



SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 024

The guidance contained in this ruling is affected by subsequent law changes.

DATE : 10 February 2009

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

SECTION : SECTIONS 41 AND 43

SUBJECT : SHARE FOR SHARE RELIEF PROVISION

1. Summary

This ruling provides guidance on when –

- a company is considered to be a listed company; and
- the acquiring company should review its position to determine whether it has met the minimum required interest intended to qualify for share for share relief.

2. Relevant tax laws

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

All legislative references are to sections of the Act and unless the context otherwise indicates, any word or expression in this ruling bears the meaning ascribed to them in the Act.

This ruling has been requested in relation to the provisions sections 41 and 43.

3. Parties to the proposed transaction

The Applicants: A listed company, as defined in the Act (the target transferor); and

A public company as defined in the Act (the acquiring company).

4. Description of the proposed transaction

The target transferor wishes to dispose of its 5.8% shareholding it holds in a non-listed company (the target company) in exchange for shares in the acquiring company. No cash or other consideration will change hands. On the conclusion of this share-for-share transaction, the target transferor will hold 25.1% of the issued equity shares in the acquiring company which will hold 27.8% of the issued equity shares in the target company (the greatest single shareholding in the target company, with the second greatest holding being 12%).

Currently a process is on the way to list the shares of the target company on an “exchange” as defined in section 1 and licensed under section 10 of the Securities Services Act, No. 36 of 2004 (a recognised exchange).

5. Conditions and assumptions

This ruling is made subject to the following conditions and assumptions –

- Written approval by the recognised exchange to add the shares of the target company to its list of securities.

6. Ruling

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

- the target company will be considered to be a “listed company” as defined in section 41 of the Act when its shares are formally added to the list of securities kept by the recognised exchange; and
- the acquiring company will not be considered to have the required interest intended in terms of section 43(c)(i) of the Act as it is required that the target company be listed on the disposal date of the share-for-share transaction. No share-for-share relief will therefore be available to the applicants.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three (3) years from the date of the ruling.

Issued by:

**Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE**