

BINDING PRIVATE RULING: BPR 335

DATE: 29 November 2019

ACT : SECURITIES TRANSFER TAX ACT 25 OF 2007 (STT Act)
SECTION : SECTION 8(1)(k)
SUBJECT : STT EXEMPTION FOR FOREIGN GOVERNMENTS

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 whether the STT exemption for any sphere of a foreign government is available in situations where a foreign central bank acts as investment manager for a sovereign wealth fund (the fund).

2. Relevant tax laws

In this ruling references to sections are to sections of the STT Act applicable as at 14 August 2019. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the STT Act.

This is a ruling on the interpretation and application of section 8(1)(k).

3. Parties to the proposed transaction

The applicant: The central bank of a foreign country which is a separate legal entity that is wholly owned by the foreign government

4. Description of the proposed transaction

The applicant and its activities are regulated by acts of parliament of the country concerned, specifically relating to the applicant and the monetary system of that country. The applicant plays an independent role in that country's government administration and has a direct link to its parliament, which supervises the monetary affairs of that country via the Ministry of Finance.

In addition to its role as the central bank of the foreign country, the applicant has been entrusted with the role of managing that country's sovereign wealth fund (the fund). The fund does not have any separate legal personality but rather constitutes a pool of segregated financial assets, owned beneficially by the foreign government.

The applicant neither invests nor manages any funds or financial assets on behalf of third parties, other than the foreign government and is subject to a series of

measures designed to ensure the utmost level of transparency regarding its investments, including an obligation to regularly publish the fund's investments and annual results and scrutiny by different statutory bodies.

The applicant manages the fund by investing in a portfolio of financial instruments, real estate, cash deposits and other assets and financial liabilities. The applicant is responsible for making investments in accordance with the fundamental rules laid down by its country's law and the more detailed rules laid down by that country's ministry of finance.

The applicant is not remunerated for carrying out the management function. Rather, the applicant is entitled to a reimbursement of the costs that it incurs in managing the fund. The management costs are strictly controlled by the foreign government via the ministry of finance.

The proposed transaction is the acquisition of JSE-listed securities during the course of the performance of the applicant's mandate to manage the fund for the benefit of the foreign government and that country's people.

The applicant uses both its own employees as well as certain third party external investment managers for making investments in publicly listed SA equities through the fund's account. In the case of the former, the applicant, in its capacity as investment manager of the fund, and in the case of the latter, the third party external investment manager, acting on behalf of the applicant, makes the decision to purchase a security and instructs a broker or uses Direct Market Access through one of its counterparties to acquire the security. The acquisition of SA JSE-listed securities occurs via an agency chain of brokers that link the ultimate seller with the foreign government, as ultimate purchaser. These brokers may act as agents or so-called "riskless principals" in conducting the service they are mandated to render to the applicant (or external investment manager on behalf of the applicant). A broker could also fulfil the role of seller in a principal capacity if they held the SA equities in question and wished to fulfil the purchase order. The broker acts in terms of a purchase order (or mandate) and not as a nominee for the ultimate purchaser (the foreign government). The STRATE system used by the JSE recognises transactions between beneficial holders of securities only, and does not record the parties in the agency chain.

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 foreign government is a "sphere of the government of any other country" as contemplated in section 8(1)(k).
- b) Subject to section 8(3), the exemption contained in section 8(1)(k) applies to securities transfers to the foreign government itself, as well as to securities beneficially transferred to the foreign government, but registered in the name of the applicant, where the applicant carries out investments in its role as investment manager of the fund for the foreign government.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 14 August 2019.

**Legal Counsel: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**