

24 March 2017

The South African Revenue Service
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BY EMAIL: policycomments@sars.gov.za

RE: Draft Interpretation Note - Meaning of the term “Extracted” for Mineral Royalty

We write to comment on certain aspects of the draft interpretation note that aims to provide clarity on the interpretation of the term “extracted” referred to in section 6A(1)(b) of the Mineral and Petroleum Resources Royalty Act, 28 of 2008 (“the Act”).

A. Background

In terms of section 6A(1)(b):

If any unrefined mineral resource is transferred at a condition beyond the condition specified in Schedule 2 for that mineral resource, the mineral resource must be treated as having been transferred at the higher of the condition specified for that mineral resource or the condition in which that mineral resource was extracted. (our underlining)

It is stated at page 4 of the draft interpretation note that:

If one attaches the ordinary meaning of the word “extracted” and has regard to the context in which it is contained then a conclusion can be reached that it is at the first point of extraction from the earth (in other words, at the mouth of mine) and not at the point when the mineral is won or recovered. (our underlining)

B. Comment for consideration

While we agree that the term “extracted” should be interpreted given the term’s importance in respect of the mineral royalty, we believe that reliance on the “at the mouth of mine” terminology is overly simplistic. In essence, the “mine mouth” concept is an effective demarcation only for certain types of mining.

We note that the phrase “at the mouth of the mine” is effectively defined as “the first point of extraction from the earth” in the paragraph quoted above. However, we are concerned that both SARS officials and taxpayers may revert to their own understanding of “at the mouth of the mine”. Because each commodity and mine has its own facts and circumstances, the phrase “at the mouth of mine” as used in practice does not always mean the same as “the first point of extraction from the earth”. There are significant differences for determining the point of departure between underground mines, open-cast mines and aggregate quarries.

In some mines, such as underground mines, the physical mine-mouth might be easy to pin-point. In other mines, such as open-cast mines and quarries, the physical mine-mouth can be difficult to pin-point with the mine-mouth definition being more of a virtual concept. The draft ruling also takes care to distinguish the point of winning / recovery from the mine-mouth, thereby adding to the confusion. In this regard, we note that some beneficiation can take place between “the first point of extraction from the earth” and the mine mouth, especially in the case of open-cast mines and aggregate quarries.

Therefore, the mine-mouth concept might work well for underground mining but not for open-pit mining / quarrying because the latter forms of mining often entail a removal from the ground without ultimate reference to a mine-mouth. We submit that it is unnecessary to introduce the phrase “at the mouth of mine” in interpreting the meaning of the word “extracted” and/or the phrase “the first point of extraction from the earth”.

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We recommend that the phrase “at the mouth of mine” should be removed and that the phrase “the first point of extraction from the earth” should be used consistently. The “first point of extraction from the earth” should be determined based on the facts and circumstances of each commodity and mine, given the interpretation given to the term “extracted”. In-depth consultation would be required should SARS wish to provide guidelines for different commodities and mining methods.

We welcome the opportunity to comment on the draft interpretation note and look forward to future engagements.

Yours sincerely

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