BINDING PRIVATE RULING: BPR 097

DATE: 03 March 2011

ACT	**:**	**INCOME TAX ACT, NO. 58 OF 1962 (the Act)**
SECTION	**:**	**PARAGRAPHS 11, 13, 20, 31, 38, 62 AND 80 OF THE EIGHTH SCHEDULE TO THE ACT**
SUBJECT	**:**	**CAPITAL GAINS TAX LIABILITY IN RELATION TO ASSETS OF A TRUST WHICH VEST IN THE HANDS OF THE VESTING BENEFICIARIES**

1. Summary

This ruling deals with the capital gains tax consequences when assets vest in the beneficiaries of a vesting trust.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling legislative references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act, applicable as at 11 November 2010 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested under the provisions of –

- section 1, definition of "connected person"; and
- paragraphs 11(1)(*d*), 13(1)(*a*)(iiA), 20(1)(*a*), 31(1)(*g*), 38, an*d* 80 of the Eighth Schedule.

3. Parties to the proposed transaction

The Applicant:	A vesting trust to be formed
The Beneficiaries:	The investors in the Applicant

4. Description of the proposed transaction

The Applicant will be a vesting trust that makes direct and indirect investments, or both, in residential property.

Each Beneficiary will enter into a Participation Agreement with the trustees of the Applicant in terms of which each Beneficiary will make a capital commitment to the Applicant. The Applicant will draw down on these capital commitments, among others, to fund the acquisition costs of the investment assets (the assets).

Under the trust deed, the Beneficiaries will have vested rights in the assets acquired by the Applicant with funds obtained from the Beneficiaries, on the date that the trustees acquire ownership of those assets. The extent of the vested right will be calculated *pro rata* to each Beneficiary's participation quota.

Each Beneficiary will also have vested rights to the income and capital of the Applicant, *pro rata* to its participation quota.

The Applicant's fund manager will identify investment opportunities which will be referred to the investment committee (the committee). The committee will consist of representatives elected by the fund manager and the Beneficiaries. The committee will consider the recommendations made by the fund manager as to acquisitions and will also make its own recommendations to the trustees (including whether or not proposals of the fund manager should be approved).

If an investment is approved by both the committee and the trustees, the Applicant, through the fund manager, will issue monthly draw down notices for its estimate of the expenditure and the acquisition cost of the asset which will become payable by the Applicant during the next month. Each Beneficiary shall pay its portion of the monthly draw down account directly into the bank account of the Applicant.

When it becomes opportune to dispose of assets, the fund manager will refer divestment opportunities to the committee which will make recommendations to the trustees who will make the final decisions regarding divestments.

5. Conditions and assumptions

This ruling is subject to the conditions and assumptions that –.

- the ruling only applies to the assets acquired with capital contributions made available by the Beneficiaries and not to assets acquired with loans as the Beneficiaries do not acquire a vested right in assets acquired by loan funding.

6. Ruling

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

- There will be a proportionate disposal by the Applicant of the assets to the Beneficiary at market value, if the Beneficiary made capital contributions in respect of the acquisition of those assets to the

Applicant and as a result thereof becomes a vested Beneficiary. No capital gains tax (CGT) liability will arise at that stage.

- The Beneficiaries correspondingly acquire vested rights in the Applicant's assets at a base cost equal to the market value of the assets under paragraph 38. Any subsequent actions of the trustees, in relation to the Applicant's assets, are actions taken on behalf of the Beneficiaries. Thus, the acquisition of the assets by the trustees will be the purchase of those assets on behalf of the Beneficiaries. The Beneficiaries will, therefore, be allowed to take into account, all the paragraph 20 allowable expenditure actually incurred and funded from the Applicant's bank account, as the base cost of the assets.
- On the subsequent disposal by the Applicant of the assets, the Beneficiaries themselves will account for the disposal of the assets for CGT purposes. The respective Beneficiaries will be liable for CGT under the CGT legislation, since the assets would have already vested in the respective Beneficiaries.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of fifteen (15) years as from 01 November 2010.

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