

BINDING PRIVATE RULING: BPR 115

DATE: 19 March 2012

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : PARAGRAPH 1 DEFINITION OF “REMUNERATION”, “EMPLOYER” AND “EMPLOYEE” READ WITH PARAGRAPH 2(1)(a) OF THE FOURTH SCHEDULE TO THE ACT
SUBJECT : INCENTIVE REWARDS PAID TO INDEPENDENT SALES PERSONS

1. Summary

This ruling deals with incentive cash rewards to be paid by a company to independent sales persons not in the employment of the company.

2. Relevant tax laws

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

In this ruling references to paragraphs are to paragraphs of the Fourth Schedule to the Act applicable as at 27 July 2011 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 paragraph 1, definition of “remuneration”, “employer” and “employee”; and paragraph 2(1)(a) of the Fourth Schedule.

3. Parties to the proposed transaction

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

Independent sales persons: The employees, of various wholesalers and retailers, who participate in the Reward Programme referred to in point 4 below

4. Description of the proposed transaction

The Applicant manufactures products which it sells to various wholesalers and retailers and intends launching a Reward Programme

(the Programme) as a marketing initiative to increase the sales of its products.

The Programme will be directed at the Independent sales persons who sell the Applicant's products to the customers of the wholesalers and retailers. Wholesalers and retailers may, however, direct that their staff will not be entitled to participate in the Programme and the Applicant will not enjoy any form of employment relationship with the sales persons.

The Applicant will, furthermore, have no supervision or control over these sales persons and no service will be rendered by them on the premises of the Applicant.

The sales persons will be required to register for the Programme with the Applicant, after which a recognised prepaid card will be issued to each of them. The reward to be earned by a sales person will be calculated with reference to the amount of the Applicant's products sold and the equivalent Rand value will be credited to his/her prepaid card.

The term "prepaid" means the card can only be utilised to the extent that it has a positive balance and cannot be overdrawn as is the case of normal credit cards. The sales persons will be entitled to spend the Rand value of their rewards at their discretion but only by utilising the prepaid card to purchase certain goods and services.

The prepaid accounts will be under the control of the Applicant and administered by an independent third party. The physical cash to be used to credit these accounts will be held in a separate bank account in the name of the Applicant. The prepaid card account will be credited to a maximum value of R5 000, which will be supplemented as and when a portion or all of the maximum value has been utilised and further reward credits are available.

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 is as follows:

- The amounts payable into the prepaid card accounts for the benefit of the Independent sales persons will not constitute

“remuneration” as defined in paragraph 1 for employee’s tax purposes.

- The amounts payable will fall outside the ambit of paragraph 2(1).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of two (2) years from July 2011.

8. General note

This ruling does not mean that incentive cash rewards received by the Independent sales persons under the circumstances as described in this ruling are not taxable. The incentive cash rewards received constitute “gross income” as defined in section 1 of the Act and will, therefore, be subject to income tax in their hands. The incentive cash rewards as described above will not constitute “remuneration” as defined in the Fourth Schedule which merely releases the Applicant from the obligation to withhold employees’ tax from these amounts but does not release the sales persons from the obligation to declare such incentive cash rewards for income tax purposes.

Issued by:

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