

BINDING PRIVATE RULING: BPR 404

DATE: 15 July 2024

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 37C and 37D
SUBJECT : EXPENDITURE INCURRED IN RESPECT OF ENVIRONMENTAL CONSERVATION

Preamble

This binding private ruling is published with the consent of the Applicant(s) to which it has been issued. It is binding between SARS, the Applicant and any Co-Applicant(s) only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines the tax consequences pertaining to land to be declared a nature reserve.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 4 March 2024. 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 37C; and
- section 37D.

3. Parties to the proposed transaction

The Applicant: A resident company

4. Description of the proposed transaction

Future expansion needs necessitate the development of a portion of trade premises owned and operated by the Applicant. The environmental impact assessment process identified, amongst others, the destruction of existing wetlands because of the planned development. To mitigate this environmental impact, the Applicant purchased another property (the Property) and has undertaken to create a wetland offset on a portion of the Property. The Property is located in the local vicinity of the Applicant's trade premises; it is not adjacent to or across the road from the Applicant's trade premises.

The Applicant agreed to apportion the Property for urban development and a nature reserve. An agreement between the Applicant, the local metropolitan municipality and the Department of Fisheries, Forestry and Environment in accordance with section 20 or section 23 of the National Environmental Management: Protected Areas Act 57 of 2003 (NEMPA) as well as a 99-year endorsement on the Property's title deed specifying the portion declared a nature reserve, will be required.

The proposed biodiversity management agreement between the Applicant and the local metropolitan municipality will have a duration of at least five years as provided for in section 44 of the National Environmental Management: Biodiversity Act 10 of 2004 (NEMBA). The local metropolitan municipality will be responsible for the management of the declared land and the Applicant will fund the maintenance costs of the declared land. The Applicant will not have a right of use over the portion of the land to be declared a nature reserve.

The Applicant will apportion the market and municipal values as well as the purchase price of the Property based on the ratio of the size of the declared land over the total size of the Property.

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 expenditure incurred in respect of the acquisition of the portion of the Property to be declared a nature reserve under the relevant provisions of NEMPA, will be deductible under section 37D(2), commencing in the year the land becomes declared.
- b) The expenditure to be incurred in respect of historic and future improvements (excluding borrowing and financing costs) effected to the portion of the Property to be declared a nature reserve under the provisions of NEMPA, will qualify for deduction under section 37D(2), commencing in the year the land becomes declared.
- c) The cost of expenditure to be incurred in respect of environmental conservation and maintenance undertaken in terms of the agreement entered into under the provisions of NEMBA, on the portion of the Property to be declared a nature reserve under the relevant provisions of NEMPA, will meet the requirements of section 37C(1).

7. General note

No opinion is expressed on the apportionment method mentioned under paragraph 4.

8. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 4 March 2024.

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