

**BINDING PRIVATE RULING: BPR 176**

DATE: 31 July 2014

**ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)**  
**SECTION : SECTION 1(1) DEFINITION OF “FOREIGN INVESTMENT ENTITY”**  
**SUBJECT : FINANCIAL INSTRUMENTS NOT ISSUED BY A “LISTED COMPANY” AS DEFINED; APPLICATION OF THE WORDS “FOR INVESTMENT PURPOSES”**

**1. Summary**

This ruling deals with financial instruments not issued by a “listed company” as defined and the application of the words “for investment purposes” in the definition of “foreign investment entity” in section 1(1) of the Act.

**2. Relevant tax laws**

This is a binding private ruling issued in accordance with section 78(1) and published in accordance with section 87(2) of the Tax Administration Act No. 28 of 2011.

In this ruling references to sections are to sections of the Act applicable as at 11 June 2014 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This is a ruling on the interpretation and application of the provisions of the definition of “foreign investment entity” in section 1(1).

**3. Parties to the proposed transaction**

The Applicant:	A company incorporated in and a resident of Country X
Co-Applicant 1:	A company incorporated in and a resident of Country X
Co-Applicant 2:	A company incorporated in and a resident of South Africa
The General Partner:	A company incorporated in and a resident of Country X
The Foreign Manager:	A company incorporated in and a resident of Country X

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

The Applicant, Co-Applicant 1 and the General Partner plan to enter into a partnership agreement to constitute a partnership (the Foreign Partnership) under the laws of Country X. The intention of the Foreign Partnership is to make long term equity and equity related investments in accordance with its investment guidelines. The Foreign Partnership will be funded by way of contributions from the Applicant and Co-Applicant 1, and will be tax transparent in Country X and South Africa.

The General Partner will appoint the Foreign Manager on behalf of the Foreign Partnership, who will subcontract Co-Applicant 2 to render investment management services in South Africa.

In terms of the proposed partnership agreement, the stated purpose of the Foreign Partnership is to deliver attractive, long term risk adjusted returns by making long term equity and equity related investments in accordance with its investment guidelines and may engage in any and all activities necessary or incidental to the accomplishment of its purpose.

The assets of the Foreign Partnership may include financial instruments listed on formal exchanges which have not been recognised by the Minister of Finance as contemplated in paragraph (c) of the definition of “recognised exchange” in paragraph 1 of the Eighth Schedule to the Act.

#### **5. Conditions and assumptions**

This ruling is subject to the additional condition and assumption that the Foreign Partnership will be a “foreign partnership” as defined in section 1(1).

#### **6. Ruling**

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

- A financial instrument issued by a foreign listed company that does not qualify under paragraph (b)(ii)(aa) of the definition of “foreign investment entity” (because the foreign stock exchange has not been recognised by the Minister of Finance as contemplated in paragraph (c) of the definition of “recognised exchange” in paragraph 1 of the Eighth Schedule) may be considered and qualify under paragraph (b)(ii)(bb) of the definition of “foreign investment entity” if that financial instrument is traded by members of the general public and a market for that trade exists.
- The amounts, financial instruments and rights to be held by the Applicant and Co-Applicant 1 will fall within the meaning of the words “for investment purposes” as required under paragraph (b) of the definition of “foreign investment entity”.
- No ruling is made on the capital or revenue nature of any amount, financial instrument or right realised, or the source of any amount arising out of any such realisation.

**7. Period for which this ruling is valid**

This binding private ruling is valid for a period of 3 years from 11 June 2014.

Issued by:

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