

BINDING PRIVATE RULING: BPR 158

DATE: 13 January 2014

The underlying principles confirmed in this ruling are currently under review. This ruling is only binding in respect of the specific applicant to whom it was issued and may not be relied upon by a third party.

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : PARAGRAPH 10(2)(b) OF THE SEVENTH SCHEDULE TO THE ACT
SUBJECT : TRANSPORT SERVICES PROVIDED BY AN EMPLOYER FOR EMPLOYEES

1. Summary

This ruling deals with transport services provided by an employer to convey employees between their homes in a foreign country and construction project sites 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.

In this ruling references to paragraphs are to paragraphs of the Seventh Schedule to the Act applicable as at 4 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 paragraph 10(2)(b) of the Seventh Schedule.

3. Parties to the proposed transaction

The Applicant: A branch of a foreign company.

4. Description of the proposed transaction

The Applicant is registered in South Africa as an external company and in the process of being registered as an employer with the South African Revenue Service.

The foreign company is engaged in the rendering of services required for the implementation and completion of construction projects in various countries.

Employees of the foreign company (the Employees) will be seconded to the Applicant to render services on an ongoing basis at the site of a specific construction project in South Africa (the Project).

All the Employees working on the Project will work in South Africa on a rotational basis and will, for the duration of the Project, periodically travel home at the cost of the employer.

The Employees are nationals of the foreign country and will retain their homes in the foreign country for the duration of the Project. If the Employees have families, their families will remain in the foreign country while the Employees are working in South Africa.

The Employees will not be entitled to any annual leave while they are in South Africa. Due to the nature of the Project, they will be required to work over weekends and to supervise the Project site.

The Employees are permanently employed by the foreign company and will remain in the permanent employ of the foreign company after the period of their secondment to South Africa.

The activities and type of work that the Employees would be involved in after their secondment to South Africa would be similar to their activities and services rendered prior to and during their secondment to South Africa.

5. Conditions and assumptions

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

- The ruling applies to the transport services made available to the Employees on or after the date of this ruling.
- The transport services are made available to all the Employees working on the Project on a rotational basis.

6. Ruling

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

- No value shall be placed on the provision of transport services by the Applicant to convey the Employees (who will work in South Africa on the Project on a rotational basis) between the foreign country and the construction project sites in South Africa.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 2 years from 4 October 2013.

8. General Note

This ruling was issued based on specific facts and circumstances relating to the Applicant and should not be interpreted to mean that a nil value may be placed on home leave benefits provided to expatriate and/or seconded employees.

Issued by: