SARS
South African Revenue Service

BINDING CLASS RULING: BCR 091

DATE: 20 November 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 OF THE ACT; 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 SHARE INCENTIVE SCHEMES**

Preamble

This binding class ruling is published with the consent of the Applicant(s) who applied for the ruling. It is binding between SARS 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 and their employees participating in the proposed share incentive schemes.

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 10 October 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 schemes
Participants:	The eligible employees of the Employer companies that will participate in the proposed share incentive schemes
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 an employer company within the Company A group of companies and the administrator of the group's share incentive schemes. The Applicant intends to implement two new share incentive schemes for the benefit of eligible employees of the Employer companies. The main objective of the proposed share incentive schemes 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 schemes can be summarised as follows:

a) The Employer companies will make proposals to the remuneration committee recommending a conditional award of a rand value to be converted to shares in Company A at the award settlement date to be awarded to the eligible employees (the award shares), subject to the terms and conditions set out in an award letter and the share incentive scheme rules. In essence each Participant will be required to still be employed at the relevant Settlement dates under each of the share incentive schemes and achieving the agreed performance targets set forth in the Award letter. Once the eligible employee accepts the terms and conditions of the scheme, they will become a Participant in the share incentive scheme and will be entitled to a number of shares in Company A determined based on the volume weighted average market price of the award shares at the relevant settlement dates.

b) In respect of each settlement date 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.

e) The main differences between the two schemes are as follows:

   i) In Scheme 1, 100% of the award amount will be settled 6 months after the award date by delivery of the award shares subject to the employment condition and performance condition stated in the award letter (settlement date).

   ii) The award shares acquired in respect of Scheme 1 will be subject to the condition that the Participants will not be entitled to dispose of or encumber the award shares within an 18-month period from the settlement date, and only after the lapse of the 2-year period from the award date will the award shares vest in a Participant.

   iii) In Scheme 2, 50% of the award amount will be settled 1 year after the award date by the delivery of the award shares of equivalent amount (first settlement date) and the balance of 50% of the award amount will be settled two years after the award date in a like manner subject to the employment condition and performance condition stated in the award letter (second settlement date).

   iv) The award shares acquired in respect of Scheme 2 will be subject to the condition that the Participants will not be entitled to dispose of or encumber the award shares within a 3-year period from the award date, being 2 years after the first settlement date and 1 year after the second settlement date. Only after the lapse of the 3-year period from the award date will the award shares vest in a Participant.

f) The following terms and conditions will apply to the award shares acquired under both schemes:

   i) 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.

ii) 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.

iii) A Participant will be entitled to all voting, dividend and other rights attaching to the award shares acquired from the respective settlement dates.

iv) When the abovementioned restrictions cease 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 both share incentive schemes 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 subject to any additional conditions and assumptions save as stipulated in the *proviso* in paragraph 7(d).

7. Ruling

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

a) Each Employer Company may, under section 11(a) read with section 23(g) of the Act, deduct the expenditure incurred by it at settlement date in respect of its qualifying employees to acquire the award shares for delivery to the Participants of the proposed employee share incentive schemes.

b) Section 23H(1) of the Act applies to the amount that is 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 in terms of the Fourth Schedule on 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 under section 2(1) of the Securities Transfer Tax Act 25 of 2007 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) On granting of the award to a Participant, the Participant will not be required to include the value of the award in his or her income in that year of assessment.

f) Each award share delivered to a Participant will constitute a restricted equity instrument as defined in section 8C(7) of the Act with the following tax consequences:

   i) The Participant will not be required to include the value of the restricted equity instrument delivered to him or her in his or her income in that year of assessment.

   ii) Only when the restrictions cease to have effect or when the Participant disposes of the award shares (whichever happens first), will the Participant be required to include any gain determined in terms of section 8C(2) in his or her income.

   iii) On the disposal of the forfeited award shares for no consideration, no gain will be realised by the Participant in terms of section 8C, and no capital gain or loss will be realised by the Participant for purposes of the Eighth Schedule to the Act.

g) Any dividend as defined in section 1(1) of the Act, received by or accrued to the Participants will be exempt from normal tax and the exceptions in paragraphs (*dd*), (*ii*), (*jj*) and (*kk*) of the proviso to section 10(1)(*k*)(i) of the Act will not apply.

h) The forfeiture of 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 five years from 10 October 2024.

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