

BINDING CLASS RULING: BCR 018

DATE: 24 May 2010

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTION 1, PARAGRAPH (l) OF THE DEFINITION OF “GROSS INCOME” AND PARAGRAPHS 1, 2(c), 2(d), 2(e), 8, 9 AND 10 OF THE SEVENTH SCHEDULE TO THE ACT
SUBJECT : OVERSEAS INCENTIVE TRIPS FOR EMPLOYEES WITH BOTH BUSINESS AND PRIVATE ELEMENTS AND RELATED TAXABLE BENEFIT IMPLICATIONS

1. Summary

This ruling deals with taxable benefits arising from overseas incentive trips (trips) for employees, where such trips have both business and private elements.

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 and paragraphs are to sections of the Act and paragraphs of the Seventh Schedule to the Act applicable as at 7 September 2009 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 1, paragraph (l) of the definition of “gross income”; and
- paragraphs 1, 2(c), 2(d), 2(e), 8, 9 and 10 of the Seventh Schedule.

3. Class

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

4. Parties to the proposed transaction

The Employer: A company incorporated in South Africa

The Employees: Selected top performing employees of the Employer, who are resident in South Africa

5. Description of the proposed transaction

The Employer will offer the Employees an overseas trip as an incentive reward for excellent services rendered during the year. The main objectives of the trip will be to create experiences of a lifetime, to make the trip inspirational and drive performance.

The Employees will accompany executives of the Employer on the trip, as prescribed by the Employer's general rules. The Employees will be under the executive's direct supervision and control.

The purpose of the trip will be partly as a reward and partly for development and learning, through teamwork, compulsory group activities and exposure to best practices. It is expected that the Employees will learn from one another, grow as individuals and ultimately grow the culture of the Employer.

Learning and development will be enhanced by the Employees attending special programs and experiences.

The Employees will only be allowed to travel if they are still in the employ of the Employer at the time of taking the trip and will not be allowed to travel if they have resigned or are working their notice month.

The travel will be in economy class and Employees will not be allowed to upgrade to any other class under any circumstances other than for medical reasons which will be at the discretion of the Employer.

The airline tickets will not be transferable or exchangeable for cash, unless specifically authorised at the sole discretion of the Employer.

The Employees will not be required to take annual leave for the duration of the trip, which can be ten (10) days at a time. The Employees will, therefore, partake in the trip on company time.

Employees will travel as a group and cannot travel separately or at any other time. No Employee will be allowed to make other travel arrangements unless pre-written authorization from the Employer is obtained. Any additional costs resulting from such breakaways would be for the Employee's account.

The Employees will not be accompanied by their partners, spouses, children or family members on the trip. The partners, spouses, children and family members are also not allowed to travel with the group under any circumstances.

Should an Employee not be able to travel at the allocated time of the award, the nomination and award will be forfeited and redistributed by the Employer.

It is compulsory for the Employees to attend and participate in the structured activities. Events or functions are scheduled for each day of the trip.

The trip will bring together key performers from various divisions of the Employer. The award is provided to the Employee, guaranteed net of tax, that is, take home pay will not be affected.

The Employer will bear all related costs for the trip, which may include –

- transportation;
- accommodation;
- meals, refreshments and food vouchers; as well as
- other services; etc.

6. Conditions and assumptions

This ruling is made subject to the conditions and assumptions that the tax consequences of the proposed transaction are dependent on, and informed by, the fact that the Employer previously offered a fully taxable incentive trip with no business element.

7. Ruling

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

- The meals, refreshments, food vouchers, accommodation and services which will be supplied on the trips will be taxable benefits as contemplated in paragraphs 2(c), 2(d) and 2(e) of the Seventh Schedule.
 - An allocation will be made, as provided for in paragraph 3(2) of the Seventh Schedule, between the business and private elements of the trip, resulting in the taxation of only the private portion of the aforementioned benefits.
 - The Employer must make a determination, based on time spend on business activities, of the percentage of business elements of the trip, which is based on a 14 hour day. This percentage must be applied to calculate the taxable benefit of each of the class members.
 - Air travel time must be excluded from the aforementioned calculation.
- The airline costs are taxable, as contemplated in paragraph 2(e) of the Seventh Schedule, and will not be subject to the aforementioned allocation.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of five (5) years as from 7 September 2009.

Issued by:

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