

BINDING PRIVATE RULING: BPR 372

DATE: 10 May 2022

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 6quat(1A)
SUBJECT : WITHHOLDING TAX ON FOREIGN ROYALTIES

Preamble

This binding private ruling is published with the consent of the applicant and the co-applicant to whom it has been issued. It is binding between SARS and the applicant and the co-applicant only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling considers whether lease payments for the use of equipment will constitute royalties in terms of a tax treaty between South Africa and another country, and whether the withholding taxes to be levied will meet the requirements of section 6quat(1A).

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 14 December 2021. 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 section 6quat(1A).

3. Parties to the proposed transaction

The applicant: A resident company

The co-applicant: A resident company

4. Description of the proposed transaction

The applicant and the co-applicant are resident companies that own and let equipment in South Africa. When there is an additional demand in certain other countries, such equipment will, by prior arrangement, be provided on a temporary basis to entities resident in those countries in exchange for rental payments that cover the cost for the applicant and the co-applicant. Each of the foreign countries concerned has entered into a convention with South Africa for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (treaty). In each case the treaty defines a royalty in article 12 as, amongst others, “payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment”.

The equipment is made available for an extended period to the foreign entities and the following will be agreed:

- The equipment will remain in the foreign country during the peak season until demand has dropped, as opposed to returning them to South Africa on the completion of each individual lease to an individual customer in the country concerned.
- The foreign entities will –
 - have full access and possession of the equipment to make business related rentals.
 - assume responsibility for any risk as regards damage, theft, etc.
 - take responsibility for repairs, maintenance, insurance, etc.
 - make the equipment available only for business related rentals in the foreign country and not for private or other matters.
 - return the equipment where it makes economic sense for both the applicant and the co-applicant and the foreign entities.

5. Conditions and assumptions

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

- a) Neither the applicant nor the co-applicant has a permanent establishment in the foreign countries.

6. Ruling

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

- a) The amounts to be paid to the applicant and the co-applicant will constitute royalties as defined in the relevant treaties.
- b) Any amounts which must be withheld as withholding taxes on those royalties under the laws of the countries concerned will meet the requirements of section 6quat(1A) and the applicant and the co-applicant will therefore be permitted to claim rebates in respect of the withholding taxes which are levied by the other countries in terms of article 12 of the relevant treaty.
- c) No view is expressed on any potential transfer pricing implications of the proposed transaction.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 14 December 2021.