BirdLife SOUTH AFRICA
Giving Conservation Wings

Policy & Advocacy Programme

TAX LEGISLATION ALERT:
Binding General Ruling No.24 *Reissued*

FISCAL BENEFITS PROJECT

The South African Revenue Service (SARS) has recently reissued Binding General Ruling No.24 (the Ruling). The Ruling deals with requirements under s18A of the Income Tax Act in order to qualify for the expense deduction set out in s37C(3) which pertains to National Parks, Nature Reserves and Protected Environments. Due to ongoing uncertainty regarding these requirements, SARS has now reissued this Ruling in February 2016 after initially issuing the Ruling in 2014.

Section 37C of the Income Tax Act No.58 of 1962 (the Act) specifically provides for the tax deductibility of expenditure actually incurred by a taxpayer to *conserve or maintain* land owned by the taxpayer. S37C(3) provides for this deduction if the conservation or maintenance is carried out in terms of a declaration made under s20, 23 or 28 of the National Environmental Management: Protected Areas Act No.57 of 2003 (NEMPA) and is declared for a duration of at least 30 years. Deductions are thus applicable to areas declared as a *National Park (NP), Nature Reserve (NR) or Protected Environment (PE)* upon the publication of the relevant Government Gazette. This deduction is deemed to be a donation and filtered through s18A of the Act. This deeming provision is the main source of uncertainty and the motivation for the Ruling.

> *Section 37C aims to provide a fiscal benefit for the environmental protection of areas vital to biodiversity conservation and ecosystem services by enabling landowners to claim tax deductions based on their conservation commitment.*

Ordinarily, section 18A(2) expressly prohibits a deduction for any donation under s18A(1) without the supporting receipt being issued. Section 37C(3), however, deems the deductible amounts to be a donation paid or transferred to the government for which a receipt has been issued under s18A(2). The original intention of this deeming provision, as set out in the corresponding explanatory memoranda, sought to provide the taxpayer undertaking a conservation commitment envisioned by NEMPA, with a deduction without their being an actual donation for which a receipt would customarily have been issued. Uncertainty arose as to the application of s37C(3) in conjunction with the rules set out in s18A(2) based on the wording that the deduction is contingent on the requirements of s18A of the Act.

Based on the above, SARS has ruled that a deduction claimed for the purposes outlined under s37C(3) and determined in accordance with s18A, will be deemed a donation and qualify for a deduction regardless that a standard receipt has not been issued in terms of s18A(2). The Ruling applies as of 15 February 2016. Its validity remains until such time as SARS determines to purposefully withdraw the Ruling or amend it or the Act itself.

To date, there is only one known attempt to access the biodiversity conservation incentive lodged in S37C(3); which has been largely responsible for the Ruling. SARS' re-enforcement of the original intention of s37C(3), through the Ruling's interpretation of the legislation, is encouraging. This is of particular relevance in light of stricter tax administration laws, compliance rules and conservation challenges.

> *BirdLife South Africa's Biodiversity Stewardship Fiscal Benefits Projects continues to engage SARS on these issues and assist landowners to access environmental tax incentives to bolster biodiversity conservation efforts nationwide.*

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