

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 036

DATE: 24 June 2009

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 1, 15 AND 36
**SUBJECT : APPLICABILITY OF TAX DISPENSATIONS CONTAINED IN
THE ACT WITH REGARD TO A SPECIFIC CONTRACT MINING
ARRANGEMENT**

1. Summary

This ruling deals with the income tax implications attendant upon a contract mining arrangement entered into by the parties specifically to overcome certain administrative impediments relating to the transfer of old order mining rights to a purchaser of a mining operation. More specifically the ruling relates to –

- whether the Applicant will be carrying on mining operations and mining as defined in section 1 of the Act, despite the fact that it will not be the holder of the mineral rights in relation to the minerals mined; and
- if so, whether the Applicant will be entitled to deduct its capital expenditure against the income earned from such activities as contemplated in section 15 read with section 36 of the Act.

2. Relevant tax laws

This ruling is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling legislative references to sections are to sections of the Act applicable as at 11 October 2007 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to them in the Act.

This ruling has been requested in under the provisions of –

- section 1, the definition of **”mining operations”** and **“mining”**; and
- sections 15 and 36.

3. Parties to the transaction

- The Applicant: A limited liability resident company operating in the mining industry
- SubCo: A limited liability resident company which is a wholly owned subsidiary of the Applicant

4. Description of the proposed transaction

As part of a larger transaction, the Applicant intends entering into a transaction in terms of which it will acquire the business of its wholly owned subsidiary (SubCo), as a going concern together with its mineral rights (old order mining rights) of SubCo in terms of the provisions of a Sale of Business Agreement.

However, pursuant to the Mineral and Petroleum Resource Development Act, No. 28 of 2002 (the MPRD Act) and more specifically the Transitional Arrangements together with the Chief Registrar's of Deed Circular No. 11, the old order mining rights, of which SubCo is the holder, are not capable of cession and transfer to the Applicant pursuant to the above transaction.

Thus, it is the intention that the Applicant will purchase the new order mining rights (converted rights) notwithstanding that the conversion of the old order mining rights to new order mining rights and the transfer of the new order mining rights may not have been implemented at the effective date of the Sale of Business Agreement.

To ensure that the Applicant would not conduct illegal mining operations (during the period when it owns the mining assets, but before the transfer of the new order mining rights), while at the same time carrying all the risk and reward of the mining operations, it is proposed that the Applicant and SubCo will enter into an interim mining arrangement. The interim mining arrangement, provided for in the Sale of Business Agreement, will regulate the rights and obligations between SubCo and the Applicant as well as the activities to be undertaken. The activities would include, *inter alia*, the mining of the minerals.

The interim arrangement will continue until the old order mining rights are converted to new order mining rights and ceded to the Applicant.

As consideration for the conduct by the Applicant of the mining activities, SubCo will pay the Applicant a monthly consideration calculated in accordance with a formula which takes into account, *inter alia*, the market value per unit of the mineral mined.

5. Conditions and assumptions

This ruling is made subject to the following conditions and assumptions –

- the final Sale of Business Agreement entered into between the parties does not deviate materially from the draft agreement provided to SARS; and
- SubCo sells its entire mining business as a going concern to the Applicant under the Sale of Business Agreement.

6. Ruling

The ruling made in connection with the proposed transaction is as follows:

- The activities performed by the Applicant under the interim mining arrangement will constitute “**mining operations**” and “**mining**” as defined in section 1.
- The revenue/consideration derived by the Applicant for producing and delivering the minerals to SubCo in terms of the interim mining arrangement will be regarded as income directly connected to such mining operations and as such will be regarded as income derived from mining operations.
- The Applicant will be entitled to capital deductions/allowances in terms of section 15 read with section 36 against such income derived from mining operations.

7. Period for which this ruling is valid

This binding private ruling, issued in October 2007, is valid for a period of 3 years from the effective date of the Sale of Business Agreement.

Issued by:

Legal and Policy Division: Advance Tax Rulings
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