

BINDING PRIVATE RULING: BPR 384

DATE: 28 October 2022

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 54, 55 – DEFINITION OF “DONATION” AND PARAGRAPHS 38 AND 39 OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : CESSION TO SPECIAL TRUST OF THE BENEFICIARY’S LOAN ACCOUNT

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 donations and capital gains tax consequences resulting from the cession to a special trust by the beneficiary of his loan account against it.

2. Relevant tax laws

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 29 August 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 54;
- section 55(1) – definition of “donation”;
- paragraph 38; and
- paragraph 39.

3. Parties to the proposed transaction

The applicant: A resident person with a disability

The co-applicant: A resident special trust

4. Description of the proposed transaction

The applicant suffered a traumatic brain injury, as a result of which he is unable to work, talk or maintain himself independently but is still able to make decisions. His wife takes care of his physical needs and manages his financial affairs under power of attorney. The co-applicant is, by virtue of an amendment to its trust deed, a special trust for the sole benefit and maintenance of the applicant for the duration of his lifetime, due to his mental and physical disabilities.

The secondary beneficiaries of the trust are his spouse and children who may only benefit as discretionary beneficiaries from the trust after the death of the applicant. The co-applicant formerly served as a family trust for the benefit of the applicant, his spouse and children.

The applicant has a loan account against the co-applicant due to funds made available to the co-applicant. The applicant proposes to cede this loan account to the co-applicant with the objective of reducing the co-applicant's liabilities and ensuring more funds are available to take care of the applicant's maintenance needs during his lifetime should something happen to his wife. He is currently maintained out of personal funds.

5. Conditions and assumptions

This binding private ruling is made subject to the additional condition and assumption that the cession by the applicant of his loan account does not result in an amount being transferred to the co-applicant which, for purposes of maintaining the applicant, is excessive.

6. Ruling

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

- a) The cession by the applicant of his loan account to the co-applicant will not constitute a donation in terms of section 54.
- b) The proceeds in respect of the cession of the loan account by the applicant will be equal to the face value of the loan account under paragraph 38. Consequently, no capital gain or loss will be realised by the applicant from the cession of the loan account and paragraph 39 is not applicable.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 29 August 2022.