

*SOUTH AFRICAN REVENUE SERVICE*

**BINDING CLASS RULING: BCR 011**

The guidance contained in this ruling is affected by subsequent law changes.

DATE: 27 October 2009

**ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)**  
**SECTION : SECTION 1, PARAGRAPH (c) OF THE DEFINITION OF “GROSS INCOME”**  
**SUBJECT : ACCRUAL OF A CONDITIONAL AWARD AND ATTENDANT TAX IMPLICATIONS**

**1. Summary**

This ruling deals with the income tax implications and principles attendant upon the granting of a conditional award in the form of an incentive bonus by an employer to a select category of employees.

**2. Relevant tax laws**

This is a binding class ruling issued in accordance with section 76R of the Act.

In this ruling legislative references to sections are to sections of the Act applicable as at 8 January 2009 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested under the provisions of section 1, paragraph (c) of the definition of “gross income”.

**3. Class**

The class members to whom this ruling will apply will be a select category of employees of the Applicant to whom a conditional award will be made in terms of a Bonus Scheme and who accept the conditional award. This will also include the executors of the estates of deceased employees, where applicable.

#### **4. Parties to the proposed transaction**

The Applicant: A Company, consisting of various operating divisions

Qualifying Employees: Employees of the Applicant that make up a select category to whom an award will be made in terms of a Bonus Scheme and who accept the award, including the executors of the estates of deceased employees, where applicable

#### **5. Description of the proposed transaction**

The Applicant desires to establish an incentive plan, that is, a Bonus Scheme for Qualifying Employees of the Applicant. The purpose of the Bonus Scheme is to attract, retain and reward these Qualifying Employees for valuable services they currently render and will render in the future to the Applicant.

The conditional award will be granted to Qualifying Employees in writing in the form of a Letter of Grant. The Letter of Grant will be specific in respect of the following important aspects –

- individual performance target to be achieved by a Qualifying Employee before a conditional award can vest;
- nature and computation of the award; and
- vesting date.

The bonus will only be payable at the end of a banking-period of three (3) years and on condition that the Qualifying Employee achieves his/her individual performance target.

The Remuneration Committee of the Applicant will be responsible for the governance of the Bonus Scheme, in accordance with the Applicant's Bonus Scheme Rules. The Applicant will be accountable for the granting of the bonus to a Qualifying Employee who has achieved his/her individual performance target.

At the expiry of the banking-period, the Remuneration Committee of the Applicant will determine whether a conditional award as contained in the Letter of Grant will vest/accrue to a Qualifying Employee or not. If a Qualifying Employee achieves his/her individual performance target the conditional award will vest/accrue. This will be referred to as the vesting date.

## **6. Conditions and assumptions**

This ruling is made subject to the condition and assumption that the conditional award is granted to Qualifying Employees on similar terms and conditions contained in the Applicant's Bonus Scheme Rules.

## **7. Ruling**

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

- The conditional award will accrue to a Qualifying Employee for purposes of determining his/her gross income, specifically under the provisions of section 1, paragraph (c) of the definition of "gross income", on the vesting date, that is, the date the Remuneration Committee of the Applicant is satisfied beyond doubt that a Qualifying Employee has achieved his/her individual performance target. In other words a Qualifying Employee will have an unconditional entitlement to the award on the vesting date.
- There will be no accrual to a Qualifying Employee when a conditional award is initially granted. At that stage a Qualifying Employee will not have an unconditional entitlement to the award as it is in the discretion of the Remuneration Committee of the Applicant to still determine whether the award vests depending on whether or not the performance target of the individual has been achieved.

## **8. Period for which this letter is valid**

This binding class ruling is valid for the years of assessment during which the Bonus Scheme operates, that is, the ruling will lapse two (2) years immediately after the expiry of the banking-period as the conditional award will also lapse in respect of those Qualifying Employees who have failed to comply with their individual performance targets during that period.

Issued by:

**Legal and Policy Division: Advance Tax Rulings**  
**SOUTH AFRICAN REVENUE SERVICE**