

No. 103

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**ADDITIONAL CONSIDERATIONS IN TERMS OF SECTION 80(2) OF THE TAX ADMINISTRATION ACT, 2011 (ACT NO. 28 OF 2011) IN RESPECT OF WHICH AN APPLICATION FOR A BINDING PRIVATE RULING OR A BINDING CLASS RULING MAY BE REJECTED**

In terms of section 80(2) of the Tax Administration Act, 2011, I, George Ngakane Virgil Magashula, Commissioner for the South African Revenue Service, hereby prescribe in the Schedule hereto, the additional considerations in respect of which an application for a binding private ruling or a binding class ruling may be rejected.



**G N V MAGASHULA**

**COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE**

## **SCHEDULE**

### **1. General**

Any term or expression contained in this notice to which a meaning has been assigned in a tax Act as defined in section 1 of the Tax Administration Act, 2011, has the meaning so assigned, unless the context indicates otherwise.

### **2. List of additional considerations in respect of which the Commissioner may reject an application for a binding private ruling or a binding class ruling**

The aspects in respect of which SARS may reject an application for a binding private ruling or a binding class ruling, is hereby extended by the following items for the indicated tax Acts.

#### **Income Tax Act, 1962 (Act No. 58 of 1962)**

- 2.1. The deductibility of expenditure relating to the taking over of liabilities or of provisions upon the acquisition of a business.
- 2.2. The qualifying allowance, contemplated in section 24C, in respect of future expenditure, that the Commissioner may determine.
- 2.3. The validity of the treatment of amounts as 'salary sacrifices' for remuneration purposes.
- 2.4. Requests that circumvent mechanisms enabling the Commissioner to issue directives. For example, this exclusion will apply to directives as provided for in paragraph 3 of the Seventh Schedule.
- 2.5. The interpretation and application of the exemption under section 10(1)(c)(v), in relation to any agreement entered into before 1 January 1990.
- 2.6. The deductibility of any expense incurred by an employer in order to transfer or extinguish, in whole or in part, its post-retirement medical aid obligation to past and present employees (excluding deductions under section 12M), specifically including, but not limited to—
  - (a) lump sum contributions to pension, provident or benefit funds;
  - (b) lump sum settlement payments made directly to employees;
  - (c) premiums paid by the employer to acquire annuity policies.

- 2.7. The deductibility, under section 11(a) or 24J(2) of interest incurred by a company on debt used to finance the acquisition of shares in another company for the purpose of acquiring the underlying assets or business.
- 2.8. The determination of the place of effective management for purposes of the definition of “resident” in section 1.
- 2.9. The tax implications of transactions that involve a so-called purpose trust.

#### **Value-Added Tax Act, 1991 (Act No. 89 of 1991)**

- 2.10. Applications in which the supplier of goods or services is not the applicant or a co-applicant and the application pertains to the VAT liability of a supply of goods or services made by that supplier.
- 2.11. Confirmation that a person is acting as an agent or principal in respect of a supply of goods or services.
- 2.12. The application of section 8(15) and whether a supply of goods or services constitutes a single supply.
- 2.13. Confirmation whether or not any technical requirements are met in respect of electronic invoicing.

#### **Donations tax**

- 2.14. Considering the price or amount that would constitute “fair market value” under section 55(1) of the Income Tax Act, 1962.
- 2.15. Any exercise of the Commissioner’s discretion under section 58(1) of the Income Tax Act, 1962, concerning the adequacy of consideration given for the disposal of property.

#### **General**

- 2.16. Applications concerning the attribution, allocation or apportionment of expenditure or input tax (from an income tax or VAT perspective), excluding a request for an alternative apportionment method in terms of section 41B of the Value-Added Tax Act, 1991.
- 2.17. Applications pertaining to the tax consequences of transactions contained in agreements which have already been concluded, except requests for—
  - (a) VAT rulings or VAT class rulings in terms of section 41B of the Value-Added Tax Act, 1991; or

- (b) the reconfirmation of a ruling, prior to its expiry date, if the facts (including all the terms of the transaction) and the applicable provisions of the relevant legislation remained the same.

2.18. Applications involving transactions in respect of which material facts cannot be established at the time of the application.