

BINDING PRIVATE RULING: BPR 315

DATE: 10 January 2019

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 24C
SUBJECT : FUTURE EXPENDITURE

Preamble

This binding private ruling is published by consent of the applicant(s) to which it has been issued. It is binding as between SARS and the applicant and any co-applicant(s) only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines the application of the definition of “future expenditure” in section 24C(1) to a precious metals purchase contract.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 26 October 2018. 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 term “future expenditure” in section 24C(1)

3. Parties to the proposed transaction

The applicant:	A resident listed company
Holdco:	A non-resident company, wholly-owned by the applicant
Opco:	A non-resident company, wholly-owned by Holdco
Purchaser:	A non-resident company

4. Description of the proposed transaction

The applicant will enter into a long-term contract with the purchaser, in terms of which the applicant will supply from time to time to the purchaser credits representing quantities of the commodities mined by Opco.

It is expected that the contract will subsist for forty years, but it may thereafter be extended for successive periods of ten years until Opco ceases to operate.

The contract provides, amongst others, that:

- In consideration for the sale and delivery of the credits, the purchaser agrees to make an advance payment to the applicant (the advance payment).
- In no circumstances will the applicant be required to refund any portion of the advance payment to the purchaser, and if at the end of the term any of the advance payment amount remains unapplied, that residual amount shall be applied as additional purchase price for credits already supplied under the contract.
- The advance payment must be used by the applicant to finance the expenditure it will incur to fulfil its contractual obligations.

The applicant intends to enter into an intercompany purchase and sale agreement with Opco in terms of which the applicant will have the right to purchase from Opco from time to time the quantity of credits which the applicant is obliged to supply to the purchaser.

The credits will be referenced to the production by Opco, and will be primarily sourced from Opco, but to the extent that such credits are insufficient to meet its obligations the applicant may source the credits from any source as the applicant may decide, including purchasing credits from a bullion bank, but not including purchases on any commodities exchange.

The purchaser will be required to make payment in cash to the applicant of between 10% and 22% of the relevant commodity spot price upon delivery of the credits in respect of the commodities (the production payment). The actual production payment percentage will in every case be determined with reference to the meaning of production payment in the contract which takes into account the investment grade rating and/or the leverage ratio of the applicant at the relevant time.

The applicant will credit the difference between the spot price and the production payment in respect of any delivery to the purchaser against the advance payment amount.

5. Conditions and assumptions

This binding private ruling is not subject to any additional conditions and assumptions other than those set out in the ruling.

6. Ruling

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

- a) The expenditure to be incurred in terms of the contract to acquire the credits will be future expenditure as envisaged in section 24C(1).
- b) No ruling is made on the determination of the allowance referred to in section 24C(2).
- c) No ruling is made on any pricing and transfer pricing aspects.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 26 October 2018.

**Legal Counsel: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**