

BINDING PRIVATE RULING: BPR 225

DATE: 1 March 2016

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 8F, 64D, AND 64EA
SUBJECT : HYBRID DEBT INSTRUMENTS

1. Summary

This ruling determines the dividends tax consequences for a non-resident issuer of hybrid debt instruments.

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 No. 28 of 2011.

In this ruling references to sections are to sections of the Act applicable as at 2 February 2016. 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 the provisions of –

- section 8F;
- section 64D; and
- section 64EA.

3. Parties to the proposed transaction

The Applicant: A company incorporated in and a resident of a foreign country, that does not have a permanent establishment in South Africa

Investors: Companies that are tax residents of South Africa

4. Description of the proposed transaction

The Applicant proposes to issue secured and unsecured interest bearing notes (SA Notes) that will be listed on the interest rate market of the JSE.

The terms of the SA Notes will, amongst others, specify an interest rate payable in respect of the SA Notes, and that the obligation of the Applicant to make payments in respect of the SA Notes is conditional upon the market value of the Applicant's assets being equal to or greater than its liabilities.

The salient terms of issue of the SA Notes are as follows:

- The SA Notes will constitute unsubordinated and unsecured obligations of the Applicant and will rank *pari passu* amongst themselves and equally with all other like obligations of the Applicant.
- The SA Notes will be denominated in ZAR.
- Interest will be payable quarterly in arrears.
- The interest rate in respect of each issue of SA Notes will either be a floating rate or a rate calculated with reference to an index or a rate calculated with reference to a basket of financial instruments. Interest payable on a floating rate will be limited to the income derived on the corresponding income investment made by the Applicant in respect of that SA Note.
- The maturity date of the SA Note will be either five or six years after the date of issue.
- The redemption amount will be equal to the subscription price of the SA Note.
- The SA Notes are issued subject to early redemption provisions following the occurrence of events specified in the pricing supplement.
- The holders of the SA Notes will have no voting rights.

The Applicant will use the proceeds of the SA Notes to invest in non-South African debt instruments, index-tracking instruments or other financial instruments in respect of which the Applicant will receive income. There will be no direct or indirect re-investment into South African assets.

5. Conditions and assumptions

This binding private ruling is not subject to any additional conditions and assumptions.

6. Ruling

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

- The SA Notes will constitute instruments and hybrid debt instruments for the purposes of section 8F. The interest payments made by the Applicant in respect of the SA Notes will be deemed to be dividends *in specie* declared and paid by the Applicant on the last day of its year of assessment as contemplated in section 8F(2).
- Dividends tax will not be payable by the Applicant in respect of the interest paid on the SA Notes which have been deemed payments of dividends *in specie*.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 3 years from 2 February 2016.

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