

BINDING PRIVATE RULING: BPR 160

DATE: 22 January 2014

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

SECTION : **SECTION 11(a) OF THE ACT**
SECTIONS 1(1), DEFINITION OF “CONSIDERATION” AND 20 OF
THE VAT ACT

SUBJECT : **INCENTIVE PAYMENTS**

1. Summary

This ruling deals with incentive payments to be made in accordance with an incentive programme to be implemented for purposes of increasing trade.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 78(1), 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 Acts applicable as at 23 August 2013 and 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 –

- section 11(a) of the Act; and
- sections 1(1), definition of “consideration” and 20 of the VAT Act.

3. Parties to the proposed transaction

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

The Farmers: Farmers who trade with the Applicant

4. Description of the proposed transaction

The Applicant proposes to implement a programme that will incentivise farmers to trade with it. The Farmers will buy their agricultural goods and equipment from the Applicant’s trade division, make use of the Applicants financing options and store their grain and produce in the Applicant’s silos.

In return for transacting with the Applicant, the Farmers will receive an incentive payment from the Applicant. The incentive payments will be made in proportion to the value of transactions with the Applicant, specifically in relation to the business areas of the Applicant and their contribution to the fees and gross profits of the Applicant. These payments will, however, only be made at the discretion of the board of directors of the Applicant and be subject to solvency and liquidity tests.

The Applicant will consider the foregoing fees and gross profits and exercise its discretion on the amount payable to the Farmers.

The Applicant will accrue for the total incentive amount to be paid in their books of account before year-end by establishing an unconditional obligation at year-end to pay the incentives and issuing an acknowledgement of the amount due to the Farmers.

The settlement of the 'incurred obligation' will only occur after year-end, by way of a cash payment (cheque) to the Farmers, representing a minimum of 20% of the incentive. This cash payment will be made to enable the Farmers to pay their tax liability resulting from the incentive payments.

The remaining 80% of the incentive amount will be utilised to buy ordinary shares and redeemable preference shares in the ultimate holding company of the Applicant on behalf of the Farmers. The Applicant will facilitate the acquisition of these shares.

The only existing current limitation on these shares will be that they may only be disposed of to other farmers. The Farmers will be entitled to immediately dispose of the shares at their discretion and will not be required to hold them for any period of time. Furthermore, it is not a condition of the proposed programme that the Farmers commit to supplying their produce to the Applicant. In addition the Farmers will not be bound to –

- buy the agricultural goods or equipment from the Applicant; or
- utilise the finance awarded to them to pay for the agricultural goods or equipment bought from the Applicant or for services of the Applicant.

The acquisition of shares will occur as follows:

- The Applicant will facilitate the process and issue a cheque to its ultimate holding company to settle its liability to the Farmer and to settle the Farmer's liability for the subscription price.
- The Farmer will be required to firstly acquire 40 000 shares in the ultimate holding company of the Applicant pro rata from existing shareholders at 66% of the net asset value.
- If the Farmer already owns a minimum of 40 000 shares, the incentive, or balance thereof, will be used to buy 15 year redeemable preference shares in the ultimate holding company of the Applicant.

The Farmers are not shareholders of the Applicant, but may be shareholders of the ultimate holding company of the Applicant. It is not a requirement that the Farmers be shareholders of the Applicant or the ultimate holding company of the Applicant in order to qualify for an incentive payment. Any Farmer may participate and will be rewarded based on transactions and interactions with the Applicant during a specific financial year, subject to the Farmer being a registered vendor as defined in section 1(1) of the VAT Act.

The incentive programme will be evaluated by the Applicant on an annual basis in order to determine whether it is adding value to its business.

The directors of the Applicant will have the right to alter or cancel the incentive programme at any time.

5. Conditions and assumptions

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

6. Ruling

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

- The incentives payable by the Applicant will be deductible under section 11(a) of the Act.
- The incentives payable to the member suppliers are not regarded as “consideration” as defined in section 1(1) of the VAT Act in respect of a supply of goods or services made by such member to the Applicant. Such payments are, therefore, not subject to VAT. It follows that a tax invoice contemplated in section 20 of the VAT Act cannot be issued and the Applicant cannot deduct any “input tax” in respect of the incentives paid.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 5 years from 23 August 2013.

Issued by:

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