

BINDING PRIVATE RULING: BPR 182

DATE: 6 November 2014

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTION 15(a) READ WITH SECTION 36, SECTION 19 AND PARAGRAPH 12A OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : WAIVER OF DEBT THAT FUNDED MINING CAPITAL EXPENDITURE

1. Summary

This ruling deals with the waiver of debt used to fund mining capital expenditure and the tax treatment in respect of the amount that remains to be claimed as a deduction under section 15(a) read with section 36.

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 12 June 2014 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 15(a) read with section 36;
- section 19; and
- paragraph 12A of the Eighth Schedule.

3. Parties to the proposed transaction

The Applicant:	A company incorporated in and a resident of South Africa
Company A:	A company incorporated in and resident of a foreign Country that holds 100 per cent of the shares in Company B
Company B:	A company incorporated in and a resident of South Africa that holds 50 per cent of the shares in the Applicant
Company C:	A company incorporated in and a resident of South Africa that also holds 50 per cent of the shares in the Applicant

Finance House: A company incorporated in and a resident of South Africa that specialises in development finance through loan funding

4. Description of the proposed transaction

The Applicant operates a new mine and the development of the mine was partly financed by equity funding, partly by loan funding from its shareholders, from Company A's ultimate holding company and from the Finance House. The majority of the development expenditure financed through the loan funding still remains to be claimed as a deduction under section 15(a) read with section 36 (unredeemed capital expenditure).

The group to which Company B belongs proposes to dispose of its 50 per cent interest in the Applicant to a foreign purchaser. As a condition to the purchase agreement the purchaser requires the reduction and waiving of certain debts owed by the Applicant to Companies A, B and C and the Finance House prior to the purchase:

- The loans currently owed by the Applicant to Companies A, B and C will be waived in full. The loans waived will comprise loan capital, capitalised interest and capitalised management fees.
- The loans owed to the Finance House will be reduced to an agreed amount and the remaining outstanding loan balances will be repayable once funds are available. The debt reduced will comprise capital and capitalised interest.

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:

- For purposes of claiming allowances under section 15(a) read with section 36, the Applicant must, in the year of assessment in which the loans are reduced or waived, reduce the balance of unredeemed capital expenditure carried forward and deemed to be an amount of capital expenditure incurred during the next year of assessment, as contemplated under section 36(7E), with the "reduction amount" as defined in section 19 and paragraph 12A in respect of the loans waived or reduced. To the extent that the loans waived or reduced funded an "allowance asset" or a "capital asset" as defined in paragraph 12A, the base cost of that asset must be reduced by the "reduction amount" as defined in paragraph 12A.
- No ruling is made on the balance of the unredeemed capital expenditure referred to in 4 above, or on the balance thereof after any adjustments made pursuant to this ruling.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 2 years from 12 June 2014.

Issued by:

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