



# UNLISTED PROPERTY FUNDS WORKING GROUP

---

14 February 2014

[Susan.Nieuwoudt@treasury.gov.za](mailto:Susan.Nieuwoudt@treasury.gov.za)

[Jdelarey@sars.gov.za](mailto:Jdelarey@sars.gov.za)

**RE: REQUEST TO TREAT UNLISTED PROPERTY FUNDS FAIRLY**

Dear Susan Nieuwoudt and Johan de la Rey:

We represent a working group on behalf of the unlisted property fund sector. Our funds, like listed funds, come in the form of companies with dual-linked debentures. We, as asset managers, sell these funds to the public and institutions, earning asset management fees. These funds typically have investors between 5 and 50 members, and in some cases, investors exceeding a 100 or more.

Although it is government's stated intention to eliminate debt with share-like features, you should note that these funds have been promoted as commercially-driven savings vehicles that act as a passive alternative for those interested in investing in the property sector without the burden of being a direct landlord. Like listed REITs, we chose the dual-linked company structure in order to maintain external management.

In terms of tax, the dual-linked structure allows the leveraged investor to offset property income against interest so taxable profits match net rental profits. Although we understand that government has avoidance concerns stemming from aggressive players in the market, we think it is patently unfair to punish pre-existing investors who genuinely believed that they were acting in accordance with the law. It should be remembered that the dual-linked structure was widely-viewed as a legitimate and simple structure that was offered by all the advisory firms on that basis. This widely accepted practice of effective flow through of rental income has been left unchallenged by SARS for decades and without SARS even raising a hint of concern until the last year or so. To trap pre-existing investors now without a viable exit strategy seems extreme.

We also understand that unlisted property funds are mainly being left out of the new tax dispensation due to capacity concerns and with the expectation that these funds can enter the new REIT regime once financial regulation is extended to the unlisted property sector. However, this eventual relief is cold comfort for private investors in the interim. We see no reason why unlisted property funds owned by individuals (and small entities) should be discriminated against when compared to the tax treatment of unlisted property funds owned partially or wholly by pension funds and/or long-term

insurers. If unlisted property funds owned by pension funds and insurers can receive transitional relief, why shouldn't our investors receive the same equitable treatment? It is very clear that government engaged almost entirely with the exclusive club of large investors to the detriment of small players, like ourselves.

Lastly, we would like to note that unlisted property funds are a necessary catalyst for future growth of the property industry. Smaller funds often act as incubators for future listed REITs, thereby adding to the liquidity of the JSE. The proposed added tax burden will stunt this incubation and leave the current group of listed REITs entrenched with an effective barrier against new entrants. All that we again ask is for transitional relief so our funds can migrate to the desired regulated condition that government is seeking to achieve.

\* \* \* \*

In view of the above, we would recommend that the long-term insurer and pension fund requirements be dropped from sections 8F(3)(d) and 8FA(3)(d). Transitional relief should apply to all 80 per cent property companies in respect of investors that held interests in those companies as from the stated effective date. It should be noted that pre-existing investors should be allowed to increase their holdings because many funds have reinvestment plans.

Should you have any further questions or comments, please contact me on my cell at 021 418 3760 or on my email at lbarnard@metopegroup.com.

Sincerely,



**Liliane Barnard**

and



**Stephen Warner**

On behalf of the: Unlisted Property Funds Working Group

Cc: Olano.makhubela (olano.makhubela@treasury.gov.za)  
Ismail Momoniat (ismail.momoniat@treasury.gov.za)  
Jeanne Viljoen ([Jeanne.viljoen@treasury.gov.za](mailto:Jeanne.viljoen@treasury.gov.za))