

## **BINDING CLASS RULING: BCR 027**

DATE: 14 February 2011

**ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)**  
**SECTION : PARAGRAPHS 1, DEFINITION OF “REMUNERATION” AND 2(1) OF THE FOURTH SCHEDULE TO THE ACT**  
**SUBJECT : TIPS HELD FOR SAFEKEEPING BY EMPLOYERS AND SUBSEQUENTLY PAID OVER TO EMPLOYEES AT REGULAR INTERVALS**

### **1. Summary**

This ruling deals with the question as to whether tips, received by employees from satisfied customers, that are held by an employer for safekeeping and subsequently paid over to the employees, will constitute payments of “remuneration” as contemplated in paragraph 2(1) of the Fourth Schedule to the Act.

### **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 paragraphs are to paragraphs of the Fourth Schedule to the Act, applicable as at 11 August 2010 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 paragraphs 1, definition of “remuneration” and 2(1) of the Fourth Schedule.

### **3. Class**

The Class members to whom this ruling will apply will be the class of employers, hereafter referred to as the Applicants as described in point 4 below.

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

The Applicants:                      A class of subsidiary and associated employers

The Employees:	The employees of the Applicants
The Customers:	The customers that make gratuitous payments to the Employees of the Applicants

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

The Applicants operate in a high cash-handling environment and for security reasons, the Employees may not report for duty with cash on their person without authorisation from senior management and having declared it to the Security Department.

The Applicants wish to implement a Group Tips Management Policy (the Tip Policy) as a result of the significant security risk that the receipt of tips by the Employees during their working hours poses in this environment.

The purpose of the Tip Policy will be to create conditions within which the Employees can continue to receive tips during their working hours whilst reducing the security risks to which the Applicants may be exposed as a result thereof.

In terms of the proposed Tip Policy the Employees have no entitlement to tips nor should they have an expectation to receive tips as part of their service performance to the Applicants.

Tips received by the Employees are to be declared and paid over to the Applicants upon receipt thereof. The omission to declare the receipt of tips may result in disciplinary action.

The declaration and handling of the tips will be managed in terms of specific procedures. Tips declared and paid over will be held in safe custody by the Applicants in their bank accounts until transferred into the Employees' bank accounts at month-end, together with their salaries.

The Employees whose services are terminated for any reason will receive their tips together with their last salary payment.

Tips will not form part of the calculation of provident fund, medical aid or any other benefit calculations for the Employees' remuneration packages.

All tips paid over to the Applicants will be transferred by the Applicants to the Employees and no tips shall be retained by the Applicants.

**6. Conditions and assumptions**

This ruling is not subject to any conditions and assumptions.

**7. Ruling**

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

The transfer of tips from the Applicants' bank accounts into the Employees' bank accounts will not constitute a payment of "remuneration", as contemplated in paragraph 2(1), made by the Applicants.

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

This binding class ruling is valid for a period of five (5) years as from August 2010.

**9. General note**

It is to be noted that this ruling does not mean that tips received by employees under the circumstances as described in this ruling, nor for that matter tips received in general, are not taxable. Amounts received by way of tips constitute "gross income" as defined in section 1 of the Act and will, therefore, be subject to income tax in the hands of the recipient. The fact of the matter is that tips as described above will not constitute "remuneration" as defined in the Fourth Schedule which merely releases an employer from the obligation to withhold employees' tax from these amounts, but does not release the recipient from the obligation to declare such tips for income tax purposes.

Issued by:

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