

BINDING PRIVATE RULING: BPR 344

DATE: 4 June 2020

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

**SECTIONS : SECTION 42 OF THE ACT AND PARAGRAPHS 20 AND 61(3) OF THE
EIGHTH SCHEDULE TO THE ACT
SECTION 8(1)(a) OF THE STT ACT**

**SUBJECT : TRANSFER OF LISTED FINANCIAL INSTRUMENTS TO COLLECTIVE
INVESTMENT SCHEMES 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 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 tax consequences of a transfer of listed financial instruments to collective investment schemes in exchange for participatory interests in those schemes.

2. Relevant tax laws

In this ruling references to sections are to sections of the relevant Act and references to paragraphs are to paragraphs of the Eighth Schedule to the Act applicable as at 30 January 2020. 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 42;
 - paragraph 20; and
 - paragraph 61(3).
- the STT Act –
 - section 8(1)(a).

3. Parties to the proposed transaction

The applicant: A resident licensed discretionary investment manager

The co-applicants: Resident individuals and resident trusts

The funds: Resident collective investment schemes as defined in the Collective Investment Schemes Control Act 45 of 2002

4. Description of the proposed transaction

The applicant acts as the fund manager for the co-applicants on whose behalf it manages a segregated portfolio of investments comprising JSE listed financial instruments, foreign mutual funds and collective investment schemes in securities (the investments) with the aim of building long-term wealth for each co-applicant.

The co-applicants are the beneficial owners of the investments. The applicant's mandates with each of the co-applicants, in terms of which the investments are managed, have been in place for a number of years. The applicant is empowered to buy and sell the investments in each co-applicant's portfolio, in order to ensure that the portfolios remain in alignment with the mandate and achieve the purpose of building long-term wealth.

The applicant wishes to consolidate the respective mandates by transferring, on behalf of the co-applicants, the investments to the funds, in exchange for participatory interests issued by the funds to the co-applicants. This will be done after procuring the requisite authorisation and consent from each co-applicant.

Subsequent to the disposal of the investments by the co-applicants to the funds, the funds may be obliged by their investment mandates to rebalance their portfolios by disposing of some assets, which may include some of the investments acquired from the co-applicants under the proposed transaction. This will be undertaken in accordance with the normal investment authority and mandate of the portfolio. Those subsequent disposals might take place within 18 months of the proposed transaction.

5. Conditions and assumptions

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

- a) The market values of the investments exceed their base costs.
- b) The investments are held as capital assets by the co-applicants and will be acquired by the funds as capital assets.
- c) The funds will not hold more than 25% of the equity shares in the listed companies that issued the investments comprising listed shares.

6. Ruling

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

- a) The proposed transaction will qualify as an "asset-for-share transaction" in terms of paragraph (a) of the definition of that term in section 42(1)(a).
- b) The co-applicants will be deemed to have disposed of their investments for amounts equal to their base costs and to have acquired the participatory interests in the funds on the dates of acquisition of the original investments and for such costs, equal to expenditure incurred by the co-applicants, as are allowable under paragraph 20 of the Eighth Schedule and to have

incurred such expenditure on the dates of original incurral by each person concerned.

- c) No capital gains will be realised for the applicant or co-applicants in respect of the proposed transaction in accordance with section 42(2).
- d) The co-applicants will be deemed to have acquired the participatory interests in the funds on the dates that the co-applicants acquired their investments and for a cost equal to any expenditure incurred in respect of the investments by the co-applicants that is allowable in terms of paragraph 20 of the Eighth Schedule. In particular –
 - For purposes of section 42(2), to the extent that the investments constitute “pre-valuation date” assets, the market values thereof on “valuation date” may be included in the expenditure incurred by each co-applicant that is allowable in terms of paragraph 20 in determining the cost at which that co-applicant will acquire the participatory interests in the funds;
 - For purposes of section 42(2), to the extent that the investments do not constitute “pre-valuation date” assets, the actual costs incurred in respect of the acquisition of the investments may be included in the expenditure incurred by each co-applicant that is allowable in terms of paragraph 20 in determining the cost at which that co-applicant will acquire the participatory interests in the funds.
- e) Section 42(7)(a) will apply to the subsequent disposal of the investments by the funds, but the effect of its application will be nil, due to the application of paragraph 61(3).
- f) The proposed transfers of investments comprising listed shares will qualify for exemption from STT under section 8(1)(a)(i) of the STT Act.
- g) The requirement in section 8(1)(a) of the STT Act will be complied with if the public officers of the funds provide sworn affidavits or solemn declarations stating that the transfer of the securities complies with the provisions of section 8(1)(a).

7. General note

The relief available in terms of this ruling does not preclude the subsequent application, if appropriate, of any general anti-avoidance provisions to the proposed transaction.

8. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 30 January 2020.