

BINDING PRIVATE RULING: BPR 166

DATE: 1 April 2014

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : PARAGRAPHS 1 DEFINITION OF “DISPOSAL” AND 11 OF THE EIGHTH SCHEDULE
SUBJECT : CHANGE OF PLACE OF INCORPORATION (DOMICILE) OF A CONTROLLED FOREIGN COMPANY

1. Summary

This ruling deals with a change of domicile of a controlled foreign company and whether this change will be regarded as a “disposal” as defined in paragraph 1 and envisaged in paragraph 11 of the Eighth Schedule.

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 and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 9 October 2013 and 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 paragraphs 1, definition of “disposal” and 11 of the Eighth Schedule.

3. Parties to the proposed transaction

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

Company A: A limited liability company, incorporated in a foreign country that is a tax haven (Country X) which is a wholly owned subsidiary of the Applicant and a “controlled foreign company” (CFC) in relation to the Applicant as defined in section 9D

4. Description of the proposed transaction

Company A is the intermediate holding company of the Applicant’s offshore investments. The Applicant proposes to change the domicile of Company A from Country X to Country Y, another foreign country that is also a tax haven, in order to avail itself of the benefits of agreements for the avoidance of double taxation that Country Y has with other countries in which Company A holds investments.

The re-domiciliation of Company A from Country X to Country Y will be effected in terms of the laws governing the re-domiciliation of companies of Country X and of Country Y respectively.

The place of effective management of Company A will change from Country X to Country Y after the implementation of the proposed transaction.

5. Conditions and assumptions

This ruling is subject to the following additional conditions and assumptions:

- The change of domicile of Company A from Country X to Country Y will be effected in terms of the laws governing the re-domiciliation of companies of Country X and of Country Y respectively with the following consequences:
 - The effect of the re-domiciliation of Company A to Country Y shall not –
 - create a new legal entity;
 - prejudice or affect the identity of the body corporate constituted by Company A or its continuity as a legal entity;
 - affect the property, rights or obligations of Company A; or
 - affect proceedings by or against Company A.
 - Proceedings that could have been commenced or continued by or against Company A in Country X before its re-domiciliation to Country Y may be commenced or continued after its incorporation in Country Y.
- The place of effective management of Company A is located outside of South Africa at all relevant times before and after the implementation of the proposed transaction.

6. Ruling

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

- The change of domicile of Company A from Country X to Country Y will not constitute a “disposal” by the Applicant as defined in paragraph 1 and envisaged in paragraph 11 of the Eighth Schedule.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 1 year from 9 October 2013.

Issued by:

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