

BINDING PRIVATE RULING: BPR 180

DATE: 1 October 2014

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTION 12N
SUBJECT : IMPROVEMENTS EFFECTED ON LAND NOT OWNED BY TAXPAYER

1. Summary

This ruling deals with the question as to whether a taxpayer, who is a party to a public private partnership, will qualify for a deduction under any of the provisions referred to in section 12N in respect of improvements effected on land not owned by the taxpayer.

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 28 March 2013 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 12N.

3. Parties to the proposed transaction

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

The Department: A department of the national government

4. Description of the proposed transaction

The Applicant and the Department entered into a public-private partnership (PPP), a commercial agreement, as more fully defined in Regulation 16.1 of the Treasury Regulations (*GNR.225* of 15 March 2005) issued in terms of section 76 of the Public Finance Management Act No. 1 of 1999.

In terms of the PPP the Applicant will –

- finance, design, construct, operate and maintain a new serviced head office building (the new building) for the Department that is to be constructed on land owned by the national government; and
- assume the financial, technical and operational risk for the project.

The Applicant may use subcontractors to carry out its obligations for both the construction and the operational phases of the PPP.

The PPP provides for a unitary payment to be made by the Department to the Applicant of the capital amount owed to the Applicant, together with interest and service fees.

During the construction phase the Applicant will be granted possession of and access to the project site to construct the new building. Thereafter the operational phase will commence. The Applicant will be given access to the new building exclusively for purposes of providing the services as described in the PPP.

The Applicant does not hold any right of use or occupation of the land or the new building by virtue of any term of the PPP.

5. Conditions and assumptions

This ruling is not subject to any additional conditions or assumptions.

6. Ruling

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

- The Applicant does not comply with the requirements of paragraphs (a) and (e) of section 12N(1) and will therefore not qualify for any deduction under any provision referred to in section 12N(1).

7. Period for which this ruling is valid

This binding private ruling is valid for the period of the PPP.

Issued by:

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