

BINDING PRIVATE RULING: BPR 318

DATE: 14 February 2018

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECURITIES TRANSFER TAX ACT 25 OF 2007 (the STT Act)**

**SECTION : SECTIONS 42 AND 44 OF THE ACT
SECTION 8(1)(a)(ii) OF THE STT ACT**

**SUBJECT : CORPORATISATION OF A COLLECTIVE INVESTMENT SCHEME IN
PROPERTY BY WAY OF AN ASSET-FOR-SHARE TRANSACTION
FOLLOWED BY AN AMALGAMATION TRANSACTION**

Preamble

This binding private ruling is published by consent of the applicant(s) to which it has been issued. It is binding as between SARS and the applicant and any co-applicant(s) only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines the tax consequences arising out of the conversion of a collective investment scheme in property to a corporate REIT in accordance with the procedure set out in Notice 42 of 2014 issued by the Registrar of Collective Investment Schemes under the Collective Investment Schemes Control Act 45 of 2001.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 4 October 2018. 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 Act –
 - section 42; and
 - section 44.
- the STT Act –
 - section 8(1)(a)(ii).

3. Parties to the proposed transaction

The applicant: A collective investment scheme in property, registered as a REIT on the JSE and a resident

Co-applicant:	A resident company which is a 100% held subsidiary of the applicant
Company A:	A resident company which is a 100% held subsidiary of the co-applicant

4. Description of the proposed transaction

The applicant is the owner of an undivided share in the ownership of each of the assets that comprise a portfolio of immovable properties. The owners conduct letting enterprises in relation to the immovable properties.

The proposed steps for implementing the conversion of the collective investment scheme in property to a corporate REIT are as follows:

- Step 1: The applicant will make a final distribution declaration (“final distribution”) to its unit holders of its actual profits accrued and anticipated profits to be accrued from the period of its last distribution to the effective date of the conversion. The final distribution declaration date and record date will be a date either prior to or the date on which shares will be issued by Company A in the transaction described in step 2.
- Step 2: The applicant will transfer its business (assets and debt which arose in the normal course of trade but excluding assets required for its final distribution obligation) to Company A in exchange for equity shares issued by Company A (“the exchange transaction”). The assets of which the market values are equal to or exceed their base costs will be disposed of by way of an asset-for-share transaction as contemplated in section 42(1)(a).
- Step 3: At least one day after the shares are issued by Company A in the exchange transaction, the applicant will transfer its Company A shares to the co-applicant in exchange for shares in the co-applicant. The applicant will thereafter distribute its shares in the co-applicant to its unit holders by way of conversion to a corporate REIT.
- Step 4: At least one day after the amalgamation transaction is implemented the applicant will delist from the JSE.
- Step 5: The applicant will settle its final distribution obligation.
- Step 6: Steps will be taken to terminate the existence of the applicant within a three year period from the date of the amalgamation transaction.

5. Conditions and assumptions

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

- a) The assets being transferred in terms of the proposed transaction were held on capital account and will be transferred on capital account.
- b) The delisting of the applicant from the JSE will take place after the implementation date of the amalgamation transaction.

- c) The applicant will, pursuant to the amalgamation transaction, take steps to terminate its existence within 36 months of the amalgamation transaction or within such further period as the Commissioner may allow.

6. Ruling

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

- a) The transaction described in step 3 will qualify as an “amalgamation transaction” as defined in paragraph (a) of the definition of “amalgamation transaction” in section 44(1).
- b) Based on the specific facts of this application, the Company A shares acquired by the applicant in the exchange transaction described in step 2 will be regarded as having been acquired and held by the applicant on capital account even though the Company A shares will be disposed of by the applicant to the co-applicant shortly after acquisition. The facts and circumstances of this transaction, taking into account all of the transaction steps, are very specific and, in the context of the corporate rules contained in Part III of Chapter II of the Act, indicate that the applicant will not deal with the assets as trading stock. As such, the provisions of section 44(2)(a) will apply to the disposal of the Company A shares by the applicant to the co-applicant.
- c) Section 42(6)(a) will apply to the transaction described in step 2, but the effect of its application will be nil.
- d) The provisions of section 44(8) will apply to the disposal of the co-applicant’s shares to the applicant’s unit holders as described in step 3; therefore the applicant must disregard this disposal in determining its taxable income.
- e) No securities transfer tax will be payable by the co-applicant in respect of the transfer of the Company A shares by the applicant to the co-applicant in the amalgamation transaction as described in step 3, in accordance with section 8(1)(a)(ii) of the STT Act.
- f) No ruling is made with regard to the application of section 42(8)(b) as the result of the debt assumed by Company A in the exchange transaction described in step 2.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 4 October 2018.