

BINDING CLASS RULING: BCR 049

DATE: 3 February 2016

ACTS : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 11(a), 23(g), AND 23L
SUBJECT : DEDUCTIBILITY OF INSURANCE PREMIUMS IN RESPECT OF AN ENVIRONMENTAL MAINTENANCE PROGRAMME GUARANTEE

1. Summary

This ruling determines the deductibility of insurance premiums incurred by a mine owner for an environmental maintenance programme guarantee issued to the Department of Mineral Resources.

2. Relevant tax laws

This is a binding class 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 are to sections of the Act applicable as at 16 July 2015. 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 11(a);
- section 23(g); and
- section 23L.

3. Class Members

The class members to whom this ruling applies are Mining companies operating in South Africa that carry on the business of mining in pursuance of schemes of profit-making.

4. Parties to the proposed transaction

The Applicant: A public company incorporated in and a resident of South Africa, that carries on business as an insurer

Class Members

5. Description of the proposed transaction

The Mineral and Petroleum Resources Development Act No. 28 of 2002 (the MPRD Act) requires an applicant for, amongst others, a mining right to conduct an environmental impact assessment and to submit an environmental management programme (EMP) and also requires the mine owner to make financial provision for the rehabilitation of the land in respect of which mining activities are conducted. The financial provision is assessed on an annual basis and its extent is adjusted as is considered necessary.

Financial provision may be in the form of an insurance policy, guaranteeing the availability of sufficient funds to undertake the agreed work programmes and to rehabilitate the prospecting, mining, reconnaissance, exploration or production areas, as the case may be.

The Applicant developed a product to enable mine owners to provide the Department of Mineral Resources (DMR) with the required financial provision.

It consists of –

- a guarantee insurance policy (as defined in the Short Term Insurance Act No. 53 of 1998) to be issued by the Applicant to the mine owner; and
- a guarantee, in the prescribed form, to the extent of the liability as determined in the EMP for three years, to be issued by the Applicant to the DMR, in terms of which the Applicant will assume the liability for the cost of the environmental rehabilitation obligation on behalf of the mine owner.

In the event that the mine owner fails or remains in default to execute its obligations, , the DMR may call for payment in terms of the guarantee. In the event that the Applicant is called upon to pay any amount in terms of the guarantee, the mine owner will be obliged to pay an additional premium to the Applicant, equal to the excess of the amount payable in terms of the underlying guarantee, after taking into account the amount of the premiums actually paid by the mine owner to the Applicant.

The DMR may also call for payment in terms of the underlying guarantee when –

- the mine owner ceases to conduct mining or prospecting operations;
- the mine owner is sequestrated;
- the mine owner surrenders his estate, in terms of the Insolvency Acts that are applicable in South Africa; or
- the Applicant, as Guarantor, notifies the DMR that it wishes to withdraw from the guarantee.

6. Conditions and assumptions

This binding class ruling is not subject to any additional conditions and assumptions.

7. Ruling

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

- The premiums incurred by a mine owner in terms of the insurance policy, written by the Applicant to the extent that it relates to the financial guarantee to be lodged with the Department of Mineral Resources for purposes of executing the mine owner's environmental maintenance programme, will be deductible by the mine owner under section 11(a) read with sections 23(g) and 23L.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of 5 years from 16 July 2015.

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