

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 051

DATE: 16 October 2009

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)

SECTION : SECTION 37B

SUBJECT : ENVIRONMENTAL EXPENDITURE ALLOWANCES

1. Summary

This ruling deals with the interpretation of the provisions of section 37B of the Act.

2. Relevant tax laws

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

In this ruling legislative references to sections are to sections of the Act applicable as at 4 March 2009 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 37B(2)(b) and (6).

3. Parties to the proposed transaction

The Applicant: A manufacturing company whose manufacturing process has a hazardous effect on the environment

4. Description of the proposed transaction

Pursuant to compliance with various laws for the protection of the environment, the Applicant will incur expenditure for the construction of and/or for effecting improvements to "environmental waste disposal assets" as defined in section 37B(1). The Applicant will also incur expenditure for decommissioning manufacturing plants and for remediation and restoration of the environment resulting from damage sustained from its manufacturing process.

The main categories of expenditure that will be incurred from time to time are –

- the acquisition of new capital structures for environmental protection purposes, such as new waste disposal sites, storm-water dams, canals, similar permanent structures and improvements to existing structures; and
- decommissioning, remediation and clean-up costs in respect of existing waste disposal sites, dams or other structures of a similar nature.

These expenses will be incurred at active operations and non-active decommissioned operations.

5. Conditions and assumptions

This ruling is not subject to any specific conditions and assumptions.

6. Ruling

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

- Decommissioning, restoration and remediation expenditure (hereafter referred to as “environmental expenditure”) which will be incurred in respect of the Applicant’s active operations will be deductible pursuant to the provisions of section 11(a), provided the requirements thereof are met. Environmental expenditure incurred from a trade previously carried on by the Applicant (that is, at non-active operations), whilst the Applicant is trading, will be deductible pursuant to the provisions of section 37B(6).
- The phrase “from a trade previously carried on” as contained in section 37B(6) does not require a taxpayer to have ceased trading altogether before being eligible to benefit from the deduction contemplated in section 37B(6).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five (5) years as from the date of this ruling until 3 March 2014.

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SOUTH AFRICAN REVENUE SERVICE