

BINDING PRIVATE RULING: BPR 218

DATE: 1 February 2016

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1) – DEFINITION OF “REIT”, 25BB AND 44
SUBJECT : QUALIFYING DISTRIBUTIONS TO BE MADE BY A REIT

1. Summary

This ruling determines the relevant year of assessment when considering whether a “qualifying distribution” is made by a REIT.

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 29 June 2015. 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 “REIT”; and
- section 25BB.

3. Parties to the proposed transaction

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

A CISP A portfolio created as a collective investment scheme in property

4. Description of the proposed transaction

The Applicant’s first financial year and its first year of assessment ended on 30 June 2015. The Applicant will, subsequent to a proposed amalgamation transaction with the CISP, list on the JSE as a REIT shortly after 30 June 2015. As from its listing, the Applicant will commence trading as a corporate REIT.

The CISP, under the regulatory requirements pertaining to its industry, converted its business to a corporate structure which is housed in the Applicant. The conversion became effective as from 1 July 2015. It consisted of the transfer of the assets and liabilities of the CISP to the Applicant in exchange for the CISP receiving shares or linked units in the corporate REIT, on the basis that those

shares or linked units were issued on behalf of the CISP to the unit holders. The CISP was thereafter voluntarily wound up. The conversion constituted an “amalgamation transaction” as contemplated in section 44. The Applicant conducted no business activities and earned no income prior to the conversion.

The Applicant will make distributions in respect of its year of assessment ending 30 June 2016, being its first year of earning rental income and its first year to be assessed as a REIT.

The distribution in respect of its 2016 year of assessment (to be determined with reference to its financial results for the financial year ending 30 June 2016) will only be made after 30 June 2016, once the financial results have been finalised, unless an interim distribution is made during the course of the 2016 year of assessment, in accordance with the manner in which REITs ordinarily make distributions.

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:

- In establishing whether 75% of the gross income of the Applicant consists of “rental income”, in order for it to make a “qualifying distribution”, in respect of its year of assessment ending 30 June 2016, being its first year of assessment as a REIT, the applicable year of assessment to consider will be the year of assessment in which the Applicant was incorporated, which ended on 30 June 2015. Paragraph (b) of the definition of “qualifying distribution” must, therefore, be considered.
- The Applicant will comply with the provisions of paragraph (b) of the definition of “qualifying distribution” in section 25BB, and provided that all the other requirements of this definition are met, the Applicant will be making a “qualifying distribution” in respect of the 2016 year of assessment.

7. Period for which this ruling is valid

This binding private ruling is valid for 5 years from 29 June 2015.