BINDING PRIVATE RULING: BPR 373

DATE: 24 May 2022

ACT	**:**	**SECURITIES TRANSFER TAX ACT 25 OF 2007 (STT Act)**
SECTION	**:**	**SECTION 8(1)(*q*)**
SUBJECT	**:**	**STT TREATMENT OF THE PROPOSED TRANSFER OF LISTED SHARES TO THE APPLICANT IN ORDER TO HEDGE ITS EXPOSURE UNDER OVER-THE-COUNTER DERIVATIVE TRANSACTIONS**

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 whether the transfer of the beneficial interest in listed shares, to the applicant to hedge its exposures under intra-group over-the-counter (OTC) derivative transactions entered into directly with the foreign broker, will be exempt from securities transfer tax (STT).

2. Relevant tax laws

In this ruling references to sections are to sections of the STT Act applicable as at 13 November 2021. 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 8(1)(*q*).

3. Parties to the proposed transaction

The applicant:	A resident company which is an "authorised user" as defined in the Financial Markets Act 19 of 2012 and a member of the JSE Limited
Foreign broker:	A non-resident which is a fellow subsidiary of the applicant. The foreign broker serves as the primary broker-dealer for clients outside of South Africa

4. Description of the proposed transaction

The applicant will offer its clients OTC derivative transactions which can be ordered either through OTC orders or through 'co-location connectivity' as set out below:

a) Over-the-counter derivatives with the client.

i) The foreign broker offers OTC Derivatives to its clients outside South Africa (clients) that enable the clients to obtain exposure to listed shares and equity indices (client OTC Derivatives Transactions).

ii) The foreign broker offers this *via* both 'high touch' (i.e. taking telephone or email orders from clients) and 'low touch' (i.e. electronic receipt and transmission of orders). 'Low touch' is commonly referred to as Direct Market Access (DMA). DMA is a common means of accessing global markets with the majority of trading jurisdictions currently supporting some form of synthetic DMA product. The products are processed, stored and made available through a worldwide computer and communications network. Under DMA, the clients will not be accessing the market themselves, but the orders will be electronically received and transmitted to the JSE as proprietary orders for electronic execution by the applicant.

iii) In order to facilitate DMA activity, when the foreign broker receives an order for a long client OTC Derivative Transaction, the foreign broker places a request with the applicant to purchase the listed shares relevant to the client's OTC Derivative Transaction either as an 'on book' trade or as an 'off book' trade. The purchase of listed shares forms the hedge for the applicant, the purchase price is used by the foreign broker to price any subsequent client OTC Derivative. Listed shares purchased by the applicant will be purchased into the applicant's "unrestricted and security restricted stock account" at the JSE in accordance with the JSE Equities Rules. Similar flow takes place for a short client OTC Derivative, with the applicant selling the listed shares either as an 'on book' trade or as an 'off book' trade.

iv) At the end of each trading day, the foreign broker will hedge its net exposure under all of its client OTC Derivatives by proposing to enter into OTC Derivatives (Intercompany OTC Derivative) with the applicant in the form of an OTC Derivative.

v) At the termination of –

(aa) a long client OTC Derivative, the applicant will sell listed shares either as an 'on book' trade or as an 'off book' trade; and

(bb) a short client OTC Derivative, the applicant will purchase listed shares either as an 'on book' trade or as an 'off book' trade.

vi) STT will, however, be levied on any reallocation of these listed shares from a member's "unrestricted and security restricted stock account" to a member's general restricted stock account.

b) Co-location transactions.

i) Co-location is widely marketed by the JSE and is offered by a number of the International Brokers' domestic and international competitors. Co-location allows much greater speed in execution (i.e. a significant reduction in latency) given the proximity of the software and hardware to the JSE and is therefore of particular interest to latency or volatility sensitive traders and other electronic traders.

ii) Under co-location, the applicant leases server space from the JSE. These servers are located on the JSE's premises in South Africa and provide direct access to the exchange using the applicant's trading identification. Clients also lease service space in the same data centre at the JSE's premises in South Africa and utilise a cross-connect with the applicant to access the co-location.

iii) A client's software would typically run an algorithm which would generate buy and sell orders automatically on the JSE. The electronic orders placed by the client would be routed through the applicant and the orders would legally be made by the applicant.

iv) Absent co-location, the order would initially be received by the foreign broker, who would place an order with the applicant before being routed to the JSE. This order transmission mechanism has a significant latency component that co-location seeks to remove.

v) At the end of the trading day, the client requests an OTC Derivative with the foreign broker in relation to the net position in listed shares traded via co-location. Therefore, because the client has to use the trading identification of the foreign broker and applicant when they place the order, using the co-location order mechanism, legally, it is as if the order was placed with the foreign broker who then placed an order with the applicant.

vi) As with OTC Derivatives with the client, at the end of each trading day, the foreign broker will hedge its net exposures under all its client OTC Derivatives by proposing to enter into an intercompany OTC Derivative with the applicant.

vii) The purchased listed shares by the applicant are economically a hedge of its exposure under the intercompany OTC Derivative. These shares will be purchased into the applicant's "unrestricted and security restricted stock account" at the JSE in accordance with the JSE Equities Rules.

viii) STT will, however, be levied on any reallocation of these listed shares from a member's "unrestricted and security restricted stock account" to a member's general restricted stock account.

5. Condition and assumption

This binding private ruling is subject to the following additional condition and assumption:

- The listed shares purchased must be allocated to the 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 acquisition of listed shares by the applicant to net hedge its exposure under an Intercompany OTC Derivative entered into with the foreign broker, and the "transfer" of such listed shares to the applicant pursuant to such acquisition, will be exempt from STT under section 8(1)(*q*) of the STT Act, if the listed shares are allocated to the applicant's "unrestricted and security restricted stock account".

b) The acquisitions of listed shares by the applicant in consequence of co-location connectivity to net hedge its exposure under intercompany OTC Derivatives entered into with the foreign broker, and the "transfer" of such listed shares to the applicant pursuant to such acquisitions, will be exempt from STT under section 8(1)(*q*) of the STT Act if the listed shares are allocated to the applicant's "unrestricted and security restricted stock account".

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 13 December 2021.

8. General note

The proposed transaction has not been considered from an income tax or dividends tax perspective.

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