

BINDING PRIVATE RULING: BPR 081

DATE: 19 May 2010

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : PARAGRAPH 9(7) OF THE SEVENTH SCHEDULE TO THE ACT
SUBJECT : DETERMINATION OF THE VALUE OF THE TAXABLE BENEFIT OF RESIDENTIAL ACCOMMODATION

1. Summary

This ruling deals with whether, in terms of paragraph 9(7) of the Seventh Schedule to the Act, no value is to be placed on residential accommodation provided to employees seconded to the South African subsidiary from offshore based group companies.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 76Q of the Act.

All legislative references to sections and paragraphs are to sections of the Act and paragraphs of the Seventh Schedule to the Act applicable as at 20 September 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 paragraph 9(7) of the Seventh Schedule.

3. Party to the proposed transaction

The Applicant: A company (a “resident” as defined in section 1) that is a subsidiary of an international group of companies (the group)

4. Description of the proposed transaction

The Applicant’s employees are employees of foreign registered companies within an international group of companies. These employees (who are residents of various offshore countries and have been assigned to work at the Applicant for a fixed period of time, ranging from less than a year to three years) are seconded to South Africa. They enter South Africa with work permits. Depending on their level of expertise, performance in South Africa and operational requirements, the period of the secondment may be

extended. Upon completion of their assignment they are transferred back to their foreign employers or, in exceptional circumstances, to another entity within the group.

The employees are required, for the purpose of obtaining work permits in South Africa, to sign employment contracts with the Applicant.

The employees remain in the employ of their foreign employers. The foreign employment contracts are their primary contracts of employment and take precedence over their South African employment contracts with the Applicant.

The fact that they retain their relationship with their foreign employers within the group is evidenced by the following terms of their secondment –

- a) they are seconded to South Africa is for temporary periods on their terms and conditions;
- b) all of them remain members of their respective foreign pension funds, which are closed schemes and only available to employee of the respective companies;
- c) their South African remuneration is determined with reference to their foreign salary;
- d) they are taxed equalise to ensure that they will be in a similar position to that enjoyed in their foreign countries;
- e) they qualify for home leave;
- f) should they be retrenched, they will return to their foreign employer first. In this instance, the foreign employer is responsible for all costs related to their repatriation and retrenchment;
- g) where applicable, the foreign employer continues with social security and/or pension fund contributions; and
- h) the foreign employer is entitled to demand transfer of the employee to another company within the group during the term of the secondment to the Applicant.

The Applicant is obliged, in terms of the group's policy on secondments to pay the employee a salary as determined by the terms of secondment referred to above.

The Applicant is also obliged by the group's policy on secondments mentioned above to provide the employees with accommodation. In this regard, the Applicant would lease, in its own name, residential

accommodation for each employee and provide it to the employee to dwell in for the duration of the secondment.

5. Conditions and assumptions

This ruling is made subject to the conditions that –

- the employees seconded to the Applicant from other group companies retain their employment with their home base employers during their assignment to the Applicant; and
- the foreign employment contracts are the employees' primary contract of employment and take precedence over their South African employment contracts with the Applicant.

6. Ruling

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

- Paragraph 9(7) of the Seventh Schedule applies to the employees seconded to the Applicant for various periods of time ranging from less than a year to three years as per the Applicant's ruling request.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three (3) years as from 20 September 2007.

Issued by:

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