

BINDING PRIVATE RULING: BPR 127

DATE: 21 November 2012

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1), DEFINITION OF “GROSS INCOME”, 5, 10, 24J AND 108 AND PARAGRAPH 5 OF ARTICLE XII OF THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNION OF SOUTH AFRICA AND THE GOVERNMENT OF THE FEDERATION OF RHODESIA AND NYASALAND (WHICH IS NOW OF APPLICATION TO ZAMBIA) FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME (SOUTH AFRICA/ZAMBIA DTA)
SUBJECT : RELIEF FROM DOUBLE TAXATION OF FOREIGN INCOME

1. Summary

This ruling deals with the granting of relief from double taxation of interest received or accrued from a Zambian source (foreign interest) in the hands of a resident of 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 sections and paragraphs are to sections of the Act and paragraphs of the Articles of the South Africa/Zambia DTA applicable as at 24 January 2012 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 –

- section 1(1), definition of “gross income” paragraph (h);
- section 5;
- section 10;
- section 24J;
- section 108; and
- paragraph 5 of Article XII of the South Africa/Zambia DTA.

3. Parties to the proposed transaction

The Applicant: A resident of South Africa

The Borrowers: Companies that are resident in Zambia

4. Description of the proposed transaction

The Applicant is contemplating advancing interest-bearing loan funding directly to the Borrowers. The Applicant will fund these transactions from its general funding pool, and will accordingly incur funding and other related expenses. The Applicant will receive foreign interest on the loans advanced at a market-related rate.

By applying the domestic tax laws of both countries, the foreign interest will be subject to tax in both South Africa and Zambia. However, the South Africa/Zambia DTA contains provisions which will, in essence, restrict South Africa's right to tax interest received or accrued from Zambia.

The relief from tax in South African of the foreign interest is dealt with by the provisions of paragraph 5 of Article XII of the South Africa/Zambia DTA, read in conjunction with the provisions of section 108. This paragraph reads as follows:

“Where interest is derived by any person from a person (hereinafter referred to as the debtor) who is ordinarily resident in one of the territories and the interest would, but for the provisions of this paragraph, be subject to tax in both territories, that interest shall be subject to tax only in the territory in which the debtor is ordinarily resident: Provided that if the debtor is ordinarily resident in both territories, the interest shall be subject to tax only in the territory in which that interest is allowable as a deduction in the determination of the debtor's taxable income.”

5. Conditions and assumptions

This 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 foreign interest will form part of the Applicant's “gross income” as defined in section 1(1) and must be reported as such.
- By virtue of the application of paragraph 5 of Article XII of the South Africa/Zambia DTA, as read in conjunction with section 108, the foreign interest will not be subject to tax in South Africa. This will be achieved by reducing “gross income”, as defined in section 1(1), by the amount of the foreign interest.
- Any interest expense and related expenses incurred by the Applicant to produce the foreign interest will accordingly not be allowed as a deduction under any provision of the Act.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 5 years from 24 January 2012.

Issued by:

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