



*SOUTH AFRICAN REVENUE SERVICE*

**BINDING PRIVATE RULING: BPR 008**

DATE : 6 March 2008

ACT : INCOME TAX ACT, 58 OF 1962 (“the Act”)

SECTION : SECTION 23(*m*)

SUBJECT : CERTAIN VARIABLE PAYMENTS MADE TO A MARKETING EXECUTIVE AND THE APPLICATION OF SECTION 23(*m*)

**1. Summary**

The issue considered in this ruling is whether certain variable payments made to the Applicant will constitute “commissions based on his or her sales or the turnover attributable to him or her” as envisaged by section 23(*m*) of the Act.

**2. Relevant tax laws**

This ruling is a binding private ruling which was requested by the Applicant in accordance with the requirements of section 76E of the Act and issued by the Legal and Policy Division: Advance Tax Rulings in accordance with section 76Q of the Act.

All legislative references are to sections of the Act applicable as at 31 July 2007 and unless the context otherwise indicates, any word or expression in this ruling bears the meaning ascribed to it in the Act.

The relevant provision of the Act is section 23(*m*).

**3. Parties to the transaction**

Applicant: An individual employee and office holder of a private company

Company: A private company involved in the information technology consulting industry who will be remunerating the Applicant

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

The Company has appointed the Applicant as a management and sales consultant. As sales consultant, the Applicant will be responsible for the “sale” of consulting work in the industries set out in the contract of employment.

The Applicant will receive his remuneration in the form of a basic fixed monthly salary, certain allowances and a further variable payment (referred to as “commission” in the relevant contract of employment) which the Applicant will earn in relation to the services he renders as sales consultant.

The variable payment or “commission” is calculated as Rx per billed hour of professional staff/consultants involved in projects falling into the industries assigned to the Applicant.

#### **5. Specific conditions and assumptions**

This binding private ruling is made subject to the following conditions and assumptions:

- The contract of employment entered into between the Company and the Applicant does not materially differ from the unsigned agreement dated 15 September 2006 which accompanied the application. In terms of this contract, the Applicant is in fact an employee of the Company.
- Detailed records must be kept of all fees billed to clients in a particular industry. To this end, the records must outline the hours of professional staff billed to a specific project undertaken in relation to a specific client, which industry that client resorts under and the total amount billed in relation to that project. In the event that fees are billed to clients on a monthly basis, the Company may use such monthly invoices in determining the “commission” payable to the Applicant on a monthly basis. However, should the total amount billed in relation to a specific project be reduced subsequently, a corresponding adjustment to the commission to which the Applicant is entitled is required.
- There must be a direct link between the sales efforts of the Applicant and the fees billed in relation to projects assigned to industries falling within his responsibility. In other words, should another person’s

actions result in the procuring of a consulting project in one of the industries assigned to the Applicant, the Applicant will not be entitled to any commission as there is no link between his marketing efforts and the turnover generated by the project.

**6. Specific ruling**

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

- The variable payments made by the Company to the Applicant as reward for rendering services as a sales consultant will constitute “commissions based on his or her sales or the turnover attributable to him or her” as envisaged by section 23(m).

**7. Period for which this ruling letter is valid**

This binding private ruling will be valid for a period of two years as from 17 August 2007.

Issued by:

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