

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 010

DATE : 6 March 2008

ACT : INCOME TAX ACT, 58 OF 1962 (“the Act”)
SECTION : SECTIONS 11(a), 15, 36 and 37A
**SUBJECT : THE APPLICABILITY OF THE MINING TAX DISPENSATIONS
CONTAINED IN THE ACT TO A SPECIFIC CONTRACT MINING
ARRANGEMENT**

1. Summary

The issues considered in this ruling are -

- Whether a contract miner appointed in order to overcome some of the administrative issues relating to the transfer of old order mining rights may be seen as deriving income from mining operations. Such contract miner is appointed on the basis that it will conduct the actual mining activities which include the beneficiation of the minerals, and in exchange for such services, the contract miner will receive a production fee based on, *inter alia*, the actual tonnage of beneficiated minerals produced on behalf of the owner of the mineral right; and
- Whether, where such contract miner incurs qualifying rehabilitation expenditure as per section 37A of the Act, such contract miner will be entitled to a tax deduction of such expenses under this section.

This ruling also addresses certain attendant issues arising from the contract mining arrangement that will be gleaned from the body of the ruling.

2. Relevant tax laws

This ruling is a binding private ruling which was requested by the Applicant in accordance with the requirements of section 76E of the Act and issued by the Legal and Policy Division: Advance Tax Rulings in accordance with section 76Q of the Act.

All legislative references are to sections of the Act applicable as at 31 October 2007 and unless the context otherwise indicates, any word or expression in this ruling bears the meaning ascribed to it in the Act.

Relevant provisions of the Act are –

- Section 11(a);
- Sections 15 and 36; and
- Section 37A.

3. Parties to the transaction

Applicant:	A limited liability resident company forming part of a group of mining companies (“the A Group”), and a wholly owned subsidiary of A (Pty) Ltd
Co-Applicant:	A limited liability resident company forming part of the A Group and also a wholly owned subsidiary of A (Pty) Ltd
A (Pty) Ltd:	The on-shore holding company of the applicant and co-applicant and a directly held wholly owned subsidiary of an off-shore listed company (“AX”) operating in the mining industry
Refiner:	A limited liability resident company that does not form part of the A Group
BEE partner:	Either a resident Trust or a limited liability company unconnected to the A group

4. Description of the proposed transaction

AX is currently involved in two projects through its indirectly held resident subsidiary, the Co-Applicant. One of the projects, the Green Project (“the Project”), has advanced to the stage of completion of a bankable feasibility study and in order to secure the long term mining rights to this project, a BEE partner will be introduced. However, the investment by the BEE partner is subject to the successful ring-fencing of the Project in a separate entity. The Co-Applicant will, therefore, transfer the Project to another indirectly wholly owned subsidiary of AX, namely the Applicant.

The assets pertaining to the Project, which include, *inter alia*, the project information (i.e. the feasibility study, etc.), surface rights to the area, and an “old order mining right”, will be transferred to the Applicant, in terms of section 42. The Applicant will thereafter be unbundled, in terms of section 46, which will result in A (Pty) Ltd owning the shares in the Applicant. The BEE partner will, through an equity share subscription at market value, become a 50% shareholder of the Applicant.

The Co-Applicant is currently the holder of an “old order mining right” as defined in Item 1 of the Transitional Arrangements for the Mineral Lease and Mining Authorisation granted to it. The intention of the parties is to transfer also such mining right as part of the transfer of the Project mining assets to the Applicant in terms of section 42.

In terms of a draft “Interim Mining and Beneficiation Agreement”, which governs the contract mining arrangement between the Applicant and the Co-Applicant, the Applicant will be appointed to –

- conduct and be responsible for Mine Development and the Mining Operations on the Property by virtue of the Co-Applicant’s rights and titles;
- produce on behalf of the Co-Applicant the concentrate product; and
- deliver for and on behalf of the Co-Applicant, the concentrate product to the Refiner (other than any Waste and By-products).

The Co-Applicant will sell the concentrate product in terms of a refinery agreement to the Refiner and the price agreed with the Refiner will equal the production fee payable by the Co-Applicant to the Applicant for the services rendered in terms of the Interim Mining and Beneficiation Agreement.

The Co-Applicant will pay the Applicant a market related production fee for the services rendered/activities undertaken in pursuance of the Interim Mining and Beneficiation Agreement. The production fee is based on the actual tonnage of concentrate product delivered by the Applicant to the Refiner in a given cost month and is payable on delivery of a tax invoice by the Applicant to the Co-Applicant.

The Interim Mining and Beneficiation Agreement shall continue until the earlier of the transfer of the mineral right or the refusal of either the conversion or cession of the mineral right by the Minister.

5. Specific conditions and assumptions

This binding private ruling is made subject to the following conditions and assumptions:

- Since the outset of the Project, the intention of the Co-Applicant was to conduct mining operations and the Applicant's intention in developing the mine is also to conduct mining operations.
- The Interim Mining and Beneficiation Agreement to be entered into will not deviate materially from the draft "Interim Mining and Beneficiation Agreement" accompanying the application.
- This binding private ruling only applies to future expenditure to be incurred by the Applicant during the interim arrangement which includes a pre-production phase and a production phase.

6. Specific ruling

This specific ruling made in connection with the proposed transaction is as follows –

- The activities performed by the Applicant prior to conversion of the old order mining right during the interim period under the interim agreement would constitute "mining operations" and "mining" as defined in section 1, and will qualify for a deduction in terms of section 15 read with section 36, in relation to –
 - (a) all expenditure incurred in constructing the mine and in acquiring mining equipment;
 - (b) all expenditure incurred in the construction and development of the concentrator complex; and
 - (c) all expenditure on development, general administration and management, (including all interest and other charges on funding to be procured by the Applicant, prior to the commencement of production;

- The Applicant would be entitled to claim a deduction in terms of section 11(a) in respect of expenditure incurred in producing the concentrate product;
- The revenue/consideration received by the Applicant from the Co-Applicant for the production of the concentrate product in terms of the interim arrangement would be regarded as income directly connected to such mining operations and as such would be regarded as income derived from mining;
- The Applicant will be entitled to deductions in terms of section 37A(1)(d)(i)(bb) against mining income for the expenditure incurred on rehabilitation costs; and
- The Co-Applicant will be entitled to claim the production fee paid to the Applicant as a deduction against income earned by the Co-Applicant from the sale of the concentrate product to the Refiner which will result in the Co-Applicant being in a tax neutral position.

7. Period for which this ruling letter is valid

This binding private ruling, issued in September 2007, will be valid from the commencement of the interim arrangement until the earlier of the conversion and cession of the mining right or a period of three years from the commencement of the interim arrangement. For purposes of this ruling, the interim arrangement will commence on the effective date of the “Interim Mining and Beneficiation” agreement.

8. General

This binding private ruling does not pertain to, or express any views on any expenditure incurred by the Applicant upon the acquisition of the Green Project from the Co-Applicant.

Issued by:

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