September 2020



# Who has to submit a tax return?

Notice No. 741 published 3 July 2020

- Companies and other juristic persons
  - Resident
    - gross income of more than R1 000 for the 2020 year of assessment;
    - held assets with a cost of more than R1 000 or had liabilities of more than R1 000 at any time during the 2020 year of assessment ;
    - capital gain or capital loss of more than R1 000 from the disposal of an asset to which the Eighth Schedule of the Income Tax Act applies in the 2020 year of assessment; or
    - had (*any*) taxable income, taxable turnover (if a micro business), an assessed loss or assessed capital loss
  - Non-resident
    - See next slide



# Who has to submit a tax return?

Notice No. 741 published 3 July 2020

- Companies and other juristic persons
  - Non-resident
    - carried on a trade through a permanent establishment in the Republic;
    - derived income from a source in the Republic; or
    - derived any capital gain or capital loss from the disposal of an asset to which the Eighth Schedule applies
  - Every company incorporated, established or formed in the Republic, but not a resident as a result of the application of any DTA during the 2020 year of assessment



# Who has to submit a tax return?

## Notice No. 741 published 3 July 2020

- Any trust that was a resident during the 2020 year of assessment
- Non-resident trusts
  - carried on a trade through a permanent establishment in the Republic;
  - derived income from a source in the Republic; or
  - derived any capital gain/loss from the disposal of an asset to which the Eighth Schedule applies
    - Immovable property in SA
    - Interest in SA immovable property
      - includes any equity shares held in a company or ownership or the right to ownership of a person in any other entity or a vested interest of a person in any assets of any trust, if-
        - (a) 80% or more of the market value of those equity shares, ownership or right to ownership or vested interest, as the case may be, at the time of disposal thereof is attributable directly or indirectly to immovable property held; and
        - (b) in the case of a company or other entity, that person (whether alone or together with any connected person in relation to that person), directly or indirectly, holds at least 20% of the equity shares in that company or ownership or right to ownership of that other entity.
    - Asset effectively connected to a permanent establishment in SA



# Who has to submit a tax return?

Notice No. 741 published 3 July 2020

- Natural persons who during the 2020 year of assessment -
  - Resident
    - Carried on *any* trade (other than solely in his or her capacity as an employee); or
    - Capital gains or capital losses exceeding R40 000; or
    - Held any funds in foreign currency or owned any assets outside the Republic, if the total value of those funds and assets exceeded R225 000 at any stage during the 2020 year of assessment; or
    - Any income or capital gains from funds in foreign currency or assets outside the Republic was attributed in terms of *(s 7 or paras 68-72 of the Eighth Schedule of the Income Tax Act)*; or
    - Held any participation rights in a controlled foreign company, as referred to in s 72A of the Income Tax Act; or
    - Had taxable turnover (as a micro business); or
    - Had gross income in excess of the tax threshold (R79 000/ R122 300/ R136 750) at the end of the 2020 year of assessment, unless excluded under para 3





# Who has to submit a tax return?

Notice No. 741 published 3 July 2020

- Natural persons (cont.)
  - Not resident
    - Carried on *any trade in the Republic* (other than solely in his or her capacity as an employee); or
    - Had capital gains or capital losses from the disposal of an asset to which the Eighth Schedule to the Income Tax Act applies; or
    - Had gross income (*SA source*) in excess of the tax threshold (R79 000/ R122 300/ R136 750)) at the end of the 2020 year of assessment, unless excluded under para 3; or
    - Gross income during the 2020 year of assessment included interest from a source in the Republic that is not exempt under s 10(1)(h) of the Income Tax Act



# Who has to submit a tax return?

Notice No. 741 published 3 July 2020

- Deceased estate
  - Had (*any*) gross income, unless excluded under para 3
- Other
  - Every person that is issued an income tax return form or who is requested by the Commissioner in writing to furnish a return, irrespective of the amount of income or nature of receipts or accruals of the person;
  - Every representative taxpayer of any person referred to in subparagraphs (a) to (i) above.



# Not required to submit a tax return

## Para 3(1) exclusion

- A natural person or estate of a deceased person is not required to submit an income tax return in terms of para 2(f)(vii) or (2)(g) if the gross income of the person during the 2020 year of assessment consisted **solely** of gross income described in one or more of the following subparagraphs:
  - (a) Remuneration paid or payable from one single source, which does not exceed R500 000 and employees' tax has been withheld in terms of the deduction tables prescribed by the Commissioner;
  - (b) Interest (other than interest from a tax free investment) from a SA source **not exceeding** the local interest exemption (R23 800/ R34 500/ R23 800 in the case of the estate of a deceased person);
  - (c) Dividends IF the natural person was a non-resident throughout the 2020 year of assessment; and
  - (d) Amounts received or accrued from a tax-free investment.



# Still required to submit a tax return

## Para 3 exclusion

- BUT the para 3(1) exclusion does **not** apply to a natural person who
  - (a) received a s 8(1)(a)(i) (*subsistence/travel/public officer*) allowance (*exceeding deemed expenditure*) other than
    - a (*reimbursement*) allowance referred to in s 8(1)(a)(ii) or
    - a purely reimbursive allowance as referred to in s 8(1)(b)(iii) (*not exceeding the SARS rate per km of R3,61 for 2019/20*); or
  - (b) was granted a taxable benefit described in paragraph 7 of the Seventh Schedule to the Income Tax Act; or
  - (c) received any amount or to whom any amount accrued in respect of services rendered **outside the Republic.**



# Auto-assessment exclusion

## Para 3(3) exclusion

- A natural person is not required to submit an income tax return if -
  - (a) notified by the Commissioner in writing that s/he is eligible for auto-assessment; and
  - (b) gross income, exemptions, deductions and rebates reflected in SARS' records are complete and correct as at the date -
    - (i) of accepting automatic assessment; or
    - (ii) specified in paragraph 4(b)(iii) (29/1/2021), irrespective of whether the return relates to a provisional taxpayer, if s/he does not respond to the notification by this date

*Note: (ii) results in a default assessment if the taxpayer does not respond*



# Filing deadlines

## para 4

(a) any company: 12 after the end of the financial year

(b) all other persons (including natural persons, trusts and other juristic persons, such as institutions, boards or bodies) -

(i) **22 October 2020** if is submitted manually or electronically through the assistance of a SARS official at a SARS office

(ii) **16 November 2020: non-provisional taxpayers** submitting through SARS eFiling

(iii) **29 January 2021: provisional taxpayers** submitting through SARS eFiling

(iv) where accounts are accepted by the Commissioner in terms of s 66(13A) of the Income Tax Act in respect of the whole or portion of a taxpayer's income, which are drawn to a date after 29 February 2020 but on or before 30 September 2020: within 6 months from the date to which such accounts are drawn.



# Who is a provisional taxpayer?

## Fourth Schedule para 1

- Person other than a company who earns income by way of –
  - (i) remuneration from an employer that is not registered as an employer in terms of para 15 of the Fourth Schedule; or
  - (ii) any amount other than remuneration or an allowance or advance contemplated in s 8(1);
- Any company; and
- Any person notified by the Commissioner

# Excluded from the definition of “provisional taxpayer”:

- Approved PBOs & recreational clubs, body corporates, share block companies or associations of persons exempt under s 10(1)(e)
- Non-resident ship-owners & Small business funding entities
- Deceased estates
- An individual who derives no income *from carrying on a business* AND -
  - Taxable income for the year of assessment will not exceed the tax threshold (2019/20: R79 000/ R122 300/ R136 750); OR
  - taxable income for the year of assessment from [*interest, dividends, foreign dividends, rental from the letting fixed property and any remuneration from an unregistered employer*] does not exceed R30 000.



# BPR 343: donations tax implications of subscribing for shares at a discount

- BPR: binding between SARS and the applicant. Published for general information. Does not constitute a practice generally prevailing.
- Relevant provisions of the Income Tax Act
  - S 55(1) Definitions for purposes of this Part
    - “donation” means any gratuitous disposal of property including any gratuitous waiver or renunciation of a right;
    - “fair market value” means ...
    - “property” means ...
  - S 58(1) Property disposed of under certain transactions deemed to have been disposed of under a donation
    - Where any property has been disposed of for a consideration which, in the opinion of the Commissioner, is not an adequate consideration that property shall for the purposes of this Part be deemed to have been disposed of under a donation: Provided that in the determination of the value of such property a reduction shall be made of an amount equal to the value of the said consideration.



# Parties to the proposed transaction

- **Applicant:** A resident company
- **Trust:** A trust to be established by the Applicant to comply with codes published under legislation regulating black economic empowerment
- **Company A:** A resident company that owns all the shares in the applicant
- **Company B:** A resident company to be incorporated by Company A



# Description of the proposed transaction

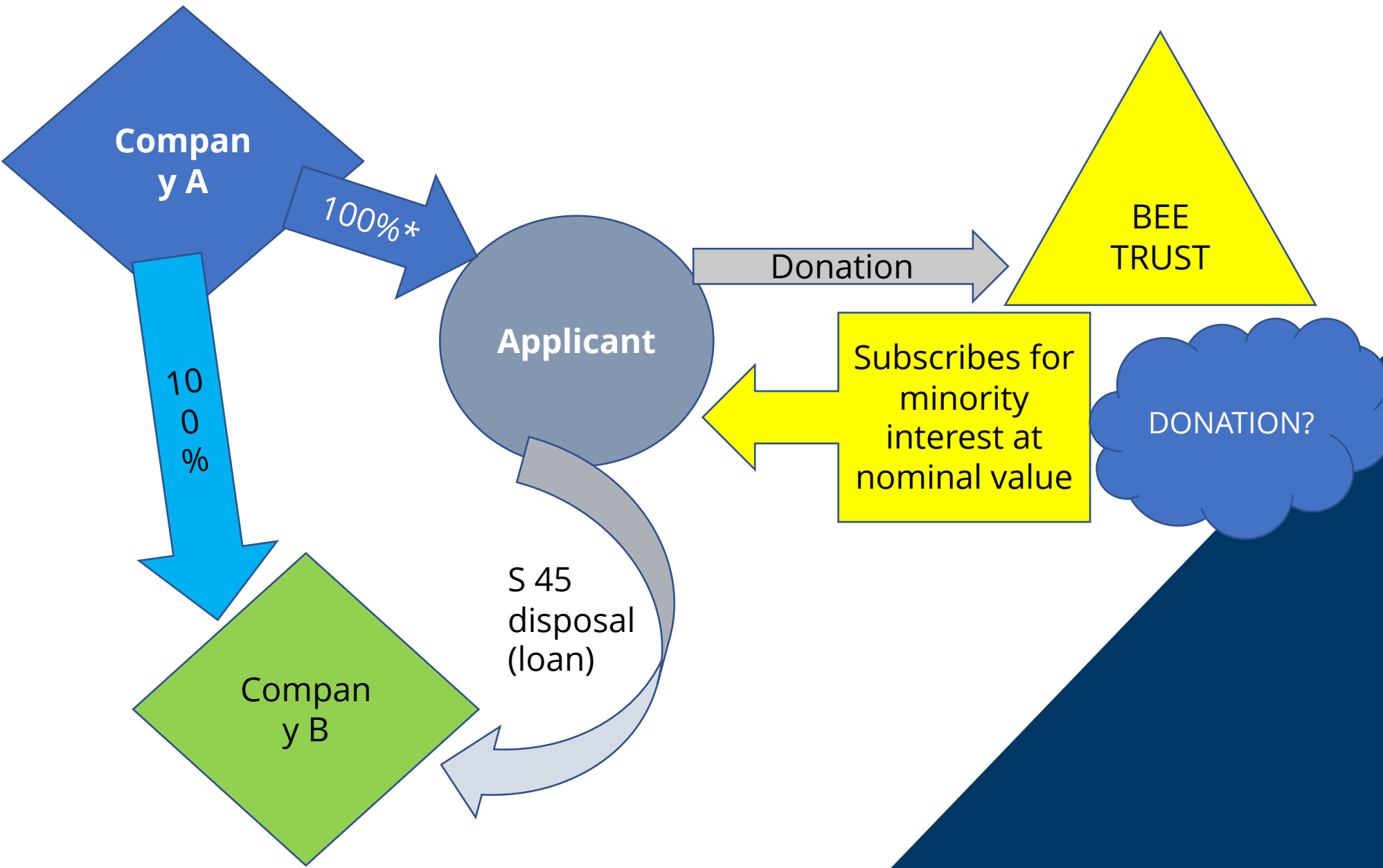
- **Applicant** wishes to introduce a minority shareholder, the **trust**, in order to enhance its broad-based black economic empowerment status.
- The object of the **trust** will be to facilitate the education, training, development and/or upskilling of the eligible beneficiaries.
- The **trust** will be entirely funded by the **applicant**.
- Eligible beneficiaries of the trust will be black women under the age of 35 who are studying or will be studying at higher-education or tertiary institutions in South Africa.
- The trust is not a public benefit organisation as envisaged in s 30(1).
- The transaction will be implemented as follows:



# The transaction will be implemented as follows:

1. Disposal of the applicant's export business
  - Company A will subscribe for 100% of the ordinary shares in company B.
  - The applicant will dispose of its export business to company B at market value in terms of an intra-group transaction as contemplated in s 45, with the purchase consideration left outstanding on loan account. The loan will be repaid from available cash reserves.
2. The trust and subscription for ordinary shares in the applicant
  - The applicant will settle the trust and fund it by way of a donation.
  - The trust will subscribe for a minority interest in the applicant at a nominal value compared to the current market value of the shares.





# Ruling

- The ruling made in connection with the proposed transaction is that the subscription for shares at a discount by the trust will not constitute a “donation” as defined in s 55(1) and will not be deemed to have been disposed of under a donation by the Applicant as envisaged in s 58(1).
- Period for which this ruling is valid
  - This binding private ruling is valid for a period of three years from 9 December 2019.
- Summary
  - This ruling determines that there are no donations tax implications resulting from a broad-based black economic empowerment trust subscribing for shares at a discount.



# BGR 53: Taxation of interest payable by SARS

- S 7E. Time of accrual of interest payable by SARS
  - In determining the taxable income derived by any person during a year of assessment, any amount of interest to which a person becomes entitled that is payable by SARS in terms of a tax Act is deemed to accrue to that person on the date on which that amount is paid to that person.
    - [inserted by s. 7 of Act 17/2017 w.e.f. 1 March 2018 and applies to amounts of interest paid by SARS on or after that date]



# Purpose of BGR 53

- Sets out the rules to avoid double taxation when –
  - a deemed accrual of interest occurs under s 7E on or after 1 March 2018; and
  - before that date either the whole or a part of that interest was included in the taxpayer's gross income on the accrual basis.





# Purpose of BGR 53

- A consequence of the introduction of s 7E is that double taxation may arise if interest payable by SARS was included in gross income when it actually accrued based on general principles before the introduction of s 7E, and the same amount is included again in gross income in a subsequent year of assessment when it is deemed to accrue (*when actually paid*) under s 7E.



# Ruling

- For purposes of s 7E, interest paid to any person under a tax Act by SARS on or after 1 March 2018 must be included in that person's gross income **to the extent that the amount has not previously been included in gross income** when it actually accrued to the person under general principles.
- A taxpayer bears the burden of proving that an amount of interest or a portion of such amount previously included in gross income corresponds with an amount of interest paid on or after 1 March 2018 such that section 7E will be interpreted as not applying to that amount or portion of that amount.



# Status and validity

- Constitutes a BGR issued under s 89 of the Tax Administration Act 28 of 2011
  - clarifies the Commissioner's application or interpretation of the tax law relating to these matters
  - may be cited by SARS or a person in any proceedings, including court proceedings (s 82)
- Applies from date of issue (22/6/2020) until it is withdrawn, amended or the relevant legislation is amended



# Also consider...

## S 7F. Deduction of interest repaid to SARS

- In determining the taxable income derived by any person during a year of assessment, any amount of interest paid by SARS to that person under a tax Act and deemed to have accrued to that person in terms of s 7E that has to be repaid by that person to SARS, to the extent that the amount of interest is or was included in the taxable income of that person, must be **deducted from that person's income** in the year of assessment during which that amount is repaid to SARS.

[inserted by s. 11 of Act 23/2018 and substituted by s. 5 of Act 34/2019 w.e.f. 15 January 2020]

- What if part or all of the interest received was exempt under s 10(1)(i) (R23 800/34 500)?
  - Can't claim a deduction of interest that was exempt



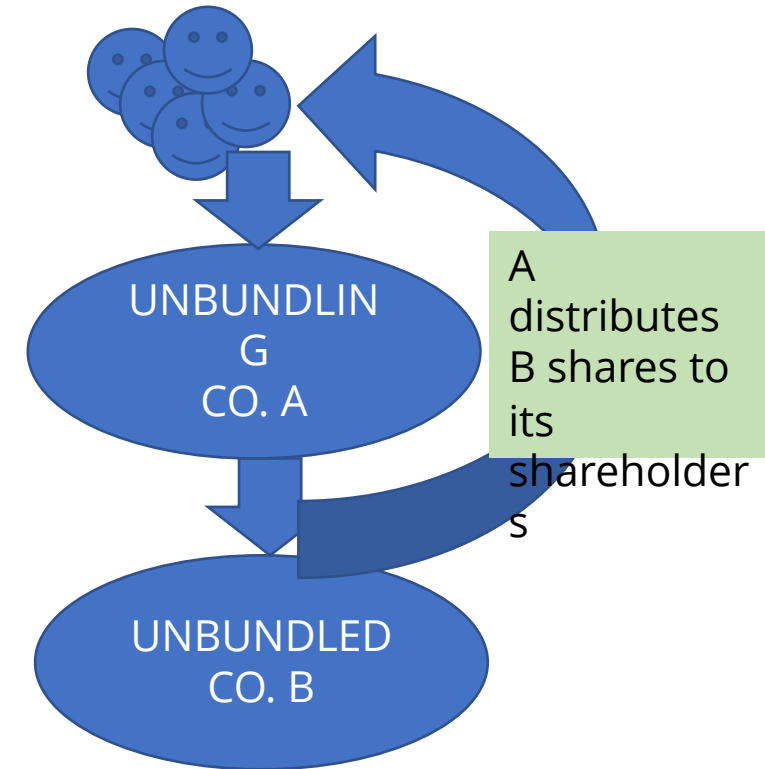
# S 46(1)(a) Unbundling transactions

(i) the equity shares in a company (the “unbundled company”), which is a resident that are held by a company (the “unbundling company”), which is a resident, are **all** distributed by that unbundling company to any shareholder of that unbundling company in accordance with the effective interest of the shareholders in the shares of that unbundling company, IF

(aa) all of the equity shares of the unbundled company are **listed** shares or will become listed shares within 12 months after that distribution; or

(bb) that shareholder to which that distribution is made by that unbundling company forms part of the **same group of companies** as that unbundling company; or

(cc) that distribution is made pursuant to an order in terms of the Competition Act, 1998, made by the Competition Tribunal/ Competition Appeal Court; **and**



# S 46(1)(a) Unbundling transactions

## Minimum holding requirement

(ii) if the equity shares distributed constitute -

(aa) IF unbundled company is a **listed** company immediately before that distribution -

(A) and no shareholder of the unbundled company other than the unbundling company holds the same number, or more, of equity shares than the unbundling company: more than 25% of the equity shares of the unbundled company; or

(B) and any shareholder of the unbundled company other than the unbundling company holds the same number, or more, of equity shares than the unbundling company: at least 35% of the equity shares of that unbundled company; or

(bb) IF unbundled company is an **unlisted** company immediately before that distribution: more than 50% of the equity shares of that unbundled company



# BGR 54 (22 June 2020): Unbundling - unlisted company - non-qualifying shareholder

- S 46 roll-over relief for an “unbundling transaction”
- If the unbundled company is unlisted, s 46(1)(a)(i)(bb) applies: must be a distribution to another company that is part of the same “group of companies”
  - Resident companies with at least 70% shareholding, excluding non-profit companies
- What happens to distributions to other (non-qualifying shareholders)?



# Discussion and ruling

- Unbundling company must distribute **all** the shares it holds in the unbundled company to its shareholders in accordance with their effective interest
  - May not retain any shares in the unbundled company
  - All shareholders of the unbundling company must participate in the distribution according to their effective interests ... includes all shareholders, regardless of the size of their holdings
- s 46(1)(a)(i)(bb): “that shareholder” to which “that distribution” is made must be part of the same group of companies as the unbundling company
  - distributions to shareholders not forming part of that group of companies are not covered by s 46 roll-over relief (does not invalidate the whole transaction)





# Tax treatment for the unbundling company

- If the unbundling company held the shares
  - On capital account, or as trading stock but held for at least 3 years (s 9C(2))
    - determine capital gain/loss on the portion of the unbundled company shares disposed of to the non-qualifying shareholders
      - para 75(1)(a) of the Eighth Schedule (distributions *in specie*): proceeds = market value of the unbundled company shares on the date of distribution.
  - As trading stock falling outside s 9C
    - Include in gross income: the market value of the equity shares disposed of to the non-qualifying shareholders (s 22(8)); deduct the cost price of the unbundled company shares (s11(a) / s 22(2))
- Distribution in the form of a dividend *in specie*: dividends tax, subject to any applicable exemptions in s 64FA.



# Tax treatment for resident shareholders

- Holding the unbundling company shares
  - On **capital account**, or as trading stock held for at least three years and s 9C(2) applies:
    - If the distribution is a dividend: include in gross income – possible s 10(1)(k)
    - If a return of capital: reduce the base cost of the unbundling company shares and treat any excess as a capital gain (para 76B of the Eighth Schedule)
    - Base cost of the unbundled company shares = market value on the date of distribution (para 75(1)(b) of the Eighth Schedule)



# Tax treatment for resident shareholders

- Holding the unbundling company shares
  - As **trading stock falling** outside s 9C
    - Include distribution in gross income (dividend or a return of capital)
      - If a dividend – possible s 10(1)(k)
    - If the unbundled company shares are acquired as
      - Trading stock: cost price = market value on the date of distribution (s 22(4))
      - Capital asset: base cost = market value on the date of distribution (para 75(1)(b))



# BCR 070 (& BPR 345): unbundling transaction

- Parties to the proposed transaction
  - Applicant: resident listed company
  - Listco: resident company established 6 months before Last Day to Trade (LDT) as a wholly-owned subsidiary of the applicant, which is to be listed
  - Class members: all resident and non-resident shareholders of listed shares in the applicant, as reflected on the applicant's securities register on the LDT.



# Transactions

- Applicant will take several transaction steps (set out in BPR 345)
- Ultimately, applicant will distribute its shares in Listco to the class members



# Ruling

- a) The distribution of the Listco shares to the class members will constitute an “unbundling transaction”, as defined in s 46(1) of the Income Tax Act
- b) Tax consequences for the class members (s 46(3))
  - must allocate a portion of the expenditure and market value attributable to the applicant shares to the Listco shares acquired and reduce the expenditure and market value attributable to the applicant shares by the amount so allocated to the Listco shares
  - regarded as having acquired the Listco shares on the same date as the applicant shares and with the same intention (that is, where the applicant shares were held as capital assets, the Listco shares must be regarded as acquired as capital assets and where their applicant shares were held as trading stock, the Listco shares must be regarded as acquired as trading stock)



# Ruling (cont.)

- c) The proportionate amount of the expenditure and market value to be allocated to the Listco shares must be determined in accordance with the ratio that the market value of the Listco shares, using the closing price on LDT+1, bears to the sum of the market value, using the closing price on LDT+1, of the applicant shares and Listco shares
- d) Each class member must also reduce the expenditure and market value attributable to its applicant shares by the amount so allocated to the Listco shares



# Unbundling transactions

## *SARS Tax Guide for Share Owners*

- Recipient of the unbundled shares must adjust the base cost of the original shares:
  - portion of the expenditure and any market value on 1 October 2001 of the original shares must be allocated to the new shares received
  - if the weighted-average method has been adopted, part of the base cost of the existing shares must be allocated to the new shares
- The allocation must be done in accordance with the following formula:

Market value of new shares at end of day of unbundling

Market value of old and new shares at end of day of unbundling × Cost of old shares





# Example

## *SARS Tax Guide for Share Owners*

- J held 100 shares in A Ltd on 1 October 2001 - acquired in 1995 at a cost of R100. Market value of the shares on 1 October 2001 was R120.
- A Ltd distributed all its shares in B Ltd to holders of its shares as part of an unbundling transaction under s 46. The last day to trade cum div in the A Ltd shares was Tuesday 22/10/2019. The A Ltd and B Ltd shares began trading separately on the JSE on Wednesday 23/10/2019
- J received 20 B Ltd shares having a market value of R20 at close of business on 23/10/2019
- Market value of A Ltd shares at close of business on 23/10/2019 was R140



## Expenditure and market value on 1 October 2001 attributable to J's A Ltd and B Ltd shares:

Expenditure attributable to B Ltd shares:

$$= R100 \times R20 / (R20 + R140)$$

$$= R100 \times R20 / R160$$

$$= R12,50$$

Expenditure attributable to A Ltd shares:

$$= R100 - R12,50$$

$$= R87,50$$

1/10/01 MV attributable to B Ltd shares:

$$= R120 \times R20 / (R20 + R140)$$

$$= R120 \times R20 / R160$$

$$= R15$$

1/10/01 MV attributable to A Ltd shares:

$$= R120 - R15$$

$$= R105$$



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THANK YOU!



# Any Questions

- Please use the Question Portal on iLearn to post any questions.



Question Portal