

BINDING CLASS RULING: BCR 059

DATE: 20 October 2017

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1) – DEFINITION OF “COMPANY” AND 42
SUBJECT : ASSET FOR SHARE TRANSACTION INVOLVING A FOREIGN COLLECTIVE INVESTMENT SCHEME

1. Summary

This ruling determines the tax consequences of an asset for share transaction involving a collective investment scheme carried on outside the Republic.

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 28 of 2011.

In this ruling references to sections are to sections of the Act applicable as at 29 August 2017.

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 –

- section 1(1) – definition of “company”; and
- section 42.

3. Class

The class members to whom this ruling will apply are the unit holders referred to in 4.

4. Parties to the proposed transaction

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

Company A An open-ended investment fund incorporated as a *société d'investissement à capital variable* (SICAV) in a foreign country and licensed there as, and carrying on there, a collective investment scheme

Company B An open-ended investment fund incorporated as a SICAV in the foreign country and licensed there as, and carrying on there, a collective investment scheme

Unit holders: South African holders of participatory interests in portfolio A

5. Description of the proposed transaction

The applicant is an investment fund manager conducting its business from South Africa. It is the investment manager of portfolio A, offered to investors in the foreign country. Portfolio A is one of several funds administered by Company A.

The applicant wishes to change the administrators of portfolio A and this required the registration of a new SICAV. To this end, the promotor has registered Company B, which has been approved as a collective investment scheme in the foreign country.

The applicant wishes to transfer the assets of portfolio A to portfolio B, a portfolio of Company B, to be offered at its inception to investors in the foreign country.

The proposed transaction will be implemented by way of the following transaction steps:

Step 1 – swap transaction

- a) The unit holders of portfolio A will transfer all their units in portfolio A to portfolio B.
- b) Portfolio B's units will be issued by Company B to the unit holders of portfolio A as consideration for the acquisition of the units in portfolio A.
 - o The unit price of portfolio A units, as at closure date, will be reflected as the initial offer price of portfolio B units.

The above steps will constitute the “asset-for-share transaction” contemplated in section 42 in respect of which the ruling is requested.

Step 2 – *in specie* redemption transaction

- c) Company B, as the sole investor in portfolio A units, will request an *in specie* redemption of all of its units in portfolio A.
- d) Company A will accede to this redemption request by assigning all of the portfolio A underlying investments to Company B, and particularly in favour of portfolio B.

Step 1 and step 2 will take place on the same day.

Step 3 – deregistration transaction

- e) Portfolio A will thereafter be deregistered and closed within three years of the above transactions.

Portfolio B will be managed by the applicant in terms of a management agreement and the investment mandate is to manage the day-to-day investments of the portfolio. The investment objectives of portfolio B will be identical to those of portfolio A and it will continue to invest in the same assets as portfolio A. Portfolio B units will be offered in the foreign country.

After the implementation of the proposed transaction the applicant plans to register portfolio B with the Financial Services Board (FSB) under section 65 of the Collective Investment Schemes Control Act 45 of 2002 (CISCA), to be classified as a collective investment scheme in securities.

6. Conditions and assumptions

This binding class ruling is subject to the following additional conditions and assumptions:

- a) Portfolio A and portfolio B are foreign collective investment schemes effectively managed in South Africa by the applicant.
- b) Portfolio B is comparable to a portfolio of a collective investment scheme in securities contemplated in Part VII of the CISCA and will be classified as such by the FSB when portfolio B is registered with the FSB under section 65 of the CISCA.
- c) The market values of the units in portfolio A held by the unit holders are greater or equal to either their base costs or the costs taken into account under section 11(a) read with section 22, as the case may require.
- d) None of the items set out in section 42(8A) applies in respect of the proposed transaction.

7. Ruling

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

- a) The share swap transaction described in step 1 of the proposed transaction will comply with paragraph (a) of the definition of “asset-for-share transaction” in section 42(1) and will qualify for relief under section 42(2)(a). Consequently, the unit holders will not realise either capital gains or taxable income from the proposed transaction.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of one year from 29 August 2017.

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