

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 050

DATE: 16 October 2009

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

SECTION : SECTIONS 11(a) AND 23H

**SUBJECT : CASH GRANTS MADE BY AN EMPLOYER TO SHARE-INCENTIVE
SCHEME TRUSTS AND THEIR DEDUCTIBILITY FOR TAX
PURPOSES**

1. Summary

This ruling deals with the deductibility for tax purposes of cash grants made by an employer to employee share-incentive scheme trusts to enable the trusts to acquire shares in fulfilment of the employer's share-incentive scheme obligations. This ruling also deals with whether the provisions of section 23H be applicable if the grants are deductible.

2. Relevant tax laws

This 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 1 April 2008 and unless the context indicates otherwise, 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); and
- section 23H.

3. Parties to the proposed transaction

The Applicant: A listed company

Share trusts: Various employee share-incentive scheme share trusts for different categories of employees and management as well as directors of the Applicant

4. **Description of the proposed transaction**

The Applicant has share-incentive schemes for its different categories of employees and management as well as for directors, housed in five Share trusts, each with its own set of rules. The Applicant intends to make cash grants to the trusts to enable the trusts to acquire shares to allocate to the employees for the purpose of the share-incentive schemes.

The schemes were designed to provide a mechanism for the Applicant to retain and incentivise its staff.

The schemes will operate as follows:

Share trust for low income employees

- The Applicant will grant a cash award to the trust.
- The trust will use the cash to acquire the Applicant's shares through a fresh issue of shares or an open market purchase at market value.
- The trust will immediately vest the shares in the qualifying employees, subject to a resolutive condition that the employees will remain in the employ of the Applicant until death, retirement, retrenchment or the sale of a division. At the discretion of the trustees, the resolutive condition may be waived, but only after a period of at least 10 years from the date the shares were granted.
- Dividends on vested shares will accrue to the employees and will be paid by the trust to the employees when dividends are declared and paid.
- In addition to the entitlement to receive dividends, the employees will have full voting rights.

The other Share trusts

- The Applicant will grant a cash award to the respective trusts.
- Each trust will use the cash to acquire the Applicant's shares through a fresh issue of shares or an open market purchase at market value.
- Each trust will grant options to qualifying employees to acquire the Applicant's shares. These share option grants will occur on specified dates. The vesting and exercise of the share options (which will occur within a 90-day period of each other) will be staggered and deferred to future specified dates.
- Vesting will occur in tranches after years 3 and 4 with respect to directors and after years 5 to 7 with respect to other qualifying employees, following the offer of the share options to qualifying employees.
- The strike price will be set at the weighted average price of the Applicant's shares for the 30 trading days prior to the date of grant of the share options.
- Within 90 days of vesting, employees are obliged to either exercise their share options by acquiring the shares at the strike price or to forfeit their share options.
- Dividends accruing on the shares held by each trust may, at the discretion of the trustees, be distributed to the Applicant, as an income beneficiary of the trust.

- Should a participant to the share-incentive scheme leave the employ of the Applicant before the vesting date, he or she will forfeit his or her share options.

5. Conditions and assumptions

This ruling is not subject to any conditions and assumptions.

6. Ruling

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

- The cash grants to be made by the Applicant to the various Share trusts will be deductible under section 11(a).
- The provisions of section 23H will apply to the expenditure to be incurred in respect of the grants to be made to the various Share trusts referred to above.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three (3) years as from the date of this ruling until 31 March 2011.

Issued by:

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