

## **BINDING PRIVATE RULING: BPR 099**

DATE: 24 March 2011

**ACT : SECURITIES TRANSFER TAX ACT NO. 25 OF 2007 (STT ACT)**  
**SECTION : SECTION 1, DEFINITION OF “TRANSFER”**  
**SUBJECT : TRANSFER OF BENEFICIAL OWNERSHIP OF SOUTH AFRICAN LISTED SHARES UNDER A “RISKLESS PRINCIPAL” TRANSACTION**

### **1. Summary**

The issues considered in this ruling are:

- Whether, pursuant to the purchase of South African listed shares (shares) by a client of a foreign broker, the transfer of the shares from a JSE Limited member firm (JSE member firm) to the foreign broker and then from the foreign broker to its client under a “riskless principal” transaction will result in a single change in beneficial ownership and therefore constitutes a single “transfer” as defined in section 1 of the STT Act.
- Whether, on sale of shares by the client of the foreign broker, the transfer of the shares from the client to the foreign broker and then from the foreign broker to the JSE member firm under a “riskless principal” transaction, will result in any liability for securities transfer tax (STT) in the hands of the client, the foreign broker or the JSE member firm.

### **2. Relevant tax laws**

This is a binding private ruling issued in accordance with section 19(1) of the STT Act, read with section 76Q of the Income Tax Act No. 58 of 1962.

In this ruling legislation references to sections are to sections of the STT Act applicable as at 17 November 2010 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the STT Act.

This ruling has been requested under the provisions of section 1, definition of “transfer”.

### 3. Parties to the proposed transaction

The Applicant: A foreign broker

The Clients: Clients of the Applicant

### 4. Description of the proposed transaction

The Applicant is a foreign broker who intends to offer a facility to trade in shares to the Clients under a “riskless principal” transaction. The term “riskless principal” is used in certain foreign jurisdictions in a legal and regulatory context. A riskless principal transaction is a transaction in terms of which the Applicant receives the Client’s request to either: –

- purchase shares for the Client and the Applicant fulfils that order by agreeing to purchase those shares, as principal, through a JSE member firm or Off-market and immediately thereafter, on-selling the shares to the Client; or
- sell shares for the Client and the Applicant fulfils that order by agreeing to sell those shares, as principal, through a JSE member firm or Off-market and immediately prior to that, purchasing the shares from the Client.

The Applicant proposes to act as a “riskless principal” in both the Client’s purchase and sale transactions.

The two principal transactions (they are, in the case of the Client’s Purchase Transaction – the JSE member firm or Off-market trade to the Applicant and from the Applicant to the Client or, in the case of the Client’s Sale Transaction – the Client trade to the Applicant and from the Applicant to the JSE member firm or Off-market trade) will occur at the same price and on the same terms. The Applicant will be acting as principal in relation to the JSE member firm or the Off-market seller/purchaser and also as principal in an equal and opposite transaction with the Client.

Economically, a riskless principal transaction is in some respects similar to an agency transaction where the Applicant will act as the Client’s agent in placing the relevant request with the South African broker or dealing with it Off-market and, at no stage, will the Applicant become the beneficial owner of the shares.

Although the Applicant is not acting as the agent for the Client in a riskless principal transaction, it is important to note that, in the same way as in the case of an agency trade –

- at the time of a purchase of shares by the Applicant from the JSE member firm or Off-market seller, there is a pre-existing Client's order to purchase the shares for the Client; or
- at the time of the sale of shares by the Client to the Applicant, the Applicant has a pre-existing Client's order to sell the shares for the Client.

At no stage is it the intention of the Applicant to be or become the ultimate beneficial owner of the shares.

Set out below are the detailed steps of a Client's Purchase and Sale Transaction.

- Client's Purchase Transaction *via* a JSE member firm:
  - The Client places a purchase order for shares with the Applicant.
  - In order to fulfil the Client's request, the Applicant places a matching purchase order for shares with a JSE member firm for On-market trades.
  - On the settlement date (5 days after the order was executed), settlement takes place in terms of the Strate Ltd settlement model. The Client receives the shares on a Deliver versus Payment (DvP) basis *via* its Central Securities Depository Participant (CSDP), establishing the Client as the owner of the shares.
  - The consideration is paid to the seller's CSDP and the charges levied on the purchasing Client, such as STT collected under section 3, accrues to the JSE member firm for onward payment to SARS.
  - At no stage is it the intention of the Applicant to be recognised as the ultimate beneficial owner of the shares.
- Client's Purchase Transaction *via* an Off-market trade:
  - The Client places a purchase order for shares with the Applicant.
  - In order to fulfil the Client's request, the Applicant places a matching purchase order for shares on an Off-market basis.
  - On the settlement date (5 days after the order was executed), settlement takes place in terms of the Strate Ltd settlement model. The Client receives the shares on a DvP basis *via* its CSDP, establishing the Client as the owner of the shares.

- The consideration is paid to the seller's CSDP and the charges levied on the purchasing Client, such as STT collected under section 4, remain with the Applicant's CSDP for onward payment to SARS.
  - At no stage is it the intention of the Applicant to be recognised as the ultimate beneficial owner of the shares.
- The Client's Sale Transaction *via* On-market execution:
  - The Client places a sale order for shares with the Applicant.
  - In order to fulfil the Client's request, the Applicant places a matching sale order for shares with the JSE member firm.
  - On the settlement date (5 days after the order was executed), settlement takes place in terms of the Strate Ltd settlement model. The Client delivers the shares on a DvP basis *via* its CSDP.
  - The consideration is paid by the purchaser's CSDP to the Client's CSDP with the purchaser's JSE member firm keeping the charges levied on the purchaser, such as STT collected under section 3. The collection and payment of the STT has nothing to do with the Client, the Applicant or the selling JSE member firm in this instance.
  - At no stage is it the intention of the Applicant to be recognised as the ultimate beneficial owner of the shares.
- The Client's Sale Transaction *via* Off-market execution:
  - The Client places a sale order for shares with the Applicant.
  - In order to fulfil the Client's request, the Applicant executes the sale order Off-market (that is, not *via* the JSE).
  - On the settlement date (5 days after the order was executed), settlement takes place in terms of the Strate Ltd settlement model. The Client delivers the shares on a DvP basis *via* its CSDP.
  - The consideration is paid by the purchaser's CSDP to the Client's CSDP with the purchaser's CSDP keeping the STT collected under section 4. The collection and payment of the STT has nothing to do with the Client, the Applicant or the selling JSE member firm in this instance.
  - At no stage is it the intention of the Applicant to be recognised as the ultimate beneficial owner of the shares.

## **5. Conditions and assumptions**

This ruling is made subject to the conditions and assumptions that –

- the Applicant must have proof of a pre-existing order from the Client before the transaction is executed and this proof must be retained for a period of five (5) years; and
- the purchase/sale transaction must be concluded under the riskless principal transaction.

## **6. Ruling**

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

- The purchase of shares by the Applicant and the subsequent purchase by the Client from the Applicant under a riskless principal model will constitute a single “transfer” as defined in section 1. Consequently, STT is only leviable once on a transaction. STT will, therefore, be payable by the JSE member firm in terms of section 3 for On-market trades or by the Applicant’s CSDP in terms of section 4 for Off-market trades. The single STT charge will be recovered from the Client by the Applicant.
- The sale of shares by the Client to the Applicant and the subsequent sale by the Applicant *via* an On or Off-market trade will constitute a single “transfer” as defined in section 1. Consequently, STT is only leviable once on a transaction. The transaction will not attract a STT charge for the Client or the Applicant under a riskless principal transaction.

## **7. Period for which this ruling is valid**

This binding private ruling is valid for a period of five (5) years as from November 2010.

Issued by:

**Legal and Policy Division: Advance Tax Rulings**  
**SOUTH AFRICAN REVENUE SERVICE**