

BINDING PRIVATE RULING: BPR 307

DATE: 4 July 2018

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 108 AND PARAGRAPH 4(b) OF ARTICLE 11 OF THE CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME (the SOUTH AFRICA/BRAZIL TREATY)
SUBJECT : RELIEF FROM DOUBLE TAXATION OF INTEREST

1. Summary

This ruling determines whether South Africa or Brazil has the taxing rights in respect of interest income on bonds issued by the government of Brazil and paid to a South African resident.

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 28 of 2011.

In this ruling references to sections are to sections of the Act and references to paragraphs are to paragraphs of article 11 of the South Africa/Brazil Treaty applicable as at 25 May 2018. 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 108 and paragraph 4(b) of article 11 of the South Africa/Brazil Treaty.

3. Parties to the proposed transaction

The applicant: A resident company

4. Description of the proposed transaction

The applicant proposes to enter into trades in respect of bonds issued by the Brazilian government (bonds).

The applicant will –

- enter into a purchase and resell agreement with international counterparties in terms of which it will acquire bonds from the counterparties and will agree to sell back the bonds to the counterparties on specified dates and for specified prices which will each include an interest component; and

- acquire bonds in the market without any associated resell arrangements.

The applicant may in either case receive interest from the Brazilian government as issuer of the bonds during the term of the transaction.

The interest that the applicant will receive is not subject to tax in Brazil.

In respect of the purchase and resell agreement, the applicant will pay the counterparties so-called manufactured payments calculated with reference to the interest it will receive while holding each bond.

The applicant will recognise the purchase and resell agreements and the bonds at fair value in profit or loss in terms of International Financial Reporting Standard 9, and section 24JB(2) will apply to the instruments.

5. Conditions and assumptions

This binding private ruling is not subject to any additional conditions and assumptions.

6. Ruling

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

- a) Paragraph (4)(b) of article 11 of the South Africa/Brazil Treaty grants exclusive taxing rights to Brazil in respect of the interest that the Applicant will receive on the bonds. The interest will therefore not be taxable in South Africa.

7. Additional note

This ruling –

- does not cover the application or interpretation of any general or specific anti-avoidance provision or doctrine; and
- does not make any pronouncement on the deductibility of any expenditure incurred by the applicant in relation to the transactions.

8. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 25 May 2018.