

BINDING PRIVATE RULING: BPR 169

DATE: 9 May 2014

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

SECTION : SECTION 13quin

SUBJECT : COMMERCIAL BUILDING ALLOWANCE

1. Summary

This ruling deals with the deduction of a commercial building allowance in respect of a unit, as contemplated in the Sectional Titles Act No. 95 of 1986 (the ST 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 11 March 2014 and 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 13quin.

3. Parties to the proposed transaction

The Applicant: A public company incorporated in and a resident of South Africa

The Property Developer: A private company incorporated in and a resident of South Africa

4. Description of the proposed transaction

The Applicant and the Property Developer (the Developer) jointly acquired a vacant piece of land. The land is jointly held in undivided shares of 9/16th (57.1%) by the Applicant, and 7/16th (42.9%) by the Developer.

The parties each paid their proportionate share of the purchase consideration on the joint acquisition of the land. The parties propose to register a sectional title development scheme (the scheme) over the property (and its proposed buildings) under the provisions of the ST Act.

It is proposed that the Applicant and the Developer will develop the jointly owned land by each erecting for its respective separate use, and at its own cost, a commercial building thereon, each building comprising a separate tower.

The two buildings will be separated by a greened thoroughfare, as regards the appearance above ground level. Below ground, the underground parking basement will be constructed as a single basement, which will establish a single

foundation for the two towers. The basement will be separated into two parts by a wall on each level, with dedicated parking areas for each unit.

In order to give effect to the proposed improvements to the land, the Applicant and the Developer will conclude a development agreement to erect the commercial buildings which will ultimately be the object of the scheme.

The development agreement will govern the terms of the proposed development, including the quality, extent and costing of the Applicant's unit, the construction of which will be project managed by the Developer. It will also regulate the division of development costs between the Applicant and the Developer, ensuring that the Applicant will have the sole financial responsibility for the development of its separate unit (including its proportionate basement parking area). The development costs pertaining to the shared amenities will be shared between the parties proportionate to their joint land ownership ratios, or such other ratio as agreed by them.

The Developer will, by way of a separate construction contract, engage a building contractor for the construction of its own unit as well as the common structures and shared amenities. In addition, the Developer will subcontract the construction of the Applicant's unit, whilst remaining contractually bound to deliver the unit to the Applicant.

5. Conditions and assumptions

This 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 Applicant will be entitled to claim a commercial building allowance on its unit, as contemplated in section 13*quin*, on occupying the unit after registration of the sectional plan under the provisions of the ST Act, and prior to the tenants of the Developer occupying the Developer's unit.
- The Applicant will also be entitled to claim a commercial building allowance on its unit, as contemplated in section 13*quin*, on occupying its unit after registration of the sectional plan under the provisions of the ST Act, should the tenants of the Developer occupy the Developer's "unit" prior to registration of the sectional plan and prior to the Applicant occupying its unit.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of four years from 11 March 2014.

Issued by:

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