

BINDING PRIVATE RULING: BPR 403

DATE: 14 December 2023

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 24JB
SUBJECT : TAXATION OF COVERED PERSONS IN RESPECT OF EQUITY LINKED NOTES

Preamble

This binding private ruling is published with the consent of the Applicant(s) to which it has been issued. It is binding between SARS, the Applicant and any Co-Applicant(s) only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines the tax treatment of amounts causally connected to financial assets and financial liabilities of a “covered person” which is subject to section 24JB(2).

2. Relevant tax laws

In this ruling, references to sections are to sections of the Act applicable as at 10 November 2023. 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 24JB.

3. Parties to the proposed transaction

The Applicant: A resident company
Noteholder: Various resident companies

4. Description of the proposed transaction

The business activities of the Applicant pertain to, amongst others, the provision of financing to clients using debt and equity instruments. The Applicant constitutes an “authorised user” as defined in section 1 of the Financial Markets Act 19 of 2012 and a “covered person” as defined in section 24JB(1).

The proposed transaction entails the Applicant issuing an Equity Linked Note (“ELN”) to a Noteholder in the course of its business.

The terms of the ELN are as follows:

- the Noteholder will pay an amount to the Applicant on the subscription (the “Subscription Amount”);

- the Applicant will undertake to pay the Noteholder an amount (the “Redemption Amount”), calculated with reference to the value of a specified index or a basket or portfolio of listed shares or participatory interests in a Collective Investment Scheme (“Equity Basket”), subject to a minimum Redemption Amount equal to a percentage of the Subscription Amount on the date the ELN is redeemed by the Applicant (“Redemption Date”);
- the ELN will be issued for an indefinite term, subject to a minimum term of five years after which the ELN will be redeemable at the option of the Noteholder;
- the ELN will reference the performance of the Equity Basket;
- the Noteholder will not be entitled to any distributions in respect of the ELN prior to the Redemption Date;
- the Redemption Amount will be determined in accordance with a formula which references, amongst others, the Subscription Amount, the performance or change in value of the Equity Basket in the period between the date of issue of the ELN and the relevant Redemption Date, and the capital guaranteed portion of the Subscription Amount;
- the Applicant will bear the risk pertaining to its ability to make payment to the Noteholder of the Redemption Amount on the Redemption Date and will be liable for any losses that may arise to the extent that it is not able to comply with its obligations in this regard. To the extent that the Applicant is able to generate profits in respect of a particular Equity Basket which exceed the Redemption Amount payable to the Noteholder, the Applicant will retain such excess return.

The Applicant will use the Subscription Amount for speculative and profit-generating purposes. The Applicant will, therefore, carry on trading activities to generate the return required to meet its obligation to pay the Noteholder the Redemption Amount on the Redemption Date.

The ELN will be recognised as a financial liability at fair value by the Applicant in its Statement of Financial Position in terms of IFRS 9. Subsequently, the ELN will be measured at fair value with changes in the fair value, over the term of the ELN, being recognized in profit or loss in the Applicant’s Statement of Comprehensive Income in accordance with IFRS 9.

5. Conditions and assumptions

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

- a) The Applicant constitutes a “covered person” as defined in section 24JB(1)(a).
- b) Sections 8F, 8FA and 24JB(4) do not apply to the ELN.

6. Ruling

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

- a) The provisions of section 24JB(2) will apply to the ELN.

- b) All amounts recognised in profit or loss in the Applicant's Statement of Comprehensive Income in respect of the ELN measured at fair value, must be included in or deducted from the Applicant's income in terms of section 24JB(2).
- c) Section 24JB(3) will apply to the Subscription Amount and the Redemption Amount.
- d) The Subscription Amount will not be included in the "gross income" of the Applicant in the year of assessment in which the ELN is issued.
- e) The Redemption Amount payable by the Applicant on the Redemption Date will not be deductible from the income of the Applicant in terms of section 11(a) read with section 23(g).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 10 November 2023.