

BINDING PRIVATE RULING: BPR 270

DATE: 11 April 2017

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)
TRANSFER DUTY ACT 40 OF 1949 (Transfer Duty Act)**
**SECTION : SECTIONS 25BB(4), 29A, 40CA AND 42 AND PARAGRAPH 20(1)(a)
OF THE EIGHTH SCHEDULE TO THE ACT
SECTION 9(1)(l)(i) OF THE TRANSFER DUTY ACT**
**SUBJECT : RESTRUCTURING OF PROPERTY PORTFOLIO UNDER THE
CORPORATE RULES**

1. Summary

This ruling determines certain tax consequences resulting from the restructuring of the unlisted property portfolio of a long-term insurer, by making use of the corporate rules.

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 relevant Act and paragraphs of the Eighth Schedule to the Act applicable as at 29 March 2017. 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 25BB(4);
 - section 29A;
 - section 40CA;
 - section 42; and
 - paragraph 20(1)(a).
- the Transfer Duty Act –
 - section 9(1)(l)(i).

3. Parties to the proposed transaction

The Applicant:	A listed company incorporated in and a resident of South Africa, carrying on business as a long-term insurer
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The First Co-Applicant:	A company incorporated in and a resident of South Africa and a wholly-owned subsidiary of the Applicant
The Second Co-Applicant:	A corporate REIT to be listed on the Main Board of the JSE

4. **Description of the proposed transaction**

The Applicant holds unlisted prime real estate with the objective of delivering long-term returns and matching policyholder liabilities. In some instances the Applicant owns 100% of the properties and in others less than 100%. The First Co-Applicant owns a 25% undivided interest in Property X.

The Applicant's funds established and maintained in accordance with section 29A exposed to the property portfolio are—

- the untaxed policyholder fund;
- the individual policyholder fund;
- the risk policy fund; and
- the company policyholder fund.

The Applicant and the First Co-Applicant propose to transfer a portion of the property portfolio and Property X to the Second Co-Applicant.

The proposed steps to implement the restructuring will be as follows:

- The Applicant will dispose of a portion of its undivided interest in the property portfolio, which includes associated letting enterprises, to the Second Co-Applicant in exchange for units in the Second Co-Applicant.
- As the Applicant and the Second Co-Applicant will become co-owners of the property portfolio they will, in instances in which they hold a 100% undivided share in properties, create a separate unincorporated joint venture for purposes of conducting the letting enterprise of the property portfolio.
- The First Co-Applicant will dispose of a portion of its undivided interest in Property X, including the associated letting enterprises, to the Second Co-Applicant in exchange for units in the Second Co-Applicant.
- As the Second Co-Applicant will become a co-owner of Property X, the Second Co-Applicant will be integrated in the pre-existing unincorporated joint venture for purposes of conducting the letting enterprise of Property X.
- The units in the Second Co-Applicant will be proportionally allocated by the Applicant to the relevant funds in accordance with section 29A.

None of the allowances noted in section 25BB(4) were claimed by the First Co-Applicant prior to the proposed transfer of a portion of its undivided interest in Property X to the Second Co-Applicant.

5. Conditions and assumptions

This binding private ruling is subject to the additional condition and assumption that the Second Co-Applicant complies with the JSE Listing Requirements.

6. Ruling

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

- a) The disposal of the portion of the property portfolio (including the rights attaching to the property portfolio and the letting enterprises) by the Applicant to the Second Co-Applicant will qualify as an “asset-for-share transaction” as defined in paragraph (a) of the definition of “asset-for-share transaction” in section 42(1). However, section 42 will not apply insofar as it relates to the untaxed policyholder fund.
- b) Insofar as the disposal of the portion of the property portfolio relates to the untaxed policyholder fund, the Second Co-Applicant will obtain a base cost for the relevant portion of the property portfolio (including the relevant portion of the rights attaching to the property portfolio and the letting enterprises) equal to the market value of the Second Co-Applicant's units issued to the Applicant immediately after acquiring the property portfolio.
- c) Insofar as the disposal of the portion of the property portfolio relates to the untaxed policyholder fund, the Applicant will obtain a base cost for the units acquired in the Second Co-Applicant equal to the market value of the relevant portion of the property portfolio (including the relevant portion of the rights attaching to the property portfolio and the letting enterprises) disposed of.
- d) The Second Co-Applicant will not be liable for transfer duty as section 9(1)(j)(i) of the Transfer Duty Act will apply to the acquisition of the portion of the undivided interest of the Applicant in the property portfolio. However, the public officer of the Second Co-Applicant must make a sworn affidavit or solemn affirmation confirming that the transaction complies with the section.
- e) The disposal of the portion of Property X (including the rights attaching to the property and the associated letting enterprises) by the First Co-Applicant to the Second Co-Applicant will qualify as an “asset-for-share transaction” as defined in paragraph (a) of the definition of “asset-for-share transaction” in section 42(1).
- f) The Second Co-Applicant will not be liable for transfer duty as section 9(1)(j)(i) of the Transfer Duty Act will apply to the acquisition of the portion of the undivided interest of the First Co-Applicant in Property X. However, the public officer of the Second Co-Applicant must make a sworn affidavit or solemn affirmation confirming that the transaction complies with the section.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of two years from 29 March 2017.

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