

SOUTH AFRICAN REVENUE SERVICE

BINDING CLASS RULING: BCR 006

DATE: 23 September 2009

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTION 11D
SUBJECT : DEDUCTION OF LEVY PAYMENTS TO BE MADE BY TAXPAYERS FOR RESEARCH AND DEVELOPMENT EXPENDITURE INCURRED BY ANOTHER TAXPAYER ON THEIR BEHALF

1. Summary

This ruling deals with the deductibility of levy payments to be made by particular taxpayers to another taxpayer, where these payments will be utilised by the other taxpayer to conduct research and development on behalf of and for the benefit of those taxpayers who will make such payments.

2. Relevant tax laws

This is a binding class ruling issued in accordance with section 76R of the Act.

In this ruling legislative references to sections are to sections of the Act applicable as at 01 September 2008 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 11D.

3. Class

The class members to whom this ruling will apply will be the Members of the Applicant to which the levies will be paid, and on whose behalf the Applicant will incur research and development expenditure.

4. Parties to the proposed transaction

The Applicant: A public benefit organisation established in South Africa and registered in terms of section 30

The Members: Any other association, individual or entity admitted by the Applicant in its discretion as a Member of the Applicant

5. Description of the proposed transaction

The Applicant's organisational structure is a network of participating institutions and individuals that have a strong interest in improving the competitive position of a certain South African Industry. The primary interest of the Applicant is to build a strong and healthy South African industry through co-operative (participative) research and development initiatives.

The proposed transaction relates specifically to the payments in the form of a levy to the Applicant. The Applicant will utilise these levy payments to fund world class research and development to strengthen local and international competitiveness of this specific industry. This levy is referred to as the Research and Development Levy and is payable by the Members.

The obligation to pay the Research and Development Levy only arises after delivery of the Member's produce. If the Member doesn't deliver any produce, the Member will not be liable for the payment of any Research and Development Levy. In terms of the last mentioned Act, the Research and Development levy will be administered and utilised by the Applicant in accordance with the Applicant's business plan.

The Applicant undertakes research and development projects on behalf of its Members through commissioning the services of competent specialists and institutions such as universities which are based in South Africa.

The Members of the Applicant will have free access to the results of the research undertaken by the Applicant and to the technology involved, and will be able to use the information in the production of their income.

6. Conditions and assumption

This ruling is made subject to the following conditions and assumption:

Conditions

- The levy to be paid to the Applicant will only be deductible in terms of section 11D to the extent that such levies are utilised by the Applicant for purposes as specified in section 11D and not to fund other costs, for example, administration, training, transformation, technology transfer, etc.

- The Members will only be entitled to claim a deduction in respect of research and development if the Members make actual levy payments.
 - Neither the results of the research and development nor the right of use thereof will be sold or ceded to any other party or be exploited in any other way.
 - Persons who have contributed to the research and development will continue to have access to the information even if they are no longer Members of the Applicant.

Assumptions

- The research and development projects undertaken by the Applicant will result in the development of 'novel, practical and non-obvious' information or the devising, developing or creation of specified intellectual property of a scientific or a technological nature as envisaged in section 11D.

7. Ruling

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

- The Members of the Applicant will be entitled to claim a deduction equivalent to 150% of the Research and Development Levy paid to the Applicant to the extent that the levy is utilised by the Applicant for the purposes specified in section 11D.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of five (5) years as from the date of this ruling until 30 August 2013.

Issued by:

Legal and Policy Division: Advance Tax Rulings
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