

BINDING PRIVATE RULING: BPR 387

DATE: 9 December 2022

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 9D and 10(1)(cN)
SUBJECT : ATTRIBUTION OF NETT INCOME TO A PUBLIC BENEFIT ORGANISATION

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 and 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 of a public benefit organisation holding a participatory interest in a controlled foreign company, which is a foreign incorporated charity.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 8 November 2022. 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 9D; and
- section 10(1)(cN).

3. Parties to the proposed transaction

The applicant: A resident public benefit organisation (PBO) approved under section 30.

The CIO: A foreign incorporated charitable organisation.

4. Description of the proposed transaction

The applicant was established to administer and control a special fund for the sole purpose of receiving donations to be used exclusively to provide funds, assets, essential services or other resources, for the benefit of its beneficiaries.

The applicant has embarked on a programme to solicit donations from wealthy South Africans who have emigrated to other countries. It is envisaged that charities will be established in various identified foreign countries or cities and will collect

donations. These donations will be used to supplement the annual financial needs of the applicant, to build up funds, which can be distributed to its beneficiaries.

The proposed transaction entails the establishment of an Association Charitable Incorporated Organisation (Association CIO) in the United Kingdom (UK). This is a corporate structure designed specifically and exclusively for charities and is regulated principally by the Charity Commission of England and Wales. The applicant will be the sole member of the Association CIO.

All or most of the trustees will be UK residents and will be chosen by their willingness and commitment to raise funds for the Association CIO. Although it is the trustees who are responsible for managing and controlling the CIO, and who thus constitute its effective management, the member of the CIO would be entitled to vote.

Although the CIO will be established to raise funds for the ultimate benefit of the applicant's beneficiaries, it will, nevertheless, have full discretion as to which charity (whether in the UK or not) it will distribute its funds.

The governance of the Association CIO will take place at two levels:

a) The board of charity trustees

- i) Akin to the board of directors in a private company, the charity trustees will manage the affairs of the CIO and they may, for that purpose, exercise all the powers of the CIO. They will exercise these functions collectively, as a board.
- ii) Each trustee must exercise his/her duties in accordance with English charity law, i.e. in the way that he/she decides, in good faith, is most likely to further the purpose of the CIO, with reasonable skill and care, acting in the best interest of their CIO, avoiding conflicts of interest whenever possible (and if not, managing them in accordance with the charity law).
- iii) Individual trustees who act in breach of their charitable duties may incur a personal liability under English law.
- iv) The board of trustees may decide to donate or distribute funds to its (sole) member(s), if doing so is in furtherance of the charitable object of the CIO and the relevant member(s) qualifies as a beneficiary of the CIO.

b) The member(s)

- i) Members may also be trustees, but members will be acting in different capacities when making decisions in different capacities.
- ii) The following decisions can only be made by a CIO's members passing a resolution (by either a 75% majority in general meeting or a unanimous written resolution) in accordance with rules set out in the relevant legislation:
 - (aa) Amending the CIO's constitution. The Charity Commission will review any amendments that the member(s) may approve from time to time, and the Commission will refuse to register any amendments to the constitution which are non-compliant with general principles of charity law and CIO legislation;

- (bb) Applying to the Charity Commission to amalgamate the CIO with any number of other CIO's;
- (cc) Transferring the CIO's undertaking to another CIO; and
- (dd) Applying to the Commission for the CIO to be dissolved.

5. Conditions and assumptions

This binding private ruling is subject to the following additional conditions and assumptions:

- a) The ruling does not preclude the application of section 30(5) where appropriate; and
- b) The CIO will not have its place of effective management in South Africa.

6. Ruling

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

- a) Section 9D applies to the applicant.
- b) The amount to be included in the applicant's income in terms of section 9D(2) will be exempt under the provisions of section 10(1)(cN)(i).
- c) The provisions of section 72A will apply to the applicant.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 8 November 2022.