

BINDING PRIVATE RULING: BPR 216

DATE: 5 January 2016

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1), DEFINITION OF “GROSS INCOME”, 8(4)(a), 8F, 8FA, 11(a), 19, 23(g), 24J, 24JB AND PARAGRAPHS 12A OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : TAX CONSEQUENCES OF THE ISSUING OF ADDITIONAL TIER 1 CAPITAL INSTRUMENTS BY A REGISTERED BANK

1. Summary

This ruling determines the income tax consequences for the issuer of specified instruments, the proceeds of which qualify as “additional tier 1 capital” as defined in the Banks Act No. 94 of 1990.

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 and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule thereto applicable as at 2 December 2015. 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 1(1) – definition of “gross income”;
- section 8(4)(a);
- section 8F;
- section 8FA;
- section 11(a) read with section 23(g);
- section 19;
- section 24J;
- section 24JB; and
- paragraph 12A.

3. Parties to the proposed transaction

The Applicant: A public company that is a registered bank in terms of the Banks Act, incorporated in and a resident of South Africa

4. Description of the proposed transaction

The Basel Committee on Banking Supervision published various documents on 16 December 2010 and updated on 1 June 2011 pertaining to banking supervision – Basel III: A framework for more resilient banks and banking systems (Basel III Accord).

Pursuant to the Basel III Accord, the Banks Amendment Act, 2013 published in *Government Gazette* No. 37144 of 10 December 2013, amended the Banks Act, to provide for the full implementation of the Basel III Accord in South Africa.

In terms of the Banks Act Regulations were published by GN No. R. 1029 in *Government Gazette* No. 35950 of 12 December 2012 and amended with effect from 1 April 2015 and GN No. R. 261 published in *Government Gazette* No. 38616 of 27 March 2015 (the Regulations). The Regulations provide, amongst others, for the partial implementation of the Basel III Accord in South Africa and the requirements with which specific categories of instruments and/or shares must comply in order for the proceeds of the issue thereof to qualify for inclusion in the regulatory capital of banks.

The Applicant proposes to issue instruments that qualify as “additional tier 1 capital” as defined in the Banks Act (the Notes).

The Applicant intends to utilise the proceeds of the Notes for general banking purposes.

The salient terms of issue as recorded in the pricing supplement for the issue of the Notes are as follows:

- The Notes will constitute direct, unsecured and subordinated obligations of the Applicant and will rank *pari passu* without any preference or priority among themselves and *pari passu* with all securities issued by the Applicant the proceeds of which qualify (or are deemed under the Capital Regulations to qualify) as additional tier 1 capital, and at least *pari passu* with all other claims of creditors of the Applicant which rank or are expressed to rank (or are deemed under the Capital Regulations to rank) *pari passu* with the additional tier 1 Notes.
- Interest is payable semi-annually in arrears. The Applicant has full discretion regarding the payment of interest. The Applicant may elect not to pay interest at the payment interval. The interest payments will not be cumulative.
- The Notes have no maturity date. Their maturity date is at the discretion of the Applicant and they are redeemable at their original issue price, subject to regulatory approval, on a date not earlier than five years and one day following the issue date. The Notes are also early redeemable in the case of so-called “tax events” or “regulatory events” as defined in the pricing supplement.
- The relevant amounts owing under the Notes are written off in certain circumstances as set out in the terms and conditions of their issue, being so-called trigger events.
- The Notes are to be redeemed on the winding up or liquidation of the Applicant, if they have not been redeemed earlier.

5. Conditions and assumptions

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

- The proceeds of the Notes are not recognised in profit-and-loss in the statement of comprehensive income in respect of the financial assets and liabilities of the Applicant.
- This ruling is applicable only to the issue of the Notes contemplated in the pricing supplement for the issue of the instruments.

6. Ruling

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

- The proceeds derived by the Applicant from the issue of the Notes will not form part of its “gross income”, as defined in section 1(1).
- The periodic payments, referred to as interest in the pricing supplement, to be made by the Applicant in terms of the Notes constitute “interest”, as defined in section 24J(1).
- Section 24J will not be applicable to the incurral of interest in respect of the Notes.
- The interest will be deductible under section 11(a) read with section 23(g) when incurred.
- Interest will be incurred when the obligation to make the payment becomes unconditional. If a decision is made by the Applicant not to pay the interest as provided in the pricing supplement, such “interest” will not have been incurred. The aforementioned interest expenditure will not be incurred upfront in a particular payment period or on a day-to-day basis during that particular payment period.
- To the extent that any interest is written-off by the Applicant that has been incurred and claimed as a deduction under section 11(a), such interest must be recouped under section 8(4)(a).
- To the extent that the capital of the Notes is written-off, as envisaged in the pricing supplement, a recoupment under section 19 and/or an adjustment under paragraph 12A of the Eighth Schedule must be made in respect of the base cost of the assets generally funded by the Applicant from the proceeds of the Notes.
- Sections 8F, 8FA and 24JB will not apply to the Notes.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 5 years from 2 December 2015.