



South African Revenue Service

**BINDING CLASS RULING: BCR 071**

DATE: 29 July 2020

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

**SECTION : SECTIONS 64H(3) AND 108 OF THE ACT  
ARTICLES 3 AND 10 OF THE CONVENTION BETWEEN THE  
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA (SA) AND  
THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN  
(UK) AND NORTHERN IRELAND FOR THE AVOIDANCE OF DOUBLE  
TAXATION AND THE PREVENTION OF FISCAL EVASION WITH  
RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS,  
PUBLISHED IN *GOVERNMENT GAZETTE* 24335 DATED 31 JANUARY  
2003, (THE TREATY)  
ARTICLE II OF THE PROTOCOL BETWEEN THE GOVERNMENT OF  
SA AND THE GOVERNMENT OF THE UK AMENDING THE TREATY,  
PUBLISHED IN *GOVERNMENT GAZETTE* 34971 DATED  
2 FEBRUARY 2012, (THE PROTOCOL)  
SECTION 1 OF THE STT ACT – DEFINITION OF “TRANSFER”**

**SUBJECT : TRANSFER OF PORTFOLIO INVESTMENTS BY FOREIGN PENSION  
FUNDS TO AN AUTHORISED CONTRACTUAL SCHEME**

***Preamble***

This binding class ruling is published with the consent of the applicant(s) to which it has been issued. It is binding between SARS and the class members only and published for general information. It does not constitute a practice generally prevailing.

**1. Summary**

This ruling determines securities transfer tax implications of the transfer of JSE listed shares by foreign pension funds to an authorised contractual scheme (ACS) and entitlements to treaty relief of the class members.

**2. Relevant tax laws**

In this ruling references to sections are to sections of the Act unless otherwise indicated, applicable as at 13 March 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 –
  - sections 64H(3) and 108;

- the STT Act –
  - section 1 – definition of “transfer”; and
- the Treaty –
  - article 3; and
  - paragraph 2 of article 10, as amended by article II of the Protocol.

### **3. Class**

The class members to whom this ruling will apply are the administering authorities referred to in 4.

### **4. Parties to the proposed transaction**

The applicant:                   An asset management company which is a resident of the UK, acting in its capacity as the ACS manager

The class members:   The administering authorities of certain pension schemes

### **5. Description of the proposed transaction**

The class members directly hold various portfolio investments, which include JSE listed shares (the shares). An introduction of a new statutory regime in the UK requires the class members to pool their investment assets. The class members will transfer their portfolio investments, including the shares, into one or more sub-funds of an ACS, established by statute in the UK as an investment vehicle for that purpose. The ACS that will be used in this instance will be a co-ownership fund. The transfers will be done in each case in exchange for the issue of a proportional number of units in a sub-fund (or sub-funds).

The ACS has no legal personality and is not a taxable entity for UK tax purposes. It is, therefore, treated by the UK revenue authority as a tax transparent investment vehicle with the result that income accruing to the ACS is the income of investors in proportion to their investments. However, any capital gains derived by the ACS do not flow through to the investors. According to UK law, any capital gains tax liability will be determined only for an individual class member upon the disposal of its units by that class member.

The ACS categorises investments into sub-funds and each sub-fund is regarded as a collective investment scheme for UK tax purposes. However, the ACS itself is not regarded as a collective investment scheme. The assets of each sub-fund in the UK are, for legal purposes in the UK, beneficially owned by the unitholders in that sub-fund as tenants in common and cannot be used to discharge any liabilities of, or meet any claims against, any persons other than the unitholders in that sub-fund in their capacity as unitholders. Each sub-fund is transparent and is not a taxable entity for UK tax purposes. As such, each sub-fund is not subject to tax in the UK on income or gains arising on underlying investments.

## 6. Conditions and assumptions

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

- a) By law in the UK, the ACS has no legal personality and does not constitute an entity in its own right.
- b) In the UK, the ACS is not a taxable entity for purposes of direct taxes and taxable income derived by the ACS is taxable in the class members only.
- c) The determination of any capital gains tax liability for each class member will be made upon the disposal of units by the class member, and not when the ACS disposes of underlying investments.
- d) The income derived and paid by the ACS to the class members retains its nature for the class members.
- e) The investment parameters of the ACS will limit equity share investments that will be made in South African entities such that those investments will not equal or exceed 20% of the investee company's equity share capital as contemplated in paragraph 2(2)(b) of the Eighth Schedule to the Act.

## 7. Ruling

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

- a) The transfer of the shares by the class members to the ACS will result in a change in beneficial ownership from the class members to the ACS and will therefore constitute a "transfer" as defined in section 1 of the STT Act. The ACS will be liable for STT in terms of section 7(1)(a) of the STT Act.
- b) No STT liability will arise upon the investment or withdrawal of funds from the ACS resulting in a change in the number of units held by the class members without a corresponding change in the underlying securities held by the ACS.
- c) The ACS will not be entitled to relief under the Treaty as it does not qualify as a resident for the purposes of the Treaty.
- d) The class members will be entitled to the relief provided in paragraph 2 of article 10 of the Treaty as amended by article II of the Protocol as they are the beneficial owners of the dividends flowing from the shares. Accordingly, section 64H(3) will apply to the class members.

## 8. Period for which this ruling is valid

This binding class ruling is valid for a period of three years from 13 March 2020.