



SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 033

DATE: 12 June 2009

ACT : INCOME TAX ACT, 58 OF 1962 (the Act)
SECTION : SECTIONS 1, 11(a), 15, 36 AND 37A
SUBJECT : APPLICABILITY OF TAX DISPENSATIONS CONTAINED IN THE ACT WITH REGARD TO A SPECIFIC CONTRACT MINING ARRANGEMENT

1. Summary

This ruling deals with whether a company, which is appointed on the basis that it will conduct activities, and in exchange for conducting such activities will receive a production fee based on, *inter alia*, the actual tonnage of minerals produced on behalf of the owner of the mineral right, will be entitled to the deductions allowable in terms of sections 15, 36 and 37A of the Act.

This ruling also addresses certain attendant issues arising from the contract mining arrangement referred to in this ruling.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling legislative references to sections are to sections of the Act applicable as at 31 December 2007 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

The ruling has been requested under the provisions of –

- section 1, the definition of “**mining operations**” and “**mining**”;
- sections 11(a), 15, 36 and 37A.

3. Parties to the proposed transaction

The Applicant: A limited liability resident company which is a wholly owned subsidiary of Company C

The Co-Applicant: A limited liability resident company which is a wholly owned subsidiary of Company A

The Refiner: A limited liability resident company (other than the Co-Applicant) which is a wholly owned subsidiary of Company A

Company A: A limited liability resident company which is the sole shareholder of both the Co-Applicant and the Refiner

Company C: A limited liability resident company formed by Company A to consolidate the interests of the Co-Applicant and a Black Economic Empowerment party.

4. Description of the proposed transaction

The Applicant seeks this ruling pending the finalisation of the acquisition of the mining operations, that is, the mining rights referred to as new order mining rights.

The Co-Applicant is currently the holder of old order mining rights. Both terms “**holder**” and “**old order mining right**” are defined in Item 1 of Schedule II (Transitional Arrangements) to the Mineral and Petroleum Resources Development Act, No. 28 of 2002 (MPRD Act).

It is intended by the parties to the proposed transaction that the Applicant will acquire the Co-Applicant’s mining operations (including the Co-Applicant’s old order mining rights) as a going concern and that the parties will elect for the intra-group tax roll-over relief provisions contained in section 45 to apply to the transaction as they form part of the same “**group of companies**” as defined in section 1.

In terms of the current interpretation of the MPRD Act and the Chief Registrar of Deed’s Circular No. 11 as to the transferability of old order mining rights, the Co-Applicant is not able to cede these mining right to the Applicant, prior to its conversion to new order mining rights.

In an attempt to overcome this obstacle and as an interim arrangement for the period prior to the conversion of these mining rights (that is, during the interim period), the Co-Applicant will appoint the Applicant in terms of an agreement (the Contractor Agreement) as an independent contractor to produce the concentrate product on its behalf.

In terms of the Contractor Agreement which governs the interim arrangement, the Applicant will be appointed to:

- conduct the mining operations related to the project by virtue of the Co-Applicant's rights and titles;
- produce on behalf of the Co-Applicant the concentrate product; and
- deliver the concentrate product to the Co-Applicant.

The Co-Applicant will sell the concentrate product in terms of the Sale of Concentrate Agreement to the Refiner for a consideration equal to the market price as determined in accordance with the concentrate formula.

The concentrate formula takes into account the value of the various metals found in the concentrate and calculates the value of each metal component in relation to its selling price as determined on the international markets.

The fee payable by the Co-Applicant to the Applicant for the production of the concentrate product is equal to the concentrate purchase price received by the Co-Applicant from the Refiner in a given cost month determined in terms of the above concentrate formula.

The interim arrangement will continue until such time as the old order mining rights are converted to new order mining rights and the Minister of Minerals and Energy has consented to the transfer of the new order mining rights to the Applicant, that is, for the interim period.

5. **Conditions and assumptions**

This ruling is made subject to the following conditions and assumptions –

- the Co-Applicant sells its entire mining business as a going concern to the Applicant under the Sale of Business Agreement;
- the Applicant's intention is to conduct mining operations;
- the Sale of Business Agreement, the Contractor Agreement and the Sale of Concentrate Agreement entered into will not deviate materially from the draft agreements which accompanied this application; and
- this ruling only applies to future expenditure to be incurred or paid by the Applicant during the interim arrangement.

6. **Ruling**

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

- The activities performed by the Applicant under the interim agreement will constitute "**mining operations**" and "**mining**" as defined in section 1.
- The revenue/consideration derived by the Applicant for producing and delivering the concentrate product to the Co-Applicant in terms of the interim agreement will be regarded as income being directly connected

to such mining operations and as such will be regarded as income derived from mining operations.

- The Applicant will be entitled to capital expenditure deductions/ allowances in terms of section 15 read with section 36 against such income derived from mining operations.
- The Applicant will be entitled to claim as a deduction, in terms of section 37A(1)(d)(i)(bb), cash contributions made in respect of environmental obligations notwithstanding the fact that the legal liability for such rehabilitation rests with the Co-Applicant as the owner of the old order mining rights prior to the conversion to new order mining rights.
- The Co-Applicant will be entitled to claim the consideration paid to the Applicant, in terms of the Contractor Agreement, as a deduction from the income earned from the Refiner from the sale of the concentrate product which will result in the Co-Applicant being in a tax neutral position.

7. Period for which this ruling is valid

This binding private ruling is valid from the commencement date of the interim arrangement (that is, 1 January 2008) until the earlier of the conversion and cession of the mining right or a period of 3 years from the commencement of the interim arrangement being 1 January 2008.

Issued by:

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