

BINDING PRIVATE RULING: BPR 305

DATE: 20 June 2018

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 54 AND PARAGRAPH 2 OF THE EIGHTH SCHEDULE
SUBJECT : REGISTRATION OF UNITS IN THE NAME OF THE BENEFICIAL OWNERS

1. Summary

This ruling determines the consequences of the transfer of units in an equity fund registered in the name of a nominee for the beneficial owner.

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 28 of 2011.

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 25 August 2017. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the Act.

This is a ruling on the interpretation and application of –

- section 54; and
- paragraph 2.

3. Parties to the proposed transaction

The applicant: A natural person and a resident

Co-applicant A: A natural person and a resident

Children: The three co-applicant children of the applicant and co-applicant A, who are also residents

4. Description of the proposed transaction

The applicant and co-applicant A are married and they had three children (the children), who are co-applicants. The youngest has reached the age of 18.

Some years ago the applicant and co-applicant A each acquired 3 000 units in an off-shore global equity fund (fund). It was decided that the children should also invest in the fund, money they inherited from relatives residing outside South Africa and held in off-shore bank accounts in the names of the children.

The fund rules did not permit persons under the age of 18 to buy fund units in their own names. Since the children were younger than 18 at the time, it was decided to invest the funds in the name of the applicant and co-applicant A, as registered unit owners, but with the children as the beneficial unit owners.

Three thousand six hundred units were purchased for each of the children and the applicant and co-applicant A each held half of the units on behalf of the children, who were recorded as the beneficial owners of the units with Fund X.

Later, due to circumstances, the units held by co-applicant A on behalf of the children were transferred to the applicant whilst the children remained the beneficial owners of the units. At the same time 1 400 of co-applicant A's own units were registered in the applicant's name, whilst the Co-Applicant A remained the beneficial owner of those units. The reason for the applicant holding co-applicant A's units, as nominee, is no longer relevant.

The Applicant intends to –

- register all of the units in her name in respect of the children in their names; and
- register the 1 400 units registered in her name in respect of co-applicant A in the name of co-applicant A.

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 transfer of the units from the applicant to co-applicant A will not constitute a disposal of an asset as contemplated in paragraph 2.
- b) Section 54 will not apply to the transfer of those units.
- c) The transfer of the units from the applicant to the children will not constitute a disposal of assets as contemplated in paragraph 2.
- d) Section 54 will not apply to the transfer of those units.
- e) The base cost of the units held by the children is equal to the original purchase price of the units at the time of their acquisition.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of one year from 29 August 2017.