

BINDING CLASS RULING: BCR 062

DATE: 22 March 2018

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 11D(2), (4) AND (9)
SUBJECT : RESEARCH AND DEVELOPMENT CONDUCTED ON BEHALF OF A TAXPAYER

1. Summary

This ruling determines the deductibility under section 11D(4) read with section 11D(2) of levy payments made by members of an association which will in turn use the levy to fund research and development (R&D) activities approved by the Minister of Science and Technology in terms of section 11D(9).

2. Relevant tax laws

This is a binding class ruling issued in accordance with section 78(2) 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 11 January 2018. 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 11D(2), (4) and (9).

3. Parties to the proposed transaction

The applicant: An association incorporated in and a resident of South Africa, which is an institution, board or body that is exempt from normal tax under section 10(1)(cA)

The class members: Companies incorporated in and residents of South Africa, who are members of the applicant association

4. Description of the proposed transaction

A research division of the applicant carries out extensive scientific research to sustain and enhance the manufacture of a product of its members.

The research division of the applicant, on behalf of the class members, submits R&D project applications to the Department of Science and Technology (DST), from time to time, for approval as mandated by section 11D(4)(d) and (9). These R&D projects are undertaken on behalf of the class members. Each class member is required by the DST to submit individual applications, albeit that the applications all relate to the same R&D projects.

If the applications are successful, each individual class member will receive a letter from the DST confirming that the relevant R&D projects are approved by the Minister of Science and Technology for purposes of section 11D.

The class members are required to pay a mandatory levy to the applicant. The levy is used to fund the various activities and functions of the applicant, including those of its research division.

The levy is determined based on the budgets of the various divisions of the applicant; hence the applicant is able to determine the portion of the levy that funds the activities of its research division. The research division, which conducts the R&D is, in turn, able to determine on an accurate basis how much of the determined portion of the levy relates to section 11D approved projects. The research division is able to determine accurately whether the monthly levy is paid by the class members to the applicant before or after the date when the DST has received the section 11D application for approval.

5. Conditions and assumptions

This binding class ruling is not subject to any additional conditions and assumptions.

6. Ruling

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

- a) The class members may claim a deduction in terms of section 11D(2) read with (4) equivalent to 150% of the levy incurred by each class member, to the extent only –
 - of the portion of the levy that will actually be used directly and solely for R&D activities by the applicant;
 - that the R&D has been approved by the Minister of Science and Technology in terms of section 11D(9); and
 - of the levy portion that will be incurred on or after the date of receipt of the application by the DST for approval of that R&D in terms of section 11D(9).
- b) any of the class members which has a year-end that is different to that of the applicant may nonetheless deduct the levy portion that is actually incurred expenditure in respect of R&D in the course of its financial year and approved in terms of section 11D(9).

7. Period for which this ruling is valid

This binding class ruling is valid in respect of years of assessment ending on or after the date of this ruling, for a period of five years from the date hereof.