



South African Revenue Service

BINDING CLASS RULING: BCR 082

DATE: 27 October 2022

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 8(4)(a), 11(a), 23(c), 23(g), 23H AND 23L
SUBJECT : DEDUCTIBILITY OF MINING REHABILITATION INSURANCE PREMIUMS

Preamble

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

1. Summary

This ruling determines the deductibility of insurance premiums incurred by a holder of a mining right for an environmental management programme guarantee issued to the Department of Mineral Resources (DMRE).

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 29 September 2022. 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 –

- section 8(4)(a);
- section 11(a);
- section 23(g);
- section 23(c);
- section 23H; and
- section 23L.

3. Class

The class members to whom this ruling will apply are the mining companies referred to in 4.

4. **Parties to the proposed transaction**

The applicant: A resident public company carrying on business as a short-term insurer

Class Members: Companies, operating in South Africa and carrying on the business of mining, to be insured by the applicant by way of a guarantee to secure compliance with their statutory environmental maintenance obligations under the National Environmental Management Act 107 of 1998 (NEMA)

5. **Description of the proposed transaction**

NEMA, together with the Regulations pertaining to the Financial Provision for Prospecting, Exploration, Mining or Production Operations promulgated under NEMA in Government Gazette No. 3942520 dated 20 November 2015 (Regulations), require the class members to make financial provision to guarantee the availability of sufficient funds to undertake rehabilitation and remediation of the adverse impacts of mining operations carried on by it.

The applicant has developed a short-term insurance product that will assist the class members to meet the requirements under NEMA, read together with the Regulations.

The proposed transaction entails the applicant issuing a financial guarantee to the DMRE in respect of the required financial provision for the rehabilitation by each class member. The guarantee will be issued following the conclusion of the insurance policy and payment of the premium by a class member.

The duration of the policy will generally be a period of three years (fixed cover period) and it calls for a premium from the insured at the beginning of each cover year. Each fixed cover period is used in the calculation of the annual premium payable for the cover. The cover limit is the total amount for which the applicant shall be liable in terms of the policy and shall be the quantum of the underlying guarantee for which the applicant shall indemnify the class member.

The premiums are calculated for a class member considering several factors, including the credit risk of the class member, the class member's historical rehabilitation record and the nature of the mining conducted, for example, open cast mining, open pit mining, etc. In addition, fees are payable to the applicant by the class member annually in advance, calculated as a percentage of the underlying guarantee issued excluding Value Added Tax, or such rate agreed in any endorsement, for the duration of the fixed cover or any extended cover period.

Some class members will treat a portion of the premiums under the policy, generally the management fee component, as an expense for purposes of International Financial Reporting Standards (IFRS). The other class members will treat the entire premium as an expense for purposes of IFRS.

In the event that the class member fails or remains in default to execute its obligations, the DMRE may call for payment in terms of the guarantee. In the event the applicant is called upon to pay any amount in terms of the guarantee, the class member will be obliged to pay an additional premium to the applicant, equal to the excess of the amount payable in terms of the underlying guarantee, after taking into account the amount of the premiums actually paid by the class member to the applicant.

The guarantee provides that the DMRE may call for payment in terms of the guarantee in the following instances:

- a) When the class member fails or remains in default to execute the environmental management programme;
- b) When the class member ceases to conduct mining or prospecting operations;
- c) When the class member's estate is liquidated;
- d) When the class member surrenders its estate in terms of the Insolvency Act 24 of 1936; or
- e) When the applicant notifies the DMRE that it wishes to withdraw from the guarantee.

6. Conditions and assumptions

This binding class ruling is not subject to any additional conditions and assumptions.

7. Ruling

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

- a) The portion of a premium incurred by a class member which is not taken into account as an expense for the purpose of financial reporting in terms of IFRS will not be deductible under section 11(a) by virtue of section 23L(2).
- b) Section 23L(3) will apply where any policy benefits are received by or accrue to a class member who has been denied a deduction in terms of section 23L(2) of any premiums paid under such policy.
- c) Section 23L(2) will not apply to the premium, or portion thereof, incurred by a class member which is taken into account as an expense for the purpose of financial reporting pursuant to IFRS. The premium, or portion thereof, will accordingly be deductible under section 11(a) read with section 23(g).
- d) If the annual premium is incurred within the first six months of the class member's year of assessment, section 23H will not apply to the deductible portion.
- e) Section 23H will apply to the deductible portion of the premium to the extent that the benefit of the premium extends beyond six months of the class member's year-end if the annual premium is incurred in the last six months of its year of assessment.

- f) Where any policy benefits are received by or accrue to a class member, any premium or portion thereof which was previously allowed as a deduction and which was returned by way of such benefit, must be recouped under section 8(4)(a). For the avoidance of doubt, a policy benefit as defined in section 23L(1) includes a performance bonus.
- g) Section 23(c) does not apply to the deductible portion of a premium.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of five years from 29 September 2022.

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