

BINDING PRIVATE RULING: BPR 389

DATE: 6 June 2023

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
**SECTION : SECTION 1(1) – PARAGRAPHS (c) AND (i) OF THE DEFINITION OF “GROSS INCOME”, AND DEFINITION OF “RELATIVE”;
SECTION 10(1)(q); PARAGRAPH 1 – DEFINITION OF “TAXABLE BENEFIT” AND PARAGRAPH 2 OF THE SEVENTH SCHEDULE**
SUBJECT : BURSARIES AWARDED BY A RESIDENT COMPANY

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 income tax consequences resulting from bursaries awarded by a resident company in terms of two distinct bursary schemes to members of the general public and relatives of employees and former employees.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act and references to paragraphs are to paragraphs of the Seventh Schedule to the Act applicable as at 31 January 2023. 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 1(1) – paragraph (c) and (i) of the definition of “gross income”;
- section 1(1) – definition of “relative”;
- section 10(1)(q);
- paragraph 1 – definition of “taxable benefit”; and
- paragraph 2 of the Seventh Schedule.

3. Parties to the proposed transaction

The Applicant: A resident company

Recipients Individuals who are the recipients of bursaries awarded by the Applicant

4. **Description of the proposed transaction**

The Applicant carries on business in the manufacturing sector. Its operations are primarily located in a specific town in the Republic. The Applicant recognised the fact that there are children, in the community in which it operates, who are unable to pursue tertiary studies due to financial constraints.

The first bursary scheme

The Applicant established the first bursary scheme with the objective of providing opportunities for tertiary studies in any field to candidates with sufficient merit. The first bursary scheme does not require Recipients to work for the Applicant for the period that the bursary is sponsored at a tertiary institution once their studies are completed. Members of the general public are eligible to apply for the bursary scheme, including relatives of employees and former employees but excluding employees of the Applicant.

As the bursary scheme has been operating for a long time there has never been any need to advertise this scheme. Potential applicants generally reside in the community in which the Applicant operates and have knowledge of the scheme by word of mouth. The dates for receiving applications for the bursary scheme are communicated to the employees and disseminated to the community. Applications are accepted, evaluated and awarded on a first come, first serve basis.

In the last three years of assessment on average 94% of bursaries awarded under this bursary scheme was awarded to relatives of persons who are employees of the Applicant while 4% of the bursaries was awarded to relatives of former employees.

The second bursary scheme

The Applicant established a second bursary scheme providing bursaries to qualifying students who have completed their first year of study in any field of engineering. The second bursary scheme requires bursary Recipients, at the discretion of the Applicant, to work for the Applicant for a period equal to the period for which the bursary was sponsored.

The Applicant advertises this bursary scheme by sending information regarding it to bursary offices of all universities across South Africa. During the last three years of assessment all the bursaries were awarded to applicants unrelated to employees and former employees of the Applicant.

Similar features of both the bursary schemes

The material characteristics of the abovementioned bursary schemes, specifically the bursary allocation criteria, the application procedure, the conditions of the bursary, the financing thereof and the allocation committee that awards the bursaries, correspond in all respects.

- Both bursary schemes have, since their inception, been accessible to any member of the general public.
- Bursaries are allocated based on an academic and administrative testing scale. More specifically, bursaries granted in terms of the bursary scheme are allocated based on the balanced consideration of the following criteria:
 - academic performance;
 - financial need;

- course requirements of the educational institution; and
 - a selection process based on assessments and interviews.
- A condition of both bursary schemes is that the bursary Recipient or their guardian will be obliged to reimburse the monies awarded in terms of the bursary if the Recipient fails to comply with the terms of the bursary agreement, including if the recipient's studies are discontinued for whatsoever reason.

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:

- a) Any bursary awarded by the Applicant under the first bursary scheme to a relative of an employee of the Applicant will constitute a taxable benefit in the hands of the employee for purposes of the Seventh Schedule to be included in paragraph (i) of the definition of "gross income". Paragraph (ii) of the proviso to section 10(1)(q) will apply in the determination of the taxable benefit under paragraph 2 of the Seventh Schedule.
- b) Any bursary awarded under the second bursary scheme by the Applicant must be included in the gross income of the Recipient under paragraph (c) of the definition of "gross income". However, the amount to be included in gross income will be exempt under section 10(1)(q).

7. **Period for which this ruling is valid**

This binding private ruling is valid for a period of three years from 30 January 2023.