

# The Mineral and Petroleum Resources Royalty Act

After more than five years of negotiation between Treasury and the mining industry, the mineral and petroleum resources royalty will become payable from 1 March 2010.

The royalty payment will have a definite impact on your mining operations and accounting systems.

## Who will be affected?

All persons who –

- hold a prospecting, mining, exploration or production right;
- a retention permit;
- mining permit;
- a lease or sublease in respect of a production right; or
- any person who wins or recovers a mineral resource within the Republic,

will be regarded as persons affected by the Mineral and Petroleum Resources Royalty Act (the Act).

## Classification of minerals

Royalty payments are calculated as a percentage of gross sales, EBIT and whether the mineral is refined or unrefined. In this regard, royalty payments will be payable based on the condition of the mineral as stipulated in either Schedule 1 or 2 of the Act.

## How is it calculated?

The royalty payment is calculated as a percentage of gross sales of mineral resources. The percentage is calculated in terms of different formulae depending on whether the mineral resources are unrefined or refined.

The two critical determinants for the calculation and determination of the value of the royalty are:

- gross sales; and
- EBIT.

### Gross sales

Gross sales is the transfer of all mineral resources as defined in Schedule 1 and 2 of the Act. Various inclusions and exclusions will apply.

### EBIT

EBIT is defined as earnings before interest and taxes and is the aggregate of gross sales and so much of any amount allowed to be deducted in terms of the Income Tax Act. Various inclusions and exclusions will apply.



It is imperative that strict controls be implemented to monitor and evaluate tax balances such as unredeemed capital expenditure, ring fencing of assessed losses and non-deductible expenditure for the purposes of this Act.

### When is it payable?

The royalty payment is payable semi annually by way of estimated payments on a basis similar to provisional tax for income tax purposes.

### Arm's length

For the purposes of the Act all transactions are to be concluded on an arm's length basis, including transactions between connected and unconnected persons.

### GAAR provisions

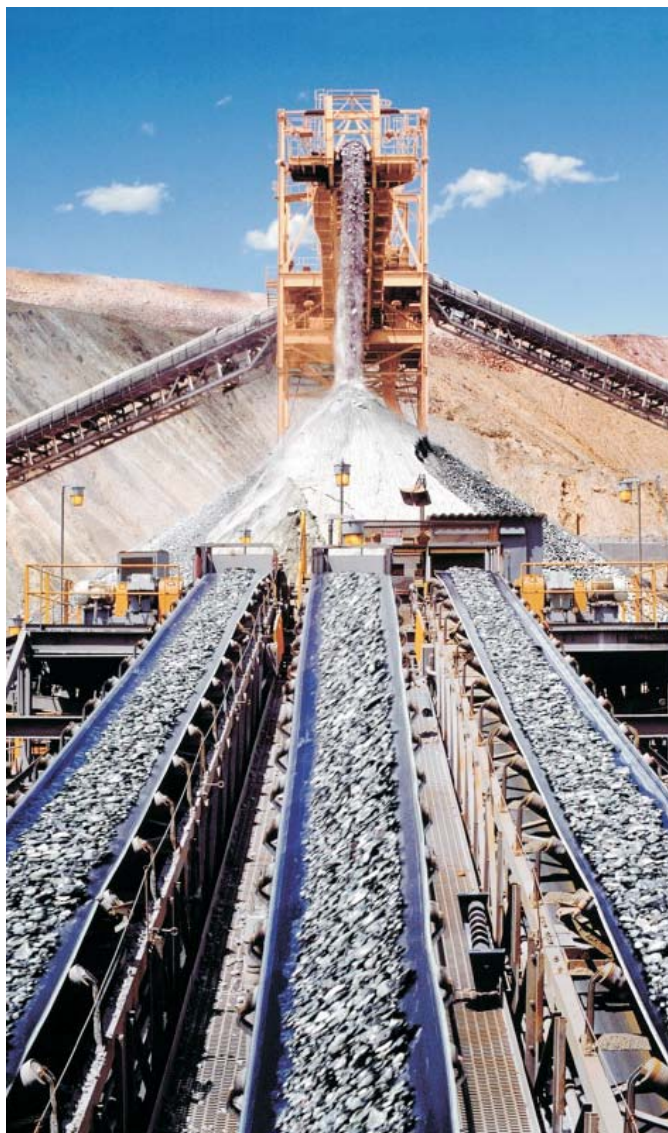
The purpose of the GAAR provisions in the Act is to act as a general anti-avoidance backstop to deter royalty schemes.

### Administration

The Act is administered by SARS and returns are submitted annually within six months after the end of the year of assessment.

### Services we are able to offer you

- Registration with SARS as an extractor of mineral resources;
- Application to SARS for Non Binding Private Opinions related to mine and industry specific requirements;
- Assistance with the calculation of royalty payments;
- Implementation of internal structures and processes to assist with the calculation of the royalty;
- Assistance with compliance such as completion of royalty returns; and
- Transfer pricing.



The Mineral and Petroleum Resources Royalty Act brings South Africa's mining legislation in line with prevailing international norms. It will change the mining administrative and accounting landscape and it is important that you are aware of its potential impact on your operations.

Please call the Mining Tax team for any further information or assistance.

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