

BINDING PRIVATE RULING: BPR 282

DATE: 20 October 2017

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 11(a), 23(g), 55(1) – DEFINITION OF “DONATION”, AND 58
SUBJECT : DEDUCTIBILITY OF SOCIO-ECONOMIC AND ENTERPRISE DEVELOPMENT EXPENDITURE

1. Summary

This ruling determines the income tax consequences for the operator of a wind farm incurring expenditure in respect of socio-economic development (SED) and enterprise development (ED) obligations imposed and accordingly undertaken in terms of an electricity generation agreement and licence.

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 21 August 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 –

- Section 11(a) read with section 23(g);
- Section 55(1) – definition of “donation”; and
- Section 58.

3. Parties to the proposed transaction

The applicant: A private company incorporated in and a resident of South Africa

The trust: A trust established in South Africa

4. Description of the proposed transaction

The applicant is a company that owns and operates a wind farm that generates electricity. In terms of the agreement entered into with the government of the Republic to supply electricity to the national grid and the electricity generation licence issued by the regulator, it must commit funds equal to a specified percentage of its annual revenue to SED and ED expenditure.

Failure to incur the required SED or ED expenditure, or both, will result in the applicant incurring termination points under the agreement's termination point system. However, the maximum termination points that may be incurred for non-compliance are not sufficient to reach the threshold stipulated that will result in the termination of the agreement.

Pursuant to its SED and ED obligations, the Applicant established a trust that will specifically undertake the projects or provide funding to other organisations registered as public benefit organisations as contemplated in section 30(3) which will undertake them. The applicant proposes to contribute amounts to the trust on a quarterly basis based on the specified percentage of its revenue earned in the previous year of assessment.

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 is as follows:

- a) The contributions to be made by the applicant to the trust in respect of the SED and ED commitments will be deductible under section 11(a) read with section 23(g). The total amount incurred in each year of assessment will be equal to the specified percentage of the applicant's revenue, as defined in the agreement, earned by the applicant in that year of assessment.
- b) The expenditure incurred by the applicant in respect of the SED and ED commitments will not be a donation as defined in section 55(1) nor a deemed donation, as contemplated in section 58.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 21 August 2017.