

BINDING PRIVATE RULING: BPR 224

DATE: 29 February 2016

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1) – DEFINITION OF “GROSS INCOME” AND 33
SUBJECT : NON-RESIDENT – SOURCE OF INCOME FROM THE OPERATION OF SHIPS

1. Summary

This ruling determines whether the profits of a company, that is not a resident of South Africa, from the operations of ships in international waters and South African ports will constitute gross income as defined in section 1(1) of the Act.

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 are to sections of the Act applicable as at 10 December 2015. 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”; and
- section 33.

3. Parties to the proposed transaction

The Ship Owners: Non-resident ship owners that lease ships to the Applicant

The Applicant: A listed company incorporated in and a resident of Liberia

The Sub-lessees: Third party entities from across the world that lease ships, or space on ships, from the Applicant

4. Description of the proposed transaction

The Applicant is a worldwide time charterer of shipping tankers that conclude contracts at its various worldwide business operations, depending on where the Sub-lessee resides. The Applicant’s place of effective management is not located in South Africa, nor does it have any operations or offices in South Africa.

The Applicant has managers at the offices worldwide who conduct its business activities, for example, they market the vessels, enter into cargo and vessel leases, issue voyage orders to the vessels, etc.

The Applicant will lease a ship from the Ship Owner and will sub-lease the ship to its customer, known as the Sub-lessee. The Sub-lessee will either lease the entire ship from the Applicant, or rent space on the ship, to carry a variety of liquid products to various international ports. The Sub-lessee will also off-load and/or load the products at South African ports. The Applicant will not perform or be involved in any of the off-loading and/or loading activities.

The ship owners are responsible for –

- (a) making the ship available to the Applicant;
- (b) insuring the ship; and
- (c) providing the crew, skipper, food and spare parts for the maintenance of the ship.

The Applicant is responsible for –

- (i) making the ship available to the Sub-lessee en-route via the Sub-lessee's first port of call, through the international voyage and to the Sub-lessee's final destination port;
- (ii) facilitating the international voyage;
- (iii) paying for the vessel's fuel and port charges, such as pilot and coast guard charges, and expenses which relate to the moving of the cargo; and
- (iv) paying the ship owner a rental.

The Sub-lessee is responsible for –

- (aa) dealing with all commercial issues relating to its cargo, including the load and off-load of its cargo;
- (bb) insuring the cargo;
- (cc) the appointment of third party service providers (and paying associated costs and bearing associated risks) in connection with the commercial issues referred to above; and
- (dd) paying the rental to the Applicant.

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:

- The income derived by the Applicant from its international shipping activities will not constitute “gross income” as defined in section 1(1).
- The Applicant will not be deemed to derive taxable income under section 33(1); nor does the Applicant need to render any accounts under that section.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 5 years from 10 December 2015.

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