

BINDING PRIVATE RULING: BPR 227

DATE: 17 March 2016

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

**SECTION : SECTIONS 1(1) – DEFINITION OF “CONTRIBUTED TAX CAPITAL”
AND “GROSS INCOME”, 9C, 10(1)(k), 64E, 64EA AND 64F OF THE
ACT AND PARAGRAPHS 1 – DEFINITION OF “DISPOSAL”, 3, 4, 11
AND 35 OF THE EIGHTH SCHEDULE TO THE ACT
SECTIONS 1 – DEFINITION OF “TRANSFER” AND “SECURITY”, 2
AND 6 OF THE STT ACT**

**SUBJECT : SHARE SUBSCRIPTION TRANSACTION FOLLOWED BY TWO
SHARE REPURCHASE TRANSACTIONS**

1. Summary

This ruling determines the income tax, capital gains tax, dividends tax and securities transfer tax consequences resulting from a share subscription transaction followed by two share repurchase transactions.

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 relevant Act and paragraphs of the Eighth Schedule to the Act applicable as at 15 February 2015. Unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the relevant Act.

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

- the Act –
 - section 1(1) – definition of “contributed tax capital” and “gross income”;
 - section 9C;
 - section 10(1)(k);
 - section 64E;
 - section 64EA;
 - section 64F; and
 - paragraph 1 – definition of “disposal”;
 - paragraph 3;
 - paragraph 4;

- paragraph 11; and
- paragraph 35.
- the STT Act –
 - section 1 – definition of “transfer” and “security”;
 - section 2; and
 - section 6.

3. Parties to the proposed transaction

The Applicant:	A private company incorporated in and a resident of South Africa
Co-Applicant A:	A state-owned company incorporated in and a resident of South Africa
Co-Applicant B:	A private company incorporated in and a resident of South Africa

4. Description of the proposed transaction

The parties consider that a share subscription transaction followed by two share repurchase transactions will be the most commercially efficient manner for implementing the Applicant's exit, as a shareholder, from Co-Applicant A.

The Applicant is one of three shareholders of Co-Applicant A. Co-Applicant A is a state owned company that is the shareholder of Co-Applicant B.

For operational and strategic reasons the Applicant intends to divest from Co-Applicant A to manage its investment in Co-Applicant B directly.

The proposed transaction will be implemented as follows:

- The Applicant will obtain intra-day funding from Bank A.
- The Applicant will use the intra-day funding and its own funds to subscribe for equity shares in Co-Applicant B.
- Co-Applicant B will use the proceeds received from the Applicant to enter into a share repurchase transaction for a specified number of equity shares held by Co-Applicant A (first share repurchase transaction). The repurchase consideration will be settled in cash and the securities transfer tax paid.
- Co-Applicant A will use the proceeds received from Co-Applicant B to enter into a share repurchase transaction for all the shares held by the Applicant (second share repurchase transaction). The repurchase consideration will be settled in cash and the securities transfer tax paid.
- The Applicant will use the proceeds received from Co-Applicant A to repay Bank A.

The Boards of Directors of Co-Applicant B and Co-Applicant A will elect that portions of the proceeds to be received by Co-Applicant A and the Applicant in terms of the first share repurchase transaction and second share repurchase transaction respectively, will be applied as returns of capital.

The shares which Co-Applicant A holds in Co-Applicant B and the shares which the Applicant holds in Co-Applicant A have been held for a period of at least 3 years for purposes of section 9C(2) of the Act.

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 price to be received by Co-Applicant B for the issue of the shares will constitute “contributed tax capital” as defined in section 1(1) of the Act.
- The issue of the shares by Co-Applicant B will not constitute a disposal for purposes of the Eighth Schedule to the Act and hence no capital gain will arise on their issue.
- No securities transfer tax will be payable on the issue of the shares by Co-Applicant B.
- A portion of the proceeds to be received by Co-Applicant A for the disposal of the shares in Co-Applicant B will be deemed to be of a capital nature under section 9C(2) of the Act.
- The balance of the proceeds to be received by Co-Applicant A for the disposal of the shares in Co-Applicant B will be regarded as a “dividend” as defined in section 1(1) of the Act and must be included in the gross income of Co-Applicant A.
- The dividend to be included in the gross income of Co-Applicant A will be exempt from normal tax under section 10(1)(k)(i) of the Act.
- The repurchase of the equity shares held by Co-Applicant A in Co-Applicant B in terms of the first share repurchase transaction will be regarded as a disposal of assets by Co-Applicant A for purposes of the Eighth Schedule to the Act.
- The proceeds for purposes of the Eighth Schedule to the Act will be reduced by the amount which is regarded to be a dividend and consequently included in the gross income of Co-Applicant A.
- No liability for dividends tax will arise in respect of the first share repurchase transaction as Co-Applicant A is a resident company.
- A liability for securities transfer tax will arise in respect of the first share repurchase transaction on the transfer of the shares in Co-Applicant B.

- A portion of the proceeds to be received by the Applicant for the disposal of the shares in Co-Applicant A will be deemed to be of a capital nature under section 9C(2) of the Act.
- The balance of the proceeds to be received by the Applicant for the disposal of the shares in Co-Applicant A will be regarded as a “dividend” as defined in section 1(1) of the Act and must be included in the gross income of the Applicant.
- The dividend to be included in the gross income of the Applicant will be exempt from normal tax under section 10(1)(k)(i) of the Act.
- The repurchase of the equity shares held by the Applicant in Co-Applicant A in terms of the second share repurchase transaction will be regarded as a disposal of assets by the Applicant for purposes of the Eighth Schedule to the Act.
- The proceeds for purposes of the Eighth Schedule to the Act will be reduced by the amount which is regarded to be a dividend and consequently included in the gross income of the Applicant.
- No liability for dividends tax will arise in respect of the second share repurchase transaction, as the Applicant is a resident company.
- A liability for securities transfer tax will arise in respect of the second share repurchase transaction on the transfer of the shares in Co-Applicant A.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 3 years from 15 February 2016.