

BINDING GENERAL RULING (INCOME TAX): NO. 24

DATE: 2 September 2014

ACT: INCOME TAX ACT NO. 58 OF 1962

SECTION: SECTIONS 18A, 37C(3) AND 37C(5)

SUBJECT: SECTION 18A(2) RECEIPT FOR PURPOSES OF A DEDUCTION AS CONTEMPLATED IN SECTION 37C(3) AND (5)

Preamble

For the purposes of this ruling –

- “**BGR**” means a binding general ruling issued under section 89 of the Tax Administration Act No. 28 of 2011;
- “**Protected Areas Act**” means the National Environmental Management Act: Protected Areas Act No. 57 of 2003;
- “**section**” means a section of the Act;
- “**the Act**” means the Income Tax Act No. 58 of 1962; and
- any word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This BGR provides certainty on the application of the deeming provisions in section 37C(3) and (5) as far as it relates to a deduction claimed under section 18A.

2. Background

Section 37C¹ incentivises the conservation of ecologically-viable areas by enabling taxpayers to claim various tax deductions for these endeavours.

The deductions as contemplated under section 37C(3) and (5) are linked to section 18A. In this regard, the deductible amounts are deemed to be a donation paid or transferred to the government for which a receipt has been issued under section 18A(2).

Section 18A(2) expressly prohibits a deduction under section 18A(1), unless the claim is supported by a receipt issued in accordance with section 18A(2). Uncertainty exists as to whether the legislation requires a receipt as envisaged in section 18A(2) to be furnished to SARS, for purposes of a deduction as contemplated in section 37C(3) or (5).

¹ Section 37C(1), (3) and (5).

3. The law

Section 37C(3) provides for the tax deductibility of expenditure actually incurred by a taxpayer to conserve or maintain land owned by the taxpayer if the conservation or maintenance is carried out in terms of a declaration that has a duration of at least 30 years under section 20, 23 or 28 of the Protected Areas Act. The expenditure incurred is for purposes of section 18A deemed to be a donation by the taxpayer actually paid or transferred during the year to the government for which a receipt has been issued under section 18A(2).

Section 37C(5) provides amongst other things that if –

- land is declared a national park or nature reserve in terms of an agreement under section 20(3) or 23(3) of the Protected Areas Act; and
- the declaration is endorsed on the title deed of the land and has a duration of at least 99 years,

the declaration of the land without regard to any right of use retained by any taxpayer is deemed to be a donation of immovable property for purposes of section 18A to the government for which a receipt has been issued under section 18A(2) in the year of assessment in which the land is so declared.

Section 18A(1)(c) provides for the tax deductibility of donations made to any government department of the Republic in the national, provincial or local sphere, carrying on an approved public benefit activity as set out in Part II of the Ninth Schedule. A taxpayer making a *bona fide* donation in cash or of property in kind to any entity listed under section 18A(1), is entitled to a deduction from taxable income if the donation is supported by the necessary section 18A receipt, which must include the details as set out in section 18A(2).

4. Ruling

An amount claimed under section 18A and that is for purposes of section 37C(3) or (5) deemed to be a donation, will qualify for deduction notwithstanding the fact that a receipt as prescribed in section 18A(2) has not been issued.

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act No. 28 of 2011.

5. Period for which this ruling is valid

This BGR is effective from date of issue and applies for an indefinite period or until the relevant legislation is amended.