

BINDING PRIVATE RULING: BPR 301

DATE: 20 April 2018

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1) – DEFINITIONS OF “GROSS INCOME”, “INCOME” AND “SECURITIES LENDING ARRANGEMENT”, 9(2)(a), PARAGRAPH (ff) OF THE PROVISO TO SECTION 10(1)(k)(i), 11(a) READ WITH 23(g), AND 64F
SUBJECT : TAXATION OF DIVIDENDS RECEIVED BY A BORROWER UNDER A SECURITIES LENDING ARRANGEMENT

1. Summary

This ruling determines whether a South African sourced dividend received by a borrower in terms of a securities lending arrangement must be included in the “income” of the applicant and whether any related securities lending expenditure will be deductible.

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.

This is a ruling on the interpretation and application of –

- section 1(1) – paragraph (k) of the definition of “gross income”, definitions of “income” and “securities lending arrangement”;
- section 9(2)(a);
- paragraph (ff) of the proviso to section 10(1)(k)(i);
- sections 11(a) read with 23(g);
- section 64F.

3. Parties to the proposed transaction

The applicant: A non-resident company, who will be the borrower in terms of a securities lending arrangement

The lender: A non-resident entity, who will be the lender in terms of a securities lending arrangement

4. Description of the proposed transaction

The applicant will enter into a securities lending arrangement (SLA), in terms of which it will borrow South African equities (SA Equities) from the lender.

The applicant will then on-deliver (either by way of another securities lending arrangement or collateral arrangement) the SA Equities to independent third party entities. It is anticipated that the SA Equities will pay dividends. The applicant will recall the SA Equities prior to the dividend record date which is, on average, 20-30 days after the date of on-delivery.

The applicant, as owner of the SA Equity on the record date, will receive any dividend paid in respect of the SA Equity.

The applicant will be contractually required to pay a “manufactured dividend” to the lender in terms of the SLA.

To the extent that any dividend or interest is paid on the collateral provided in terms of the SLA, the lender will make to the applicant a “manufactured payment” in respect of the collateral.

On the close-out date of the SLA, the lender will return the collateral to the applicant; and the applicant will return the SA Equity to the lender.

5. Conditions and assumptions

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

- a) The dividends received by the applicant in respect of the SA Equities must be “dividends”, as defined in section 1(1).
- b) The SA Equities held by the applicant will always represent a shareholding of less than 10%.
- c) The SLA complies with the definition of a “lending arrangement”, in the Securities Transfer Tax Act 25 of 2007.
- d) The SA Equities that are borrowed will be borrowed before any interim or final dividend on the relevant SA Equity is announced or declared.
- e) Neither the lender nor the entity to whom the applicant will transfer the SA Equities will be entities within the applicant’s group of companies or a related party to it.

6. Ruling

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

- a) The dividend received by or accrued to the applicant in respect of the SA Equity (the dividend) will be from a source within South Africa as contemplated in section 9(2)(a) and will form part of the “gross income” of the applicant under paragraph (k) of the definition of that term in section 1(1).
- b) The dividend will under paragraph (ff) of the proviso to section 10(1)(k)(i) not be exempt from income tax on the basis that the dividend will be received by or accrued to the applicant in respect of a share borrowed by the applicant. The dividend will accordingly be included in the applicant’s “income”, as defined in section 1(1) and the “manufactured dividend”, and

other related expenditure to be paid to the lender under the SLA will be deductible by the applicant in terms of section 11(a) read with section 23(g). The portion of the dividend received or accrued to the applicant, remaining after the “manufactured dividend” and any related expenditure paid to the lender has been deducted, will be included in the taxable income of the applicant.

- c) The dividend will be exempt from dividends tax under section 64F(1)(l).
- d) No ruling is made on whether the on-delivery of the SA Equities borrowed by the applicant in terms of another securities lending arrangement or collateral arrangement complies with the definitions of those terms in section 1(1).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 18 January 2018.

8. Note

The proposed transaction has not been considered from the perspective of whether it will be entered into with the purpose of avoiding dividends tax.

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