

BINDING PRIVATE RULING: BPR 162

DATE:03 March 2014

**ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
VALUE-ADDED TAX ACT, NO. 89 OF 1991 (the VAT Act)**

**SECTION : PARAGRAPHS 2 OF THE EIGHTH SCHEDULE AND 1 AND 7(1)
AND (2) OF THE TENTH SCHEDULE TO THE ACT
SECTIONS 1(1) DEFINITION OF “CONSIDERATION” AND “FIXED
PROPERTY”, 9(3)(d) AND (4) AND 16(4)(a)(ii) OF THE VAT ACT**

SUBJECT : SALE OF AN OIL AND GAS RIGHT

1. Summary

This ruling deals with the consequences on the sale of an oil and gas right and the timing of when value-added tax (VAT) will be payable in respect of the consideration accruing on the disposal of the exploration right (ER).

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 relevant Acts and paragraphs of the Schedules to the Act applicable as at 26 November 2013 and 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 provisions of –

- paragraph 2 of the Eighth Schedule;
- paragraphs 1, definition of “oil and gas company” and “oil and gas right” and 7(1) and (2) of the Tenth Schedule.
- sections 1(1), definition of “consideration” and “fixed property”, 9(3)(d) and (4); and 16(4)(a)(ii) of the VAT Act.

3. Parties to the proposed transaction

The Applicant: An oil and gas company incorporated in and a resident of South Africa

The Co-Applicant: A newly formed company incorporated in and a resident of South Africa

4. Description of the proposed transaction

The Applicant currently owns an ER acquired by it in terms of the Mineral and Petroleum Resources Development Act, No. 28 of 2002 (the MPRD Act). The ER

constitutes an “oil and gas right”, as defined in paragraph 1 of the Tenth Schedule, and is held by the Applicant as a capital asset.

The Applicant wishes to develop the ER, and in order to do so, wishes to conclude a contract (the agreement) with the Co-Applicant in which the Applicant will sell a participating interest in the ER. The agreement is subject to certain suspensive conditions.

In return for the participating interest in the ER, the Co-Applicant will undertake to pay certain agreed amounts to the Applicant when the suspensive conditions of the agreement are met.

5. Conditions and assumptions

This ruling is subject to the following additional conditions and assumptions:

- The Applicant and the Co-Applicant are not connected persons as envisaged in the definition of “connected person” in section 1(1) of the VAT Act.
- The ER is held by the Applicant as a capital asset.

6. Ruling

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

6.1 Income tax

- The Applicant will qualify for rollover relief, as referred to in paragraph 7(1) and (2) of the Tenth Schedule.
- A letter by the Applicant submitted to the Legal and Policy Division, stating that both parties are in agreement that the rollover provisions as set out in paragraph 7(2) of the Tenth Schedule must apply, will constitute the Applicant’s election for rollover relief as required in paragraph 7(1).
- In terms of paragraph 7(2) of the Tenth Schedule, the Applicant will be deemed to have disposed of the participating interest in the ER for an amount equal to the base cost. Thus, no capital gain will be realised and no amount of tax will be payable by the Applicant on the disposal.

6.2 VAT

- The disposal of the participating interest in the ER will be a disposal of “fixed property” as defined in section 1(1) of the VAT Act (that is, the ER acquired by virtue of a conversion contemplated in the MPRD Act is a real right in land). The time of supply in respect of such supply will be determined in accordance with section 9(3)(d) of the VAT Act. The Applicant will, under section 16(4)(a)(ii) of the VAT Act, be required to account for output tax to the extent that payment of any consideration relating to the purchase price of the ER is made during a tax period.

Exclusions

This ruling only addresses the VAT implications in respect of the supply of the ER and does not deal with any other supplies emanating from that supply.

7. Period for which this ruling is valid

This binding private ruling is valid until all amounts due to the Applicant, as consideration (including the conditional amounts), have been quantified and paid.

Issued by:

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