

BINDING CLASS RULING: BCR 050

DATE: 9 February 2016

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

**SECTION : SECTIONS 9C, 42 AND 44(6) OF THE ACT
SECTION 8 OF THE STT ACT**

**SUBJECT : TAX CONSEQUENCES FOR UNITHOLDERS IN A REIT OF AN
AMALGAMATION TRANSACTION, FOLLOWED BY AN ASSET-FOR-
SHARE TRANSACTION**

1. Summary

This ruling determines the income tax and securities transfer tax consequences for the unitholders in a listed REIT of an amalgamation of the REIT, followed by an asset-for-share transaction.

2. Relevant tax laws

This is a binding class ruling issued in accordance with section 78(2) 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 Act applicable as at 15 December 2015. 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 following provisions of –

- the Act –
 - section 9C;
 - section 42; and
 - section 44(6).
- the STT Act
 - section 8.

3. Class Members

The Class Members to whom this ruling will apply are the minority unitholders of a collective investment scheme in property, listed as a REIT on the JSE.

4. Parties to the proposed transaction

The Applicant: A collective investment scheme in property listed as a REIT on the JSE and a resident of South Africa

Class Members

5. Description of the proposed transaction

The Applicant will transfer all of its assets, being its entire shareholding in a property company (PropCo), to a subsidiary (Company B), of the holder of the majority of the Applicant's units (Company A) in terms of an "amalgamation transaction" as contemplated in section 44 of the Act (S44 transaction), in return for the issuing of equity shares in Company B.

The Applicant will distribute the equity shares received in terms of the S44 transaction to its unitholders approximately 10 business days after the date of issue of these shares. These shares will be kept in escrow for the benefit of the unitholders. The Applicant will still be a REIT at the time of that distribution.

After the S44 transaction and this distribution of the equity shares in Company B to the unitholders, the Class Members will dispose of their portion of these equity shares in Company B in return for the issuing of equity shares in Company A in terms of an "asset-for-share transaction" as contemplated in section 42 of the Act.

The asset-for-share transaction is expected to take effect one day after the amalgamation transaction's effective date, when the last suspensive conditions will be fulfilled.

The existence of the Applicant will then be terminated in due course.

6. Conditions and assumptions

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

- The chronology of the transactions and transaction steps, as set out in point 5, is adhered to during the implementation of the proposed transaction.
- The market value of the shares in PropCo is equal to or exceeds the base cost thereof on the date on which the last suspensive condition to the S44 transaction is fulfilled.
- The amount of the Applicant's final distribution as a REIT is determined with reference to the financial results of the Applicant as reflected in financial statements prepared for the current year of assessment, which is deemed to end on the date on which the Applicant ceases to be a REIT for tax purposes.
- The existence of the Applicant is finally terminated in consequence of the S44 transaction.

7. Ruling

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

- The income tax and capital gains tax rollover provisions of section 44(6) will apply, as the circumstances necessitate, to the distribution of the equity shares in Company B to the unitholders, even though these shares will only be distributed approximately 10 business days after the date of issue thereof in terms of the S44 transaction and be held in escrow until the Class Members' portion of these shares in Company B are exchanged for the equity shares in Company A.
- The substitution of the Class Members' investment in the Applicant for a temporary investment in Company B (in escrow) and ultimately an investment in Company A will not, in isolation, result in a change in the nature, for tax purposes, of the Class Members' investment.
- For purposes of the definition of "qualifying share" in section 9C(1) of the Act, the equity shares in Company A will be considered to have been owned by the Class Members for a continuous period of 3 years if still held and not disposed of on the third anniversary of the issue date of the equity shares in Company A to the Class Members.
- No STT is payable in respect of the transfer of the Class Members' portion of the equity shares in Company B to Company A under section 42 of the Act.

8. Period for which this ruling is valid

This binding class ruling is valid for the year of assessment during which the proposed transaction is implemented.