



SOUTH AFRICAN REVENUE SERVICE

BINDING CLASS RULING: BCR 016

DATE: 26 January 2010

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : PARAGRAPHS 11, 33 AND 35 OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : CAPITAL GAINS TAX – RE-DESIGNATION OF PREFERENCE SHARES

1. Summary

This ruling deals with the capital gains tax consequences which may arise when one class of preference shares is re-designated to another class of preference shares in circumstances where the two classes of preference shares are almost identical.

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 8 January 2009 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 11, 33 and 35 of the Eighth Schedule.

3. Class

The class members to whom this ruling will apply will be the Class A shareholders of a company.

4. Parties to the proposed transaction

The Applicant: A company

Class A shareholders: Holders of P preference shares in the Applicant

Class B shareholders: Holders of Q preference shares in the Applicant to be re-designated P preference shares

5. Description of the proposed transaction

The Applicant intends amending its articles of association in order to vary the terms of the Q preference shares previously issued, in an attempt to remove an apparent market perception that this class of shares is economically different from its class P preference shares.

The entitlements of shareholders, whether Class A shareholders or Class B shareholders, as regards to dividends and their participation in liquidation proceedings (when liquidated), are almost identical. However, for reasons unknown to the Applicant the respective classes of shares trade at different prices. The proposed transaction will have the effect that the Q preference shares will be re-designated P preference shares. Thereafter, there will only be P preference shares in issue.

It is envisaged that the rights currently associated with the Q preference shares, which will be re-designated P preference shares, will be amended to provide for the share premiums of these two classes to be merged and the pooled amount thereof to be distributed evenly among the combined Class A shareholders (combination of the Class A shareholders and former Class B shareholders) of P preference shares on liquidation. Furthermore, the dividend formula applicable to the P preference shares will be amended as the issue price is currently a factor of the formula. The rights of the combined Class A shareholders to dividends will not change in any way as a result of the change in the formula. The combined Class A shareholders will remain entitled to exactly the same dividend to which they were entitled to before the re-designation of the Q preference shares.

The Q preference shares will not be cancelled, but will merely be renamed to P preference shares. The Class B shareholders will retain such shares that they held immediately prior to the re-designation, but will merely be renamed Class A shareholders.

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:

- The re-designation of the Applicant's Q preference shares to P preference shares will not be an event, which will be subject to capital gains tax as envisaged in the Eighth Schedule, for the shareholders. The limited variation of rights will not constitute a "disposal" as defined

in paragraph 1 of the Eighth Schedule, therefore, the provisions of paragraphs 11, 33 and 35 of the Eighth Schedule will not be applicable to the said re-designation of the Q preference shares.

8. Period for which this ruling is valid

This binding class ruling, issued in July 2009, is valid for the year of assessment in which the proposed re-designation of the Q preference shares takes place.

Issued by:

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