

BINDING PRIVATE RULING: BPR 310

DATE: 12 September 2018

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)
VALUE-ADDED TAX ACT 89 OF 1991 (VAT Act)**
**SECTION : SECTION 11(a) READ WITH SECTION 23(g) OF THE ACT
SECTIONS 1(1) – DEFINITION OF “CONSIDERATION”, 7(1)(a), AND
10(23) OF THE VAT ACT**
SUBJECT : CUSTOMER LOYALTY PROGRAMME

Preamble

This binding private ruling is published by consent of the applicant(s) to which it has been issued. It is binding as 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 and VAT consequences of a customer loyalty programme.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 78(1) and published in accordance with section 87(2) of the Tax Administration Act 28 of 2011.

In this ruling references to sections are to sections of the Act, and the VAT Act, applicable as at 2 August 2018. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the Act, or the VAT Act.

This is a ruling on the interpretation and application of –

- section 11(a) read with section 23(g) of the Act; and
- sections 1(1), – definition of “consideration”, 7(1)(a), and 10(23) of the VAT Act.

3. Parties to the proposed transaction

The applicant: A resident company trading in products and services

The trust: A resident trust set up to act as the vehicle to facilitate the management of the applicant’s customer loyalty programme

The participants: Customers of the applicant who will earn points in respect of purchases made or services procured

4. Description of the proposed transaction

The applicant implemented a customer loyalty programme (the “programme”) for the benefit of its customer base. Customers of the applicant will register for the programme as participants and will earn points for transactions with the applicant.

The applicant established a trust to act as the vehicle to facilitate the management of the programme and the participants will be appointed as beneficiaries of the trust.

The applicant will make a capital contribution at the end of each financial year to the trust. The board of the applicant will determine the amount of the contribution to be made to the trust based on the applicant’s gross profit. Upon determination by the board of the contribution, the contribution will vest immediately in the participants in accordance with their participation ratios. This contribution will constitute the pool benefit to be shared, in the form of shares or customer credits, among the participants in proportion to the points they earned during that financial year.

The trust will use the contribution to buy shares in the applicant or its holding company, or the capital contribution may be applied to provide customer credits against the applicant to the participants. The customer credits will be acquired by the trust using the contribution, rather than the applicant simply allocating credits to customer accounts. The board of the applicant will stipulate how much of the contribution must be applied by the trust to buy shares or customer credits on behalf of the participants.

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) The contributions to be made by the applicant will be deductible under section 11(a) read with section 23(g) of the Act in the year of assessment in which the board has determined the participants’ allocations.
- b) The contribution to be made to the trust as part of the programme will be a reward to the participants for contributing to the profitability of the applicant in relation to the value of the business conducted with the participants. To the extent that there is no requirement for the participants and/or the trust to make a supply of goods or services to the applicant in return for the payment, the payment therefore will not constitute “consideration” as defined in section 1(1) of the VAT Act, as it will not relate to a supply of goods or services.

- c) Each share constitutes an “equity security” as defined in section 2(2) of the VAT Act. The issuing of shares by the applicant to the participants will constitute the supply of services (being financial services envisaged in section 2(1)(d) of the VAT Act).
- d) The payments made by the trust on behalf of the participants in respect of the supply of the shares will constitute “consideration” as defined in section 1(1) of the VAT Act for an exempt supply under section 12(a) of that Act.
- e) Payments made by the trust to the applicant towards obtaining customer credits on behalf of the participants –
 - will constitute “consideration” as defined in section 1(1) of the VAT Act, to the extent that the amounts paid are applied towards paying for goods already supplied by the applicant to the participants (the original supply). Under section 9(1) of the VAT Act, the Original Supply shall be deemed to take place at the earlier of the time when such consideration is received or an invoice for such supply is issued. Should the consideration be received before an invoice is issued, the applicant will be required to account for VAT (at the relevant rate) in the tax period in which the consideration is so received. Should the invoice be issued before such receipt, the applicant will be required to account for VAT on the original supply in the tax period in which such invoice is issued; and
 - do not constitute “consideration” as defined in section 1(1) of the VAT Act, to the extent that the amounts paid will be applied against future supplies of goods made by the applicant to the participants.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 2 August 2018.

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