

DRAFT BINDING GENERAL RULING

DATE:

ACT: INCOME TAX ACT 58 OF 1962

SECTION: SECTION 7E

SUBJECT: TRANSITIONAL 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 on an amount owing by SARS as a result of a delay in effecting payment of that amount;
- “**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 transitional rules to avoid double taxation when –

- a deemed accrual of interest occurs under section 7E; and
- in a prior year of assessment either the whole or a part of that interest was included in the taxpayer’s income on the accrual basis.

2. Background

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.¹

¹ The definition of “gross income” is contained in section 1(1).

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.² Since there is a necessary implication against double taxation, once an amount that has accrued to a taxpayer is included in gross income, it cannot again be included in gross income upon receipt.³

SARS administers a number of tax Acts⁴ 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 complications in taxing interest that accrued in a prior year of assessment.

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 deemed to accrue to that person on the date on which the amount is paid⁵ 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

A consequence of the transition period is that double taxation may arise if interest was taxed in a prior year of assessment when actual accrual took place and section 7E was not yet effective, but interest is paid after the effective date. Thus, an amount of interest payable by SARS may have been included in gross income when it accrued and the same amount may in a subsequent year of assessment be included again in gross income owing to the application of 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 accrued during years of assessment ending before 1 March 2018.

A taxpayer that did not account for interest that accrued before 1 March 2018 and which was paid by SARS on or after that date must declare such interest in the year of assessment in which it is paid. SARS will not seek to assess such interest on an accrual basis in earlier years of assessment.

4. Ruling

Interest paid to any person under a tax Act by SARS on or after 1 March 2018 must for purposes of section 7E, be included in that persons gross income only to the extent that no portion of that amount was already included in gross income in any previous year of assessment.

² *SIR v Silverglen Investments (Pty) Ltd 1969 (1) SA 365 (A), 30 SATC 199 at 207.*

³ *CIR v Delfos 1933 AD 242, 6 SATC 92.*

⁴ Under section 1 of the TA Act "tax act" is defined to mean the TA Act, any Act or portion of an Act, referred to in section 4 of the SARS Act, excluding customs and excise legislation.

⁵ When SARS sets off any outstanding tax debt against an amount that is refundable including any interest thereon, 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.

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 will apply from the date of issue of the final BGR until it is withdrawn, amended or the relevant legislation is amended.

**Executive: Legal Advisory
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