

BINDING GENERAL RULING (INCOME TAX) 29 (ISSUE 2)

DATE: 1 February 2017

ACT : INCOME TAX ACT 58 OF 1962
SECTION : SECTION 46(3)(a)(v)
SUBJECT : UNBUNDLING TRANSACTIONS: MEANING OF “AS AT THE END OF THE DAY AFTER THAT DISTRIBUTION”

Preamble

For the purposes of this ruling –

- **“BGR”** means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011;
- **“business day”** as defined in the JSE Limited Listings Requirements means any day other than a Saturday, Sunday or any other day on which the JSE is closed;
- **“expenditure”** means expenditure as defined in section 46(3)(b);
- **“JSE”** means the securities exchange operated by JSE Ltd;
- **“last day to trade or LDT”** bears the meaning as defined in the JSE Limited Listings Requirements, namely, “the last business day to trade in a security in order to settle by record date to be able to qualify for entitlements or to participate in an event. All trades done from commencement of trade on LDT + 1 will be excluding entitlements”;
- **“record date”** or **“RD”** bears the meaning as defined in the JSE Limited Listings Requirements, namely, “the date on which the holdings, upon which the event entitlement is based are ascertained. Record date is one settlement period after LDT (currently 3 business days). Record date must be on a Friday or, if Friday is a public holiday, the last trading day of the week”;
- **“section 46”** means section 46 of the Act;
- **“the Act”** means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This BGR addresses the interpretation of the words “at the end of the day after that distribution” as used in section 46(3)(a)(v) in relation to an unbundling company listed on the JSE. It does not address consecutive unbundling transactions occurring on the same day or the determination of the market value of shares in an unlisted unbundled company.

2. Background

Section 46 provides parties to an unbundling transaction with relief from various taxes that would otherwise become payable.

A shareholder who acquires unbundled shares through an unbundling transaction must allocate a portion of the expenditure and any market value on valuation date attributable to the unbundling shares to the unbundled shares under section 46(3)(a)(i)(aa).

In making this allocation, section 46(3)(a)(v) requires that the shareholder must use the ratio that the market value of the unbundled shares, “*as at the end of the day after that distribution*”, bears to the sum of the market values, as at the end of that day, of the unbundling shares and the unbundled shares.

3. Application of the law

The JSE Equities Rules¹ are binding on members of the JSE, their clients and agents.² Under these rules shares in an unbundling company trade inclusive of the right to the unbundled shares up to and including LDT and begin trading exclusive of that right on the first business day after LDT.

Unbundled shares in a listed unbundled company would begin trading independently of the shares in the unbundling company on LDT + 1. A holder of unbundling company shares on LDT takes delivery of the unbundled company shares only on record date + 1, that is, LDT + 4. Such a holder is nevertheless able to trade in the unbundled company shares from the commencement of LDT + 1 by contractual arrangement, with settlement being made on a rolling “T + 3”³ (trade plus three days) basis. In other words, the seller is obliged to deliver the shares to the buyer on the third business day following the day on which the shares were disposed of.

The prices of the unbundling and unbundled company shares tend to fluctuate during the initial period of trading on LDT + 1 owing, amongst other things, to the number of sellers entering the market but should stabilise by the close of business on that day.

In order to achieve a fair allocation between the unbundling and unbundled shares, the market values as at the end of the first business day after LDT must be used when applying the ratio as specified in section 46(3)(a)(v).

Thus if LDT falls on a Tuesday,⁴ the first business day after LDT will fall on the next day (Wednesday) and the closing prices on the Wednesday must be used (assuming the Tuesday and Wednesday are both business days).

The same listed prices should be used in performing the allocation for certificated listed shares since such shares can be traded on the JSE only after they have been dematerialised.

¹ Issued on 1 August 2005 and subsequently amended from time to time (My LexisNexis: SII 23/2016, October 2016).

² The JSE Equities Rules are binding on these persons under Rule 2.30.2.

³ The JSE switched from T + 5 to T + 3 on 11 July 2016.

⁴ See the definition of “record date” in the Preamble. Record date falls on a Friday or on a Thursday if the Friday is a public holiday. LDT is then determined by counting backwards from record date.

4. Ruling

For the purposes of section 46(3)(a)(v) and with reference to the market values of the unbundling and unbundled company shares, “as at the end of the day after that distribution” means in relation to shares unbundled under section 46 of the Act by an unbundling company listed on the JSE –

- the closing price of the unbundling company shares on LDT +1; and
- the closing price of a listed unbundled company's shares on LDT + 1.

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act 28 of 2011.

5. Period for which this ruling is valid

This BGR applies from date of issue until it is withdrawn, amended or the relevant legislation is amended.

**Senior Manager: Corporate Income Tax
Legal Counsel
SOUTH AFRICAN REVENUE SERVICE**