

BINDING PRIVATE RULING: BPR 186

DATE: 12 February 2015

**ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECURITIES TRANSFER TAX ACT NO. 25 OF 2007 (the STT Act)**

**SECTION : SECTIONS 24J, 41 AND 42 OF THE ACT
: SECTIONS 1 AND 8 OF THE STT ACT**

**SUBJECT : ASSET-FOR-SHARE TRANSACTION BETWEEN A RESIDENT
PRIVATE COMPANY AND A COLLECTIVE INVESTMENT SCHEME
IN SECURITIES**

1. Summary

This ruling deals with the tax treatment of the conversion of an existing portfolio of assets into participatory interests in a collective investment scheme in securities (CIS) under section 42 of the Act and the immediate disposal of the participatory interests.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 78(1) and published in accordance with section 87(2) of the Tax Administration Act No. 28 of 2011.

In this ruling references to sections are to sections of the relevant Acts applicable as at 20 November 2014 and 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 provisions of –

- sections 24J, 41 and 42 of the Act; and
- sections 1 and 8 of the STT Act.

3. Parties to the proposed transaction

The Applicant: A private company incorporated in and a resident of South Africa

Existing CIS: An existing collective investment scheme in securities that is a trust registered in and a resident of South Africa

4. Description of the proposed transaction

The Applicant intends to transfer its existing asset portfolio to a CIS, under section 42 of the Act, in return for the issue of participatory interests in the CIS and immediately dispose of the participatory interests in the CIS to a third party under a separate agreement. The asset portfolio comprises shares, bonds, and shares in REITs as defined in section 1(1) of the Act.

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:

- Section 42 of the Act will be applicable to assets transferred by the Applicant to a CIS in return for the issue of participatory interests in the CIS.
- Section 42 will not be applicable to assets transferred where the market value of these assets is less than their base cost or the expenditure actually incurred.
- Under section 42 the Applicant will acquire the participatory interests in the CIS at the base cost of the assets so transferred to the CIS and the CIS will be deemed to have acquired those assets at their original base cost or the expenditure actually incurred for purposes of paragraph 20 of the Eighth Schedule to the Act.
- In respect of the transfer of bonds to the CIS:
 - a) The proceeds upon disposal of the bonds will be deemed to be equal to the their original base cost or the expenditure actually incurred.
 - b) The CIS will be deemed to have acquired the bonds at their original base cost or the expenditure incurred.
 - c) The base cost or the expenditure incurred will be equal to the adjusted initial amount at the beginning of the accrual period in which the transfer takes place plus accrual amounts for the current accrual period ending on the date of transfer and other payments made by the holder during the period less any payments received by the holder during the period.
 - d) The Applicant will be liable for normal tax on interest that accrued in respect of the bonds under section 24J of the Act, up to the date of the transfer.
 - e) The transfer price for purposes of the treatment of the transfer of the bonds will be deemed to be equal to the base cost or the expenditure incurred.

- f) The transfer price for purposes of the treatment of the bonds in the hands of the CIS under section 24J of the Act, subsequent to the proposed transaction, will be deemed to be equal to the base cost or the expenditure incurred.
- Notwithstanding the short period that would have lapsed, the subsequent transfer of the participatory interest in the CIS to the third party will not change the character of the holding of the assets by the Applicant on the basis of it being held on capital account.
- The Applicant will be subject to capital gains tax on transfer of the participatory interest in the CIS to the third party on the difference between the base cost of the participatory interests and the market value thereof on the date of transfer, on the basis that the Applicant may not utilise any assessed loss or balance of assessed loss to shield any capital gains as a result of the disposal as envisaged in section 42(7) of the Act.
- In relation to STT:
 - a) The transfer of the bonds is not subject to STT.
 - b) The transfer of the shares in REITs is exempt from the payment of STT under section 8(1)(t) of the STT Act.
 - c) The transfer of securities governed by section 42 of the Act is exempt from the payment of STT under section 8(1)(a)(i) of the STT Act.
 - d) The transfer of securities whose market value has declined below their base cost will not be subject to the payment of STT under section 8(1)(a)(vi) of the STT Act, provided that a sworn affidavit or solemn declaration is made by the public officer of the Applicant as required by section 8(1)(a)(vi) of the STT Act.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 1 year from 20 November 2014.