



Tax and Legal News

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Tax and Legal News Transactional tax consequences as a result of Brexit

As a consequence of Brexit, a number of investment funds, which are domiciled in the United Kingdom, have been restructuring their portfolios. Where a fund holds South African investments, such restructurings may have South African transactional tax consequences, even if the fund has no presence in South Africa.

More specifically, the South African Securities Transfer Tax Act, No 25 of 2007 (the **STT Act**) imposes Securities Transfer Tax (**STT**) (currently at a rate of 0.25% of the taxable amount) in respect of every “transfer” of any security issued by:

- a company incorporated in South Africa; or
- a company incorporated outside South Africa and listed on an exchange licensed under the South African Securities Services Act, No 36 of 2004.

The term “transfer” is defined for purposes of the STT Act to include:

“the transfer, sale, assignment or cession, or disposal in any other manner, of a security or the cancellation or redemption of that security, but does not include

- (a) any event that does not result in a change of beneficial ownership;*
- (b); or”*

It follows from the above that STT will only be imposed if the transaction results in a change in the “beneficial ownership” of the security.

The term “beneficial ownership” is not defined in the STT Act. However, it appears that the legislature intended that an economic meaning be given to the term for STT purposes. It is further submitted that, for STT purposes, the concept of beneficial ownership must be interpreted narrowly and absent a nominee or agent agreement, the legal owner of a security should also be regarded as the beneficial owner of the security, unless the legal owner has been deprived of all rights, which would normally attach to a security.

In limited circumstances, the transfer of a security is exempted from STT.

In summary, where a restructure results in a change of beneficial ownership of security issued by a company, which is incorporated in South Africa and/or listed on a South African exchange, it needs to be assessed, whether the transfer is subject to South African STT.

Should you have any questions, please contact one of our team members below.

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