

BINDING PRIVATE RULING: BPR 378

DATE: 15 September 2022

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

**SECTION : SECTIONS 9C, 42 AND PARAGRAPH 61(3) OF THE EIGHTH
SCHEDULE TO THE ACT
SECTION 8(1)(a)(i) 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 with the consent of the applicant to which it has been issued. It is binding between SARS and the applicant 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 shares to a portfolio of a collective investment scheme (CIS) in securities in exchange for participatory interests in those schemes.

2. Relevant tax laws

In this ruling references to sections and paragraphs are to sections of the relevant Act and paragraphs of the Eighth Schedule to the Act applicable as at 10 May 2022. 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 9C(2);
 - section 42(1) – paragraph (a) of the definition of “asset-for-share transaction”;
 - section 42(2)(a);
 - section 42(7)(a) and
 - Paragraph 61(3) of the Eighth Schedule.
- the STT Act –
 - section 8(1)(a)(i).

3. Parties to the proposed transaction

The applicant: A resident, acting as “manager” as defined in section 1 of the Collective Investment Schemes Control Act, 45 of 2002 on behalf of portfolios of collective investment schemes in securities (the funds)

4. Description of the proposed transaction

The applicant acts as the fund manager for the funds 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 investor. The investors are the beneficial owners of listed shares and have held the shares on capital account. The shares constitute “equity shares” as defined in section 1(1) of the Act. The shares do not constitute hybrid equity instruments as envisaged in section 8E of the Act.

The proposed steps for implementing the envisaged “asset-for-share transaction” are as follows:

- The investor intends to transfer the shares to the relevant fund in exchange for the issuance of participatory interests in the fund under section 42 of the Act; and
- Subsequently, the fund may be required to rebalance its portfolio by disposing of certain shares obtained in terms of the proposed transaction within 18 months of their acquisition in line with the fund’s objective and investment mandate.

5. Conditions and assumptions

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

- a) The market value of each share transferred is equal to or exceeds its base cost.
- b) The shares are held as capital assets by the investors and will be acquired by the fund with the intention to hold them as capital assets.
- c) The ruling is not applicable to shares acquired by the fund which does not fit the fund’s investment strategy and which the fund will acquire with the intention to immediately or shortly after dispose of, after entering into the “asset-for-shares transaction”.
- d) The fund will not hold more than 25% of the equity shares in the listed companies that issued the shares.

6. Ruling

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

- a) Section 9C(2) will apply on disposal of the shares by the fund provided the shares have been held by the fund and the investors for three years in aggregate.

- b) The proposed transaction, being the transfer of the shares to the fund in exchange for the issuance of participatory interests in the fund to the investor, constitutes an “asset-for-share transaction”, as defined in paragraph (a) of the definition of that term in section 42(1).
- c) The investor and the fund will be deemed under section 42(2)(b) to be one and the same person with respect to –
- the shares that will be acquired by the fund as capital assets from that investor who disposes of it as a capital asset;
 - the date of acquisition of that share by that investor; and
 - the amount and date of incurral by the investor of any expenditure in respect of that share allowable in terms of paragraph 20 of the Eighth Schedule.
- d) Section 42(7)(a) will apply to the disposal of the shares by the fund, which were acquired as capital assets in terms of the “asset-for-share transaction” and disposed of within 18 months after the transaction. However, the effect will be nil, due to the application of paragraph 61(3) of the Eighth Schedule.
- e) The transfer of the listed shares to the fund will qualify for an exemption from STT in terms of section 8(1)(a)(i) of the STT Act. It requires that the public officer of the relevant company provides a sworn affidavit or solemn declaration that the acquisition of the relevant security complied with the provisions of section 8(1)(a). This requirement would be met if the public officer of the fund (being the acquirer of the shares) provides a sworn affidavit or solemn declaration that the acquisition of the shares has complied with the provisions of section 8(1)(a) of the STT Act.

7. General note

The relief available in terms of this ruling does not preclude the subsequent application 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 three years from 10 May 2022.