

SOUTH AFRICAN REVENUE SERVICE

NO. 748

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ADDITIONAL CONSIDERATIONS IN TERMS OF SECTION 80(2) OF THE TAX ADMINISTRATION ACT, 2011 (ACT NO. 28 OF 2011) IN RESPECT OF WHICH AN APPLICATION FOR A BINDING PRIVATE RULING OR A BINDING CLASS RULING MAY BE REJECTED

In terms of section 80(2) of the Tax Administration Act, 2011, I, Thomas Swabihi Moyane Commissioner for the South African Revenue Service, hereby prescribe in the Schedule hereto, the additional considerations in respect of which an application for a binding private ruling or a binding class ruling may be rejected.

This public notice replaces with effect from the date of publication thereof all previous notices issued under section 80(2) of the Tax Administration Act, 2011.



THOMAS SWABIHI MOYANE

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

1. General

Any term or expression contained in this notice to which a meaning has been assigned in a 'tax Act' as defined in section 1 of the Tax Administration Act, 2011, has the meaning so assigned, unless the context indicates otherwise.

2. List of additional considerations in respect of which the Commissioner may reject an application for a binding private ruling or a binding class ruling.

The aspects in respect of which SARS may reject an application for a binding private ruling or a binding class ruling, are hereby extended by the following items in respect of the indicated tax Acts:

2.1 Income Tax Act, 1962 (Act No. 58 of 1962)

2.1.1 The determination of the allowance referred to in section 24C(2).

2.1.2 The effect of a salary sacrifice for the purposes of the definition of "remuneration" as defined in paragraph 1 of the Fourth Schedule.

2.1.3 The interpretation and application of the exemption under section 10(1)(c)(v), in relation to any agreement entered into before 1 January 1990.

2.1.4 The deductibility of any expense incurred by an employer in order to transfer or extinguish, in whole or in part, its post-retirement medical aid obligations towards past or present employees (excluding deductions under section 12M), specifically including, but not limited to—

- (a) lump sum contributions to pension, provident or benefit funds;
- (b) lump sum settlement payments made directly to employees;
- (c) premiums paid by the employer to acquire annuity policies.

2.1.5 Applications concerning residency or tax status, which include—

- (a) the determination of the place of effective management for purposes of the definition of "resident" in section 1(1);
- (b) any determination whether a "foreign business establishment" in relation to a controlled foreign company is in existence for purposes of the definition of that term in section 9D(1);
- (c) any determination whether a "permanent establishment" as defined in section 1(1) has been created.

2.1.6 Whether consideration would constitute "fair market value" for purposes of Part V of Chapter II.

2.1.7 Any exercise of the Commissioner's discretion under section 58(1) to determine whether the consideration given for the disposal of property is adequate.

2.2 Value-Added Tax Act, 1991 (Act No. 89 of 1991)

2.2.1 The liability for tax of a supplier of goods or services that is not a party to the application.

2.2.2 The entitlement to deduct input tax in respect of goods or services acquired by a person who is not a party to the application.

2.2.3 Applications requiring the Commissioner to determine that a person is acting as an agent or principal in respect of a supply of goods or services.

2.2.4 The application of section 8(15) and whether a supply of goods or services constitutes a single supply.

2.2.5 Confirmation that the issuing of a tax invoice, debit or credit note complies with the requirements imposed by any law relating to electronic communications, or that any technical requirements are met in respect of electronic invoicing.

2.2.6 Confirmation that a supply of accommodation or any right to occupy a building or part thereof, constitutes "commercial accommodation".

2.2.7 Confirmation that a supply by a "welfare organisation" to a public authority or a municipality qualifies for the zero rate in terms of section 11(2)(n).

3. Other considerations

3.1 Applications for directives or certificates in terms of the laws administered by the Commissioner if other mechanisms have been established by which those directives or certificates may be obtained.

3.2 Applications concerning the attribution, allocation or apportionment of expenditure or input tax for income tax or value-added tax purposes. A request for the approval of an alternative apportionment method may be made in terms of section 41B of the Value-Added Tax Act, 1991.

3.3 Applications pertaining to the tax consequences of transactions contained in agreements which have already been concluded, except requests for—

(a) rulings or class rulings in terms of section 41B of the Value-Added Tax Act, 1991; or

(b) the extension of the validity of a ruling prior to its expiry date, if the facts (including all the terms of the transaction), the applicable provisions of the relevant legislation and the applicable legal principles remained the same.

3.4 Applications in respect of which the applicant has not rendered all tax returns or paid any tax by the due date, unless arrangements acceptable to SARS have been made.