

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 071

DATE: 21 January 2010

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

SECTION : SECTION 1, PARAGRAPH (h) OF THE DEFINITION OF “GROSS INCOME”

SUBJECT : IMPROVEMENTS EFFECTED ON LEASEHOLD PROPERTY

1. Summary

This ruling deals with whether the value of improvements on leasehold property, if effected by the tenant, will constitute gross income in the hands of the landlord.

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 17 November 2009 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 in terms of paragraph (h) of the definition of “gross income” in section 1.

3. Parties to the proposed transaction

The Applicant: A trust which will be the lessor in terms of the lease agreement to be entered into

Tenant A: The lessee in terms of the lease agreement to be entered into

Occupant B: The party who occupies the portion of the property adjacent to the portion that will be leased to Tenant A

4. Description of the proposed transaction

The Applicant owns a property which is partly occupied and used by Occupant B. The trust intends to lease the vacant portion of the property to Tenant A for a market related rental for a period of twenty five years. Tenant A will have the option to effect improvements on that vacant portion of the property.

Tenant A will have no obligation in terms of the lease agreement or any other agreement to effect improvements on that vacant portion of the property. Tenant A will, however, be required in terms of the lease agreement to be entered into with the Applicant to conclude an agreement with Occupant B, should Tenant A decide to effect any improvements on that vacant portion of the property.

The requirement that Tenant A will have to conclude an agreement with Occupant B is in order to protect the interests of Occupant B. The main objective of this agreement will be to ensure that any future improvements to be effected by Tenant A will not negatively affect Occupant B's operations. This agreement will in essence control aesthetics, access, and security, minimise the impact of construction activities, prohibit the occupation of that vacant portion of the property by "undesirable tenants" and regulate the extent and size of any future improvements. All plans of such improvements will be subject to the prior written approval of Occupant B. Occupant B will, however, not in any way be entitled to place any obligation on Tenant A with regard to what improvements, if any, is to be effected by Tenant A or the extent of such improvements.

No rights will be ceded or otherwise made over to Occupant B in terms of the lease agreement to be entered into between the Applicant and Tenant A.

5. Conditions and assumptions

This ruling is not subject to any conditions and assumptions, other than mentioned in point 4 above.

6. Ruling

The ruling made in connection with the proposed transaction is that the value of any future improvements if effected by Tenant A on that vacant portion of the property of the Applicant will not constitute gross income in the hands of the Applicant in terms of paragraph (h) of the definition of 'gross income' in section 1.

7. Period for which this ruling is valid

This binding private ruling, issued in November 2009, is valid for the period of the lease agreement.

Issued by:

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