

BINDING PRIVATE RULING: BPR 077

DATE: 12 February 2010

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTION 1, DEFINITION OF “GROSS INCOME”, SECTION 55(1), DEFINITION OF “DONATION”, AND PARAGRAPH 1, DEFINITION OF “ASSET” AND PARAGRAPH 11 OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : TRANSFER OF A COMPENSATION AWARD GRANTED TO AN INCAPACITATED PERSON TO A TRUST TO BE ADMINISTERED BY TRUSTEES FOR THE BENEFIT OF THAT PERSON

1. Summary

This ruling deals with the tax implications for an incapacitated person and a trust that will be created to administer a compensation award granted to the incapacitated person on behalf of and for that benefit of that person and that person’s family.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling legislative references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 22 October 2009 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested under the provisions of –

- section 1, definition of “gross income”;
- section 55(1), definition of “donation”;
- paragraph 1, definition of “asset”; and
- paragraph 11, definition of “disposal”.

3. Parties to the proposed transaction

The Applicant: Court appointed legal representative

The Patient: An adult person severely injured and incapacitated as a result of a motor vehicle accident

Co-Applicant: The trustees of an *inter vivos* trust (the Trust) to be created

4. Description of the proposed transaction

The Applicant proposes to transfer the compensation granted to the Patient to the Trust, pursuant to an order of the court being granted.

The Patient was injured in a motor vehicle accident and suffered severe brain damage to the extent of being incapable of taking care of any personal affairs (financially or otherwise). At the time of the accident the Patient was married and has minor children born of this marriage.

The Court appointed a *curator ad litem* to assist the Patient with legal proceedings against the Road Accident Fund (RAF) and to report to the Court to enable the Court to make an order concerning the mental status of the Patient.

The Patient was granted a substantial amount as compensation for damage suffered, payable by the RAF.

The *curator ad litem* recommended in his report to the Court amongst others that –

- the Patient be declared incapable of managing personal affairs without assistance; and
- a special trust be established for the administration of the compensation granted to the Patient, in order to utilise the compensation for the maintenance of the Patient and immediate family as an alternative to the appointment of a *curator bonis* to the estate of the Patient.

5. Conditions and assumptions

This ruling is made subject to the condition that the transfer of the compensation granted to the Patient to the Trust, is made an order of the Court.

6. Ruling

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

- The transfer of the compensation award to the Trust will not constitute a donation for purposes of donations tax and, therefore, no donations tax will be payable by the Patient on the amount so transferred.

- The amount to be transferred will not constitute “gross income” in the hands of the Trust.
- There will be no capital gains tax consequences for the Patient or for the Trust in respect of the transfer of the compensation award to the Trust.

7. Period for which this ruling is valid

This binding private ruling is only valid in respect of the proposed transfer of the compensation award to the Trust provided the transfer takes place within a period of three years as from 22 October 2009.

Issued by:

**Legal and Policy Division: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**