

BINDING CLASS RULING: BCR 037

DATE: 23 January 2013

**ACTS : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECURITIES TRANSFER TAX ACT NO. 25 OF 2007 (the STT Act)**
**SECTIONS : SECTION 46 OF THE ACT
SECTION 8(1)(a)(iv) OF THE STT ACT**
SUBJECT : DISTRIBUTION OF SHARES IN AN UNBUNDLING TRANSACTION

1. Summary

This ruling deals with the question as to whether the transfer of equity shares held by a company to the shareholders of that company, in an unbundling transaction, will be exempt from dividends tax and securities transfer tax.

2. Relevant tax laws

This is a binding class ruling issued in accordance with section 78(2) and published in accordance with section 87(2) of the Tax Administration Act No. 28 of 2011.

In this ruling references to sections are to sections of the relevant Act applicable as at 19 November 2012 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in that Act.

This is a ruling on the interpretation and application of the provisions of –

- section 46 of the Act; and
- section 8(1)(a)(iv) of the STT Act.

3. Class

The class members to whom this ruling will apply will be the Shareholders as described in 4 below.

4. Parties to the proposed transaction

The Applicant:	A listed public company, incorporated in and a resident of South Africa
Co-Applicant:	A private company, incorporated in and a resident of South Africa
Shareholders:	Shareholders of the Applicant

5. Description of the proposed transaction

The Applicant owns 100% of the equity shares in the Co-Applicant. The Applicant would like to unbundle its equity shareholding in the Co-Applicant through a pro-rata distribution of the Co-Applicant shareholding. The intention is to establish a

primary listing for the Co-Applicant on the Johannesburg Stock Exchange (JSE) and a secondary listing of the American Depositary Receipts on the New York Stock Exchange (NYSE). Both the Applicant and Co-Applicant will remain a resident of South Africa for tax purposes.

In order to comply with the US federal securities laws, the Co-Applicant will be required to register with the Securities and Exchange Commission (SEC) for purposes of the distribution of its shares, unless a dispensation is agreed with the SEC. The replication of the JSE and NYSE listing structure for the Co-Applicant will enable shareholders to trade in the Applicant's shares on the same basis as they do currently.

6. Conditions and assumptions

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

7. Ruling

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

- The distribution of the Co-Applicant's shares by the Applicant to its shareholders will constitute an 'unbundling transaction', as defined in section 46(1) of the Act.
- The distribution of the Co-Applicant's shares by the Applicant through an unbundling transaction will be deemed not to be an amount transferred by the Applicant for purposes of Part VIII of Chapter II, as contemplated in section 46(5) of the Act.
- The transfer of the Co-Applicant's shares pursuant to the Applicant's unbundling distribution will be exempt from securities transfer tax under section 8(1)(a)(iv) of the STT Act.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of 5 years from 19 November 2012, provided the transaction is concluded within a period of 3 years from 19 November 2012.

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