

## **BINDING PRIVATE RULING: BPR 232**

DATE: 19 May 2016

**ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 1(1) – DEFINITION OF “EQUITY SHARE”, AND 44(1) – DEFINITION OF “AMALGAMATION TRANSACTION”**  
**SUBJECT : EQUITY SHARES TO BE ISSUED BY RESULTANT COMPANY AS PART OF AN AMALGAMATION TRANSACTION**

### **1. Summary**

This ruling determines whether the shares of each class to be issued by a resultant company following an amalgamation transaction will be equity shares as defined in section 1(1) of the Act.

### **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 are to sections of the Act applicable as at 1 June 2015. Unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

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

- section 1(1) – the definition of “equity share”; and
- section 44(1) – the definition of “amalgamation transaction”.

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

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

The Co-Applicants:

- Shareholders: Companies incorporated in and residents of South Africa that will be the shareholders of the Amalgamated companies
- Amalgamated companies: Companies incorporated in and residents of South Africa that will be wound up as part of the amalgamation transaction
- Resultant company: A company incorporated in and a resident of South Africa that will remain in existence after the amalgamation transaction

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

The Applicant and the Co-Applicants decided to rationalise the administration of their businesses, of which the underlying nature is identical, by amalgamating the businesses in a single entity and terminating the existence of the existing companies.

The Applicant and the Co-Applicants have significant interests in investments in fixed properties, which they hold individually or jointly. The nature of the investments is in each case similar, comprising of shares in companies that own fixed property which is let to derive rental income. As new projects are identified, the traditional approach has been to form a new entity to own the fixed property, construct improvements and enter into lease agreements with tenants.

The amalgamation will result in the transfer of the assets and liabilities of the Amalgamated companies to the Resultant company, in exchange for shares in its corporate structure. Those shares will be issued on behalf of the Amalgamated companies, after which the Amalgamated companies will be wound up.

The Resultant company will issue shares of different classes. Each class of shares will be linked to a designated property investment. The holders of these shares will each be entitled to a distribution of income and capital, attributable to the income and capital generated by the designated property. The distributions will not be limited to specified amounts.

In the event of a winding-up, if there is any surplus remaining after satisfying the interests of the shareholders of each class, each share shall be entitled to share equally in the surplus. The rights of each class of shareholder will be documented in the memorandum of incorporation.

#### **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:

- a) The disposal by the respective Amalgamated companies of their businesses to the Resultant company will meet the requirements of an “amalgamation transaction” as defined in section 44(1).
- b) The shares of the different classes to be issued by the Resultant company will each constitute an “equity share” as defined in section 1(1).

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

This binding private ruling is valid for a period of 5 years from 1 June 2015.

Issued by: