

BINDING CLASS RULING: BCR 030

DATE: 09 September 2011

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTION 8C
SUBJECT : EQUITY INSTRUMENTS ACQUIRED IN TERMS OF A SHARE VALUE INCENTIVE PLAN

1. Summary

This ruling deals with the applicability of the provisions of section 8C of the Act in respect of equity instruments acquired in terms of a share value incentive plan.

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 sections are to sections of the Act applicable as at 07 December 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 section 8C.

3. Class members

The class members to whom this ruling will apply will be the participants as described in point 4 below.

4. Parties to the proposed transaction

The Applicant: A foreign company, registered in South Africa as an external company

Co-Applicants: Subsidiaries of the Applicant

The Participants: Qualifying employees of the Applicant and the Co-Applicants participating in the Applicant's share value incentive plan

5. Description of the proposed transaction

The Applicant and the Co-Applicants form a group of companies (the Group). The directors within the Group are expected to maintain a shareholding in the respective companies equal in value to 100% of their annual basic pay. With the above in mind the Applicant has introduced a Share Value Incentive Plan (SVIP) to facilitate the acquisition of shares.

The Rules of the SVIP distinguish between what are referred to as Bonus Invested Shares and Invested Shares with the addition of possible Matched Awards on either of these schemes.

Below is a description of the equity instruments that form the subject matter of the proposed transaction:

Bonus Invested Shares

- A Bonus Invested Share is a share acquired on behalf of a Participant with a percentage of his/her after tax annual bonus. The after tax amount is remitted to an independent Trustee and is used to acquire shares on behalf of the Participant at the current listed price on an arm's length basis. The Participants are obliged to acquire shares through this arrangement.
- A Bonus Invested Share will vest on the third anniversary of the Date of Grant.
- If a Participant ceases to be in employment due to ill health, injury or disability, redundancy or retrenchment or retirement, or if the company by which the Participant is employed ceases to be a member of the Group, or if the undertaking or part undertaking in which the Participant is employed is transferred to a person or body corporate outside the Group (Good Leavers), then the Bonus Invested Shares will vest at a time to be determined by the Remuneration Committee.
- If a Participant ceases to be in employment for any reason other than those specified above, the Participant's Bonus Invested Shares will be forfeited immediately unless the Remuneration Committee determines that all or part of a Participant's Bonus Invested Shares may be immediately released to the Participant.

Invested Shares

- An Invested Share is a share acquired by a Participant on invitation only and at a market related price. The number of shares available to a Participant is calculated with reference to the

remaining after tax amount of his/her annual bonus after deducting that portion used to acquire Bonus Invested Shares, if any.

- An Invested Share will vest in the Participant on the third anniversary of the Date of Grant.
- As soon as practically possible after the receipt of an invitation form from the Participant, the Trustee will acquire the Invested Shares on behalf of the Participant at the current listed price on an arm's length basis. After the Invested Shares are acquired on behalf of a Participant, the Remuneration Committee will grant or procure the grant of a Matched Award based on the value of the Invested Shares so acquired.
- The Invested Shares will be held in trust on behalf of the Participant until the vesting in the Participant of the Matched Awards.
- Any dividends declared on the Participant's Invested Shares during the relevant period belong to the Participant. The Participant is entitled to instruct the Trustees on how to vote or abstain from voting in relation to the Invested Shares and whether to accept or reject any offer in relation to them.
- The Participant may instruct the Trustees to sell, transfer or otherwise dispose of the Participant's Invested Share (either in part or in full) at any time. Should such disposal occur before the elapsing of the third anniversary, the Matched Award in relation to those shares will be correspondingly reduced or forfeited.

Matched Award

- A Matched Award is a contingent right to acquire shares after the third anniversary of the Date of Grant thereof provided that the Participant is still in the employ of the Applicant or one of the Co-Applicants and the required set targets have been met. The Remuneration Committee will, on or before the Date of Grant –
 - determine whether the Participant's bonus is applied to acquire Bonus Invested Shares;
 - determine whether Matched Awards will be granted in relation to the acquisition of Bonus Invested Shares or Invested Shares; and
 - specify any performance target that will apply in respect of the Matched Award.

- A Matched Award normally vests on the third anniversary of its Date of Grant or earlier in certain Good Leaver circumstances, provided that any performance target set for the Matched Award is met. The value of the shares on vesting is determined by the market value on the vesting date and not on day one, that is, the Date of Grant. If the company meets the performance target as at the vesting date the employee gets the Matched Award free of charge. As soon as practically possible after the vesting date, the shares relating to the Matched Award will be automatically transferred to the Participant and the Bonus Invested Shares will become fully available to the Participant.
- In the case of Good Leavers, a Matched Award may however vest earlier than after three years. The Matched Award will in this instance vest at a time and to the extent determined by the Remuneration Committee after taking into account the extent to which performance targets have been met and the time elapsed when the Participant ceases to be employed in Good Leaver circumstances. In the case of leavers other than Good Leavers, the Matched Award will lapse unless the Remuneration Committee decides otherwise.
- The Participants have no voting, dividend or other rights in relation to Matched Awards; however, the Remuneration Committee may determine that a Participant should receive a payment equivalent to the amount of the dividends declared during the performance period.

6. Conditions and assumptions

This ruling is made subject to the conditions and assumptions that –

- the ruling is based on the terms and conditions set out in the SVIP, as supplied to the Advance Tax Rulings Division; and
- it will only be applicable to all Bonus Invested Shares, Invested Shares and Matched Awards granted after the issue date of this ruling.

7. Ruling

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

- The Bonus Invested Shares, Invested Shares and the Matched Awards will be “restricted equity instruments” as defined in section 8C(7) in the hands of the Participants.

- The Bonus Invested Shares, Invested Shares and Matched Awards will be subject to section 8C, therefore, the Applicant or Co-Applicants will be required to withhold an amount of employees' tax to the extent that gains have vested in the Participants in relation to these restricted equity instruments.
- To the extent that any loss may arise on vesting of the restricted equity instruments (Bonus Invested Shares, Invested Shares and Matched Awards), such loss will be deductible from the income of the Participants under section 8C(2)(b).

8. Period for which this ruling is valid

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

Issued by:

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