



SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 065

DATE: 03 December 2009

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)

SECTION : SECTION 1, DEFINITION OF "RESIDENT"

SUBJECT : DETERMINATION OF RESIDENCY FOR SOUTH AFRICAN INCOME TAX PURPOSES IN THE CONTEXT OF THE TERM "ORDINARILY RESIDENT"

1. Summary

This ruling deals with the question as to whether a foreign citizen, who accepts employment in South Africa with a South African company for a period of two years, renewable annually thereafter, and who is required to relocate to South Africa with his family, will be regarded as ordinarily resident in South Africa for South African income tax purposes.

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 15 December 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, the definition of "resident", and in the context of the "ordinarily resident" test in particular.

3. Parties to the transaction

The Applicant: A natural person who is a citizen of a foreign country

Company A: The employer of the Applicant situated and registered in South Africa

4. Description of the proposed transaction

The background to the ruling requested can be described as follows:

- South Africa has a residence base income tax system. The residence base of taxation has the effect that in the case of a natural person who is a “resident” as defined in section 1 is subject to income tax on his/her worldwide income in South Africa.
- The Applicant accepted employment with Company A for a period of 2 years, renewable annually thereafter. The Applicant was born and raised in a foreign country and is a citizen of that country. The Applicant’s career started in his country of birth and after 26 years he moved to another country where he worked for 4 years before being recruited by Company A.
- The Applicant relocated to South Africa with his wife and their children as was required in terms of his contract of employment. The Applicant bought a house in South Africa, where he and his family will stay for the duration of his employment with Company A. The reason for his decision to buy, rather than to rent a place in South Africa was simply because they could not find appropriate accommodation to rent. His wife had certain specific preferences which could not be satisfied by the accommodation stock available at that time. The Applicant has never been a resident of South Africa and will only stay in South Africa for as long as he is employed by Company A, after which he will return to his country of birth. In the current year of assessment he has spent 7 days in South Africa on two “reconnaissance tours” and has not spent any time in South Africa in any previous years of assessment.
- The Applicant has no other social or family ties in South Africa and he does not intend to apply for South African citizenship or naturalisation. The Applicant will be employed in South Africa as a foreign country national, permitted to work under authority of a temporary work permit granted by the relevant Government Department.
- The Applicant has children from a previous marriage who all reside in his country of birth. The Applicant’s father and mother live in the Applicant’s country of birth, as do his brother and sister.
- The Applicant sold his property in his country of birth when he moved to South Africa because he felt that the housing market had peaked and the property was in any event situated in a different city further from the cities where his wider family is based. The Applicant has a property in another foreign country, but this is an investment property that is rented out.
- Although the Applicant does not have any property in his country of birth at this stage, he regards his country of birth as his real home, that

is, the place to which he will return once the contract with Company A terminates.

5. Conditions and assumptions

This ruling is made subject to the conditions and assumptions that –

- the Applicant may become a resident for purposes of the Act under the physical presence test as contained in the definition of “resident” in section 1;
- the Applicant must provide a detailed update of his residency status at the end of the two year period for which this ruling is valid to enable the Advance Tax Ruling (ATR) division to either extend the ruling or withdraw the ruling if the updated facts differ from the facts stated in this document; and
- the Applicant must inform the ATR division immediately if his stated intention changes and he decides to stay in South Africa on a permanent basis, in which case this ruling will no longer apply.

6. Ruling

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

- The Applicant will not be regarded as ordinarily resident for purposes of the definition of “resident” as contained in section 1 for the two year period that he will be employed by Company A.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of two (2) years as from 21 December 2007.

Issued by:

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