



SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 054

DATE: 21 October 2009

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 41(4) AND 44(1) AND (13)
SUBJECT : CORPORATE RULES – AMALGAMATION TRANSACTIONS

1. Summary

This ruling deals with whether companies, being associations of persons registered in terms of section 27 of the Co-operatives Act, No. 91 of 1981 (the Co-operatives Act), will be regarded as having taken steps to liquidate, wind-up or deregister under section 44(13) of the Act, given the provisions of section 41(4) which does not specifically mention co-operatives.

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 10 March 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 –

- section 41(4); and
- section 44(1) and (13)

3. Parties to the proposed transaction

The Applicant: A company incorporated in South Africa and a “resident” as defined in section 1

Co-operative Y: A co-operative incorporated in South Africa and a “resident” as defined in section 1

Co-operative Z: A co-operative incorporated in South Africa and a “resident” as defined in section 1

4. Description of the proposed transaction

It is proposed that Co-operative Y and Co-operative Z be amalgamated with the Applicant, whereby Co-operatives Y and Z will dispose of all their assets to the Applicant in exchange for which the Applicant will issue equity shares to Co-

operatives Y and Z. The Applicant will also assume all liabilities of Co-operatives Y and Z as part of the proposed amalgamation transaction.

The corporate existence of Co-operatives Y and Z will be terminated by way of winding-up in terms of the Co-operatives Act and Co-operatives Y and Z will distribute the shares received from the Applicant to their respective members before and in anticipation of the winding-up.

All the assets of Co-operatives Y and Z will therefore be held by the Applicant after the proposed transaction. The Applicant will then constitute the new trading entity and its shareholders will consist of its own shareholders and the members of Co-operatives Y and Z wound up.

5. Conditions and assumptions

This ruling is made subject to the condition that all the requirements of section 44 will be met, including the requirements of section 44(13) read with section 41(4), specifically ruled on in paragraph 6 below.

6. Ruling

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

- Co-operatives Y and Z will be regarded as having taken the necessary steps to terminate their existence as required by the definition of an “amalgamation transaction” as defined in section 44(1), read with sections 44(13) and 41(4), provided that -
 - Co-operatives Y and Z lodge a special resolution authorising the voluntary winding-up of the Co-operatives under section 180 of the Co-operatives Act;
 - Co-operatives Y and Z submit copies of the aforementioned resolutions to the Commissioner;
 - all the returns or information required to be submitted or furnished to the Commissioner in terms of any Act administered by the Commissioner by the end of the relevant period within which the aforementioned steps must be taken, are submitted or furnished or arrangements are made with the Commissioner for the submission of any outstanding returns or furnishing of information; and
 - the aforementioned steps are taken within 18 months after the date of the proposed transaction, or such further period as the Commissioner may allow.

7. Period for which this ruling is valid

This binding private ruling, issued in March 2009, applies to the year of assessment in which the proposed transaction is executed.

Issued by: