

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 032

DATE: 09 June 2009

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)

SECTION : SECTION 11(a) READ WITH SECTION 23(g) AND SECTION 22

SUBJECT : PAYMENTS MADE TO A THIRD PARTY FOR MAKING AVAILABLE ITS MANUFACTURING FACILITY

1. Summary

This ruling deals with whether payments made to a third party for making its manufacturing facility available to a taxpayer, who is a manufacturer of goods in the same industry, is of a capital or revenue nature, and whether such payments are deductible as a cost of acquisition of trading stock.

2. Relevant tax laws

This ruling is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling legislative references to sections are to sections of the Act applicable as at 7 November 2007 and unless the context otherwise indicates, any word or expression in this ruling bears the meaning ascribed to it in the Act.

The ruling has been requested under the provisions of –

- section 11(a) read with section 23(g); and
- section 22.

3. Parties to the proposed transaction

The Applicant: A company which is a manufacturer and retailer of consumer products sold to the public

Company A: An independent manufacturing company which is in the same industry as the Applicant

4. Description of the proposed transaction

The Applicant intends to conclude a contract with Company A, for the supply of consumer products during high demand seasons and during expected and unexpected downtime of the Applicant's manufacturing facilities, in order to meet seasonal demands for the consumer products which the Applicant normally manufactures.

In terms of the contract:

- (a) Company A is to construct, own, staff, operate and maintain the manufacturing facility for the purpose of manufacturing and selling consumer products to the Applicant.
- (b) Company A may not manufacture and sell the consumer products to any person, other than the Applicant.
- (c) Company A will be called upon from time to time by the Applicant to manufacture consumer products for the Applicant and to make its facility ready and available for such purpose.
- (d) The Applicant will pay Company A –
 - an monthly amount for making its manufacturing facility ready and available for the manufacturing of the consumer products (hereafter referred to as “facility payments”); and
 - an amount for the consumer products sold to the Applicant.
- (e) The facility payments will be paid monthly in respect of each period of a month, for the duration of the contract. The facility payments will be adjusted accordingly in cases where the manufacturing facility of Company A is not available due to maintenance or for whatever other reason.

5. Conditions and assumptions

This ruling is made subject to the condition and assumption that the facility payments made may not be in lieu of capital payments in respect of the purchase price of the manufacturing facility of Company A, on acquisition by the Applicant of the manufacturing facility of Company A in the event of early termination of the contract.

6. Ruling

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

- The facility payments will form part of the cost of the acquisition of the consumer products (trading stock) and will accordingly be allowed as

expenditure incurred in terms of section 11(a) read together with section 23(g) and section 22.

7. Period for which this ruling letter is valid

This binding private ruling, issued in November 2007, is valid for the period of the contract, provided that a declaration is submitted every five (5) years by the Applicant confirming that the terms of the contract are still the same.

Issued by:

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