



SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 007

The guidance contained in this ruling is affected by subsequent law changes and policy guidance on the subject provided in Interpretation Note No.35 Employees' tax: *Personal service providers and labour brokers (issue 3)*.

DATE : 6 March 2008

ACT : INCOME TAX ACT, 58 OF 1962 (“the Act”)
SECTION : SECTION 1: GROSS INCOME DEFINITION, PARAGRAPH 2 OF THE FOURTH SCHEDULE TO THE ACT AND ARTICLES 5 AND 7 OF THE CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND THE NORTHERN IRELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS (“SA/UK DTA”)
SUBJECT : SERVICE FEES RECEIVED BY A NON-RESIDENT LABOUR BROKER

1. Summary

The issues considered in this ruling are:

- Whether service fees received by the Applicant, in respect of the supply of consultants who have to perform specific services (inside and outside South Africa) to a South African resident, are from a South African source.
- Whether the Applicant has created a permanent establishment in South Africa.

2. Relevant tax laws

This ruling is a binding private ruling which was requested by the Applicant in accordance with the requirements of section 76E of the Act and issued by the Legal and Policy Division: Advance Tax Rulings in accordance with section 76Q of the Act.

All legislative references are to sections of the Act, paragraphs of the Fourth Schedule or Article of the SA/UK DTA applicable at 31 August 2007 and unless the context otherwise indicates, any word or expression in this ruling bears the meaning ascribed to it in the Act.

The relevant provisions of the Act are –

- section 1, definition of “**gross income**”; and
- paragraph 2(1) of the Fourth Schedule.

The relevant provisions of the SA/UK DTA are –

- Article 5; and
- Article 7.

3. Parties to the transaction

Applicant: A non-resident labour broker

Client: A South African company to whom the Applicant renders services

4. Description of the proposed transaction

This transaction concerns the supply of consultants by the Applicant to perform specific services (inside and outside of South Africa) to the Client for a period ranging between 6 and 12 months. The service fees will be based on the specific work performed by the consultants, calculated at a pre-determined rate. The Applicant will use the services of an independent South African based management company to obtain the necessary work permits for the consultants and to register the consultants as taxpayers with the South African Revenue Service.

The Applicant will not establish an office in South Africa and will not appoint any employees in South Africa to conclude contracts on behalf of the Applicant in South Africa. The consultants will be under the supervision and control of the Client who will be responsible to provide the consultants with the necessary tools and equipment to perform the required services.

5. Specific conditions and assumptions

This binding private ruling is made subject to the following conditions and assumptions –

- the Applicant is not a “**resident**” as defined in section 1; and
- the business of the Applicant is not carried on through a fixed place of business that has a certain degree of permanence within the meaning of Article 7.

6. Specific ruling

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

- The service fees received by the Applicant in respect of the supply of consultants who have to perform specific services outside South Africa are not from a South African source and are therefore not subject to South African tax in the hands of the Applicant.
- The service fees received by the Applicant in respect of the supply of consultants who have to perform specific services in South Africa are from a South African source and will be “**gross income**” as defined in section 1 and therefore subject to employees’ tax in terms of paragraph 2(1) of the Fourth Schedule. This service fee received by the Applicant is, however, exempt from South African tax in terms of Article 7 as the Applicant will not be deemed/regarded as having created a “**permanent establishment**” as defined in Article 5 in South Africa.

7. Period for which this ruling letter is valid

This binding private ruling is valid for a period of three years.

8. Other issues

In respect of the proposed transaction the Applicant should consider the provisions of sections 1 and 23(1) of the Value-Added Tax Act, No. 89 of 1991.

Issued by:

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