

**BINDING PRIVATE RULING: BPR 322**

DATE: 16 July 2019

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 1(1) DEFINITION OF “GROSS INCOME”, 11(a), 23(g), 24J AND PARAGRAPHS 1 – DEFINITIONS OF “DISPOSAL” AND “BASE COST”, 20(1) AND 35(1) OF THE EIGHTH SCHEDULE TO THE ACT**  
**SUBJECT : EQUITY LINKED NOTE**

***Preamble***

This binding private ruling is published by consent of the applicant to which it has been issued. It is binding as between SARS and the applicant only and published for general information. It does not constitute a practice generally prevailing.

**1. Summary**

This ruling determines the nature of an amount received or which accrues as a redemption amount of an equity linked note (ELN), as well as the nature of the amount paid to acquire the ELN. It further determines that the ELN is not an instrument as defined in section 24J(1).

**2. Relevant tax laws**

In this ruling references to sections are to sections of the Act and references to a paragraph are to a paragraph of the Eighth Schedule to the Act applicable as at 13 March 2019. 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);
- section 23(g);
- section 24J(1);
- paragraph 1 – definitions of “disposal” and “base cost”;
- paragraph 20(1); and
- paragraph 35(1).

**3. Parties to the proposed transaction**

The applicant: A resident company carrying on business as a long-term insurer

Company A: A resident company

Policy holders: The beneficiaries of long-term equity linked insurance policies

#### **4. Description of the proposed transaction**

The applicant will issue long-term linked policies to the policy holders. The applicant will invest an amount, the “subscription amount”, to obtain from time to time an ELN from company A in respect of a particular tranche of policies issued by it.

The policy benefit in a given case is not guaranteed. It will be determined solely by reference to the ELN held in respect of the tranche of which the relevant policy forms a part. The ELNs are therefore underlying assets which both secure the applicant in respect of its liability arising out of the issuing of the linked policies to the policy holders and financial assets held by the applicant, the value of which determines the value of the maturity benefit that the applicant anticipates it will pay to the policy holders.

On the maturity date of an ELN, the applicant will receive the redemption amount from company A. This amount will be determined with reference to a specified index or indices, or basket of shares, subject to a minimum redemption payment equal to a significant percentage of the subscription amount.

The only return the applicant will earn from offering the linked policy is the amount by which the recovered costs will exceed actual policy administration costs (“Excess”). The Excess will be calculated and included in the income of the applicant in accordance with the provisions of section 29A.

#### **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 receipt or accrual of the redemption payment to the applicant on the maturity date will not form part of the “gross income” of the applicant. The receipt or accrual will be of a capital nature.
- b) The subscription amount for the ELN will not be deductible. It will be expenditure of a capital nature.
- c) The amount received by or accruing to the applicant on disposal of the ELN will constitute “proceeds” as defined in paragraph 1, read with paragraph 35(1).
- d) The subscription amount will constitute the base cost of the ELN as defined in paragraph 1 read with paragraph 20(1)(a).
- e) The ELN will not constitute an “instrument” as defined in section 24J(1).

**7. Period for which this ruling is valid**

This binding private ruling is valid for a period of five years from the date of the ruling.

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