

Guidelines issued in terms of article 22A (2) of the Duty on Documents and Transfers Act

The purpose of these guidelines is to clarify the extent of the application of articles 42(1)(b), 42B and 47 of the Duty on Documents and Transfer Act (hereinafter in these Guidelines referred to as “the Act”) in relation to partnerships and interests therein.

For the purposes of Articles 42(1)(b), 42B and 47 of the Act, and in view of the provisions of article 42C of the Act, it is hereby being clarified that the term “company” shall include a partnership, and references to the transfer, acquisition or disposals of marketable securities is to include the transfer, acquisition or disposals of an interest in a partnership.

The provisions of article 42(1)(b) shall also be considered to apply in cases involving

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- (i) the exchange of a partnership interest for shares from one company to another where the company receiving the shares and the company whose shares are being exchanged are companies forming part of the same group of companies;
- (i) the transfer of a partnership interest for consideration from a company or partnership to another company or partnership, where the transferor and the transferee form part of the same group of companies or where any or both of them are partnerships, would have been considered to form part of the same group if they had been a company or companies.

Furthermore, any references in articles 42(1)(b), 42B and 47 to –

- (a) “property company” shall include “property partnership” as defined in article 2(1) of the Income Tax Act (but excluding the provisos to the said definition);
- (b) “group of companies” shall be applied in the case of partnerships mutatis mutandis as if the partnership had been a company;
- (c) “company’s ordinary share capital, voting rights and rights to profits” shall include a partnership’s capital, voting rights and rights to profits; and
- (d) The allocation to the Foreign Income Account shall in the case of a partnership be construed to mean such allocation as would have been made had the partnership been a company.

These guidelines shall be deemed to have come into effect on the 28th June 2019.