

SOUTH AFRICAN REVENUE SERVICE

BINDING CLASS RULING: BCR 015

DATE: 26 January 2010

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)

SECTION : SECTION 27(5B)

**SUBJECT : REPEALED LEGISLATION AND THE APPLICATION OF SECTION 12(1)
OF THE INTERPRETATION ACT, NO. 33 OF 1957**

1. Summary

This ruling deals with the question as to whether the reference in section 27(5B) of the Act to the repealed Co-operatives Act, No. 91 of 1981 is in fact a reference to the Co-operatives Act, No. 14 of 2005 by applying section 12(1) of the Interpretation Act, No. 33 of 1957.

2. Relevant tax laws

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

In this ruling legislative references to sections are to sections of the relevant Acts applicable as at 19 August 2009 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the relevant Acts.

The specific ruling has been requested under the provisions of –

- section 27(5B) of the Act;
- sections 56 to 58 of the Co-operatives Act of 2005;
- sections 165 to 168 of the now repealed Co-operatives Act of 1981; and
- section 12(1) of the Interpretation Act of 1957.

3. Class

The class members to whom this ruling will apply will be the co-operatives to be amalgamated according to section 56 of the Co-operatives Act of 2005.

4. Parties to the proposed transaction

Co-operative A: A Co-operative incorporated in South Africa

Co-operative B: A Co-operative incorporated in South Africa

5. Description of the proposed transaction

Co-operatives A and B intend to amalgamate under the Co-operatives Act of 2005 and to trade as one co-operative entity. The envisaged amalgamation would result in a pooling of resources. Shares will be issued to the members of the existing entities in proportion to their holdings in those entities and the net value of the respective entities.

The salient terms of the heads of agreement between the parties are:

- The co-operatives wish to amalgamate.
- The amalgamated co-operative will be constituted in terms of the requirements of the Co-operatives Act of 2005.
- The provisions of section 56 of the Co-operatives Act of 2005 will be included in the Amalgamation Agreement.
- The values of the individual amalgamating co-operatives will be subject to the finalisation of due diligence procedures.
- The shares of the individual amalgamating co-operatives shall be allocated a weight based on the outcomes of the due diligence and the shares in the amalgamated co-operative shall be issued *pro rata* based on these weights.
- The directors that serve on the boards of the individual amalgamating co-operatives shall continue to serve as directors of the amalgamated co-operative until the first annual general meeting, where the members will elect a new board of directors, is held. Current directors will be eligible to stand for election to the new board.
- Funds not yet distributed or allocated to specific members in the individual amalgamating co-operatives will be combined in the amalgamated co-operative and special funds will be maintained.
- The formalities for the approval of an amalgamation under section 57 of the Co-operatives Act of 2005 will be observed.

6 Conditions and assumptions

This ruling is subject to the conditions and assumptions that –

- no ruling is issued in respect of the application of the provisions of section 103(2) of the Act; and
- this ruling does not determine how any assessed losses are to be dealt with.

7. Ruling

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

- By virtue of the provisions of section 12(1) of the Interpretation Act of 1957, the reference in section 27(5B) of the Act to the Co-operatives Act of 1981 is interpreted as a reference to the Co-operatives Act of 2005.

8. Period for which this ruling is valid

This binding class ruling issued in August 2009 will only be valid in respect of the proposed transaction.

Issued by:

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