

BINDING PRIVATE RULING: BPR 117

DATE: 10 April 2012

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTION 8C AND PARAGRAPH 11A OF THE FOURTH SCHEDULE TO THE ACT
SUBJECT : OBLIGATION TO DEDUCT OR WITHHOLD EMPLOYEE'S TAX IN RESPECT OF A SHARE OPTION SCHEME

1. Summary

This ruling deals with the question as to whether a person, other than the person who pays the employee's remuneration, is obliged to deduct or withhold employee's tax under the provisions of paragraph 11A of the Fourth Schedule to the Act in respect of "equity instruments" as defined in section 8C of the Act.

2. Relevant tax laws

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

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Fourth Schedule to the Act, applicable as at 24 January 2012 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 8C; and
- paragraph 11A of the Fourth Schedule.

3. Parties to the proposed transaction

The Applicant: A company incorporated outside South Africa which has its place of effective management outside South Africa

The Co-Applicant: A company incorporated in and a resident of South Africa which is a subsidiary of the Applicant

4. Description of the proposed transaction

The Applicant is planning the implementation of two incentive plans in order to reward and retain eligible South African employees and directors of the Co-Applicant. The proposed incentive plans are referred to as Plan A and B.

In terms of both Plan A and B, the Applicant may grant non-transferrable options to eligible South African employees and directors of the Co-Applicant to acquire fully paid up ordinary shares in the capital of the Applicant from time to time and free of any consideration. The exercise of these options by the employees and directors of the Co-Applicant is subject to certain conditions as described in the rules of the respective incentive plans.

5 Conditions and assumptions

This binding private ruling is not subject to any conditions or assumptions.

6 Ruling

The ruling made in connection with the proposed transaction in terms of Plan A and B is as follows:

- The Applicant and the Co-Applicant will not be obliged to deduct or withhold any employees' tax on the date of grant of an option under either Plan A or B. The Applicant and the Co-Applicant will only be obliged to deduct or withhold employees' tax once an option vests as contemplated in section 8C.
- The Applicant and Co-Applicant shall be jointly and severally liable to –
 - deduct or withhold employees' tax in terms of paragraph 11A of the Fourth Schedule in respect of any section 8C gain which will be included in remuneration;
 - ascertain from the Commissioner the amount to be so deducted or withheld in terms of paragraph 11A; and
 - inform the Commissioner in terms of paragraph 11A(5) if the amount to be deducted or withheld by way of employees' tax exceeds the amount from which the deduction or withholding will be made.
- Where an option under Plan B is cash settled as contemplated in the Rules of Plan B, the Applicant and Co-Applicant shall be obliged to deduct or withhold employees' tax in respect of the vesting of an option as contemplated for in section 8C, and no further or

additional employees' tax is to be deducted or withheld in respect of the cash payment.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from January 2012.

Issued by:

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