

BINDING PRIVATE RULING: BPR 091

DATE: 22 December 2010

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)

SECTION : SECTION 24J

SUBJECT : SECURITIES LENDING TRANSACTION

1. Summary

This ruling deals with the question as to whether a securities lending transaction, with shares as the subject, will be regarded as an “instrument” for purposes of section 24J of the Act. It also deals with the question as to whether the shares to be received in terms of such transaction will be regarded as a “payment made” for purposes of the proviso to the definitions of “yield to maturity” and “adjusted initial amount” in relation to an “instrument” consisting of a collateral deposit placed with the share lender.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling legislative references to sections are to sections of the Act applicable as at 21 October 2008 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested under the provisions of section 24J and more particularly –

- the definition of “instrument”; and
- the proviso to the definitions of “adjusted initial amount” and “yield to maturity”

contained in section 24J(1).

3. Parties to the proposed transaction

The Applicant: A share trading company that will be entering into securities lending transactions as the borrower of shares

The Lender: An unrelated share trading company that will be lending the shares in terms of securities lending transactions to the Applicant

4. Description of the proposed transaction

The Applicant will be borrowing South African shares from the Lender. For the duration of each securities lending transaction the Applicant will compensate the Lender for any dividends declared on those shares in the form of “manufactured dividend” payments. In addition the Applicant will pay the Lender a fixed percentage fee as compensation for concluding such securities lending transactions.

The Applicant's obligations under these securities lending transactions will be secured by the Applicant by placing with the Lender interest-bearing cash collateral deposits (collateral deposits).

The Lender may utilise those collateral deposits in various ways, for example, providing collateral to third parties on other transactions, financing its general business activities or granting loans to group companies. The Lender will make interest payments to the Applicant in return on the collateral deposits placed by the Applicant with the Lender.

The Lender will be entitled to terminate these securities lending transactions and to call for the return of the equivalent shares at any time by giving notice of not less than the standard agreed settlement time on any business day. Upon the expiry of the term of these securities lending transactions, the collateral deposits held by the lender will be returned to the Applicant, in exchange for the return of the equivalent quantity and kind of shares borrowed by the Applicant.

5. Conditions and assumptions

This ruling is made subject to conditions and assumptions that –

- the securities lending transactions will not form part of an “impermissible avoidance arrangement” as envisaged in section 80A;
- there will be no set-off of payments due and payable between the Lender and the Applicant; and
- the subject of the securities lending transactions will not be shares with fixed pre-determined dividend rates and those dividends will not be deemed to be declared if it is not declared.

6. Ruling

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

- The Applicant will not be required to account for the securities lending transactions under the provisions of section 24J as the shares which are the subject of the securities lending transactions are not “instruments”, as defined in section 24J.
- The term “payment made” as contemplated in the proviso to the terms “yield to maturity” and “adjusted initial amount” does not include the

lending of shares in relation to an instrument consisting of a collateral deposit placed with the Lender, and accordingly the proviso to the definitions of “yield to maturity” and “adjusted initial amount” will not apply.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three (3) years as from 6 May 2009.

Issued by:

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