

BINDING PRIVATE RULING: BPR 348

DATE: 29 July 2020

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 10(1)(cN)(ii)(dd) AND 10(1)(cN)(ii)(aa)(A)
SUBJECT : INCOME TAX CONSEQUENCES FOR A PUBLIC BENEFIT ORGANISATION LENDING FUNDS TO QUALIFYING ENTREPRENEURS

Preamble

This binding private ruling is published with the consent of the applicant to which it has been issued. It is binding between SARS and the applicant only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines the income tax consequences for a public benefit organisation resulting from the provision of loans to qualifying entrepreneurs to start or grow their businesses.

2. Relevant tax laws

In this ruling references to sections and schedules are to sections of and schedules to the Act applicable as at 26 March 2020. 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 10(1)(cN)(ii)(aa), and
- section 10(1)(cN)(ii)(dd).

3. Parties to the proposed transaction

The applicant: A resident non-profit company

4. Description of the proposed transaction

The applicant is incorporated as a non-profit company under the Companies Act 71 of 2008 and approved as a public benefit organisation under section 30(3) read with section 18A. Its principal object is to carry on a public benefit activity as contemplated in section 30(1) focusing on the provision of education as contemplated in paragraph 4 of Part I and paragraph 3 of Part II of the Ninth Schedule.

The applicant is approved to carry on public benefit activities contemplated in paragraphs 4(a) and 4(o) of Part I and paragraphs 3(a) and 3(o) of Part II of the Ninth Schedule.

The Applicant's primary and subsidiary objects are directed at the promotion of entrepreneurship through education and training. Its programs are targeted at the youth. It teaches a two year academic curriculum.

One of the applicant's subsidiary objects is to collaborate with other educational organisations and organisations promoting entrepreneurship and leadership or governance or both.

To promote entrepreneurship amongst the youth, the applicant proposes to solicit funds from philanthropists with which to grant loans to young entrepreneurs who are starting or scaling their businesses. Its loan funding will be provided as complimentary funding of at least an equal amount when the qualifying young entrepreneurs attract funding from other philanthropists or investors. Once the applicant provides funding to the entrepreneurs, the applicant will monitor its investment in their businesses, collect data and disseminate information to existing philanthropists and other stakeholders in the wider philanthropy network to encourage greater participation from other philanthropists.

The applicant will target young entrepreneurs who do not have access to funding from conventional commercial lending institutions because, due to their age, the entrepreneurs will not have built a credible business track record, will not be able to provide security for the repayment of loans and will not have proof of a stable income.

Eligible entrepreneurs will be alumni of the applicant and alumni of an associated entrepreneurship program. Those who apply for funding must have a registered business, a bank account, a business plan, be the founders or have a validated leadership role in the business and be endorsed by the applicant's Portfolio Manager.

Persons who qualify for funding will receive a letter of guarantee that will enable them to seek matching funding from investors.

Conventional interest will not be charged on the loans. Instead, the beneficiaries will repay the loans by paying a small percentage of their monthly revenue (revenue share) to the applicant until 100% of the loan amount plus a very small margin is recovered over the loan term. No revenue share will be payable when the beneficiaries have not generated any revenue. Any income received from the repayment of the loans will either be ploughed back into the programme or otherwise used to further the applicant's public benefit activities.

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:

- The receipts and accruals of the entrepreneur loan programme of the applicant will not qualify to be exempt from normal tax under section 10(1)(cN)(ii)(aa), because the undertaking is not integral or directly related to the applicant's sole or principal object of providing education.

- The receipts and accruals of the entrepreneur loan programme will however qualify to be exempt from normal tax under section 10(1)(cN)(ii)(dd), subject to the basic exemption amount calculated under that provision. The basic exemption amount is applicable to the receipts and accruals of all business undertakings and trading activities of the applicant that qualify under that provision during any relevant year of assessment.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 26 March 2020.

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