

BINDING PRIVATE RULING: BPR 339

DATE: 21 February 2020

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

**SECTION : SECTIONS 9C AND 42 OF THE ACT
SECTION 8(1)(a)(i) OF THE STT ACT**

**SUBJECT : TRANSFER OF LISTED SHARES TO A COLLECTIVE INVESTMENT
SCHEME IN EXCHANGE FOR PARTICIPATORY INTERESTS**

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 of a transfer of listed shares to a collective investment scheme (CIS) in exchange for participatory interests in that CIS.

2. Relevant tax laws

In this ruling references to sections are to sections of the relevant Act applicable as at 21 October 2019. 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 Act –
 - section 9C; and
 - section 42.
- the STT Act –
 - section 8(1)(a)(i).

3. Parties to the proposed transaction

The applicant: A resident family trust

The fund: A resident CIS as defined in the Collective Investment Schemes Control Act 45 of 2002 (CISCA)

4. Description of the proposed transaction

The applicant is a resident discretionary investment trust. The assets of the applicant comprise, amongst others, of fixed property and listed shares. The listed shares are held as long-term investments to realise dividend returns as well as capital growth. The current market values of the listed shares exceed their base costs.

Certain of the listed shares have been held by the applicant for at least three years. Others have been held for less than three years.

The settlor, who is also one of the trustees of the applicant, has been acting as the investment manager in respect of the listed shares. A private client wealth management, stockbroking and portfolio management company attended to the administration of the listed shares.

The trustees of the applicant decided that the listed shares including the related investment management and administration functions should be transferred to a professionally managed and administered investment fund.

The applicant will enter into an agreement to transfer the listed shares to the fund in exchange for the issue of participatory interests in the fund to the applicant.

5. Conditions and assumptions

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

- a) The fund constitutes a registered CIS as envisaged in section 1 of CISCA.
- b) The fund will acquire the listed shares as long-term investments.
- c) The shareholdings in the various listed companies held by the fund after the proposed transaction described in 4 above will not exceed the thresholds prescribed by the proviso to paragraph (a) of the definition of "asset-for-share transaction" in section 42(1).

6. Ruling

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

- a) Section 9C(2) will apply to the listed shares referred to in 4 above that have been held for three years or longer by the applicant.
- b) For purposes of section 9C(2), the applicant will be deemed to have acquired the participatory interests in the fund on the dates the listed shares mentioned in 4 above were acquired.
- c) The proposed transaction described in 4 will qualify as an "asset-for-share transaction" as defined in paragraph (a) of that definition in section 42(1).
- d) No capital gains will arise for the applicant in respect of the disposals of the listed shares as the applicant will be deemed to have disposed of them for proceeds equal to their base costs.

- e) The applicant will be deemed to have acquired the participatory interests in the fund on the dates when the applicant acquired the listed shares and for the same expenditure incurred by the applicant that is allowable in terms of paragraph 20 of the Eighth Schedule to the Act. For purposes of section 42(2) –
- The market value of the listed shares held for a period of more than three years on "valuation date" may be included in the expenditure incurred by the applicant in determining the cost at which the applicant will acquire the participatory interests in the fund.
 - The actual expenditure incurred in relation to the listed shares that do not constitute pre-valuation date assets and that is allowable in terms of paragraph 20 may be included in determining the cost at which the applicant will acquire the participatory interests in the fund.
- f) The proposed transfer of the listed shares will qualify for exemption from STT under section 8(1)(a)(i) of the STT Act.
- g) The public officer of the fund (being the acquirer of the listed shares) must make the relevant sworn affidavit or solemn declaration as contemplated in section 8(1)(a) of the STT Act.

7. Period for which this ruling is valid

This binding private ruling is valid in respect of the year of assessment ending 29 February 2020.

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