

BINDING CLASS RULING: BCR 042

DATE: 07 February 2014

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1), DEFINITION OF “LISTED SHARE” AND 10B(2)(d)
SUBJECT : PREFERRED SECURITIES ISSUED BY A COMPANY REGISTERED IN A FOREIGN COUNTRY

1. Summary

This ruling deals with the applicability of the definition of “listed share” in section 1(1) to preferred securities issued to South African investors by a company registered in a foreign country and with issues concerning distributions to the class members.

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 are to sections of the Act applicable as at 2 December 2013 and 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), definition of “listed share”; and
- section 10B(2)(d).

3. Class

The class members to whom this ruling applies are described in point 4 below.

4. Parties to the proposed transaction

The Applicant: A joint stock company with limited liability, incorporated in and a resident of a foreign country (Country X)

The Class Members: South African investors who are beneficial owners of dividends associated from time to time with the preferred securities issued by the Applicant

5. Description of the proposed transaction

The Applicant is wholly-owned by a company limited by shares that is incorporated in and a resident of another foreign country (Country Y). The Applicant will be listed on the JSE Limited. The Applicant will invest in non-South African debt instruments (the debt instruments) and will receive an interest return thereon. There will be no direct or indirect re-investment into South African assets.

The Applicant will raise the funds for investing in the debt instruments by way of its branch in Country Y issuing preferred securities. The preferred securities will –

- be redeemable upon the maturity date, which will be five years or more after date of issue, at the same amount paid for the preferred securities;
- confer preferred rights to dividends and such dividends will be –
 - calculated with reference to a rate derived from the underlying debt instruments;
 - limited to the net revenue derived from these debt instruments; and
 - paid in cash;
- be non-voting except in certain circumstances that are mandatory under the laws of Country X; and
- rank *pari passu* with all other preferred securities and all preferred securities will rank in preference to ordinary shares.

6. Conditions and assumptions

This ruling is not subject to any additional conditions and assumptions.

7. Ruling

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

- The preferred securities will constitute listed shares as defined in section 1(1).
- The distributions to the Class Members will –
 - constitute “amounts payable” as envisaged in the definition of “foreign dividend” in section 1(1); and
 - not constitute a distribution of an asset *in specie* as envisaged in section 10B(2)(d).
- No ruling is made on the provisions of sections 8E and 8EA.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of 5 years from 2 December 2013.

Issued by:

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