

**BINDING PRIVATE RULING: BPR 244**

DATE: 26 July 2016

**ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 1(1) – DEFINITION OF “TRADING STOCK”, 13quin,  
41(1) – DEFINITION OF “TRADING STOCK” AND 44**  
**SUBJECT : DISPOSAL OF AN UNDIVIDED INTEREST IN IMMOVABLE  
PROPERTY BY WAY OF AN AMALGAMATION TRANSACTION**

**1. Summary**

This ruling determines whether the proposed transaction will qualify as an “amalgamation transaction” as defined in section 44(1) and whether the resultant company will qualify to claim the allowance under section 13quin.

**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 21 June 2016. 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 –

- section 1(1) – definition of “trading stock”;
- section 13quin;
- section 41(1) – definition of “trading stock”; and
- section 44(1), (3) and (6).

**3. Parties to the proposed transaction**

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

The Co-Applicants: Companies incorporated in and residents of South Africa and a trust established in and a resident of South Africa

The Amalgamated Companies: Companies incorporated in and residents of South Africa that are collectively 100% held by the Co-Applicants

The Rental Company: A company incorporated in and a resident of South Africa that is 100% held by the Amalgamated Companies collectively

#### 4. Description of the proposed transaction

The current shareholder structure of the parties consists of the Co-Applicants, the Amalgamated Companies and the Rental Company (group).

The Amalgamated Companies own an undivided interest in properties that form part of the same property complex. This creates complexities to obtain funding at competitive interest rates and on terms for further development and improvements to the properties.

The proposed transaction (merger) is aimed to reduce the number of existing entities in the group and to rationalise the ownership and management of assets in a manner that reflects the commercial reality of the property interests owned by the companies in the group.

Prior to the merger, the only assets that will be owned by the Amalgamated Companies will be the undivided interests in the properties and the shares in the Rental Company. The Rental Company acts as a rental collection agency. None of the Amalgamated Companies will have any liabilities at the time of the proposed merger.

Certain improvements on the properties owned by the Amalgamated Companies qualify for the allowance under section 13quin.

The steps for implementing the merger will be as follows:

- a) The Amalgamated Companies will dispose of their assets to the Applicant. As consideration, the Applicant will issue shares to the Amalgamated Companies (consideration shares). The Amalgamated Companies will take the necessary steps, set out in section 41(4), to deregister.
- b) The Amalgamated Companies will distribute the consideration shares to their shareholders (Co-Applicants).
- c) Once deregistration of the Amalgamated Companies have been completed, the shares held by the Co-Applicants in the Amalgamated Companies will be cancelled for no consideration.
- d) The Co-Applicants do not intend to dispose of the shares in the Applicant subsequent to the merger.
- e) The proposed transaction will form part of and involve a merger as contemplated in section 113 of the Companies Act, 2008.
- f) After the merger the Co-Applicants will hold shares in the Applicant that, in turn, will own the undivided interest in the property complex.
- g) The Applicant will incur significant improvement and expansion expenditure in respect of the property complex following the merger, to be funded partly by its shareholders and partly by external funders.

**5. Conditions and assumptions**

This binding private ruling is not subject to any additional condition and assumption.

**6. Ruling**

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

- a) The proposed transaction to be entered into by each of the Amalgamated Companies will each be an “amalgamation transaction” as defined in section 44(1);
- b) The Applicant will be entitled to claim the section 13quin allowance on the buildings in respect of which the respective Amalgamated Companies were entitled to claim that allowance;
- c) No ruling is made as to whether the Co-Applicants will hold the consideration shares on capital or revenue account, but the Co-Applicants will qualify for the relief under section 44(6) in either event.

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

This binding private ruling is valid for a period of 5 years from 21 June 2016.

**Legal Counsel: Advance Tax Rulings  
SOUTH AFRICAN REVENUE SERVICE**