BINDING PRIVATE RULING: BPR 268

DATE: 3 April 2017

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 8(4)(*a*) AND 11(*a*) READ WITH 23(*g*)
SUBJECT : CORRECTIVE PAYMENTS

1. Summary

This ruling determines whether payments to be made to correct amounts erroneously invoiced in previous years of assessment will be deductible and whether the receipts of those amounts must be recouped.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 78(1) and published in accordance with section 87(2) of the Tax Administration Act 28 of 2011.

In this ruling references to sections are to sections of the Act applicable as at 20 February 2017. 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 the provisions of –

- section 8(4)(*a*); and
- section 11(*a*) read with section 23(*g*).

3. Parties to the proposed transaction

The Applicant:	A company incorporated in and a resident of South Africa
The Co-Applicant:	A South African branch of Company A registered as an external company
Company A:	A company incorporated outside South Africa and not a resident

4. Description of the proposed transaction

The Applicant and Co-Applicant are part of a multi-national group of companies to which Company B, a foreign company within the group, rendered support services in return for a fee (global recharges). The global recharges relating to the South African operations were processed as follows:

- Prior to the 2011 year of assessment, Company B invoiced all the global recharges relating to the South African operations to Company A. Company A then invoiced the Applicant with its portion of the global

recharges (approximately 60%) and the Co-Applicant with its portion of the global recharges (approximately 40%).

- For the 2011 to 2015 years of assessment Company B raised the global recharges relating to the South African operations in a couple of different ways, with the Applicant being invoiced its portion of the global recharges either directly by Company B or by the Co-Applicant. In either case the Applicant invoiced approximately 40% of its allocated portion of the global recharges back to the Co-Applicant in the mistaken belief that it was contractually obliged to do so.

During the 2016 year of assessment it was discovered that the Applicant had invoiced the global recharges for the 2011 to 2015 years of assessment to the Co-Applicant in error.

The Applicant treated the global recharges for these years of assessment, net of the amount invoiced to the Co-Applicant, as expenditure deductible under section 11(*a*). The Co-Applicant, likewise, treated the global recharges including the portion invoiced from the Applicant for these years of assessment as expenditure deductible under section 11(*a*).

The Applicant will, in due course, enter into an agreement to reimburse the Co-Applicant for the amounts erroneously received, by issuing credit notes for each financial year to the Co-Applicant. Subsequent to the issuing of the credit notes the Applicant will make a payment to the Co-Applicant equal to the sum of the amounts reflected on the credit notes.

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, as specifically requested, is as follows:

a) The payment to be made by the Applicant to the Co-Applicant will be deductible under section 11(*a*) in the year of assessment in which it is made by the Applicant.

b) The payment to be received by the Co-Applicant from the Applicant will be taxable in the year of assessment in which it is received, as a recoupment under section 8(4)(*a*).

7. Period for which this ruling is valid

This binding private ruling is valid for one year from 3 March 2017.

Legal Counsel: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE