

**BINDING PRIVATE RULING: BPR 370**

DATE: 5 November 2021

**ACT** : **INCOME TAX ACT 58 OF 1962 (the Act)**  
: **SECURITIES TRANSFER TAX ACT 25 OF 2007 (STT Act)**  
: **TRANSFER DUTY ACT 40 OF 1949 (TD Act)**  
**SECTIONS** : **SECTIONS 54, 55(1), 57 AND 58; PARAGRAPHS 11 AND 35 OF THE EIGHTH SCHEDULE TO THE ACT**  
: **SECTION 2(1)(a)(i) READ WITH THE DEFINITION OF “TRANSFER” IN SECTION 1 OF THE STT ACT**  
: **SECTION 2(1)(b)(i) OF THE TD ACT**  
**SUBJECT** : **REGISTRATION OF SHARES IN THE NAME OF BENEFICIAL HOLDER**

***Preamble***

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

**1. Summary**

This ruling determines the donations tax, securities transfer tax and transfer duty consequences for the co-applicant on the registration of shares held in the name of the co-applicant, the registered holder, in the name of the applicant, the beneficial owner.

**2. Relevant tax laws**

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act, and to sections of the STT and TD Acts, as at 22 October 2021. 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 54;
  - section 55(1);
  - section 57;
  - section 58;
  - paragraph 11; and
  - paragraph 35.

- the STT Act
  - section 2(1)(a)(i) read with the definition of “transfer” in section 1.
- the TD Act
  - section 2(1)(b)(i).

### 3. Parties to the proposed transaction

The applicant: A natural person who is a resident

The co-applicant: A natural person who is a resident

### 4. Description of the proposed transaction

The applicant needed a property on which to conduct his business and arranged with his attorney that it be acquired on his behalf and registered in the name of one of the employees of the attorney. The attorney and employee acted as a nominee of the applicant with the acquisition and registration of the property. The property was later transferred to a company and the shares were similarly held in name only, by one of the employees of the attorney.

At all times since the acquisition of the property, and at all times when the shares in the company were held, the applicant had control of the property. The applicant funded and maintained the property, paid all rates and taxes on the property and incurred all costs of renovations and extensions. Consequently, the applicant had possession and control of the property since its acquisition.

The proposed transaction involves the registration of the shares in the name of the applicant who is and always was the beneficial owner and holder of the shares in question.

### 5. Conditions and assumptions

This binding private ruling is not subject to any additional conditions and assumptions.

### 6. Ruling

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

- a) The registration of the shares in the name of the applicant and the contemporaneous deregistration of the co-applicant will not constitute a disposal for purposes of the Eighth Schedule.
- b) Paragraph 38 of the Eighth Schedule will not apply to the proposed transaction.
- c) The registration of the shares in the name of the applicant will not constitute a “donation” by the co-applicant as defined in section 55(1) of the Act, nor a deemed donation as envisaged in section 58(1).
- d) No Securities Transfer Tax will be payable on the proposed transaction.
- e) No Transfer Duty will be payable on the registration of the shares in the name of the applicant.

**7. Period for which this ruling is valid**

This binding private ruling is valid for a period of one year from 22 October 2021.

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