

BINDING PRIVATE RULING: BPR 239

DATE: 10 June 2016

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1) – DEFINITION OF “GROSS INCOME”, 15(a) AND 36(11) – DEFINITION OF “CAPITAL EXPENDITURE” OF THE ACT AND PARAGRAPHS 1 – DEFINITION OF “DISPOSAL”, 3 AND 11 OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : CASH CONTRIBUTIONS MADE TO A SPECIAL PURPOSE VEHICLE ESTABLISHED TO PROVIDE HOUSING TO MINE WORKERS

1. Summary

This ruling determines the income tax consequences resulting from cash contributions to be made by the Applicant (as a party to a mining joint venture) to a special purpose vehicle established to provide housing for the employees of the joint venture and the group of companies of which the Applicant forms part (the group).

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 thereto applicable as at 4 May 2016. 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”;
- section 15(a) read with section 36;
- section 36(11) – definition of “capital expenditure” in particular paragraphs (d) and (e) of that term;
- paragraph 1 – definition of “disposal”;
- paragraph 3; and
- paragraph 11.

3. Parties to the proposed transaction

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

Co-Applicant:	A mining company incorporated in and a resident of South Africa
Joint Venture (JV):	A mining joint venture between the Applicant and the Co-Applicant
Propco:	A company incorporated in and a resident of South Africa that is a wholly owned subsidiary of the Applicant

4. Description of the proposed transaction

The holder of a mining right is required under section 25(2)(f) of the Mineral and Petroleum Resources Development Act No. 28 of 2002 (MPRDA) to comply with the requirements of the prescribed social labour plan (SLP) in order to apply for and be granted a renewal of its mining right. It is also obliged to comply with the broad-based social-economic empowerment Charter, referred to in section 100 of the MPRDA. The Charter obliges mines to establish measures for improving the standard of housing (including the upgrading of hostels, conversion of hostels to family units and the promotion of home ownership options) for mine employees.

The JV has, in terms of its SLP, agreed to the implementation of a housing scheme for the benefit of the employees of the JV and the group.

Propco was established exclusively for purposes of the housing scheme. It obtained loan funding from a financial institution.

The funding agreement requires that the housing scheme is to be conducted in a legal entity separate to the JV participants and the entity is to be capitalised with a certain amount.

The JV proposes to fund Propco by way of a cash contribution that is neither a loan nor equity share capital. The funding agreement further provides for a restriction on the distributions that may be made to the shareholder of Propco. The board of directors of the Applicant's holding company resolved that any surplus cash and profits remaining in Propco after completion of the housing scheme and repayment of the loan should be utilised for social spending to further improve the lives of employees and the communities where the group conducts mining operations.

The memorandum of incorporation of Propco therefore specifically provides that:

- a) Upon completion of the housing projects undertaken by Propco, as set out in the group's housing policy or prior to any voluntary liquidation proceedings which may be undertaken by Propco, all surplus cash and profits shall be applied to one or more programmes that have as its/their object the improvement of the social conditions of the communities in or around the area in which the Applicant carries on its business.
- b) Propco shall not be entitled to undertake voluntary liquidation proceedings without having first applied all surplus cash and profits of Propco as set out above.

5. Conditions and assumptions

This binding private ruling is made subject to the additional condition and assumption that the clauses in the memorandum of incorporation of Propco relating to the utilisation of surplus cash and profit are strictly adhered to.

6. Ruling

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

- The cash contribution to be made by the JV to Propco for purposes of the housing scheme will qualify as “capital expenditure”, as defined in paragraph (e) of the definition of that term in section 36(11), for each member of the JV, to the extent that the cash contribution relates to housing for persons employed by the JV. Any part of the cash contribution that relates to housing for persons not employed by the JV will not be deductible and an apportionment of the expenditure must be made.
- The cash contribution will not result in a disposal of an asset by any member of the JV. Consequently, the cash contribution will not give rise to a capital gain contemplated in paragraph 3 of the Eighth Schedule.
- The cash contribution to be received by Propco will constitute a receipt of a capital nature and will not constitute “gross income”, as defined in section 1(1).
- The receipt of the above cash contribution from the JV will not give rise to a capital gain contemplated in paragraph 3 of the Eighth Schedule. Accordingly, no inclusion of a taxable capital gain will be made in the taxable income of Propco under section 26A.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 1 year from 4 May 2016.