

BINDING PRIVATE RULING: BPR 222

DATE: 18 February 2016

ACT : **INCOME TAX ACT NO. 58 OF 1962 (the Act)**
SECTION : **SECTION 6^{quat}**
SUBJECT : **FOREIGN PARTNERSHIP – REBATE IN RESPECT OF FOREIGN TAXES ON INCOME**

1. Summary

This ruling determines whether the income tax and solidarity surcharge payable by a South African resident in Germany, as well as the trade tax payable by certain foreign partnerships, also in Germany, will qualify for a rebate under the provisions of section 6^{quat} of the Act.

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 Act applicable as at 3 December 2015. 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 section 6^{quat}.

3. Parties to the proposed transaction

The Applicant: An individual who is currently resident in Germany and will become ordinarily resident in South Africa

Foreign Partnership A: A limited liability foreign partnership which has its place of effective management in Germany

Foreign Partnership B: A limited liability foreign partnership which has its place of effective management in Germany

Foreign Partnership C: A limited liability foreign partnership which has its place of effective management in Germany

4. Description of the proposed transaction

The Applicant is an individual who is a 100% limited partner in Foreign Partnership A.

Foreign Partnership A is the 100% limited partner in two other foreign partnerships, Foreign Partnership B and Foreign Partnership C, which have trade businesses and property holdings in Germany, so that the income derived by a foreign partner from these two entities will qualify as business income derived from a permanent establishment in Germany.

Taxes are imposed by different tiers of government under the tax system of Germany, namely by the federal government of Germany itself, by the individual states, and by municipalities.

The foreign partnerships are tax transparent for income tax purposes, but not for trade tax purposes. As a result, the Applicant is subject to personal income tax in Germany on income derived by the foreign partnerships. The Applicant is also subject to a solidarity surcharge in Germany.

The Applicant is proposing to relocate to South Africa with his family. Once he has done this, he intends to become ordinarily resident in South Africa, where he will be subject to income tax on his worldwide income and capital gains.

The Applicant will continue to hold an interest in Foreign Partnership A and an indirect interest in Foreign Partnerships B and C. The partnerships all fall within the ambit of the definition of a “foreign partnership” in section 1(1). The Applicant will continue to be taxed in Germany on the income accruing to him from his partnership interests.

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:

- The income tax and solidarity surcharge payable by the Applicant in Germany, as well as the Applicant's *pro rata* share of the trade tax payable by the three foreign partnerships in Germany (to the extent not credited against his income tax in the foreign country), will qualify for a foreign tax credit under section 6*quat* against the Applicant's income tax liability in South Africa in respect of the amount included in the Applicant's income which originates from the foreign partnerships.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 5 years from 3 December 2015.