

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 052

DATE: 16 October 2009

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)

SECTION : SECTION 10(1)(k)(ii)(dd)

SUBJECT : REPATRIATION OF PROFITS IN THE FORM OF FOREIGN DIVIDENDS PAID BY A FOREIGN SUBSIDIARY TO A RESIDENT COMPANY WHICH WAS PREVIOUSLY EXEMPT FROM INCOME TAX

1. Summary

This ruling deals with the application of the foreign dividend exemption rules to the repatriation of profits in the form of foreign dividends paid by a foreign subsidiary to a resident company. The company used to be an exempt entity, but its exemption was withdrawn before section 9D was introduced into the Act which determines that the income of a controlled foreign company is to be included in the income of a resident.

2. Relevant tax laws

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

In this ruling legislative references to sections are to sections of the Act applicable as at 31 July 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 10(1)(k)(ii)(dd).

3. Parties to the proposed transaction

The Applicant: A company, incorporated in South Africa, that used to be exempt from income tax

Company Z: A wholly owned subsidiary of the Applicant which is registered in a foreign country

4. Description of the proposed transaction

Company Z is a wholly owned subsidiary of the Applicant and was incorporated in a foreign country to provide capacity to the Applicant to cover catastrophe risks and risks for which cover is not available in South Africa. Its revenue is derived solely from insurance premiums paid to it by the Applicant and the Applicant's subsidiary companies.

The Applicant is currently in the process of winding up the operations of Company Z and will be repatriating the profits to South Africa in the form of foreign dividends.

Although Company Z is not a "resident" as defined in section 1, it is a controlled foreign company and accordingly its income has been included as income under the provisions of section 9D and, therefore, taxed in the hands of the Applicant since 1 January 2001.

As the income of Company Z was taxed in the hands of the Applicant, any dividends declared out of profits relating to the period 1 January 2001 to date are exempt under the provisions of section 10(1)(k)(ii)(cc).

5. Conditions and assumptions

This ruling is not subject to any conditions and assumptions.

6. Ruling

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

- It is confirmed that any dividend declared by Company Z out of profits accumulated during the period that the Applicant was exempt from income tax, will be exempt from income tax under the provisions of section 10(1)(k)(ii)(dd).
- Any dividend declared by Company Z out of profits earned after the termination of the Applicant's exempt status to 31 December 2000 will not be exempt from income tax as envisaged in section 10(1)(k)(ii)(dd).

7. Period for which this ruling is valid

This binding private ruling, issued in June 2007, will only be valid in respect of dividends distributed by Company Z.

Issued by:

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