

BINDING PRIVATE RULING: BPR 130

DATE: 13 December 2012

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTION 1(1), DEFINITION OF “GROSS INCOME”, AND PARAGRAPHS 1, 3, 4, 11, 20, 33, 35 AND 38 OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : SALE OF MINING RIGHTS AND THE RESPECTIVE BASE COST OF EACH MINING RIGHT

1. Summary

This ruling deals with the capital gains tax consequences arising from the sale of mining rights.

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 Eighth Schedule to the Act applicable as at 9 March 2012 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”; and
- paragraphs 1, 3, 4, 11, 20, 33, 35 and 38 of the Eighth Schedule.

3. Parties to the proposed transaction

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

The Purchaser: A private company incorporated in and a resident of South Africa

4. Description of the proposed transaction

The Applicant is in the business of mining and selling of minerals.

The Applicant initially obtained mining rights from a “connected person” as defined in section 1(1) and accordingly treated the transaction under paragraph 38 of the Eighth Schedule. The result of applying paragraph 38 was that the connected person included the market value of the assets as proceeds and the Applicant acquired the mining rights at the same market value.

The Applicant intends to sell the mining rights which it initially acquired from the connected person (mining right no’s. 1 and 2), as well as other prospecting and mining rights awarded to it by the Department of Mineral Affairs (mining right no’s. 3, 4 and 5).

In terms of the proposed sale agreement the Applicant will dispose of mining right no’s. 1, 2, 4 and 5, and a portion of mining right no. 3, under section 11 of the Mineral and Petroleum Resources Development Act No. 28 of 2002.

The Applicant proposes to apportion the proceeds of the sale in accordance with the surface area linked to each mining right, as it relates to the total hectares of all surface areas included in the transaction (the “surface area apportion method”).

The proposed transaction will only relate to the mining rights and not the surface area or land itself. The Applicant will retain ownership of the land and will merely allow the purchaser access to the land in order to exploit the mining rights so acquired.

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 proceeds which will arise from the proposed transaction will be of a capital nature and subject to the provisions of the Eighth Schedule.
- Each mining right to be disposed of in the proposed transaction will be regarded as an individual “asset”, as defined in paragraph 1 of the Eighth Schedule.
- The ‘surface area apportionment method’ will not be regarded as an appropriate method for allocating the proceeds of the sale to the individual mining rights disposed of.

- The base cost of mining right no's. 1 and 2, initially acquired from the connected person, will be the respective market value as established under paragraph 38 of the Eighth Schedule on the acquisition date thereof.
- The base cost of mining right no. 3, relating to the sale of a portion of that mining right, will be the proportionate market value thereof established under paragraphs 38 and 33 of the Eighth Schedule.
- The base cost of mining right no's. 4 and 5 will be the amount incurred in creating these mining rights, as provided for in paragraph 20 of the Eighth Schedule.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 3 years from 9 March 2012.

Issued by:

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