

# Tax

# Alert

15 October 2020

## Let's talk

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## Mining Tax: Postponement of proposed legislative changes

### In brief

Regular readers of our Tax Alerts will recall that, on 31 July, 2020, National Treasury released the Draft Taxation Laws Amendment Bill, 2020 ('the DTLAB') for public comment. The DTLAB included proposals that would, if enacted, have a significant impact on the mining industry.

In essence, the proposed amendments related to the treatment of allowable mining capital expenditure ('capex') and the ring-fencing of capex per mine as contained in section 15 and 36 of the Income Tax Act, 1962 ('the Act').

The public comment process included workshops and discussions held with affected taxpayers (as well as Parliamentary hearings) at which the proposals were considered and discussed. Following this process, on 13 October, National Treasury and SARS presented to Parliament's Standing Committee on Finance a Draft Response Document on the DTLAB. The Draft Response Document contains a summary of draft responses of National Treasury and SARS to the public comments received, and proposes steps that will be taken in order to address key issues raised during the public consultation process. Regarding the proposals contained in the DTLAB that relate to mining, it is proposed that these amendments be postponed until the 2021 legislative cycle so that further public consultation thereon may be held.

### In detail

As per our previous Tax Alert dated 11 August, the relevant proposed amendments (to sections 15 and 36 of the Act) pertain to, *inter alia*, the following:

- The availability of the accelerated capital expenditure allowance to contract miners;
- The discretion afforded to the Minister of Finance to lift the ring-fencing of capex per mine; and
- The application for a 'one mine' directive from the Commissioner for SARS.

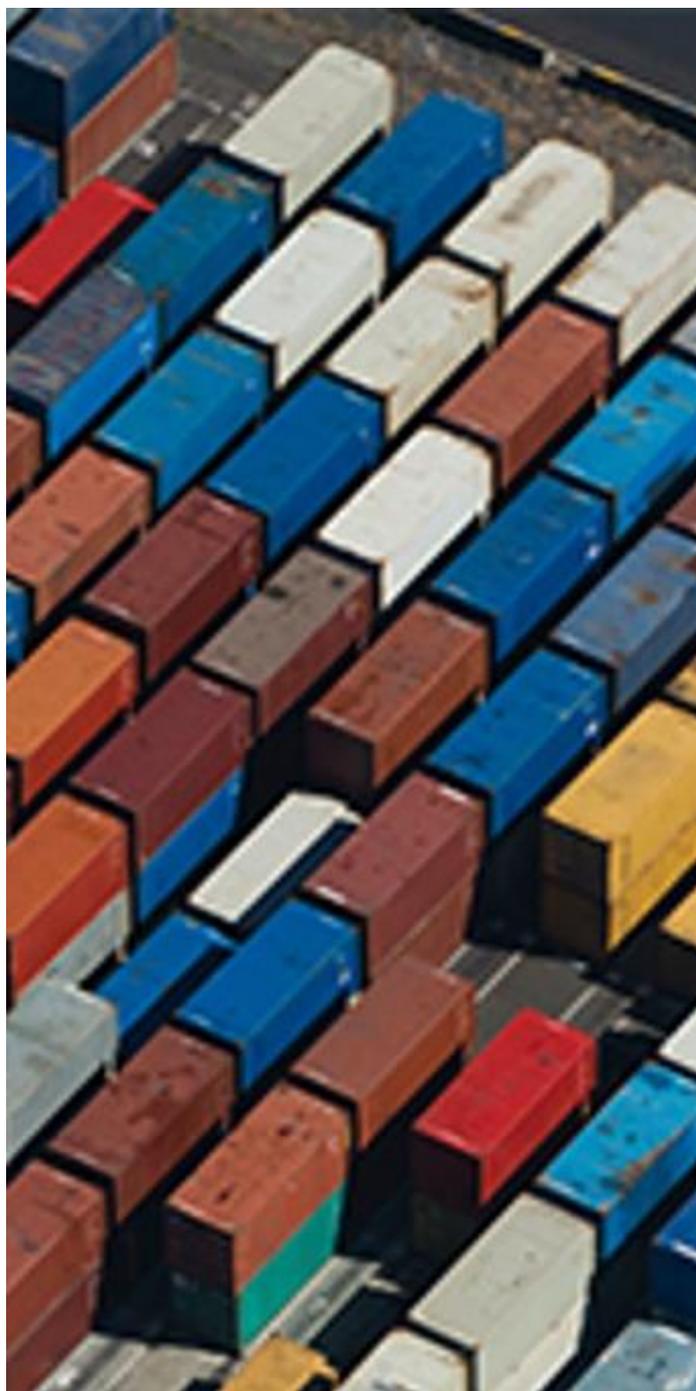


Aside from the devastating impact that the proposed amendments would have had for contract miners (and the mining industry as a whole), one of the main concerns raised during the public comment process was that the proposed amendments did not appear to take into consideration the mining tax regime as a whole, and that enacting them would constitute a 'piecemeal' approach to addressing the perceived concerns that gave rise to the need for the proposed amendment. This, it was argued by commentators, would risk destabilising the mining industry. This is of particular concern in the context of an environment in which investment and growth is sorely needed.

Accordingly, in order to address these concerns and avoid negative unintended consequences that would have resulted had the proposals been enacted, the Draft Response Document proposes that Government and the mining industry be afforded more time to investigate the relevant issues and find solutions, after which legislative amendments will be considered in the 2021 legislative cycle.

## Takeaway

It is imperative that, going forward, all affected by the proposed amendments ensure that they are involved in any consultations held by the National Treasury in relation thereto. This will ensure that an appropriate balance is struck between the policy imperatives of government, as well as growth and investment in the mining industry.



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