

BINDING CLASS RULING: BCR 090

DATE: 5 August 2024

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECURITIES TRANSFER TAX ACT 25 OF 2007 (STT Act)**

**SECTION : SECTIONS 8C, 10(1)(k)(i), 11(a), 23(g), 23H, 56, AND 58;
PARAGRAPHS 2 AND 11A OF THE FOURTH SCHEDULE AND
PARAGRAPH 35 OF THE EIGHTH SCHEDULE TO THE ACT
SECTION 1 – DEFINITION OF “TRANSFER” OF THE STT ACT**

SUBJECT : AWARD OF LISTED SHARES UNDER A SHARE INCENTIVE SCHEME

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, 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 income tax and securities transfer tax consequences for employer companies of a proposed share incentive scheme.

2. Relevant tax laws

In this ruling references to sections and paragraphs are to sections of the relevant Act and paragraphs of the Fourth and Eighth Schedule to the Act applicable as at 23 April 2024. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the relevant Act.

This is a ruling on the interpretation and application of –

- the Act –
 - section 8C;
 - section 10(1)(k)(i);
 - section 11(a), read with section 23(g);
 - section 23H;
 - section 56;
 - section 58;
 - paragraph 2 of the Fourth Schedule;
 - paragraph 11A of the Fourth Schedule; and
 - paragraph 35 of the Eighth Schedule.

- the STT Act –
 - section 1 – definition of “transfer”.

3. Class

The class members to whom this ruling will apply are the Employer companies and Participants referred to in 4.

4. Parties to the proposed transaction

The Applicant:	A resident wholly-owned subsidiary of Company A
Company A:	A resident company listed on the JSE and the holding company of the Employer companies
Employer companies:	The Applicant and the other operating companies within the Company A group of companies that employ the eligible employees who will participate in the proposed employee share incentive scheme
Participants:	The eligible employees of the Employer companies that will participate in the proposed share incentive scheme
Trust A:	A trust approved as a public benefit organisation under section 30(3) of the Act established to carry out public benefit activities on behalf of the group

5. Description of the proposed transaction

The Applicant is the main employer company within the Company A group of companies and the administrator of Company A's share incentive schemes. The Applicant intends to implement a new share incentive scheme for the benefit of eligible employees of the Employer companies. The main objective of the proposed share incentive scheme is the protection and enhancement of the Employer companies' businesses and their income. This will be achieved by incentivising the eligible employees to be efficient, productive and remain in the group's employ.

The practical implementation of the new share incentive scheme is summarised as follows:

- a) The Employer companies will make proposals to the remuneration committee recommending a rand value of shares in Company A to be awarded to the eligible employees (“award shares”), subject to the terms and conditions set out in an award letter and the share incentive scheme rules. Once the eligible employee accepts the terms and conditions of the scheme, he or she will become a Participant in the share incentive scheme and will be entitled to a prescribed number of shares in Company A, the number to be determined with reference to the volume weighted average market price.
- b) The Applicant will provide a list of all the Participants who qualify for shares and the respective rand values of the award shares to its stockbroker that will administer each Participant's securities account. The stockbroker will

calculate the number of award shares to be bought and allocated to the Participants' accounts.

- c) The stockbroker will aggregate the total incentive scheme purchase value of the award shares and devise an appropriate trading strategy to acquire the award shares. The stockbroker requires between three and ten days to purchase the full quantity of the award shares. The stockbroker will buy the required quantity based on its trading plan for each of the respective trading days. The award shares will be purchased throughout the trading day to achieve the targeted volume weighted average market price.
- d) The award shares will be purchased and deposited in an allocation account of the stockbroker. At the end of each trading day, the award shares will be allocated to each Participant based on the proportional allotment, and the quantities allocated will be rounded to the nearest whole number.

The award shares will be subject to the following terms and conditions:

- i) The Participants will not be entitled to dispose of the award shares within a 3-year period from the settlement date, and only after the lapse of the 3-year period will the award shares vest in a Participant ("vesting date");
- ii) If a Participant is a "good leaver" as set out in the scheme rules, such participant will either –
 - (aa) be entitled to retain the award shares, which may only be disposed of from vesting date; or
 - (bb) the vesting date will be accelerated, and the Participant will become entitled to dispose of the award shares immediately in certain circumstances as set out in the scheme rules.
- iii) If a Participant is a "bad leaver" as set out in the scheme rules, such Participant will be obliged to forfeit the award shares for no consideration in favour of Trust A.
- iv) When the abovementioned restriction ceases to have effect and a Participant becomes entitled to dispose of the award shares, the Participant may elect that a portion of the award shares be disposed of, in order for the Employer company to settle the employees' tax obligation that may arise.

Trust A will acquire the forfeited award shares under the share incentive scheme for no consideration. After acquisition Trust A will dispose of the forfeited award shares in the market as soon as is practically possible, irrespective of whether the share price has increased or decreased from the time of acquisition. The reason for the disposal of the award shares is solely to convert the forfeited award shares acquired into cash to be utilised by Trust A to carry out its public benefit activities.

6. Conditions and assumptions

This binding class ruling is not made subject to any conditions and assumptions, save as stipulated in the *proviso* below.

7. Ruling

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

- a) The Employer companies may deduct the expenditure incurred to acquire the award shares under section 11(a), read with section 23(g) of the Act.
- b) Section 23H(1) of the Act will apply to the amount deductible under section 11(a), read with section 23(g), in respect of the expenditure incurred to acquire the award shares.
- c) The Employer companies will be obliged to withhold employees' tax under the Fourth Schedule upon the vesting of the award shares, if any gain is determined in terms of section 8C(2) of the Act.
- d) Securities transfer tax will be imposed once on the acquisition by the stockbroker of the award shares in the market, provided that those shares are allocated to the Participants' share accounts by the close of business on the date of the transaction.
- e) The award shares will constitute "restricted equity instruments" for purposes of section 8C of the Act, and therefore:
 - i) On delivery of the award shares to the Participant, the Participant will not be required to include the value of the award shares in his or her income in that year of assessment.
 - ii) Only upon the restrictions ceasing to have effect or the Participant disposing of the award shares (whichever is the earlier), will the Participant be required to include any gain determined under section 8C(2) in his or her income.
 - iii) Upon the disposal of the forfeited award shares to Trust A for no consideration, no gain will be determined by the Participant under section 8C, and no capital gain or loss will be determined by the Participant under the Eighth Schedule to the Act.
- f) Any dividend received by or accruing to the Participants will be exempt from normal tax and the exceptions in paragraphs (dd), (ii), (jj) and (kk) of section 10(1)(k)(i) will not apply.
- g) The forfeiture of the award shares by the Participants in favour of Trust A for no consideration will not be subject to donations tax.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of 5 years from 23 April 2024.