

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 047

DATE: 16 October 2009

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTION 9D(2A) READ WITH (9)(b)(ii)(cc)(C)
SUBJECT : AGENCY INCOME EARNED BY A CONTROLLED FOREIGN COMPANY TO BE EXCLUDED FROM ITS NET INCOME

1. Summary

This ruling deals with agency income earned by a controlled foreign company from its holding company which is a resident and whether such income must be taken into account when determining the net income of such controlled foreign company or not.

2. Relevant tax laws

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

In this ruling all legislative references to sections are to sections of the Act applicable as at 7 February 2007 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 9D(2A) read with (9)(b)(ii)(cc)(C).

3. Parties to the proposed transaction

The Applicant: A holding company which is a "resident" as defined in section 1

Foreign company: Controlled foreign company of the Applicant

4. Description of the proposed transaction

The Applicant holds 75% of the share capital of a "foreign company" as defined in section 9D. The shareholding was acquired in 1997 and increased to 75% in 2004.

In terms of its current *modus operandi*, the Applicant has a third party appointed as its agent in the same foreign country where the Foreign company is domiciled, to perform certain services on its behalf. This arrangement is in place as the Applicant is prohibited in terms of the laws of that foreign country from performing such services itself. The Applicant is in the process of terminating its agreement with its current agent and would like to appoint the Foreign company as its agent.

If appointed, the Foreign company will assume the same risks and functions as the current agent. The market related rates of commission and fees paid to the current agent will also be paid to the Foreign company.

The Foreign company has an established office, including full time staff, in that foreign country. It will also appoint a full time agency manager to manage the agency activity in that foreign country if the Foreign company is appointed as the new agent. The office of the Foreign company is suitably equipped and has the proper facilities required to carry out the agency function. The agency business to be provided will further be in addition to its existing business activities.

5. Conditions and assumptions

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

- the Foreign company is a “controlled foreign company” as defined in section 9D;
- the agency income that the Foreign company will receive will be attributable to a “foreign business establishment” as defined in section 9D;
- the agency income that the Applicant will receive from the Foreign company will reflect an arm’s length price as is envisaged in the provisions of section 31; and
- such services to be provided by the Foreign company in terms of the agency agreement to be concluded with the Applicant will be rendered mainly in the country of residence of the Foreign company for the benefit of customers that have premises situated in that foreign country.

6. Ruling

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

- The requirements of section 9D(9)(b)(ii)(cc)(C) will have been met and the exclusion provided for in section 9D(9)(b)(ii)(cc)(C) will apply to the agency income earned from services rendered by the Foreign company on behalf of the Applicant.
- This agency income must not be taken into account when determining the Foreign company’s net income for purposes of section 9D(2A).

7. Period for which this ruling is valid

This binding private ruling, issued in June 2007, will be valid for a period of three (3) years from the date on which the Applicant appoints the foreign company as its agent.

Issued by:

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