

## **BINDING PRIVATE RULING: BPR 095**

DATE: 24 February 2011

**ACT** : **INCOME TAX ACT, NO. 58 of 1962 (the Act)**  
**SECTION** : **SECTION 58(1)**  
**SUBJECT** : **ADEQUATE CONSIDERATION AS CONTEMPLATED UNDER SECTION 58(1)**

### **1. Summary**

This ruling deals with the question as to whether the consideration for ordinary shares to be disposed of in terms of a funding structure will comprise adequate consideration and, therefore the shares will not be deemed to have been disposed of under a donation.

### **2. Relevant tax laws**

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling legislative references to sections are to sections of the Act applicable as at 17 January 2011 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested under the provisions of section 58(1).

### **3. Parties to the proposed transaction**

The Applicant: A company

The Co-Applicant: A proposed Black Economic Empowerment (BEE) party

### **4. Description of the proposed transaction**

The Applicant's funding structure of BEE transactions will be as follows:

- A BEE special purpose vehicle (SPV) will be established and funded to acquire a target company. Such funding will be provided as follows –

- the Co-Applicant will provide nominal funding by subscribing for preference and ordinary shares in the SPV; and
- the bulk of the funding will be provided by the Applicant, which will subscribe for redeemable cumulative fixed term preference shares and ordinary share capital at par.
- On expiry of the preference share funding term, the Applicant will evaluate the return received to date and will dispose of its ordinary shares in the SPV, for sufficient value to achieve any balance of the target internal rate of return (IRR) not yet earned. The Co-Applicant will have first right of refusal of the ordinary shares held by the Applicant.
- If the Applicant has achieved its target IRR, the ordinary shares may be disposed of at par value. Should the economic return from the preference shares be achieved, for example, 90% of the target IRR, the Applicant may dispose of the ordinary shares for a sufficient sum to meet the outstanding 10%.

## **5. Conditions and assumptions**

This ruling is not subject to any conditions and assumptions.

## **6. Ruling**

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

- The Applicant's consideration for the ordinary shares to be disposed of in the SPV in terms of the Applicant's funding structure, will comprise adequate consideration and, therefore, the ordinary shares will not be deemed to have been disposed of under a donation envisaged in section 58(1).

## **7. Period for which this ruling is valid**

This binding private ruling is valid for a period of five (5) years as from 17 January 2011.

Issued by:

**Legal and Policy Division: Advance Tax Rulings  
SOUTH AFRICAN REVENUE SERVICE**