

BINDING PRIVATE RULING: BPR 088

DATE:01 July 2010

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTION 1, DEFINITION OF “EQUITY SHARE CAPITAL”
SUBJECT : CONTRIBUTED CAPITAL OF A FOREIGN LIMITED LIABILITY CO-OPERATIVE

1. Summary

This ruling deals with the question as to whether the contributed capital of a foreign limited liability co-operative will constitute “equity share capital”, as defined in section 1 of the Act.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling legislative references to sections are to sections of the Act applicable as at 31 March 2010 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 section 1, definition of “equity share capital”.

3. Parties to the proposed transaction

The Applicant: A company that is a “resident” as defined in section 1 and the holding company of a group of local and foreign companies (the Group)

Foreign Holding Company: The holder of the Applicant’s foreign companies

Foreign Intermediate Holding Entity (the Entity): A foreign limited liability Co-operative to be incorporated that is to be held by the Foreign Holding Company and that will hold the Applicant's foreign companies

4. Description of the proposed transaction

The Applicant is the holding company of a group of companies through which its local and foreign investments are held. The Applicant is in the process of restructuring the holding of its foreign investments.

The international dimension of the restructuring process will result in a neutral tax effect from a South African tax perspective. One of the objectives of the restructuring process is to manage and reduce the withholding tax leakage on the repatriation of profits from the foreign operating companies in the Group in the various countries in which such subsidiaries operate.

In order to mitigate the leakage of withholding tax on dividends and other cross border fund flows, the Applicant intends to interpose the Entity between the Foreign Holding Company and the foreign operating companies. The Entity will reside in a country that has an appropriate tax treaty network with the territories in which the foreign operating companies are resident and have legal personality under the company law of its country or residence. It will be able to own assets and conclude agreements. Co-operatives in that specific country are associations and have to be incorporated on the basis of a notarial deed.

In terms of the Entity's proposed deed of incorporation (deed of incorporation), each member will make a contribution in cash or in kind as will be determined by the general meeting. The deed of incorporation will also stipulate that the participating members will have an unlimited right to dividends, when declared and the return of capital on the winding-up of the Entity.

5. Conditions and assumptions

This ruling is made subject to the condition and assumption that the international dimension of the restructuring process is not a South African tax driven exercise and will result in a neutral tax effect from a South African tax perspective.

6. Ruling

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

- The contributed capital of the foreign limited liability co-operative will constitute "equity share capital", as defined in section 1.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five (5) years as from 31 March 2010.

Issued by:

**Legal and Policy Division: Advance Tax Rulings
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