

BINDING PRIVATE RULING: BPR 247

DATE: 8 September 2016

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTION 1(1) – DEFINITION OF “GROSS INCOME” AND PARAGRAPHS 1 –DEFINITION OF “REMUNERATION” AND 2(1) OF THE FOURTH SCHEDULE AND PARAGRAPH 2(k) AND (l) OF THE SEVENTH SCHEDULE
SUBJECT : EMPLOYER CONTRIBUTIONS TO FOREIGN SOCIAL AND PENSION FUNDS IN RESPECT OF A NON-RESIDENT

1. Summary

This ruling determines the tax consequences of employer contributions to a foreign social and pension fund in respect of a non-resident person working in South Africa.

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.

Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the Act.

This is a ruling on the interpretation and application of the provisions of the Act–

- section 1(1) – definition of “gross income”; and
- paragraph 1 of the Fourth Schedule – definition of “remuneration”;
- paragraph 2(1) of the Fourth Schedule; and
- paragraph 2(k) and (l) of the Seventh Schedule.

3. Parties to the proposed transaction

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

Person A: A natural person who is not a resident of South Africa

Company B: A company incorporated outside and not a resident of South Africa, which is the parent company of the Applicant

4. Description of the proposed transaction

The Applicant intends to employ Person A on a three year fixed term employment contract, in terms of an inter-company work permit arrangement. The Applicant will be responsible for the payment of the remuneration of Person A.

Company B currently employs Person A, whose employment is regulated by a collective bargaining agreement. This agreement stipulates, amongst other things, that social protection for nationals expatriated outside the country of residence of Person A must be equivalent to that which that person would have received in his or her country of residence.

Because there is no social security system in South Africa, the group must maintain social security contributions for Person A, through accredited parastatal service providers. These contributions are compulsory. Neither the host company nor the employee can opt out of these contributions.

The contributions are to be paid to parastatal service providers, recognised by the national social security system, which administer the relevant social funds. The social funds provide cover in the form of a pension fund, workman's compensation, base medical coverage, death, disability and unemployment insurance.

In addition to the social funds, the group has also set up a private pension fund to which an amount is to be paid over as an employer contribution. The contributions to the pension fund are not compulsory under the bargaining agreement but are required by virtue of the employment contract.

The obligations in respect of the social funds and the pension fund rest solely upon the employer. No co-contributions will be required from the employee and no amounts are to be paid on the employee's behalf in respect of such contributions.

Company B will pay the contributions in respect of the social funds and pension fund to the relevant service providers and will recharge these costs to the Applicant, which will be obliged to reimburse Company B.

5. Conditions and assumptions

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

6. Ruling

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

- a) The social security and pension fund contributions to be made by the Applicant to Company B in respect of Person A will not be subject to income tax in the hands of Person A.
- b) The social security and pension fund contributions to be made by the Applicant to Company B in respect of Person A will not give rise to a withholding obligation on the Applicant under the Fourth Schedule to the Act.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of four years from 4 August 2016.

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