

**BINDING CLASS RULING: BCR 055**

DATE: 28 September 2016

**ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)  
VALUE-ADDED TAX ACT NO. 89 OF 1991 (VAT Act)**

**SECTION : SECTIONS 1(1) – DEFINITION OF “GROSS INCOME”, 11(a), 23(g)  
AND 23H OF THE ACT  
SECTIONS 1(1), – DEFINITIONS OF “CONSIDERATION”, “INPUT  
TAX”, “SUPPLY” AND “SERVICES”, 7(1)(a), 10(23) AND 21 OF THE  
VAT ACT**

**SUBJECT : INCOME TAX AND VALUE-ADDED TAX CONSEQUENCES OF A  
CUSTOMER LOYALTY SCHEME**

**1. Summary**

This ruling determines the income tax and value-added tax (VAT) consequences for suppliers making customer loyalty bonus payments.

**2. Relevant tax laws**

This is a binding class ruling issued in accordance with section 78(2) and published in accordance with section 87(2) of the Tax Administration Act No. 28 of 2011.

In this ruling references to sections are to sections of the relevant Act applicable as at 24 August 2016. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the relevant Act.

This is a ruling on the interpretation and application of the provisions of –

- the Act –
  - section 1(1) – definition of “gross income”;
  - section 11(a) read with section 23(g); and
  - section 23H.
- the VAT Act –
  - section (1)(1) – definitions of “consideration”, “input tax”, “supply” and “services”;
  - section 7(1)(a);
  - section 10(23); and
  - section 21.

### 3. **Class**

The Class Members to whom this ruling will apply consists of the Applicant, its subsidiaries and the joint ventures in which the Applicant or its subsidiaries have an interest, that will participate in the customer loyalty scheme.

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

The Applicant: A company incorporated in and a resident of South Africa

The Class Members: The entities described in point 3 above

The Settling Entity: A company to be incorporated that will function as the Settling Entity on behalf of the Class Members, duly represented in this application by the directors of the Applicant

Customers: Customers of the Class Members

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

Each Class Member is incorporated in and is a resident of South Africa, and is also registered as a vendor for VAT purposes.

The Class Members seek to implement a customer loyalty scheme (scheme) to protect their existing customer base and possibly expand the businesses carried on by them. The framework for the implementation of the scheme will be contained in the scheme rules.

The salient terms of the scheme will be as follows:

- a) The board of directors of the Applicant (the board), as custodian of the scheme, will approve the scheme that will involve the loyalty bonus allocations (allocations) to customers conducting business with the Class Members.
- b) The board may annually authorise and determine –
  - i) the entities that will be Class Members in a particular bonus scheme period;
  - ii) the amount available to pay the allocations and the basis or eligibility criteria for the allocations; and
  - iii) the manner in which the allocations will be settled.
- c) A customer can choose whether or not to participate in the scheme. Participating customers will formally accept the rules as binding on them when electing to participate.
- d) The Class Member will charge the same price for the goods or services provided to all customers, whether they are participating customers or not.
- e) During the scheme period, the board may on or before the expiry of the annual allocation period, but shall by no later than three months thereafter, determine each participants' allocation based on the value of business conducted with the Class Member.

- f) In order to simplify the administration of the scheme the allocations will be settled by the Settling Entity, as opposed to being administered and settled by each Class Member. To achieve this outcome:
- i) Each Class Member will incur an obligation towards the customer for the allocations for the annual allocation period.
  - ii) The Settling Entity will settle this obligation on behalf of the Class Member in its capacity as agent of the Class Members.
  - iii) The Class Member will incur an obligation to reimburse the Settling Entity equal to its obligation towards the customers that has been settled on its behalf.

## **6. Conditions and assumptions**

This binding class ruling is not subject to any additional conditions and assumptions.

## **7. Ruling**

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

### **a) The Act**

- i) The allocations made by the Class Members will be deductible under section 11(a) read with section 23(g) in the year of assessment in which the board has determined all the participants' allocations as contemplated in the scheme rules. Should the board make such determination after the end of the year of assessment relating to the annual allocation period, the allocations will fall to be deductible in the latter year of assessment.
- ii) Section 23H will not apply to the deduction mentioned in i) above.
- iii) The Settling Entity will not be entitled to a deduction under section 11(a) read with section 23(g), in respect of payments made on behalf of the relevant Class Member to a participating customer.
- iv) The Settling Entity will not be required to include in its "gross income" the value of the right to be reimbursed by the Class Member in respect of payments made by it to customers on behalf of the relevant Class Member.

### **b) The VAT Act**

- i) The allocation is not "consideration" as defined in section 1(1) in respect of any supply of goods or services made by the participating customer, and the Class Member may not deduct any amount as input tax in relation to it.
- ii) The allocation by the Class Member does not have any VAT implications in relation to that Class Member.
- iii) The allocation is determined based on the overall business conducted and the availability of profits for the allocation. It therefore does not result from an agreement envisaged under section 21(1)(c) to alter the previously agreed consideration for any taxable supply of goods or services. Consequently, no adjustment

must be made under section 21(2) and no credit note must be issued under section 21(3) on a tax invoice previously issued by the Class Member concerned for the supply of goods or services.

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

This binding class ruling is valid for a period of five years from 24 August 2016.

**Legal Counsel: Advance Tax Rulings  
SOUTH AFRICAN REVENUE SERVICE**