

**BINDING CLASS RULING: BCR 084**

DATE: 9 December 2022

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 55(1) – DEFINITION OF “DONATION”, 58(1) AND PARAGRAPHS 35 AND 38 OF THE EIGHTH SCHEDULE TO THE ACT**  
**SUBJECT : TRANSFER OF FUNDS HELD IN TRUST TO A “BENEFICIARY FUND”**

***Preamble***

This binding class ruling is published with the consent of the applicant(s) to which it has been issued. It is binding between SARS and the applicant, any co-applicant(s) and the class members only and published for general information. It does not constitute a practice generally prevailing.

**1. Summary**

This ruling determines the tax consequences of the transfer of assets of a vesting trust to a “beneficiary fund”.

**2. Relevant tax laws**

In these ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 9 May 2022. 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 55(1) – definition of “donation”;
- section 58(1);
- paragraph 35; and
- paragraph 38.

**3. Class**

The class members to whom this ruling will apply are beneficiaries of the applicant referred to in 4.

**4. Parties to the proposed transaction**

The applicant: An umbrella trust registered in terms of the Trust Property Control Act 57 of 1988 for the purpose of, *amongst others*, managing various sub-trusts for the benefit of beneficiaries of each sub-trust.

The beneficiary fund: A “beneficiary fund” as defined in section 1(1) of the Pension Funds Act 24 of 1956 (the PFA), with the objective to, on behalf of its beneficiaries, receive, administer, invest and pay benefits referred to in section 37C of the PFA, which have become payable on the death of a member of a transferor fund (being a trust or a “pension fund organization” as defined in the PFA) in order to provide for the education, maintenance, advancement and wellbeing of a deceased member’s dependent beneficiaries.

## 5. Description of the proposed transaction

The applicant receives death and disability benefits paid out on the death of a member of a transferor retirement fund paid pursuant to a pension fund’s obligations as contemplated in section 37C of the PFA for the benefit of deceased fund members’ minor beneficiaries. Each beneficiary’s money is managed in a sub-trust designated in the name of the deceased fund member concerned or the beneficiary.

The applicant is a vesting trust and each beneficiary has a vested right to the income and capital of the sub-trust. The applicant pays benefits to the beneficiaries for their care, maintenance and education until they reach a predetermined age (referred to as the “Fixed Date” in the trust deed), subject to the trustee’s discretion as to the extent of such payments, which are paid out of the income and/or capital of the sub-trust. Upon reaching the Fixed Date the beneficiaries are entitled to payment of the capital of the sub-trust.

Upon the death of the beneficiary, benefits payable under the trust vest in the estate of the beneficiary or, failing the receipt of an inventory from the Master of the High Court, in the guardian’s fund.

The beneficiary fund has the same purpose and goals as the applicant.

The applicant proposes to transfer all of the qualifying assets and business of the trust (i.e. all assets and business that fall within the scope of business of the beneficiary fund) to the beneficiary fund to reduce costs and improve the regulatory oversight applicable to the relevant qualifying assets and business.

The proposed transfer will take place in terms of section 14 of the PFA and the trustees of the applicant will make the transfer acting in terms of a provision of the applicant’s trust deed which provides that “*the trustees may in their discretion transfer any of the trust assets, including any liabilities and any obligations towards Beneficiaries to any other trust, beneficiary fund or any other approved fund, the aims of which are substantially the same as this Trust.*”

Regarding the termination of a sub-trust, the trust deed provides that “upon the distribution or transfer of all the trust assets of a sub-trust, such sub-trust shall cease and shall cease to form part of the trust.”

Upon the transfer of all the assets of a sub-trust to the beneficiary fund, in terms of the proposed transaction, the beneficiary will become a member of the beneficiary fund with a fund credit equal to the value of the assets transferred to the beneficiary fund. The beneficiary fund is required to maintain a separate sub-account for each beneficiary to account for the capital it received for the beneficiary, record investment returns and expenses attributable to the beneficiary's account and payment of benefits to the beneficiary.

The trustees of the beneficiary fund have a discretion to pay the benefits out of the income and/or the capital of the fund. Upon reaching the predetermined age the beneficiaries have a right to payment of their fund benefit.

## **6. Conditions and assumptions**

This binding class ruling is not subject to any additional conditions and assumptions.

## **7. Ruling**

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

- a) The proposed transaction will not constitute a "donation" as defined in section 55(1).
- b) Section 58(1) will not be applicable to the proposed transaction.
- c) Paragraph 38 will not be applicable to the proposed transaction.
- d) The proposed transaction will constitute a disposal of the beneficiaries' rights in the individual assets of each sub-trust in exchange for rights in the beneficiary fund. For purposes of paragraph 35(1)(a) the proceeds in respect of this disposal will comprise the market value of the interest in the beneficiary fund i.e. the value of the capital received by the beneficiary fund. Capital gains and losses on the disposal of each beneficiary's vested rights in the trust assets must be determined on an asset-by-asset basis and the proceeds described above must be allocated to each asset based on the market value of each asset disposed of.

## **8. Period for which this ruling is valid**

This binding class ruling is valid for a period of three years from 9 May 2022.