

BINDING PRIVATE RULING: BPR 138

DATE: 14 March 2013

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 24J, 42 AND 58 AND PARAGRAPH 38 OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : SUBSCRIPTION FOR SHARES AT NOMINAL VALUES COUPLED TO A REPURCHASE AGREEMENT AT THE SAME NOMINAL VALUES

1. Summary

This ruling deals with the income tax consequences relating to a subscription for shares at nominal values and the repurchasing of those shares in the future for the same nominal values.

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 Act and paragraphs of the Eighth Schedule to the Act applicable as at 20 December 2012 and 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 the provisions of –

- section 24J;
- section 42;
- section 58; and
- paragraph 38 of the Eighth Schedule.

3. Parties to the proposed transaction

The Applicant: A company that is the controlling group company, the shares of which are listed on the Johannesburg Stock exchange

The Co-Applicants: Empowerco, a controlled group company to be used as a special purpose vehicle to hold empowerment shares in the Applicant

Employee Trust, an employee share ownership scheme trust, the beneficiaries of which are black employees of the Applicant's group of companies

4. Description of the proposed transaction

The Applicant proposes to enter into a Broad Based Black Economic Empowerment (BBBEE) transaction in terms of which it will transfer ownership of shares in itself, representing a portion of its South African (SA) operations, to its black employees through the Employee Trust.

A summary of the proposed transaction is set out in the steps below:

- The Applicant will issue a new class of shares (class B shares) to Empowerco under section 42, representing 20% of its SA operations.
- Empowerco and the Employee Trust will enter into a “share issue and repurchase agreement” in terms of which Empowerco will issue shares to the Employee Trust, equalling 50.1% of its ordinary shares, at a nominal value. It will be a term of issue of these shares that Empowerco will have an option to repurchase some of the shares at the end of a 10 year lock-in period at the same nominal value. The number of shares to be repurchased will be based on a compound growth formula.
- The remaining Empowerco shares held by the Employee Trust after execution of the repurchase agreement will be distributed by the Employee Trust to its beneficiaries, subject to a disposal restriction for a period of 7 days.
- During the 7 day restriction period the Empowerco shares will be exchanged under section 42 for listed shares in the Applicant.

5. Conditions and assumptions

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

6. Ruling

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

- The subscription of shares in Empowerco by the Employee Trust will not be deemed to have been disposed of under a donation by Empowerco, as envisaged in section 58(1).
- Section 24J will not be applicable to the share issue and repurchase agreement to be entered into by Empowerco and the Employee Trust and thus no interest will have to be accounted for by the parties.
- When Empowerco repurchases the shares from the Employee Trust in terms of the repurchase agreement, no capital gain will arise from the disposal of these shares by the Employee Trust as the proceeds from the disposal will equal the acquisition cost of the shares. Paragraph 38 of the Eighth Schedule will not be applicable to the disposal of these shares by the Employee Trust.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 10 years from 20 December 2012.

Issued by:

**Legal and Policy Division: Advance Tax Rulings
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