

BINDING PRIVATE RULING: BPR 183

DATE: 6 November 2014

ACTS : **INCOME TAX ACT NO. 58 OF 1962 (the Act)**
SECTION : **SECTION 1(1) DEFINITION OF “GROSS INCOME” PARAGRAPHS (c) AND (j), AND PARAGRAPHS 2(a) AND 2(d) OF THE SEVENTH SCHEDULE TO THE ACT**
SUBJECT : **EMPLOYEE HOUSING SCHEME**

1. Summary

This ruling considers whether a taxable benefit will arise for employees who will acquire properties from an associated institution of their employer in terms of a proposed employee housing scheme.

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 and paragraphs are to sections of the Act and paragraphs of the Seventh Schedule thereto as at 28 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 the provisions of –

- section 1(1), definition of “gross income” paragraphs (c) and (j); and
- paragraphs 2(a) and 2(d) of the Seventh Schedule.

3. Parties to the proposed transaction

The Applicant:	A private company incorporated in and a resident of South Africa
Co–Applicant A:	A public company incorporated in and a resident of South Africa
Co–Applicant B:	A private company incorporated in and a resident of South Africa
Co–Applicant C:	A private company incorporated in and a resident of South Africa

4. Description of the proposed transaction

In terms of a wage agreement with a recognised trade union the Applicant agreed to investigate and find a feasible housing solution for certain current and future eligible employees (the employees) of the Applicant and/or the Co-Applicants.

In terms of a feasibility study done a suitable housing scheme has been developed which will provide access to affordable housing for the employees.

The housing scheme will entail the following:

- The acquisition of suitable land and the development of housing on that land.
- Co-Applicant B will enter into a sale of land agreement (the agreement) with each of the employees whereby those employees will acquire a property from Co-Applicant B at the prevailing market value on the date of signature of the agreement.
- The purchase price agreed upon is to be paid in specified monthly instalments over a period of time. In most cases the purchase price will be paid over a period of 208 months.
- The agreements will be subject to the provisions of the Alienation of Land Act No. 68 of 1981, and specific reference is made in the agreements to sections 17 and 27 of that Act in that –
 - the employee will be entitled to accelerate payment of the full outstanding purchase price, and other amounts due and owing under the agreement, at any time and demand transfer of the property into the employee's name; and
 - the employee can demand the transfer of the property at any time after at least 50% of the purchase price has been paid, on condition that a first mortgage bond is registered over the property by the employee in favour of Co-Applicant B to secure payment of the balance of the purchase price and other amounts owing under the agreement.
- Occupation and possession of the property is to be given to the employee on the date on which the agreement is signed. Registration in the name of the employee will be delayed until the employee has paid the full consideration, or at least 50% thereof, as the case may be, to Co-Applicant B.
- Employees are required to settle the purchase price through paying monthly non-refundable instalments in the form of capital and interest, as stipulated in the agreement.
- If the employee fails to comply with the agreement, Co-Applicant B may demand specific performance from the employee, that is, either the employee rectifies the failure to perform and accordingly the sale agreement continues, or Co-Applicant B may cancel the agreement. If Co-Applicant B cancels the agreement, it may, inter alia, retain all payments made by the employee as "*rouwkoop*", liquidated damages, or as compensation for the employee's occupation of the property for the period commencing from the signature date to the date of cancellation.
- In addition to the aforementioned instalments, the employees' current living out allowance (LOA) or home owners allowance (HOA) will be used toward the settlement of their outstanding purchase consideration. With effect from the date on which an employee takes occupation of the property, instead of paying the LOA or the HOA to the employee, the Applicant or Co-Applicants will pay an agreed contribution (the employer contribution) to a Housing Fund to be established for purposes of the housing scheme. These employer contributions will be paid each month by the Housing Fund to Co-Applicant B towards the reduction of the employee's indebtedness to Co-Applicant B. The

monthly amount to be paid by the employee will be the difference between the “instalment amount”, as defined under each individual agreement, and the employer contribution in respect of the employee concerned.

- Employees currently pay employees’ tax on the LOAs and HOAs received from their employer. The stated employer contributions, after occupation of the property has been taken by the employee, will continue to be subject to employees’ tax regardless of the fact that they are to be applied towards the reduction of the employees indebtedness to Co-Applicant B under the agreement.
- The employee’s rights under the agreement will be restricted in some respects. For example, they will only be entitled to use the properties for private residential purposes and occupy the properties personally with their spouses and children. The sale, alienation, hypothecation, encumbrance, mortgage, lease or any disposal in any manner of the property by the employee is prohibited unless the prior written consent of Co-Applicant B is obtained, and the sale of the property to a third party is subject to a first right of refusal in favour of Co-Applicant B.

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 proposed transaction will not result in a taxable benefit by virtue of the provisions of paragraphs 2(a) and 2(d) of the Seventh Schedule.
- The employer contributions that are to be paid by the Applicant or Co-Applicants to the Housing Fund will be “gross income” as defined in paragraph (c) of the relevant definition in section 1(1) and therefore still subject to employees’ tax.

7. Period for which this ruling is valid

This binding private ruling is valid for the implementation of the transaction and will be valid from the effective date of the transaction for a period of 10 years.

Issued by:

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