

BINDING PRIVATE RULING: BPR 256

DATE: 7 December 2016

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)
VALUE-ADDED TAX ACT 89 OF 1991 (VAT Act)**

**SECTION : SECTIONS 1(1) – DEFINITION OF “GROSS INCOME”, 8(4)(a), 11(a)
AND 37A OF THE ACT
SECTIONS 1(1) – DEFINITION OF “ENTERPRISE”, 16, 17 AND 20 OF
THE VAT ACT**

SUBJECT : MINING REHABILITATION

1. Summary

This ruling determines, amongst other things, the tax consequences resulting from the proposed rehabilitation of land that forms part of mining areas by way of a bio-energy project.

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 28 of 2011.

Unless otherwise indicated, in this ruling references to sections are to sections of the Act applicable as at 28 November 2016. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the relevant Act.

This is a ruling on the interpretation and application of the provisions of –

- the Act –
 - section 1(1) – the definition of “gross income”;
 - section 8(4)(a);
 - section 11(a); and
 - section 37A.
- the VAT Act –
 - section 1(1) – the definition of “enterprise”;
 - section 16;
 - section 17; and
 - section 20.

3. Parties to the proposed transaction

Company A:	A mining company incorporated in and a resident of South Africa
Company B:	A mining company incorporated in and a resident of South Africa
Trust B:	A resident rehabilitation trust as contemplated by section 37A

4. Description of the proposed transaction

Company A and Company B propose to rehabilitate certain land that forms part of their mining areas by restoring it to a land use which they argue conforms to the generally accepted principles of sustainable development as contemplated in section 37A(1)(a). The companies propose to implement a bio-energy project that has land use aims endorsed by the Department of Minerals and Resources (DMR) (the bio-energy project).

The bio-energy project will be financed and implemented through the following transaction steps:

- a) Step 1: Amendment of Trust B's trust deed
 - (i) Company A contributed funds for the rehabilitation of its mining areas to Trust A of which Company A is a beneficiary. Company A previously claimed deductions for those contributions made under the now repealed section 11(hA) and, thereafter, under section 37A. Financial provision for the rehabilitation of Company B's mining area was made in Trust B, of which Company B is a beneficiary.
 - (ii) Currently, Trust A is underfunded while Trust B is overfunded. The current assets in Trust B exceed its anticipated liabilities. Consequently, it is intended that the bio-energy project is to be funded by Trust B.
 - (iii) The DMR has approved that Company A has access to the overfunding in Trust B. It is accepted as a fact that Company A may access the surplus fund in Trust B for the benefit of the beneficiaries of Trust A.
 - (iv) As a result of the DMR's approval, Trust B will amend its deed by adding Company A as a beneficiary of Trust B, whereafter the financial provision in Trust B will also be available to cover Company A's statutory rehabilitation obligations.
- b) Step 2: Conversion of plant on Company A's mining area
 - (i) Company A will convert a redundant metallurgical plant on its mining area (plant) into a biogas anaerobic digestion plant to process crops and generate green biogas. Company A will incur the cost for the conversion of the plant.

- (ii) Company A will, thereafter, be reimbursed for the costs incurred in converting the plant, once the DMR has audited and approved that the expenditure incurred by Company A was for closure rehabilitation work, and the trustees of Trust B have satisfied themselves that all payments to be made by Trust B to Company A will be for purposes of final closure rehabilitation. The reimbursement will be made from the surplus funds available in Trust B, in accordance with the approval obtained from the DMR.
- c) Step 3: Reclamation and levelling of Company B's tailings dam and planting of initial crops (initial phase)
 - (i) Company B will restore land used for a tailings dam on its mining area to a state where it becomes suitable for the planting of crops and will, thereafter, plant and cultivate certain non-edible perennial crops (crops) on the rehabilitated tailings dam.
 - (ii) The costs incurred by Company B for the reclamation, levelling and preparation of the land for it to become suitable to grow crops will be part of Company B's closure rehabilitation and its statutory rehabilitation obligations in respect of its mining area.
 - (iii) Company B will incur the closure rehabilitation expenses, but will be reimbursed by Trust B, once the DMR has audited and approved that the expenditure incurred by Company B was for closure rehabilitation work, and the trustees of Trust B have satisfied themselves that all payments to be made by Trust B to Company B will be for purposes of final closure rehabilitation. The reimbursement will be made from the funds in Trust B, in accordance with the approval obtained from the DMR.
 - (iv) The crops, when harvested in the initial phase of the project, until the plant is fully operational, will be used as test feedstock for the plant. Company B will supply the harvested crops in the initial phase to Company A at no cost on the basis that the closure rehabilitation expenses will have been reimbursed by Trust B. These crops will be used as test crops during the conversion of the plant.
- d) Step 4: Growing and supply of crops after rehabilitation (post rehabilitation)
 - (i) The approval by the DMR of the rehabilitation of the plant and Company B's land, once undertaken, will mark the end of the rehabilitation process and the commencement of normal business operations for the companies.
 - (ii) Company B will continue to grow and harvest crops on its land and sell those crops to Company A at cost.
- e) Step 5: Production of biogas after commissioning of the plant
 - (i) Company A will acquire the crops from Company B to produce biogas.

- (ii) This biogas will be supplied to Company B, at cost plus 5%, through a pipeline. Company B will in turn use the biogas to generate electricity to be applied directly in its mining operations.
- (iii) The cost of the pipeline will be shared by Company A and Company B as follows:
 - (aa) Each party will be responsible for the cost of that portion of the pipeline that is to be built on its land.
 - (bb) Company A will contract with the contractor who will build the pipeline. The contractor will invoice Company A for the cost of the entire pipeline.
 - (cc) Company A will invoice Company B for the cost attributable to that portion of the pipeline that is built on Company B's land.

5. Conditions and assumptions

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

6. Ruling

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

- a) The adding of Company A as a beneficiary of Trust B will not result in any adverse tax consequences for the parties under section 37A(6), (7), or (8).
- b) The proposed amended trust deed of Trust B will comply with the provisions of section 37A.

Note: This ruling does not deal with the impact of the provisions of the Regulations pertaining to the Financial Provisions for Prospecting, Exploration, Mining or Production Operations, published under the National Environmental Management Act 107 of 1998, currently in force and with which the companies are required to comply as from 20 February 2019.

- c) Company A will not be entitled to claim a deduction on the costs to be incurred to rehabilitate the plant under section 11(a).
- d) The reimbursement by Trust B to Company A will not constitute "gross income" for Company A as defined in section 1(1).
- e) The reimbursement by Trust B to Company A will not constitute a taxable recoupment for Company A under section 8(4)(a).
- f) Section 37A(7) will not apply to the costs to be incurred by Company B for the reclamation of the land, the levelling off of the ground, and the preparation of the land to plant crops, to the extent that the DMR approves such costs as rehabilitation costs as contemplated in section 37A(1)(a).

- g) Section 37A(7) will not apply to the costs to be incurred by Company B for the planting of the first set of crops, to the extent that the DMR approves such costs as rehabilitation costs as contemplated in section 37A(1)(a).
- h) Company B will not be entitled to claim a deduction of the costs to be incurred for the reclamation, levelling and preparation of the tailings dam under section 11(a).
- i) Company B will not be entitled to claim a deduction of the costs to be incurred for the planting of the first set of crops during the initial phase under section 11(a).
- j) The reimbursement by Trust B to Company B will not constitute "gross income" for Company B as defined in section 1(1).
- k) The reimbursement by Trust B to Company B will not constitute a taxable recoupment for Company B under section 8(4)(a).
- l) Company B will conduct a farming trade in relation to the costs to be incurred for the planting and harvesting of crops post rehabilitation.
- m) Company B will be entitled to claim a deduction from its mining income for the purchase price to be incurred to acquire the biogas under section 11(a).
- n) Company B will be entitled to claim a deduction from its farming income of the expenses to be incurred for the planting and harvesting of the crops post rehabilitation, subject to the provisions of the First Schedule to the Act.
- o) The amount to be received by Company B from Company A for the supply of crops post rehabilitation must be included in Company B's gross income derived from farming.
- p) Company A will conduct a separate non-mining trade in relation to the conversion of the crops to biogas post rehabilitation.
- q) Company A will be entitled to claim a deduction of the purchase price of the crops supplied by Company B at cost post rehabilitation under section 11(a).
- r) The income to be received by Company A from Company B for the supply of biogas will constitute gross income from a separate non-mining trade of Company A.
- s) Company A will be entitled to deduct input tax on the conversion of the plant and the building of the pipelines on its land to transport the biogas from the plant to Company B subject to complying with the provisions of sections 16, 17 and 20 of the VAT Act.
- t) Company B will be entitled to deduct input tax on the reclamation of the land, the levelling, preparation and restoration of the land to grow crops, the harvesting of these crops and the building of the pipelines on its land to

transport the biogas from the plant to Company B subject to complying with the provisions of sections 16, 17 and 20 of the VAT Act.

- u) Trust A and Trust B are not regarded as conducting an “enterprise” as defined in section 1(1) of the VAT Act.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 28 November 2016.

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