

BINDING CLASS RULING: BCR 044

DATE: 2 May 2014

**ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECURITIES TRANSFER TAX ACT NO. 25 OF 2007 (the STT Act)**

**SECTION : SECTION 1(1), DEFINITION OF “EQUITY SHARE”; SECTION 8E AND
PARAGRAPH 11(2)(b) OF THE EIGHTH SCHEDULE TO THE ACT
SECTION 2(1) OF THE STT ACT**

**SUBJECT : REPURCHASE OF NON-REDEEMABLE, NON-PARTICIPATING
PREFERENCE SHARES**

1. Summary

This ruling deals with the tax consequences of a repurchase of non-redeemable, non-participating preference shares.

2. Relevant tax laws

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

In this ruling references to sections and paragraphs are to sections of the relevant Acts and paragraphs of the Eighth Schedule to the Act, applicable as at 14 November 2013 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the relevant Act.

This is a ruling on the interpretation and application of the provisions of –

- section 1(1), definition of “equity share”, section 8E of the Act,
- paragraph 11(2)(b) of the Eighth Schedule; and
- section 2(1) of the STT Act.

3. Class

The class members to whom this ruling will apply are described in point 4 below.

4. Parties to the proposed transaction

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

Class Members: Holders of non-redeemable, non-participating preference shares issued by the Applicant

5. Description of the proposed transaction

The Applicant issued non-redeemable, non-participating preference shares at a par value amount. The preference shares are not redeemable, even though they

confer the right to a return of the capital on the winding up of the Applicant in an amount equal to the issue price of the preference shares. Seven years after the issue date a decision was taken to undertake a general and/or specific repurchase of the preference shares at the current market price as traded on the JSE. The repurchase price constitutes a discount to the issue price of the preference shares.

6. Conditions and assumptions

This ruling is not subject to any additional conditions and assumptions.

7. Ruling

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

- The preference shares will not constitute “equity shares” for purposes of the definition in section 1(1) of the Act.
- The preference shares will not be recharacterised as hybrid equity instruments merely by reason of their repurchase by the Applicant and dividends paid by the Applicant during the current financial year of assessment will not be recharacterised as income in the hands of the Class Members.
- Any power of the Applicant to repurchase the preference shares in terms of the Takeover Regulation Panel Requirements or section 164 of the Companies Act No. 71 of 2008, will not be deemed to be an obligation to do so for purposes of section 8E of the Act.
- The proposed transaction, including the cancellation of the preference shares, will not result in a disposal by the Applicant of an asset, as contemplated in paragraph 11 of the Eighth Schedule to the Act.
- Securities transfer tax will be payable at the rate of 0.25% on the repurchase price payable by the Applicant for the preference shares.
- In the event of any particular repurchase of preference shares, to the extent that there is a dividend element, dividends withholding tax may apply.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of 5 years from 14 November 2013.

Issued by:

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