

BINDING PRIVATE RULING: BPR 417

DATE: 17 November 2025

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 30B(2)(b)(iii), 55(1) – DEFINITION OF “DONATION” AND 58(1)
SUBJECT : DISTRIBUTION OF FUNDS IN THE FURTHERANCE OF OBJECTIVES

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 that the distribution by the Applicant of its funds to its members is in the furtherance of its objectives and that the distribution does not have any donations tax implications.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 19 May 2025. 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 30B(2)(b)(iii);
- section 55(1) – definition of “donation”; and
- section 58(1).

3. Parties to the proposed transaction

The Applicant: A body created in terms of its constitution read with sections 27 and 30 of the Labour Relations Act 66 of 1995 (the LRA) and duly registered bargaining council in terms of the LRA.

4. Description of the proposed transaction

The members of the Applicant are registered employer’s organisations and registered trade unions whose members are engaged or employed in a specific industry (the Industry).

The objects of the Applicant according to its Constitution include the following:

- to promote good relationships between employers and employees;

- to secure complete organisation of employers and employees in the Industry;
- to administer agreements arrived at by the parties;
- to receive and raise monies by such means as the Applicant may, from time to time, consider advisable for the purpose of furthering the objects of the Applicant in the interest of employers and employees in the Industry, including the disbursement of moneys to such persons, bodies or organisations on behalf of the Applicant;
- to do such other things as may tend to the furtherance of the above objects or any of them.

Substantially the whole of the Applicant's funding is derived from its members.

The Applicant previously entered into an agreement (the Agreement) with –

- employer's organisations in the Industry; and
- trade unions in the Industry,

collectively referred to as the Affiliated Labour and Employer Organisations.

The object of the Agreement was to be to ensure that all employees who received the benefits of collective bargaining contributed towards its costs.

In terms of the Agreement, a levy had to be deducted by employers from the wages of all employees who were employed in the Industry on scheduled activities and who were not members of a trade union which was a member of the Applicant. The employers were required to deduct the levy, complete return forms monthly and pay the levies collected to the Applicant. The Applicant was required to deposit all monies received as per the Agreement to a separate bank account administered by it and transfer the amounts so received to the trade unions which were members of the Applicant in proportion to the number of members of each trade union. Upon receipt of the amounts, the trade union were to pay the amounts into separate bank accounts administered by each one of them.

As regards employers who were not members of any employer organisation affiliated to the Applicant but who were engaged in the Industry, the Agreement required that they pay a monthly levy to the Applicant. The non-member employers were required to complete and submit a return form and pay the levies to the Applicant. The Applicant was required to pay the levies collected to the employer's organisations affiliated to the Applicant.

The employees who were not members of trade unions referred to above and the employers who were not members of an employer organisation referred to above are collectively hereafter referred to as Non-Parties.

The Applicant acted as an agent for the Affiliated Labour and Employer Organisations in the collection of the levy mentioned above. In terms of the Applicant's Constitution, it was entitled to earn interest on monies received by it from the Non-Parties.

The Agreement subsequently expired and the Applicant notified Non-Parties accordingly. Despite the expiry of the Agreement and the Non-Parties being notified that the Agreement had expired and there was no legal obligation to make payments anymore, several Non-Parties continued to make payments to the Applicant (the Post-Expiry Amounts). Where possible, the Applicant was able to refund Post-Expiry Amounts paid by Non-Parties to the Non-Parties but this was not possible in respect of all amounts paid to it.

The Applicant kept the Post-Expiry Amounts collected for the 2013 – 2023 years of assessments and interest earned separate from its other receipts for accounting purposes and in separate bank accounts. The Applicant never utilised the monies.

Claims for the repayment of a proportion of the amounts so overpaid having prescribed, the proposed transaction entails the distribution of that portion of the Post-Expiry Amounts to the Affiliated Labour and Employer Organisations in the proportions to which the Agreement entitled them.

The proposed transaction will be achieved as follows:

- a) The Applicant will deduct from the Post-Expiry Amounts the following –
 - i) interest to which the Applicant is legally entitled;
 - ii) a handling fee; and
 - iii) fees for advisory services rendered relating to the Post-Expiry Amounts.
- b) The Applicant will distribute the remaining balance of the Post-Expiry Amount (the Distributable Amount) to the Affiliated Labour and Employer Organisations.

5. Conditions and assumptions

This binding private ruling is subject to the additional conditions and assumptions that nothing contained in the ruling should be construed as a determination that any Non-Party or Affiliated Labour and Employer Organisation is entitled to any particular amount, or that the Applicant has calculated any of its liabilities arising out of the proposed transaction correctly.

6. Ruling

The ruling made in connection with the proposed transaction is as follows:

- a) On the basis that the Applicant has been granted approval by SARS under section 30B, the distribution of the Distributable Amount by the Applicant to the Affiliated Labour and Employer Organisations will not be in contravention of section 30B(2)(b)(iii). The distribution will be undertaken in the course of the furtherance of the Applicant's objectives in accordance with its Constitution.
- b) The distribution of the Distributable Amount by the Applicant to the Affiliated Labour and Employer Organisations will not constitute a "donation" as defined in section 55(1) nor a deemed donation as contemplated in section 58(1).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 19 May 2025.

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