

## PART H: TAX AND EXCHANGE CONTROL

### 62. TAXATION ISSUES

Edward Nathan Sonnenbergs Incorporated was appointed by the Company as tax advisor for the Listing.

The following is a summary of the material South African tax consequences in connection with the acquisition, ownership and disposal of shares. The following summary is not a comprehensive description of all of the tax considerations that may be relevant to a decision to acquire, purchase, own or dispose of the Blue Label Telecoms Shares and does not cover tax consequences that depend upon your particular tax circumstances or jurisdictions outside of South Africa.

This discussion is only a general discussion, it is not a substitute for tax advice.

It is recommended that you consult your own tax advisor about the consequences of the acquisition and the holding of the Blue Label Telecoms Shares, as applicable, in your particular situation. The discussion in this section is based on current law. Changes in the law may alter the tax treatment of the Blue Label Telecoms Shares, as applicable, and possibly on a retrospective basis.

#### 62.1 Residence based system of taxation

Since 1 January 2001 South Africa has moved from a largely source based to a residence based system of taxation.

Residents of South Africa are taxed on their world-wide income and capital gains, whereas non-residents are taxed only on income and certain capital gains sourced in South Africa or deemed to be from a source in South Africa.

##### Individuals

An individual will be a resident of South Africa for tax purposes if:

- such individual is ordinarily resident in South Africa. This term is not defined in the South African Income Tax Act, 58 of 1962 ("the Income Tax Act"), and therefore its meaning is determined according to guidelines established by the courts. Generally, a person's ordinary residence will be, "*the country to which he would naturally and as a matter of course return from his wandering; as contrasted with other lands it might be called his usual or principal residence and it would be described more aptly than other countries as his real home*"; or
- the requirements of the physical presence test are met. This is determined with reference to the number of days spent by the individual in South Africa during a four-year period.

##### Legal persons (company, close corporation and trust)

As regards legal persons, a resident is defined in the Income Tax Act as any person which is incorporated, established or formed in South Africa or which has its place of effective management in South Africa. Reference can be made to "*Income Tax Interpretation Note 6 – Resident: Place of Effective Management*" issued on 26 March 2002 which details the approach adopted by SARS.

##### General proviso regarding treaty resident persons

The Income Tax Act excludes from the definition of resident all persons (legal or natural) that are deemed to be exclusively resident in another country in terms of an agreement for the avoidance of double taxation to which South Africa is a party.

#### 62.2 Dividend income

Dividends declared by a South African company are exempt from tax in the hands of the recipient. Non-resident shareholders' tax ("NRST") was abolished with effect from 1 October 1995, and currently there is no withholding tax on dividends paid by a South African company to its shareholders, whether or not they are resident in South Africa.

However, a Secondary Tax on Companies ("STC") is levied on the distribution of after-tax profits by way of a dividend, subject to certain exemptions. STC is triggered by the declaration of a dividend. The rate of STC was reduced to 10% with effect from 1 October 2007, bringing the effective company tax rate to 35.45%.

STC is a tax on the declaring company, not the recipient shareholder. Relief is therefore not provided by most double taxation agreements entered into by South Africa.

### 62.3 Disposal of shares

The disposal of shares will give rise to either a capital or revenue receipt or accrual in the hands of the taxpayer. In determining whether the income derived from the disposal of such shares is of a capital or revenue nature, the South African tax authorities and courts look at, among other things, the intention of the holder of the shares to determine whether the disposal gave rise to a capital or revenue profit.

Profits derived from the disposal of South African shares held as long-term investments are generally regarded as profits of a capital nature and are not subject to South African income tax, but may attract capital gains tax. Subject to certain relief under double taxation agreements, if a non-resident shareholder trades in South African shares, such non-resident shareholder could be subject to South African income tax if the proceeds from the disposal would be seen as being from a South African source, which would generally be the case where the trading activities take place in South Africa.

Proposed new legislation will, if effected, provide for a 3 year safe harbour ratio. With effect from 1 October 2007, the proceeds from the disposal of shares that were held for at least 3 years from the date of acquisition will be regarded as being of a capital nature. If shares are sold within three years from the date of acquisition, the normal principles described above for distinguishing capital and revenue amounts, will have to be applied.

### 62.4 Capital Gains Tax

Residents of South Africa are (subject to certain relief under double taxation agreements) subject to Capital Gains Tax ("CGT") in respect of gains made on the disposal of their world-wide assets. Non-residents will incur liability for CGT only in relation to fixed property situated in South Africa, assets of a South African permanent establishment or shares in companies that are primarily South African fixed property owning. As this should not be the case in the present circumstances, the disposal of Blue Label Telecoms Shares by a non-resident shareholder should not be subject to CGT in South Africa.

The following table sets out the prescribed portion of a capital gain that would be included in a taxpayers' taxable income, the normal tax rates applicable to certain taxpayers and, consequently, the effective rate at which capital gains are taxed:

Type of taxpayer	Prescribed portion of the capital gain included in taxable income (%)	Statutory income tax rate (%)	Effective rate (%)
Individuals	25	0 – 40	0 – 10
Trusts			
• Special	25	0 – 40	0 – 10
• Other	50	40	20
Life assurers			
• Individual policyholder fund	25	30	7.5
• Company policyholder fund	50	29	14.5
• Corporate fund	50	29	14.5
• Untaxed policyholder fund	0	0	0
Companies	50	29	14.5
Permanent establishments (branches)	50	34	17
Collective investment schemes	0 – 50	0 – 29	0 – 14.5

### 62.5 Corporate tax

The corporate tax rate is 29% of taxable income.

Additionally, STC is payable by resident companies of South Africa at a rate of 10% calculated on the net amount of dividends declared by a company during any dividend cycle, leading to an effective maximum tax rate on companies of 35.45%. The rate of STC has been reduced to 10% with effect from 1 October 2007.

## **62.6 Uncertificated Securities Tax**

The Blue Label Telecoms Shares will be uncertificated. Uncertificated Securities Tax ("UST") is imposed in respect of the issue of and change in beneficial ownership (to be paid by the transferee) of any listed uncertificated security. The UST payable is calculated at the rate of 0.25% of the taxable amount of such security, being the value or consideration given for the security, determined in terms of the South African Uncertificated Securities Tax Act, 1998 (Act 31 of 1998).

## **63. EXCHANGE CONTROL**

The Pre-Listing Statement is not an offer in any area of jurisdiction in which it is illegal to make such an offer. In such circumstances, this Pre-Listing Statement and the application forms should be read for information purposes only.

The following summary is intended as a guide only and is therefore not comprehensive. If you are in any doubt hereto, please consult your professional advisor.

### **63.1 Emigrants from the Common Monetary Area**

A former resident of the Common Monetary Area who has emigrated from South Africa may use blocked Rand accounts to purchase Blue Label Telecoms Shares in terms of this Pre-Listing Statement.

All payments in respect of subscriptions for Blue Label Telecoms Shares in terms of the Offer for Subscription and acquisitions in terms of the Offer for Sale by non-residents using blocked Rand must be made through an authorised dealer in foreign exchange.

Share certificates issued in respect of Blue Label Telecoms Shares purchased or subscribed for with blocked Rand in terms of this Pre-Listing Statement will be endorsed "non-resident" in accordance with the Exchange Control Regulations. Share certificates will be placed under the control of the authorised dealer through whom the payment was made.

Blue Label Telecoms Shares issued to a Dematerialised shareholder whose registration as a shareholder has been marked as being an "emigrant", will be similarly marked as being held by an "emigrant".

If applicable, refund monies payable in respect of unsuccessful applications, for Blue Label Telecoms Shares in terms of this Pre-Listing Statement, emanating from blocked Rand accounts will be returned, in terms of the South African Exchange Control Regulations, to the authorised dealer administering such blocked Rand accounts for credit of such applicants' blocked Rand accounts. The CSDP or broker through whom the Blue Label Telecoms Shareholders have Dematerialised their shares will ensure that they adhere to the Exchange Control Regulations.

### **63.2 Applicants resident outside the Common Monetary Area**

A person who is not resident in the Common Monetary Area should obtain advice as to whether any government and/or other legal consent is required and/or whether any other formality must be observed to enable a subscription to be made in terms of the Private Placing.

All Blue Label Telecoms Share certificates issued to non-residents of South Africa will be endorsed "non-resident" in accordance with the Exchange Control Regulations.

All Blue Label Telecoms Shares issued to Dematerialised Blue Label Telecoms Shareholders, whose registration has been so endorsed will be endorsed "non-resident" in accordance with the Exchange Control Regulations. The CSDP or broker through whom the Blue Label Telecoms Shareholders have Dematerialised their shares will ensure that they adhere to the Exchange Control Regulations.

### **63.3 Blue Label Telecoms Shares acquired by non-residents**

Persons resident outside the Common Monetary Area applying for Blue Label Telecoms Shares pursuant to this Pre-Listing Statement should note that while there are no restrictions similar to those placed on emigrants using blocked funds, in regard to Blue Label Telecoms Shares acquired by non-residents pursuant to this Pre-Listing Statement, in the case of Certificated Shares, the share certificates will be endorsed with the words "non-resident" and, in the case of Dematerialised Shares, an appropriate electronic entry will be made in the relevant register reflecting a "non-resident" endorsement.