

BINDING PRIVATE RULING: BPR 381

DATE: 4 October 2022

ACT : SECURITIES TRANSFER TAX ACT 25 OF 2007 (STT Act)
SECTION : SECTIONS 1 – DEFINITION OF “TRANSFER” AND “UNRESTRICTED AND SECURITY RESTRICTED STOCK ACCOUNT”; 2(1) AND 8(1)(g)
SUBJECT : BENEFICIAL OWNERSHIP IN RESPECT OF BACK-TO-BACK SHARE TRANSFERS

Preamble

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

1. Summary

This ruling determines the securities transfer tax consequences of the transfer of listed shares from a client to the applicant and by the applicant to an authorised user or *vice versa*.

2. Relevant tax laws

In this ruling references to sections are to sections of the STT Act applicable as at 25 August 2022. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the STT Act.

This is a ruling on the interpretation and application of –

- section 1 – definition of “transfer” and “unrestricted and security restricted stock account”;
- section 2(1); and
- section 8(1)(g).

3. Parties to the proposed transaction

The applicant: a resident company carrying on the business of a bank

Co-applicant a resident company and fellow subsidiary of the applicant, and an authorised user as defined in section 1 of the Financial Markets Act, 19 of 2002

4. Description of the proposed transaction

The applicant has an over-the-counter derivative product licence and intends to offer its clients the ability to enter into single stock equity forwards and single stock equity options (the derivative) in respect of shares which are listed on an exchange in South Africa. The derivatives will be entered into using the standard International Swaps and Derivatives Association (ISDA) documentation.

The transactions and steps envisaged are described below.

- The client will enter into the derivative with the applicant to forward purchase or sell shares or enter into an option transaction.
- The applicant will hedge the derivative with the co-applicant (commonly known as execution of the “delta”). Since the applicant is not a member of the JSE, the delta is executed by the co-applicant.
- The co-applicant will either buy or sell shares on an exchange to hedge the derivative.
- Upon settlement of the derivative, and if the client elects physical settlement, co-applicant will be responsible for the physical delivery of the shares. The co-applicant is then required to process a “Report Only Trade” on the JSE approved and conformed trading system. The JSE trade types used is OX (Exercise of Option), OD (Option Delta) or GU (Give Up). These trade types were designed by the regulator to fulfil exactly this obligation.
- Even though the applicant is obligated to deliver the shares to or purchase the shares from the client in terms of the agreement between them, the co-applicant will execute the transfers since the applicant does not have the regulatory licence to do so.
- Legal ownership of the shares is transferred from the co-applicant to the applicant and from the applicant to the client (or *vice-versa*), but economically the applicant assumes no risk. The terms of the agreements between the applicant and the client, and between the applicant and the co-applicant are similar. The forward price or strike price at which the applicant acquires the shares from the co-applicant or from the client will equal the price at which the applicant on-sells the shares to the client or to the co-applicant. It is not the intention that the applicant becomes the beneficial owner of the shares.

5. Conditions and assumptions

This binding private ruling is subject to the additional condition and assumption that the listed shares purchased by the co-applicant must be allocated to the co-applicant’s “unrestricted and security restricted stock account” at the JSE in accordance with the JSE Equities Rules and indicated as such as per the required account type codes and account identification codes.

6. Ruling

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

- a) The purchase of shares by the applicant from the co-applicant and the subsequent transfer of the shares to the client by the applicant (in terms of the derivative) constitute a single "transfer" as defined in section 1 of the STT Act, as the applicant will not be the beneficial owner of the shares. Consequently, STT is only leviable once on the transaction when the shares are transferred to the client.
- b) The purchase of shares by the applicant from the client and the subsequent transfer of the shares to the co-applicant by the applicant (in terms of the derivative) constitutes a single "transfer" as defined in section 1 of the STT Act, as the applicant will not be the beneficial owner of the shares. Consequently, STT is only leviable once on the transaction when the shares are transferred to the co-applicant. The co-applicant will account for the STT under section 2(1) if the exemption in section 8(1)(q) of the STT Act does not apply.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 26 August 2022.