

12 October 2016

The National Treasury  
240 Vermeulen Street  
**PRETORIA**  
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The South African Revenue Service  
Lehae La SARS, 299 Bronkhorst Street  
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The Standing Committee on Finance  
Parliament  
**CAPE TOWN**  
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**RE: MINERAL AND PETROLEUM RESOURCES ROYALTY (ADMINISTRATION) ACT, 2008: NEW PROPOSAL  
THAT SARS DISCRETION TO INCREASE ROYALTY TAX ESTIMATE NOT BE SUBJECT TO OBJECTION AND  
APPEAL**

We refer to the draft response document from National Treasury and SARS on the 2016 tax bills presented to the Standing Committee on Finance on 21 September 2016. We note with concern that a new proposal is now contained in paragraph 12.2 of the draft response document. This proposal was not contained in the draft bill released for comments.

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The proposal is that if SARS decides to increase a royalty tax estimate, that the decision shall not be subject to objection and appeal. This late proposal is motivated by an aim that the royalty provisional payment system should closely mirror the income tax provisional payment system. It has been argued that this approach was fully canvassed when it was adopted in the provisional tax system.

Should this proposal be passed into law, it would mean that a taxpayer's only remedy would be to take the matter on review to court. Alternatively, the taxpayer would have to pay the estimated amount and wait for a refund on assessment. Given the potentially material differences between the actual royalty liability and the SARS estimate, this may cause serious cash-flow problems for mining companies.

We do not accept that canvassing of income tax provisional tax related amendments could serve as a proxy for the royalty estimates as there are fundamental differences between the two taxes. A significant difference is that the royalty was only introduced in 2010 and its interpretation and application has not yet been settled. There are currently disputes between some taxpayers and SARS officials on the royalty calculations that could have a material impact. Some taxpayers believe that SARS officials are departing from the interpretations that were agreed when the royalty legislation was designed by National Treasury and SARS in consultation with mining companies.

In addition to these uncertainties which could impact on the making of a royalty estimate, the making of a royalty estimate is much more complicated than the making of an income tax estimate. There are two main variables in the royalty calculation, namely the gross sales and the earnings before interest and tax (EBIT). Both these amounts are subject to adjustments that require an in-depth knowledge of the business and access to detailed information which is not readily available in the trial balance. Furthermore, the taxpayer has to start off by performing an estimate applying income tax principles and then has to further adjust the estimate by applying royalty principles and adjustments. It would, therefore, be very difficult for a SARS official to make an accurate estimate of the royalty.

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Should SARS increase the taxpayer's royalty tax estimate, we are of the view that the taxpayer should have adequate recourse to challenge the estimate by way of the objection and appeal process and that the taxpayer should not be limited to a review procedure as its only recourse. With the severe strain that mining companies are under, we cannot afford to pay amounts of royalties that are not due and to wait for refunds on assessment. We need effective recourse should a royalty tax estimate by SARS be significantly overstated.

Given that this new proposal was not contained in the draft bill, which was released for comment and went through the parliamentary process, there has not been opportunity for proper consultation on the proposal. We, therefore, recommend that this proposal should not be passed this year, but that it should stand over to next year in order for it to go through a proper process of consultation.

Thank you for considering the contents of this submission. We hope that you will favourably consider our request to give adequate opportunity for proper consultation on this matter.

Yours sincerely

**Henry Nysschens**

**Chair of the Mining Tax Work Group**