

BINDING PRIVATE RULING: BPR 278

DATE: 12 September 2017

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1) – DEFINITION OF “GROSS INCOME”, 11(a) READ WITH 23(g) AND 24JB
SUBJECT : APPLICATION OF SECTION 24JB TO EQUITY - LINKED NOTES

1. Summary

This ruling determines the income tax consequences in respect of the issue of equity-linked notes (Notes) by a covered person.

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 18 July 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) – definition of “gross income”;
- section 11(a) read with section 23(g); and
- section 24JB.

3. Parties to the proposed transaction

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

Company A: A company incorporated in and a resident of South Africa

4. Description of the proposed transaction

The Applicant is a “covered person” as defined in section 24JB(1).

The proposed transaction will be as follows:

- The Applicant will, from time to time, issue Notes to Company A.
- The Applicant will use the subscription amounts which it will receive from Company A on the issue of Notes to enter into hedging and other speculative activities through the use of instruments such as listed equity futures contracts traded on the JSE, equities listed on the JSE, Over-The-Counter derivatives such as interest rate swaps, corporate bonds, loans, money market instruments and negotiable certificates of deposit issued by

banks. The Applicant will trade in these instruments in order to pay a return to Company A on the maturity of the Notes.

Each Note will provide Company A with a return equal to a zero percent tracking error in respect of a specified equity index to which Company A will be exposed and which cannot be changed during the term of the Note.

The material terms and conditions of the Notes will be as follows:

- The Applicant will carry all risk pertaining to the ability to provide a zero percent tracking error to the Applicant in respect of the reference index. To the extent that it is not able to achieve its obligations in terms of the Notes as a result of an under-performance in relation to the index, the Applicant will be liable for the losses. Equally, if it makes any profits by over-performing in relation to the index, it will retain those profits.
- The Notes will be issued for an indefinite term, subject to a minimum tenor of 5 years after which they will be redeemable at the option of Company A. A Note may be redeemed prior to the initial five year period only in exceptional circumstances.

Each Note that will be issued by the Applicant will be recognised at fair value in profit or loss in accordance with International Accounting Standard 39 of the International Financial Reporting Standards or any other standard that replaces that standard.

The initial subscription amount that the Applicant will receive on the issue of a Note and the redemption amount that the Applicant will be liable to pay to the Applicant on the redemption of a Note will not be recognised in profit or loss in the statement of comprehensive income of the Applicant.

Fair value changes in respect of the Note will be recognised in profit or loss in the statement of comprehensive income of the Applicant.

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:

- a) The subscription amounts that the Applicant will receive on the issue of Notes will not be included in its gross income in the year of assessment in which the Notes are issued.
- b) The redemption amounts that the Applicant will be liable to pay on redemption of Notes will not be deductible from its income in terms of section 11(a) read with section 23(g).
- c) Any gains or losses resulting from any changes in the fair values of Notes during the terms of the Notes will be subject to tax in accordance with section 24JB(2).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 18 July 2017.

**Legal Counsel: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**