

BINDING CLASS RULING: BCR 033

DATE: 14 March 2012

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : PARAGRAPHS 1, 11, 31 AND 33 OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : CONVERSION OF A PUBLIC COMPANY TO A PRIVATE COMPANY

1. Summary

This ruling deals with the capital gains tax consequences for a public company on conversion (in terms of the Companies Act, No. 71 of 2008) to a private company.

2. Relevant tax laws

This is a binding class ruling issued in accordance with section 76R of the Act.

In this ruling legislative references to paragraphs are to paragraphs of the Eighth Schedule to the Act, applicable as at 31 January 2012 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested under the provisions of paragraphs 1, 11, 31 and 33 of the Eighth Schedule.

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

Shareholder A: A company that holds 50% of the shares in the Applicant

Shareholder B: A company that holds the other 50% of the shares in the Applicant

5. Description of the proposed transaction

The Applicant has authorised and issued share capital of 100 ordinary shares with a par value of R1 each. Shareholders A and B each hold 50% of the issued share capital.

The Applicant was classified as a public company in terms of the Companies Act, No. 61 of 1973. The Applicant retained its classification as a public company in terms of the Companies Act, No. 71 of 2008 but now wishes to convert to a private company.

In terms of the proposed conversion from a public company to a private company, the shareholding in the Applicant will remain unchanged immediately before and after the conversion, that is, Shareholders A and B will each retain their 50% shareholding in the Applicant, with the same amount of shares.

The conversion will entail limited amendments to the Applicant's Memorandum of Incorporation, restricted to the following –

- inserting provisions prohibiting the offering of the Applicant's securities to the public and restricting the transferability of its securities;
- deleting the provisions dealing with share warrants;
- removing the power of the directors of the Applicant to apply for a stock exchange listing of the company's securities; and
- removing provisions anticipating the securities of the Applicant being listed on a stock exchange.

6. Conditions and assumption

This ruling is not subject to any conditions and assumptions.

7 Ruling

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

- For purposes of the Eighth Schedule to the Act, the conversion of the Applicant from a public company to a private company will amount to a part-disposal of the shares held by Shareholders A and B. The part-disposal of the shares held by Shareholders A and B will not result in any capital gain or capital loss as a result of paragraph 33(1) read with paragraph 31(3) of the Eighth Schedule.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of three (3) years as from January 2012.

Issued by:

**Legal and Policy Division: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**