

BINDING PRIVATE RULING: BPR 252

DATE: 10 October 2016

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 54 AND 58 AND PARAGRAPH 12A OF THE EIGHTH SCHEDULE
SUBJECT : DONATIONS TAX AND CAPITAL GAINS TAX CONSEQUENCES OF THE PART WAIVER OF A LOAN AND REDUCTION OF THE INTEREST RATE

1. Summary

This ruling determines the donations tax and capital gains tax consequences of the waiver of part of a loan to an employee share trust and the reduction of the interest rate on the remaining balance of the loan to 0%.

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 to the Eighth Schedule to the Act applicable as at 2 September 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 54;
- section 58; and
- paragraph 12A.

3. Parties to the proposed transaction

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

The Trust: A trust established in and a resident of South Africa

4. Description of the proposed transaction

The Applicant processes mining residues and waste material to extract precious metals which are sold to third parties. In order to conduct the processing activities the Applicant has a precious metals refining licence (licence) as required in terms of the Precious Metals Act No. 37 of 2005.

The Applicant established the Trust to achieve its Black Economic Empowerment objectives. The beneficiaries of the Trust are employees of the Applicant who are historically disadvantaged persons as contemplated in the broad-based socio-economic empowerment Charter for the South African Mining and Minerals Industry.

The Applicant issued some of its ordinary shares to the Trust at market value. The subscription was financed by the Applicant on loan account, on which interest is levied at the “official rate of interest” prescribed by the Seventh Schedule to the Act.

To date the loan balance has not reduced significantly due to the capitalisation of interest. The Applicant is of the view that the outstanding loan balance exceeds the market value of the shares held by the Trust. Based on current forecasts, it will take the Trust approximately 41 years to repay the loan.

In terms of Regulations published under the Precious Metals Act, the Applicant is, amongst others, required to provide “meaningful economic participation” to the beneficiaries of the Trust, in order to maintain the licence. In view of the current anticipated repayment period, two empowerment agencies have confirmed to the Applicant that the Trust may not provide the required meaningful economic participation. Accordingly, there is a risk that the Applicant will lose its licence.

The Applicant intends to waive approximately one third of the loan (which includes capitalised interest) and to reduce the interest rate on the loan to 0%.

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) Section 58 will not apply to the part waiver of the loan.
- b) Donations tax will not be levied under section 54 in respect of the part waiver of the loan.
- c) Section 58 will not apply to the amendment of the loan agreement to reduce the interest rate to 0%.
- d) Donations tax will not be levied under section 54 on the amendment of the loan agreement to reduce the interest rate to 0%.
- e) The Trust will be required, under paragraph 12A read with paragraph 20, to reduce its expenditure for the shares in the Applicant to the extent that the original loan capital is to be waived.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 2 September 2016.

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