

BINDING PRIVATE RULING: BPR 165

DATE: 18 March 2014

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1), DEFINITION OF “HOTEL KEEPER” AND 13bis
SUBJECT : LETTING OF ACCOMMODATION WHERE THE PROVISION OF MEALS IS OUTSOURCED

1. Summary

This ruling deals with the letting of accommodation to students on the basis that the owner of the building outsources the provision of meals in the on-site cafeteria to a third party caterer and whether this trade falls within the definition of “hotel keeper” 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 22 January 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 the provisions of –

- section 1(1), definition of “hotel keeper”; and
- section 13bis.

3. Parties to the proposed transaction

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

Service Providers: Companies incorporated in and residents of South Africa whose trade is the preparation and provision of meals at their clients’ on-site cafeterias (the caterers)

4. Description of the proposed transaction

The Applicant currently provides apartment style off-campus residential accommodation for students in buildings (residences) close to educational institutions. These residences typically provide fully furnished accommodation which includes a kitchenette, recreational facilities, computer centres, internet, gyms, and tutoring and mentorship programmes. Furthermore, the residences have on-site provision of food either in the style of a cafeteria or café.

The accommodation is either let directly to the students or the building is let to the educational institution which in turn lets it to the students on the basis that the Applicant is still responsible for the provision of meals.

The Applicant proposes to establish on-site cafeterias at all the facilities and outsource the supply of meals at these cafeterias to a Service Provider.

The Applicant also proposes to erect another building for the purpose of providing additional student accommodation to be operated on the same basis as the existing residential buildings.

The provision of meals will take place as follows:

- The Applicant will supply the kitchen equipment and incur the capital expenditure in respect of the kitchen fit out.
- The Service Provider will in turn prepare and sell meals and "call order items" (cafeteria items) to students.
- The Service Provider will supply drinks and further convenience grocery items to students.
- The meals will be sold on an eat-in or take-away basis.

5. Conditions and assumptions

This ruling is subject to the additional condition and assumption that meals are supplied to students at the on-site cafeteria with the option of eating in.

6. Ruling

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

- The Applicant's trade of providing residential accommodation to students, or letting a building to an educational institution for the provision of student accommodation, and outsourcing of the provision of meals to be supplied to the students in on-site cafeterias to a Service Provider, will qualify as carrying on the trade of "hotel keeper" as defined in section 1(1).
- The Applicant or its lessee will qualify as an hotel keeper in respect of the existing buildings and the new building to be erected, effective from the date that the provision of meals is outsourced.
- The Applicant will be entitled to claim the allowance provided for under section 13*bis*(1) in respect of –
 - the cost of qualifying improvements (other than repairs) to be made to existing buildings that will be used by the Applicant or rented out to a lessee for purposes of student accommodation, effective from the date of outsourcing the provision of meals; and
 - the cost of the new building to be erected and qualifying future improvements (other than repairs) to the building that will be used by the Applicant or rented out to a lessee for purposes of student accommodation, where the provision of meals is outsourced to a third party caterer, provided that meals are supplied to the students from the onset and at all relevant times thereafter.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 5 years from 22 January 2014.

Issued by:

**Legal and Policy Division: Advance Tax Rulings
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