

BINDING PRIVATE RULING: BPR 273

DATE: 2 May 2017

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)
VALUE-ADDED TAX ACT 89 OF 1991 (VAT Act)**
**SECTION : SECTIONS 19, 55, 56(1)(n) and (r) AND PARAGRAPHS 12A AND 38
OF THE EIGHTH SCHEDULE TO THE ACT
SECTION 10(4) OF THE VAT ACT**
SUBJECT : WAIVER OF A CONTRACTUAL RIGHT

1. Summary

This ruling determines the income tax, donations tax, capital gains tax and value-added tax consequences of the proposed waiver of a right to receive an annual quantity of produce in terms of a joint venture agreement.

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 (TAA).

In this ruling references to sections and paragraphs are to sections of the relevant Act and paragraphs of the Eighth Schedule to the Act applicable as at 29 March 2017. 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 Act –
 - section 19;
 - section 55 – definition of “donation”;
 - section 56(1)(n) and (r); and
 - paragraphs 12A and 38; and
- the VAT Act –
 - section 10(4).

3. Parties to the proposed transaction

The Applicant: A private company incorporated in and a resident of South Africa that is a wholly-owned subsidiary of Company A

The Co-applicant: A public company incorporated in and a resident of South Africa that is a wholly-owned subsidiary of Company A

Company A: A private company incorporated in and a resident of South Africa.

4. Description of the proposed transaction

The Co-applicant will unilaterally waive its right against the Applicant to receive an annual quantity of produce. Each year, the quantity of produce was determined in terms of an agreed formula ("the Relevant Quantity"). In consequence of the waiver, the Applicant will no longer be obliged to deliver the Relevant Quantity.

Both the Applicant and the Co-applicant are wholly-owned subsidiaries of Company A.

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) No donations tax is payable pursuant to the proposed waiver of the right to the Relevant Quantity.
- b) Paragraph 38 of the Eighth Schedule is not applicable to the waiver of the Relevant Quantity.
- c) Neither section 19, nor paragraph 12A, is applicable to the waiver of the Relevant Quantity.
- d) The waiver of the entitlement to the Relevant Quantity for no consideration does not trigger the application of section 10(4) of the VAT Act to deem the value of the supply of such service to be at open market value.

7. Period for which this ruling is valid

This binding private ruling is valid for the tax period, as defined in section 1 of the TAA, in which the proposed transaction takes place.

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