

*SOUTH AFRICAN REVENUE SERVICE*

**BINDING PRIVATE RULING: BPR 067**

DATE: 09 December 2009

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

**SECTION : SECTION 9D(10)(a)(i)**

**SUBJECT : FOREIGN BUSINESS ESTABLISHMENT: SHARING OF EMPLOYEES, EQUIPMENT AND FACILITIES AMONGST CONTROLLED FOREIGN COMPANIES WHICH ARE PART OF THE SAME GROUP OF COMPANIES**

**1. Summary**

This ruling deals with the question as to whether the place of business of a controlled foreign company (CFC) will be deemed as fulfilling the requirements of paragraph (a)(i) and (ii) of the definition of “foreign business establishment” in section 9D(1) of the Act by taking into account the utilisation of employees, equipment and facilities of any other CFC that has the same country of residence as and also forms part of the same group of companies as the CFC.

**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 22 July 2008 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(10)(a)(i).

**3. Parties to the transaction**

The Applicant: An investment holding company which is a “resident” as defined in section 1

Foreign group of companies: A foreign holding company and its subsidiaries are all incorporated and

effectively managed in one foreign country  
and are residents of that foreign country

#### 4. Description of the transaction

The Applicant acquired an interest of more than 50% in a Foreign group of companies.

In order for a place of business in relation to a CFC to fulfil the requirements of paragraph (a)(i) and (ii) of the definition of “foreign business establishment”, that place of business is to be—

- (i) *suitably staffed* with on-site managerial and operational employees of that CFC and which management and employees are required to render services on a full time basis for the purpose of conducting the primary operations of that business; and
- (ii) *suitably equipped and has proper facilities* for such purposes.

The foreign holding company and its subsidiaries (other principal CFCs and dependant CFCs) are all incorporated and effectively managed in one foreign country and are tax residents of the foreign country.

The foreign holding company (first principal CFC) is suitably equipped and has a permanent place of business in that foreign country. It also has 13 full time employees (8 on-site managerial employees and 5 on-site operational employees).

One of the subsidiaries of the foreign holding company (second principal CFC) is suitably equipped and has a permanent place of business in that foreign country. It also has 23 full time employees (5 on-site managerial employees and 18 on-site operational employees) and owns an office building and equipment.

Another subsidiary of the foreign holding company (third principal CFC) is suitably equipped and has a permanent place of business in that foreign country. It also has 23 full time employees (on-site operational employees) and owns a building.

All employees are employed on a full-time basis by the three principal CFCs. The staff employed by the principal CFCs and made available to the other subsidiaries of the foreign holding company (dependent CFCs) has the necessary skills to carry out the business of the Foreign group of companies. Furthermore, the staff used by the dependent CFCs has the necessary skills to perform the work required. In the aggregate, all employees of the Foreign group of companies are the equivalent to full-time

staff required to conduct the business of the Foreign group of companies in that foreign country.

The buildings and equipment of the principal CFCs are shared with the dependent CFCs and the said buildings and equipment are adequate for the CFCs to conduct their businesses in that foreign country.

## **5. Conditions and assumptions**

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

- all the CFCs, which form part of the Foreign group of companies, are incorporated and effectively managed in the foreign country and are residents of the said foreign country.

## **6. Ruling**

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

- The place of business of the respective dependent CFCs is deemed under the provisions of section 9D(10)(a)(i) to fulfil the requirements of paragraph (a)(i) and (ii) of the definition of “foreign business establishment” in section 9D(1) in respect of the foreign tax years ending during the Applicant’s years of assessment ending after 1 January 2007.

## **7. Period for which this ruling is valid**

This binding private ruling is valid for a period of five (5) years as from 8 December 2008.

Issued by:

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