

BINDING PRIVATE RULING: BPR 334

DATE: 21 November 2019

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 54, 55, 64(1)(a), PARAGRAPHS 12A, 20(3)(b), 39, AND 56 OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : WAIVER OF LOAN CLAIMS BY THE SETTLOR OF A TRUST

Preamble

This binding private ruling is published by consent of the applicant(s) to which it has been issued. It is binding as between SARS and 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 income tax and donations tax treatment of the waiver of loans owing to the settlor by a trust.

2. Relevant tax laws

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 31 May 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 54;
- section 55;
- section 64(1)(a);
- paragraph 12A;
- paragraph 20(3)(b);
- paragraph 39; and
- paragraph 56.

3. Parties to the proposed transaction

The applicant: A resident individual who is the settlor and beneficiary of the trust

The trust: A trust formed and registered in South Africa

4. Description of the proposed transaction

The applicant is the settlor and beneficiary of the trust and has made loans to the trust in excess of R30 million.

The trust used the proceeds of the loans to acquire an equity interest in a South African private company.

The loans are unsecured, interest-free and have no terms of repayment.

The loans are loans contemplated by section 7C and to date the interest that the applicant should have received has been calculated and donations tax has been paid as prescribed by that section, read with Part V of Chapter II of the Act.

The applicant will waive some of the loans to the trust on or after 31 July 2019.

5. Conditions and assumptions

This binding private ruling is subject to the additional condition and assumption that all donations made on or after 1 March 2018 must be taken into account in calculating the aggregate value of the donation for purposes of section 64(1)(a) to determine the applicable donations tax rate.

6. Ruling

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

The applicant

- a) The waiver of the loan claims will be a donation as contemplated in section 55.
- b) Under section 64(1)(a), to the extent that the aggregate value of the donations do not exceed R30 million, donations tax will be levied at 20% and to the extent that the aggregate value of the donation exceeds R30 million, donations tax will be levied at 25%.
- c) Since the applicant will be disposing of a debt owed by the trust, which is a connected person in relation to the applicant, the applicant must under paragraph 56(1) disregard any capital loss determined in consequence of that disposal. To the extent that the R100 000 exemption under section 56(2)(b) is taken into account in calculating the amount of donations tax payable, and the trust reduced its expenditure in respect of the shares acquired in the private company under paragraph 12A, then the capital loss of a R100 000 will not be disregarded under paragraph 56(2)(b). This loss will, however, be subject to paragraph 39.

The trust

- a) Paragraph 12A will not apply to the debt benefit received when the applicant waives the loan claims, as paragraph 12A(6)(b) excludes the application of paragraph 12A to the extent that the debt is reduced by way of a donation as defined in section 55(1) in respect of which donations tax is payable.

- b) To the extent that the R100 000 exemption under section 56(2)(b) is taken into account in calculating the amount of donations tax payable, paragraph 12A will apply and the amount of expenditure so incurred in respect of the shares acquired in the private company must for the purposes of paragraph 20 be reduced by the debt benefit (R100 000) in respect of that debt.
- c) Paragraph 20(3)(b) will not apply to reduce the amount of expenditure so incurred in respect of the shares acquired in the private company.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 31 May 2019.

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