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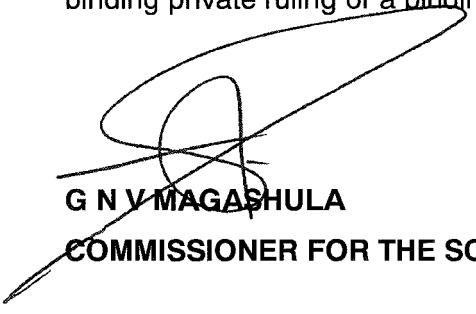
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No. 103**8 February 2013**

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.

No. 103**8 Februarie 2013**

**VERDERE OORWEGINGS INGEVOLGE ARTIKEL 80(2) VAN DIE WET OP
BELASTINGADMINISTRASIE, 2011 (WET NO. 28 VAN 2011) TEN OPSIGTE WAARVAN
'N AANSOEK OM 'N BINDENDE PRIVAATBESLISSING OF 'N BINDENDE
KLASBESLISSING AFGEKEUR KAN WORD**

Ingevolge artikel 80(2) van die Wet op Belastingadministrasie, 2011, bepaal ek, George Ngakane Virgil Magashula, Kommissaris van die Suid-Afrikaanse Inkomstediens, in die aangehegte Bylae, die verdere oorwegings ten opsigte waarvan 'n aansoek om 'n bindende privaatbeslissing of 'n bindende klasbeslissing afgekeur kan word.



G N V MAGASHULA

KOMMISSARIS VIR DIE SUID-AFRIKAANSE INKOMSTEDIENS

BYLAE**1. Algemeen**

Enige woord of uitdrukking in hierdie kennisgewing vervat waaraan 'n betekenis ingevolge 'n 'Belastingwet' soos omskryf in artikel 1 van die Wet op Belastingadministrasie, 2011, toegeskryf is, dra die betekenis aldus daaraan geheg, tensy dit uit die konteks anders blyk.

2. Lys van verdere oorwegings ten opsigte waarvan die Kommissaris 'n aansoek om 'n bindende privaatbeslissing of 'n bindende klasbeslissing kan afkeur

Die aangeleenthede ten opsigte waarvan SAID 'n aansoek om 'n bindende privaatbeslissing of 'n bindende klasbeslissing kan afkeur word hierby deur die volgende items vir die onderskeie Belastingwette uitgebrei.

Inkomstebelastingwet, 1962 (Wet No. 58 van 1962)

- 2.1. Die aftrekbaarheid van uitgawes wat betrekking het op die oornname van verpligtinge of van voorsienings by die verkryging van 'n besigheid.
- 2.2. Die kwalifiserende toelae, in artikel 24C beoog, ten opsigte van toekomstige uitgawes, soos wat die Kommissaris mag bepaal.
- 2.3. Die geldigheid van die hantering van bedrae as 'salarisopofferings' vir doeleindes van vergoeding.
- 2.4. Versoeke wat die maatreëls wat die Kommissaris in staat stel om aanwysings uit te reik, omseil. Hierdie uitsluiting sal byvoorbeeld van toepassing wees op aanwysings soos wat in paragraaf 3 van die Sewende Bylae voorsien word.
- 2.5. Die vertolking en toepassing van die uitsluiting ingevolge artikel 10(1)(c)(v), ten opsigte van enige ooreenkoms voor 1 Januarie 1990 aangegaan.
- 2.6. Die aftrekbaarheid van enige uitgawe aangegaan deur 'n werkewer ten einde die werkewer se na-aftrede mediese fonds verpligting teenoor voormalige of huidige werknekmers (uitgesluit aftrekkings ingevolge artikel 12M), geheel of gedeeltelik oor te dra of uit te wis, spesifieker ingesluit, maar nie beperk nie tot—
 - (a) enkelbedragbydrae aan pensioen-, voorsorg- of bystands fondse;
 - (b) enkelbedrag skikkingsbetalings direk aan werknekmers gemaak;
 - (c) premies deur werkewer betaal ten einde annuïteitspolisse te verkry.
- 2.7. Die aftrekbaarheid van rente ingevolge artikel 11(a) of artikel 24J(2) deur 'n maatskappy aangegaan wat gebruik is om die verkrywing van aandele in 'n ander

- maatskappy vir doeleindes van die verkrywing van die onderliggende bates of besigheid, te finansier.
- 2.8. Die bepaling van die plek van effektiewe bestuur vir doeleindes van die omskrywing van 'inwoner' in artikel 1.
 - 2.9. Die belastingimplikasies van transaksies wat 'n sogenaamde doelstellingstrust behels.

Wet op Belasting op Toegevoegde Waarde, 1991 (Wet No. 89 van 1991)

- 2.10. Aansoeke waarin die verskaffer van goedere of dienste nie die aansoeker of medeaansoeker is nie en die aansoek betrekking het op die BTW aanspreeklikheid van die lewering van goedere of dienste deur die verskaffer.
- 2.11. Bevestiging dat 'n persoon as 'n agent of prinsipaal optree ten opsigte van die lewering van goedere of dienste.
- 2.12. Die toepassing van artikel 8(15) en of die lewering van goedere of dienste 'n enkele lewering uitmaak.
- 2.13. Bevestiging of enige tegniese vereistes ten opsigte van elektroniese fakturering nagekom is al dan nie.

Skenkingsbelasting

- 2.14. Oorweging van die prys of bedrag wat "billike markwaarde" ingevolge artikel 55(1) van die Inkomstebelastingwet, 1962, daarstel.
- 2.15. Die uitoefening van die Kommissaris se oordeel kragtens artikel 58(1) van die Inkomstebelastingwet, 1962, wat betrekking het op of voldoende vergoeding gegee is vir die beskikking van eiendom.

Algemeen

- 2.16. Aansoeke rakende die toeskrywing, toedeling of verdeling van uitgawes of insetbelasting (vanuit 'n inkomstebelasting of BTW oogmerk), uitgesluit 'n versoek vir 'n alternatiewe toedelingsmetode ingevolge artikel 41B van die Wet op Belasting op Toegevoegde Waarde, 1991.
- 2.17. Aansoeke rakende die belastingimplikasies van transaksies in ooreenkoms wat reeds aangegaan is, behalwe aansoeke om–
 - (a) BTW-beslissings of BTW-klasbeslissings ingevolge artikel 41B van die Wet op Belasting op Toegevoegde Waarde, 1991; of

- (b) die bevestiging van 'n beslissing, voor die verval datum daarvan, indien die feite (ingesluit al die terme van die transaksie) en die toepaslike bepalings van die relevante wetgewing dieselfde gebly het.

2.18. Aansoeke wat verband hou met transaksies ten opsigte waarvan wesenlike feite op die tydstip van die aansoek, nie vasgestel kan word nie.

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