

## Tax Developments on one page

### Tax issues: socio-economic and development expenditure

*South African businesses play an integral role in socio-economic upliftment and development of communities. Expenditure incurred for this purpose may have tax implications for the business involved. This article considers some lessons for businesses from two recent contrasting developments in the form of a binding private ruling (BPR282) and a tax court case.*

South African businesses play an integral role in socio-economic upliftment and development of communities, in particular those communities that were disadvantaged by the previous political dispensation. This role may be fulfilled on a voluntary basis, but is often required by BBEEE codes and other business-related arrangements. Expenditure incurred for this purpose may have tax implications for the business.

This article provides a brief overview of some of the lessons businesses may take from two recent contrasting developments relating to socio-economic expenditure.

#### ***Binding private ruling 282 (BPR282)***

The company that applied for the ruling owns and operates a wind farm that supplies electricity to the national grid in terms of an agreement with the national government. This agreement and the electricity generation license that it holds requires the company to commit a percentage of its revenues to socio-economic and enterprise development expenditure. Failure to do so will result in the company incurring termination points. The ruling states that the maximum termination points that may be incurred by not complying with the requirements are not sufficient to result in termination of the supply agreement.

The company proposes to establish a trust, which will be a public benefit organisation (PBO), to which it will contribute the funds to be committed for the above purposes.

The ruling confirms that, firstly, the company will be entitled to deduct contributions to the trust in terms of sections 11(a) and 23(g) of the Income Tax Act (the general deduction formula). The issue in question appears to be whether the purpose of the

expenditure is sufficiently closely related to the business activities of the company, seeing that it could be said that the expenditure does not strictly have to be incurred as non-compliance will not result in termination of the supply agreement. The ruling issued would suggest that SARS agreed with the view that the expenditure is necessary for its performance of the business operations or attached to it by chance or are *bona fide* incurred for the more efficient performance of such operations, as was held in the PE Electric Tramway Company case.

Secondly, it confirms that a donation will not arise for purposes of donations tax. This implies that the contributions are not made gratuitously or motivated by pure benevolence. This view is in line with the deductibility of the expenditure in terms of the general deduction formula, as opposed to section 18A, which applies to donations to PBOs.

#### ***Tax court case (Case No 14055)***

The dispute related to a donation or gift made by a CC to a community (or its chief) via a customer's account for purposes of funding a community upliftment initiative. Details regarding the exact nature of the initiative are not provided, but mention is made in the judgment of the fact that a number of small farms were developed using the funds.

In this case, the taxpayer struggled to discharge the burden of proving that the amount was expended and its deductibility. Although the facts of the specific case may be peculiar, it is submitted that this case highlights the fact that the courts would necessarily be more lenient as far as discharging the burden of proof goes merely because the matter at hand relates to socio-economic expenditure. (January 2018)