



SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 061

DATE: 30 October 2009

The guidance contained in this ruling is affected by subsequent law changes.

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTION 1, DEFINITION OF “COMPANY” AND SECTIONS 9D AND 10
SUBJECT : APPLICATION OF THE DEFINITION OF “COMPANY” AND “CONTROLLED FOREIGN COMPANY” WITH REGARD TO A FOREIGN LIMITED PARTERSHIP

1. Summary

This ruling deals with whether a Foreign Limited Partnership will be a “company” and if so, will such company be a “controlled foreign company” as defined in section 9D of the Act. It also deals with whether dividends received by the holding company of the Foreign Limited Partnership are exempt from tax.

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 7 February 2007 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 1, paragraph (b) of the definition of “company”;
- section 1, definition of “dividend”;
- section 9D, definition of “controlled foreign company”; and
- section 10(1)(k)(ii)(dd).

3. Parties to the proposed transaction

The Applicant: A company which is a “resident” as defined in section 1

The Partnership:	A Foreign Limited Partnership
Management Partnership:	General Partner of the Partnership
Foreign Company A:	General Partner who will manage the Management Partnership, resident in the same foreign jurisdiction as the Partnership
Foreign Company B:	Limited Partner of the Partnership, resident in another foreign jurisdiction and indirectly a wholly-owned subsidiary of the Applicant
The Group:	The above-mentioned parties are all connected persons

4. Description of the proposed transaction

The Applicant wishes to operate one of its business units in a specific foreign jurisdiction through a limited partnership. The essential features of the limited partnership structure will be as follows:

- The Partnership will be an incorporated limited partnership to be established in terms of the specific Partnership Act of the foreign jurisdiction where they wish to operate from. The Partnership will be managed by the Management Partnership, which in turn will be managed by Foreign Company A. The other partner of the Partnership will be a limited partner, Foreign Company B.
- Foreign Company B will contribute 99% of the capital required by the Partnership. Foreign Company B will –
 - be entitled to distributions from the Partnership during the duration of the Partnership and upon winding up of the Partnership;
 - be entitled to share in the proceeds realised upon liquidation of all the assets of the Partnership;
 - have limited liability, that is, its liability to contribute to the Partnership (including the debts, obligations and liabilities of the Partnership) is limited to the total amount of its capital contribution to the Partnership;
 - have no liability to any other partner of the Partnership or to the Partnership in excess of its capital contribution to the Partnership; and
 - have voting rights with regard to major decisions affecting the Partnership such as change of investment strategy, borrowings

and major investment decisions. In terms of the Partnership's agreement a quorum is reached when the limited partners, whose contributions represent more than 50% of the total capital of the Foreign Partnership, are present.

- In terms of the foreign country's Partnership Act, the Partnership will be regarded as a body corporate with legal personality separate from that of the partners in it.

5. Conditions and assumptions

This ruling is made subject to the condition and assumption that the Partnership will be regarded as a "foreign company" as defined in section 9D(1).

6. Ruling

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

- The Foreign Partnership, incorporated in the foreign jurisdiction, will be a "company" as defined in paragraph (b) of the definition of "company" in section 1.
- The Foreign Partnership will further be regarded as a "controlled foreign company" as defined in section 9D(1), as Foreign Company B will indirectly hold approximately 99% of the participation rights in the Foreign Partnership and Foreign Company B will be indirectly 100% held by the Applicant. Foreign Company B will also be a "controlled foreign company" of the Applicant.
- Any distribution made by the Foreign Partnership to Foreign Company B will constitute a "dividend" as defined in section 1.
- The exemption provided for in section 10(1)(k)(ii)(dd) will apply in respect of such dividends received by Foreign Company B, as Foreign Company B will hold at least 20% of the "equity share capital" as defined in section 1 and 20% of the "voting rights" in the Foreign Partnership.

6. Period for which this ruling is valid

This binding private ruling is valid for a period of three (3) years as from the date of commencement of the proposed transaction.

Issued by:

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