

BINDING CLASS RULING: BCR 035

DATE: 02 November 2012

**ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECURITIES TRANSFER TAX ACT NO. 25 OF 2007 (the STT Act)**

**SECTION : SECTION 1(1) OF THE ACT, DEFINITION OF “GROSS INCOME” AND PARAGRAPH 11 OF THE EIGHTH SCHEDULE TO THE ACT
SECTION 1 OF THE STT ACT, DEFINITION OF “TRANSFER”**

SUBJECT : TAX IMPLICATIONS ARISING FROM THE CONVERSION OF PAR VALUE SHARES TO NO PAR VALUE SHARES

1. Summary

This ruling deals with the tax implications arising from the conversion of par value shares to no par value shares.

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 and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 22 June 2012 and unless the context indicates otherwise, any word or expression in this ruling bears the meanings ascribed to it in the relevant Act.

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

- section 1(1), definition of “gross income”;
- paragraph 11 of the Eighth Schedule; and
- section 1 of the STT Act, definition of “transfer”.

3. Class

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

4. Parties to the proposed transaction

The Applicant: A public company incorporated in and a resident of South Africa

The Shareholders: The shareholders of the Applicant

5. Description of the proposed transaction

- The proposed transaction will entail the conversion of all the ordinary par value shares in the Applicant to ordinary no par value shares as directed under item 6 of Schedule 5, read with Regulation 31 and section 35(2) of the Companies Act No. 71 of 2008, as amended (the Companies Act). The conversion is aimed at compliance with the Companies Act, as well as part of a wider restructuring program to be undertaken by the Applicant.
- In particular, the Applicant will file an amendment to its Memorandum of Incorporation to convert its ordinary par value shares to ordinary no par value shares in accordance with sub-regulations (6) to (11) of Regulation 31 to the Companies Act.
- The steps required to implement the proposed conversion transaction are specified in Regulation 31 of the Companies Act, namely–
 - the preparation by the board of the Applicant of a report relating to the conversion;
 - the adoption of special resolutions by the shareholders of the Applicant to implement the conversion; and
 - the filing of the proposed special resolutions and report with the Companies and Intellectual Property Commission and the South African Revenue Service.
- In effecting the conversion by the Applicant of its ordinary par value shares to ordinary no par value shares it should be noted that –
 - the proposed transaction will be implemented on the basis that all ordinary par value shares in the Applicant will be converted to ordinary no par value shares. In this regard, there will be no distinction between any Shareholders, thereby ensuring that there will be no identifiable benefits or different rights applicable to any particular Shareholder;
 - the rights relating to the shares in the Applicant subsequent to the conversion will remain unchanged. Amongst others, there will be no change to any Shareholder rights relating to–
 - the voting rights in the Applicant;
 - any participation in any profits of the Applicant;

- any participation in the capital of the Applicant;
- the rights upon the winding-up of the Applicant;
- the rights of the Shareholders in the Applicant will be preserved pursuant to the implementation of the proposed transaction;
- there will be no compensation payable to any of the Shareholders pursuant to the conversion; and
- all Shareholders will be treated equally in relation to the implementation of the proposed transaction and there will be no changes to any of the Shareholder's rights relating to their shares in the Applicant.

6. Conditions and assumptions

This ruling is subject to the additional condition and assumption that the conversion is in accordance with the draft report that was prepared by the Applicant in terms of Regulation 31(7) of the Companies Act and does not deviate therefrom.

7. Ruling

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

- In respect of the conversion of the Applicant's par value shares to no par value shares –
 - there will be no "disposal" for the Shareholders as contemplated in paragraph 11(1)(a) of the Eighth Schedule if the relevant shares in the Applicant are held on capital account;
 - there will be no "receipt" or "accrual" for the Shareholders as contemplated in section 1(1), the definition of "gross income", if the relevant shares in the Applicant are held on revenue account; and
 - there will be no "transfer" as contemplated in section 1 of the STT Act and therefore no liability to account for STT.

8. Period for which this ruling is valid

This binding class ruling is valid in respect of this proposed transaction.

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