

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 031

DATE: 29 May 2009

ACT : INCOME TAX ACT, No. 58 OF 1962 (the Act)
SECTION : SECTION 1, DEFINITION OF GROSS INCOME AND PARAGRAPH 61 OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : SALE OF SHARES HELD IN A COLLECTIVE INVESTMENT SCHEME: WHETHER THE PROCEEDS ARE CAPITAL OR REVENUE IN NATURE

1. Summary

This ruling deals with whether a collective investment scheme will, in terms of its mandate, be entering into a “scheme of profit-making” and whether any proceeds that may be received from the sale of any shares will be of a revenue or capital nature. Further, whether such proceeds distributed to the unit holders will be of a capital nature.

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 at 31 July 2007 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, the definition of the term “gross income” and
- paragraph 61.

3. Parties to the proposed transaction

The Applicant: A collective investment scheme in securities to be established as contemplated in Part IV of the Collective Investment Schemes Control Act, No. 45 of 2002

4. Description of the proposed transaction

The Applicant is to be established as a collective investment scheme for the purpose of conducting “index tracking”. Index tracking in this context means the following –

- a. Stock exchanges, such as the JSE, maintain various indices, for example, the Alsi 40;
- b. each such index consists of a number of different shares issued by different issuers;
- c. the shares in each index are weighted in accordance with certain factors (for example, an index may consist of ten shares of one issuer, fourteen shares of another issuer, nine shares of another issuer, etc.); and
- d. the movement in the value of each index is recorded, that is, a rising index means that the prices of the different shares included in the index have increased, whereas a falling index means that the prices of the different shares included in the index have fallen.

The Applicant will give an undertaking to its unit holders that –

- a. the value of the Applicant will be determined from time to time;
- b. if the value of the Applicant decreases, the repurchase price of units in the Applicant will be decreased correspondingly; and
- c. if the value of the Applicant increases, the Applicant will, on a quarterly basis, sell shares representing such increase (the shares will be sold in such a manner as to ensure that the shares held by the Applicant will continue to reflect the composition of the applicable index).

The investment and return steps will be as follows:

Step 1

In terms of the proposed transaction, the Investors will invest in units issued by the Applicant of, for example, R1 000. Depending on the performance of the underlying assets of the Applicant, the value of the units will fluctuate.

Step 2

The Applicant will utilise the cash received from the Investors (less any initial fees) to invest in listed shares on the JSE.

Step 3

The Applicant will sell listed shares in the following instances –

- a. in order to comply with the requirements of its pre-selected index;

- b. to repurchase units from its unit holders wishing to disinvest; and
- c. if on a quarterly basis the value of the Applicant increases, to distribute profits to its unit holders, provided that the listed shares will be sold in such a manner as to ensure that its listed shares will continue to reflect the composition of the applicable index.

Step 4

The Applicant will distribute profits to its unit holders.

5. Conditions and assumptions

This ruling is made subject to the following conditions and assumptions –

- the Applicant is a collective investment scheme constituted in terms of the Collective Investment Schemes Control Act, No. 45 of 2002; and
- the ratios of shares held by the Applicant shall only vary to substantially replicate the FTSE/JSE All Share Index (J303).

6. Ruling

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

- The Applicant will not be regarded as having entered into a “scheme of profit-making” and any proceeds that may be received by the Applicant from the sale of shares will therefore be of a capital nature, which will be excluded from the Applicant’s “gross income” as defined in section 1.
- Once the Applicant is registered under the Collective Investment Schemes Control Act, No. 45 of 2002, any capital gain or capital loss will be disregarded for capital gains tax purposes in terms of paragraph 61 of the Eighth Schedule.
- Any profits distributed by the Applicant, as a result of the sale of shares, to its unit holders will be of a capital nature.

7. Period for which this ruling is valid

This binding private ruling is valid for three (3) years as from the date of this ruling until 30 July 2010.

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