

BINDING PRIVATE RULING: BPR 296

DATE: 8 March 2018

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1) – DEFINITION OF “COMPANY”, “FOREIGN PARTNERSHIP” AND “PERSON” AND 24H AND PARAGRAPH 11(1) OF THE EIGHTH SCHEDULE
SUBJECT : DISPOSAL BY A GERMAN LIMITED PARTNERSHIP OF ITS ASSETS TO ITS SOLE MEMBER

1. Summary

This ruling determines whether the disposal by a German Kommanditgesellschaft limited partnership of its assets to its sole member and the immediate disposal of the assets by that member to another German Kommanditgesellschaft limited partnership of which that person is also a sole member results in a disposal for that member, a resident, for capital gains tax purposes.

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 and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 20 October 2017. 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 1(1) – definition of “company”, “foreign partnership” and “person”;
- section 24H; and
- paragraph 11(1).

3. Parties to the proposed transaction

The applicant: A resident of South Africa

KG A and KG B: Two German Kommanditgesellschaft limited partnerships

4. Description of the proposed transaction

The applicant has a 100% interest as a limited partner in both KG A and KG B. The general partner of both KGs is a company incorporated and tax resident in Germany. KG A holds mainly listed shares.

The general partner holds nil percent of the interest in the assets of the KGs. The KGs are not liable for or subject to any German tax on income, other than a trade tax levied by municipalities to the extent that they receive commercial income. The KGs do not accrue or receive commercial income and are therefore not liable for the trade tax.

The applicant is required to take into account the income and gains of the KGs for purposes of the applicant's personal German income tax liability, according to the member's interest of the Applicant in the KGs. Any German tax liability that will arise from the income of the KGs will therefore be due by the applicant and not the KGs.

Proposed transaction

The applicant will enter into a withdrawal agreement with KG A and a contribution agreement with KG B in terms of which–

- the applicant will make a withdrawal of the assets from KG A against the applicant's capital account at book value; and
- the applicant will immediately contribute the assets withdrawn from KG A to KG B at market value.

On the basis that the Applicant has similar limited partnership interests in KG A and KG B, the applicant's interest in the assets will remain the same.

The proposed transaction is not regarded as a realisation for German tax purposes on the basis that the applicant had already been taxed on these assets when the applicant ceased to be a German tax resident, and hence no German tax liability will arise.

5. Conditions and assumptions

This binding private ruling is subject to the additional condition and assumption that the assets of the KGs and the interest in the KGs are held on capital account.

6. Ruling

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

- a) The proposed transaction will not result in disposals for purposes of the Eighth Schedule as each KG qualifies as a "foreign partnership", as defined in section 1(1) and is not regarded as a "person" as defined in that section. The applicant is treated as the owner of the partnership assets for purposes of the Act.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of one year from 20 October 2017.