South African Revenue Service

BINDING GENERAL RULING (STT) 61

DATE: 17 November 2022

ACT: **SECURITIES TRANSFER TAX ACT 25 OF 2007**

SECTION: **SECTIONS 1, DEFINTION OF "COLLATERAL ARRANGEMENT", AND 8(1)(*u*)**

SUBJECT: **SECURITIES TRANSFER TAX IMPLICATIONS ON THE RE-USE OF COLLATERAL**

Preamble

For the purposes of this ruling –

- **"BGR"** means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011;
- **"collateral"** means a listed share transferred for the purposes of providing security in respect of an amount owed, which is used to repay the liability upon default;
- **"exception"** means the exception listed in paragraph (ii) of the definition of a "collateral arrangement" in section 1 that takes effect on 1 January 2023;
- **"re-use"** means the practice whereby the transferee uses the collateral for its own purposes – either for trading or to place as collateral for its own transaction;
- **"section"** means a section of the STT Act;
- **"STT Act"** means the Securities Transfer Tax Act 25 of 2007;
- **"STTA Act"** means the Securities Transfer Tax Administration Act 26 of 2007;
- **"TLAA 2021"** means the Taxation Laws Amendment Act 20 of 2021;
- **"transferee"** means a person receiving collateral from the transferor for an amount owed by the transferor to the transferee;
- **"transferor"** means a person transferring collateral for purposes of providing security for an amount owed by the transferor to the transferee; and
- any other word or expression bears the meaning ascribed to it in the STT Act.

1. Purpose

This BGR clarifies the STT consequences when a person re-uses collateral received for another purpose. The STT consequences relate to transactions both when the requirements of a "collateral arrangement" as defined in section 1(1) has been complied with and when not, specifically in relation to every transaction within a chain where the same collateral is re-used.

2. Background

The Taxation Laws Amendment Act 25 of 2015 introduced an exemption from STT for a transfer of listed shares under a collateral arrangement, with effect from 1 January 2016, by inserting the definition of a "collateral arrangement" in section 1 and adding section 8(1)(*u*) to the list of exemptions. According to the *Explanatory Memorandum* to the said Act, the purpose of this exemption is to align the tax treatment of an outright transfer of collateral with the dispensation already allowed for securities lending arrangements, thereby alleviating the negative effects of the previous tax regime on business practices and market liquidity. The Taxation Laws Amendment Act 15 of 2016, the Taxation Laws Amendment Act 17 of 2017 and the Taxation Laws Amendment Act 34 of 2019 refined the STT implications of a collateral arrangement by, amongst others, extending the period in which to return the listed shares to the transferor from 12 months to 24 months.

With effect from 1 January 2023, the TLAA 2021 clarified the STT implications of a scenario when a transferee re-uses collateral received through a qualifying collateral arrangement (meaning, the transferee received the collateral exempt from STT).

3. Discussion

STT, by its nature, is a transactional tax. This means that, in the absence of clear language to the contrary, the STT liability is determined in respect of each transaction, being the transfer of a security. Read in this context, a "collateral arrangement" is defined in section 1 with reference to a transferor, a transferee, and the transfer of the listed shares between them (the first transfer). Although this definition allows for the re-use of the collateral by the transferee, the subsequent transfer by the transferee to another person is a separate transaction of which the STT implications should be considered on its own merits. This means that the subsequent transaction cannot impact the determination of the STT liability of the first transfer, unless this subsequent transfer falls within the exception.

To illustrate the above, consider the following example:

A transfers listed shares as collateral to B for an amount owed by A to B under a qualifying collateral arrangement.

B transfers the above listed shares received as collateral to C for an amount owed by B to C under a qualifying collateral arrangement.

C transfers the same listed shares as collateral to D for an amount owed by C to D under a qualifying collateral arrangement.

Two months after D received the listed shares as collateral it transfers the shares to E, for example, because –

- C defaulted;
- D sold the shares as part of its trading activities; or
- as part of a financial arrangement with E (such as a lending arrangement).

Each of the above collateral arrangements entered into is a separate transaction for STT purposes and must be evaluated on its own merits. Therefore, on each date of entering into the above collateral arrangement agreements, it must be evaluated whether each of the agreements entered into by the respective transferors and transferees contain stipulations that indicate the relevant parties' intention to comply with the requirements set out in paragraphs *(a)* to *(e)* of the definition of a "collateral arrangement" in section 1. At the point of transfer of the listed securities, each of the above transactions may use the exemption under section 8(1)(*u*).

Upon D transferring the listed shares to E in the above example, the specific collateral arrangement being impacted is the transfer of the listed shares as collateral from C to D. As the exception is triggered, STT becomes payable in accordance with section 3 of the STTA Act (with reference to the original transfer date of the listed shares from C to D). As the requirements of a "collateral arrangement" as defined in section 1 is still complied with for the transfers of the listed shares between A and B, and B and C respectively, these transactions are not impacted by the sale of the listed shares by D to E and will continue to be exempt under section 8(1)(*u*) should all the requirements remain to be met.

4. Ruling

In determining whether a transfer of listed shares by a transferor to a transferee as collateral falls within the exemption from STT under section 8(1)(*u*), each arrangement must be separately measured against the requirements of a "collateral arrangement" as defined in section 1. Should a transaction not comply with all the relevant requirements, only that transaction will not be a collateral arrangement for the parties to the arrangement and be subject to STT. Any prior qualifying collateral arrangements entered into using the same listed shares, will not be impacted by the non-complying transaction.

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act 28 of 2011.

5. Period for which this ruling is valid

This BGR applies with effect from date of issue and is valid until it is withdrawn, amended or the relevant legislation is amended.

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