

BINDING GENERAL RULING (INCOME TAX) 53

DATE: 22 June 2020

ACT: INCOME TAX ACT 58 OF 1962

SECTION: SECTION 7E

SUBJECT: RULES FOR THE TAXATION OF INTEREST PAYABLE BY SARS UNDER SECTION 7E

Preamble

For the purposes of this ruling –

- “**BGR**” means a binding general ruling issued under section 89 of the TA Act;
- “**interest**” means interest payable by SARS under a tax Act;
- “**section**” means a section of the Act;
- “**TA Act**” means the Tax Administration Act 28 of 2011;
- “**the Act**” means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This BGR sets out the rules to avoid double taxation when –

- a deemed accrual of interest occurs under section 7E on or after 1 March 2018; and
- before that date either the whole or a part of that interest was included in the taxpayer’s gross income on the accrual basis.

2. Background

SARS administers a number of tax Acts¹ under which taxes, levies and duties are collected and paid into the National Revenue Fund. Interest may become payable by SARS in respect of these taxes, levies and duties under a variety of circumstances.

Section 7E was introduced to address the time of accrual of interest payable by SARS to a taxpayer.

Section 7E came into operation on 1 March 2018 and applies to amounts of interest paid by SARS on or after that date. It stipulates that when a person becomes entitled to any amount of interest payable by SARS under a tax Act, that amount must be

¹ Under section 1 of the TA Act “tax act” is defined to mean the TA Act or an Act, or portion of an Act, referred to in section 4 of the South African Revenue Service Act 34 of 1997, excluding customs and excise legislation.

deemed to accrue to that person on the date on which the amount is paid² to such person. The effect of section 7E is that interest payable by SARS is included in a taxpayer's gross income only when the amount is actually paid and not when the amount accrues to a person under general principles.

3. Discussion

Taxpayers are required to include in their gross income for a year or period of assessment the total amount, in cash or otherwise, received by or accrued to them or in their favour, other than receipts or accruals of a capital nature but subject to specified inclusions, whether or not of a capital nature. Residents must account for their worldwide receipts or accruals while non-residents must account only for receipts or accruals from a source within South Africa.³ The general rule is that an amount is included in a taxpayer's gross income at the earlier of receipt or accrual and there is no right of election in this regard.⁴

A consequence of the introduction of section 7E is that double taxation may arise if interest payable by SARS was included in gross income when it actually accrued based on general principles⁵ before the introduction of section 7E, and the same amount is included again in gross income in a subsequent year of assessment when it is deemed to accrue under section 7E.

Since there is a necessary implication against double taxation in a statute, the view is held that section 7E should not be interpreted as applying to interest that actually accrued under general principles before 1 March 2018 and was included in gross income before that date.

A taxpayer that did not include interest in gross income that accrued under general principles before 1 March 2018 and which is paid by SARS on or after that date must include such interest in gross income in the year of assessment in which it is paid under section 7E. SARS will not seek to assess interest that actually accrued in earlier years of assessment in those earlier years if that interest was paid on or after 1 March 2018 and has been taxed as a deemed accrual under section 7E.

4. Ruling

For purposes of section 7E, interest paid to any person under a tax Act by SARS on or after 1 March 2018 must be included in that person's gross income to the extent that the amount has not previously been included in gross income when it actually accrued to the person under general principles.

A taxpayer bears the burden of proving that an amount of interest or a portion of such amount previously included in gross income corresponds with an amount of interest

² When SARS sets off any outstanding tax debt against an amount that is refundable including any interest on that amount, such interest will be regarded as paid on the date of set-off and the taxpayer must account for such interest under section 7E accordingly.

³ The term "gross income" is defined in section 1(1).

⁴ *SIR v Silverglen Investments (Pty) Ltd* 1969 (1) SA 365 (A), 30 SATC 199 at 207.

⁵ In *CIR v People's Stores (Walvis Bay) (Pty) Ltd* 1990 (2) SA 353 (A), 52 SATC 9 Hefer JA confirmed the earlier finding in *Lategan v CIR* 1926 CPD 203, 2 SATC 16 that "accrued" meant "to which he has become entitled".

paid on or after 1 March 2018 such that section 7E will be interpreted as not applying to that amount or portion of that amount.⁶

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act 28 of 2011.

5. Period for which this ruling is valid

This BGR applies from date of issue until it is withdrawn, amended or the relevant legislation is amended.

**Senior Manager: Corporate Income Tax
SOUTH AFRICAN REVENUE SERVICE**

⁶ Section 102 of the Tax Administration Act 28 of 2011.