

BINDING PRIVATE RULING: BPR 284

DATE: 10 November 2017

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
**SECTION : SECTIONS 1(1) – DEFINITIONS OF “GROSS INCOME” AND
“TRADING STOCK”, 11(a) READ WITH 23(g) AND 22(1)(a), 24J,
24JB(1) – DEFINITION OF “COVERED PERSON”**
SUBJECT : DEBENTURES TRACKING THE VALUE OF A REFERENCE ASSET

1. Summary

This ruling determines the income tax consequences for a company that issues debentures to investors, the value of which tracks the price of specified quantities of a precious metal as reference assets.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 78(1) and published in accordance with section 87(2) of the Tax Administration Act 28 of 2011.

In this ruling references to sections are to sections of the Act applicable as at 17 August 2017.

Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the Act.

This is a ruling on the interpretation and application of –

- section 1(1) – the definitions of “gross income” and “trading stock”;
- section 11(a) read with section 23(g);
- section 22(1)(a);
- section 24J; and
- section 24JB(1) – the definition of “covered person”.

3. Parties to the proposed transaction

The applicant: A public company incorporated in and a resident of South Africa

Debenture holders: Holders of debentures to be issued by the applicant

4. Description of the proposed transaction

The applicant is a special purpose ring-fenced public company, limited by its memorandum of incorporation to conduct any other business or to incur any

liability, other than that permitted, without the prior consent of the JSE and of its debenture holders by special resolution.

The applicant conducts the business of establishing and operating exchange traded funds. It issues various classes of debentures, the values of which track the prices of specified quantities of particular reference assets. The debentures are listed on the JSE and by way of one or more secondary or dual listings on such other exchanges as the applicant may select from time to time.

The debentures will not bear interest. They are unsecured senior obligations of the applicant and rank equally with one another, evidencing the final indebtedness of the applicant to the debenture holders.

The applicant has no employees and is managed in terms of a management agreement by a manager appointed by it from time to time, which manages and administers the business and corporate affairs of the applicant and advises the applicant in relation to the conducting of its business. The applicant is wholly owned by a trust which was established with the sole purpose of beneficially holding its entire issued share capital.

The applicant's debentures may either be subscribed for in cash or *in specie* by way of the relevant reference assets. If the debentures are subscribed for in cash, the applicant uses the proceeds received to acquire the "initial quantities" of the reference assets. If the debentures are subscribed for *in specie*, the subscriber must own and hold a specified minimum quantity of the relevant reference asset and have the necessary license to buy, own, be in possession of, or to deal in that particular reference asset (qualified holder). The reference assets will be kept on deposit and in segregated accounts with a custodian.

The applicant must from time to time sell appropriate quantities of the reference assets to defray its monthly costs. The reference quantity of the reference asset associated with each debenture reduces over time in terms of a formula that reduces the initial reference quantity by the quantities sold to defray the monthly costs.

Each debenture entitles its holder to receive a cash amount on redemption, equal to the value of the reference quantity of the reference asset as at the redemption date. The applicant may be obliged, on redemption, to pay either less or more than the subscription price as at the date of issue, depending on the prevailing price of the reference asset.

A debenture holder may on notice redeem the debenture at any time. The applicant, on the other hand, has no right to redeem voluntarily, except in certain narrowly defined circumstances relating, in the main, to performance being or becoming impossible.

A qualified holder will have the right, upon redemption, to require the applicant to sell to it the appropriate quantity of the reference asset associated with the debenture as at the redemption date, provided that the qualified holder must open a nominated account with the custodian into which the applicant can transfer the reference asset on the delivery date.

In that event the obligation of the applicant to pay the redemption value of the debenture to the qualified holder on the redemption date will be off-set against the obligation of the qualified holder to pay the purchase price of the reference asset.

5. Conditions and assumptions

This binding private ruling is subject to the following additional conditions and assumptions:

- a) The ruling is based on the terms and conditions set out in the offering circulars relating to the individual classes of debentures.
- b) The ruling will apply to the issuance and redemption of debentures referencing each class of reference asset, as well as to the acquisition and disposal of the relevant reference assets, after the issue date of this ruling only.

6. Ruling

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

- a) Amounts received by the applicant for the debenture subscriptions do not constitute its “gross income”, as defined in section 1(1).
- b) On redemption of the debenture, to the extent that the redemption amount exceeds or is less than the original subscription amount, the excess paid or the reduction not paid will be, respectively, deductible under section 11(a), read with section 23(g), or included in its “gross income” by the applicant.
- c) The reference assets held by the applicant will be regarded as its “trading stock”. Expenditure incurred to acquire them will be deductible under section 11(a) read with sections 23(g) and 22(1)(a).
- d) The proceeds from the sale of the reference assets for purposes of both the redemption of debentures, and in order to defray its monthly costs, will be included in the applicant’s “gross income” in the year of sale.
- e) Expenditure incurred by way of the monthly costs in respect of the applicant’s monthly fees and expenses, will be allowed as a deduction under section 11(a) read with section 23(g), in the year in which such expenditure is incurred.
- f) Section 24J is not applicable to the debentures.
- g) The applicant is not a “covered person” as defined in section 24JB(1).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 10 years from 17 August 2017.