

## **BINDING PRIVATE RULING: BPR 143**

DATE: 02 May 2013

**ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)**  
**SECTION : SECTION 1, DEFINITIONS OF “EQUITY SHARE” AND  
“HEADQUARTER COMPANY”**  
**SUBJECT : PREFERENCE SHARES CONSTITUTING EQUITY SHARES IN  
RELATION TO A HEADQUARTER COMPANY**

### **1. Summary**

This ruling deals with the question as to whether preference shares held will qualify as equity shares for purposes of applying the definition of “headquarter company” 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 25 November 2011 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, the definitions of “equity share” and “headquarter company”.

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

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

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

The Applicant holds preference shares in an off shore company. The preference shares confer on the holder the right to participate in a return of capital only to the extent of the subscription price as well as any arrear dividends.

The right to participate in dividends, although expressed in the articles of association as a rate on the subscription price, is effectively unlimited and unrestricted as the rate is at the discretion of the directors, and the dividend is thus not restricted to a pre-determined amount or coupon. In effect, it is open to the directors to declare the same dividend on preference shares as on ordinary shares. The right to participate in dividends is not restricted.

The Applicant intends to list a certain percentage of its shares on an international stock exchange should it qualify as a “headquarter company” as defined in section 1.

**5. Conditions and assumptions**

This ruling is not subject to any conditions or assumptions.

**6. Ruling**

The ruling made in connection with the proposed transaction is that the preference shares in question will be regarded as equity shares for the purpose of applying the definition of “headquarter company” 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 25 November 2011.

Issued by:

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