

# SARS WILL FOLLOW THE MONEY: IMPROVEMENTS TO RENTAL PROPERTY

Often a landowner requires improvements to be made to his property, however, does not have the skill or capital to effect such improvements. The lessor can then agree with a lessee to effect improvements to the leased premises, which improvements made to the leased premises becomes the property of the lessor as landowner.

However, the definition of 'gross income' in the Income Tax Act (the "**Act**") provides that a lessor must include in his gross income for the year in which the right accrues to him, an amount in terms of a lease agreement where the lessee or any other person is legally obliged to effect improvements to the leased premises. The value of the improvements will be included in the lessor's gross income. The lessor will only be taxed if the obligation was placed on the user (i.e. the lessee) of the property by the lessor.

Furthermore, it is important to note that the **Act** refers to "any other person" giving the right to improve the property and not necessarily the "owner" of the property. Hence, when the owner of a property rents his property to a lessee (with no obligation to improve the leased premises) and such lessee (now sub-lessor) sub-lets the property to a another person (i.e. the sub-lessee) with an obligation on the sub-lessee to improve the rental premises, the sub-lessor will acquire the taxable right and not the owner of the property.

A general principle recognized in the *Dadoo Ltd. and Others v Krugersdorp Municipal Council* case, our courts permit parties to arrange their affairs in such a way to fall outside the ambit of a certain provisions of the **Act**, as per the example aforementioned. The Court, however, has an absolute discretion to decide whether the party concerned has succeeded in achieving that result. However, should the true intention of the parties be in fact and in law to give effect to the agreement entered into, the court will not intervene.

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