

BINDING PRIVATE RULING: BPR 106

DATE: 19 September 2011

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 1, DEFINITION OF “GROSS INCOME”, 24C AND PARAGRAPH 80(2) OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : APPLICATION OF SECTION 24C TO A MAINTENANCE TRUST

1. Summary

This ruling deals with the provisions of section 24C in respect of income received by a trust which will be set up for the maintenance of a private cemetery.

2. Relevant tax laws

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

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 16 March 2011 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 24C; and
- paragraph 80(2).

3. Parties to the proposed transaction

The Applicant: A Trust to be set up that will be responsible for the maintenance of the burial grounds of a private cemetery

Company A: A company that will operate the private cemetery

4. Description of the proposed transaction

Company A intends to operate a private cemetery on land that it will lease from a third party. The intention is to create a specific type of

cemetery for individuals who subscribe to the idea of being at one with nature. Maintaining the cemetery in its natural form will be an important consideration for the individuals electing to be buried at the cemetery, therefore, the Applicant will be set up to serve as a vehicle to carry out the maintenance and upkeep of the cemetery over the period of its existence.

Clients of Company A will enter into burial agreements with Company A in terms of which they will acquire the right to be interred or to have their ashes scattered on the burial grounds (final resting right). They will pay an amount to Company A, for the final resting right and pay another amount to the Applicant for the maintenance of the burial grounds.

In terms of the burial agreements the Applicant will assume the maintenance liability of the burial grounds in perpetuity. The Applicant will receive the maintenance fee directly from the clients of Company A and will incur the maintenance costs as and when required.

5. Conditions and assumptions

This ruling is subject to the conditions and assumptions that –

- the expenditure incurred in respect of the maintenance of the burial grounds will be deductible under section 11; and
- the section 24C ruling will not be applicable in relation to expenses of a contingent nature.

6. Ruling

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

- All amounts to be received by the Applicant, from the clients of Company A for the maintenance of the burial grounds, will constitute “gross income”, as defined in section 1, in the hands of the Applicant.
- The Applicant will be entitled to claim the section 24C allowance in each year of assessment during which it has an obligation to incur future maintenance expenditure in fulfilment of its obligation under the burial agreements to maintain the burial grounds. The amount of the allowance during each year of assessment remains subject to the discretion of the Commissioner.
- Any capital gains arising in the hands of the Applicant that are vested in the trust beneficiary in the same year of assessment will be taxed in accordance with the provisions of paragraph 80(2).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of ten (10) years as from March 2011.

Issued by:

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