

BINDING PRIVATE RULING: BPR 093

DATE: 25 January 2011

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTIONS : SECTIONS 37B(6) AND 42(3)(a)(ii)
**SUBJECT : DEDUCTIBILITY OF ENVIRONMENTAL EXPENDITURE
SUBSEQUENTLY INCURRED IN RESPECT OF ASSETS THAT HAVE
BEEN ACQUIRED IN AN ASSET-FOR-SHARE TRANSACTION**

1. Summary

This ruling deals with the question as to whether assets to be disposed of from one company to another company will satisfy laid down criteria in order that the two companies will be regarded as one and the same person for the purpose of determining an amount of environmental expenditure incurred in respect of the assets subsequently acquired to be allowed as a deduction for income tax purposes.

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 13 September 2010 and unless the context otherwise indicates, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested under the provisions of –

- section 37B(6);
- section 41(1);
- section 42(1); and
- section 42(3)(a)(ii).

3. Parties to the proposed transaction

The Applicant: A company which is a manufacturer and retailer of consumer products

Newco: A new company to be incorporated

4. Description of the proposed transaction

The Applicant is currently in the process of implementing a black economic empowerment transaction (Empowerment transaction).

As part of the implementation of the Empowerment transaction the Applicant will dispose of its entire business to Newco. This disposal will constitute an “asset-for-share-transaction” as defined in section 42.

The Applicant will dispose of the assets comprising its entire business to Newco, which include assets which are to be restored and rehabilitated, in exchange for equity shares in Newco.

In terms of the prevailing environmental legislation Newco will be obliged to undertake certain prescribed decommissioning, remediation and restoration in respect of some of the assets acquired as part of the Empowerment transaction. In other words, pursuant to the transaction, Newco will “step into the shoes” of the Applicant from an environmental legislation perspective and assume the Applicant’s obligations in relation to the decommissioning, remediation and restoration of those assets.

The ruling requested is limited to those assets which are disposed of by the Applicant to Newco in respect of which there is an obligation to undertake prescribed decommissioning, remediation or restoration in terms of the relevant environmental legislation and where the Applicant has carried on a trade.

5. Conditions and assumptions

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

- the assets to be disposed of by the Applicant to Newco will only qualify for the relief provided for in section 42 if the market value of the assets are equal to or exceeds the cost of the asset; and
- Newco will be a company which is a “resident” as defined in section 1.

6. Ruling

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

- Newco will be allowed to claim a deduction for any expenditure or loss incurred in respect of decommissioning, remediation or restoration, arising from any trade previously carried on by the Applicant, in accordance with the provisions of section 37B(6), on the basis that the Applicant will dispose of assets that constitute allowance assets as part of an asset-for-share transaction as envisaged by section 42(3)(a). It follows that the Applicant and Newco will be

deemed to be one and the same person for the purpose of determining the amount of any allowance or deduction which Newco may be entitled to in respect of the allowance assets acquired.

7. Period for which this letter is valid

This binding private ruling is valid until 13 September 2015.

Issued by:

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