

BINDING PRIVATE RULING: BPR 309

DATE: 31 August 2018

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 1(1) – DEFINITION OF “GROSS INCOME”, AND PARAGRAPH 63A OF THE EIGHTH SCHEDULE
SUBJECT : DISPOSAL OF AN ASSET BY A PUBLIC BENEFIT ORGANISATION

Preamble

This binding private ruling is published by consent of the applicant(s) to which it has been issued. It is binding as between SARS and the applicant and any co-applicant(s) only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines the tax consequences of the disposal of an asset by a public benefit organisation.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act and references to paragraphs are to paragraphs of the Eighth Schedule to the Act, applicable as at 6 August 2018. 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 1(1), – definition of “gross income”; and
- paragraph 63A.

3. Parties to the proposed transaction

The applicant: A duly approved public benefit organisation

The purchaser: An independent and unconnected third party developer

4. Description of the proposed transaction

The applicant owns three properties that are adjacent to each other. The properties each consists predominantly of vacant land with a few buildings grouped together on sections of the land. The properties have to date been utilised to house the applicant’s organisation and to enable it to fulfil its various objectives as a public benefit organisation and in particular, to enable members of the public to conduct spiritual retreats.

The properties were acquired from the proceeds of solicited donations.

The income of the applicant has decreased and it is expected that this trend would continue in the future and that it would become increasingly difficult for the applicant to sustain and maintain its properties, and to earn sufficient income to continue to fulfil its core function of carrying on public benefit activities.

In response, the applicant had taken a decision to utilise the properties to generate additional income by using the properties for business. However, that income was insufficient, and applicant has decided to sell the properties.

The aggregate footprint of the buildings on the properties constitutes 4.9% of the aggregate extent of the properties. As the properties will be consolidated on disposal, the usage area calculations were applied to the whole area of the properties and it was determined that only 8% of the consolidated property was used for business.

The applicant has therefore not violated the allowable 15% requirement in respect of business usage and accordingly substantially the whole use of the asset was directed at a purpose other than a business undertaking or trading activity.

The applicant proposes to sell the three properties to an unconnected and independent third party developer. The title of the properties will be consolidated as one in the deeds registry and it will be sold as a single property.

5. Conditions and assumptions

This binding private ruling is not subject to any additional conditions and assumptions.

6. Ruling

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

- a) The proceeds on the disposal of the property will not form part of the applicant's "gross income" as defined in section 1(1); and
- b) The applicant must disregard any capital gain or capital loss determined in respect of the disposal of the property in terms of paragraph 63A(b)(i).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 6 August 2018.