REPUBLIC OF SOUTH AFRICA

IN THE TAX COURT OF SOUTH AFRICA
HELD AT MEGAWATT PARK, JOHANNESBURG

Case No.: **IT 46010**

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
5 September 2025	________________
DATE	SIGNATURE

In the matter between:

TAXPAYER MPT **APPELLANT**

and

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE **RESPONDENT**

J U D G M E N T

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded onto Caselines. The date for hand down is deemed to be 5 September 2025.

MALI J

Introduction

[1] This is an appeal against the decision of the respondent, the South African Revenue Service (SARS), to raise additional assessments for the 2015 and 2017 tax years (the relevant tax periods) regarding royalties imposed under the Mineral and Petroleum Resources Royalty Act 28 of 2008 (the Royalty Act).

[2] The appellant is Taxpayer MPT (Appellant herein after), which is the world's only co-producer of platinum group minerals (PGMs) and chrome concentrates as primary products. The appellant is a wholly owned subsidiary of Taxpayer Plc., a company listed on both the Johannesburg Stock Exchange (JSE) and the London Stock Exchange (LSE). The respondent is the Commissioner for South African Revenue Service, a government agency responsible for tax administration. (SARS).

[3] Appellant acquired mineral rights in 2009 and commenced production between 2012 and 2013. Its mining operations are situated in an area in the Northwest Province of South Africa.

[4] During the relevant tax periods, Appellant sold unrefined mineral resources in the form of PGM concentrate to Mine-Ampa Refining Services (Pty) Ltd (Mine-Ampa) pursuant to an offtake agreement. SARS imposed tax in terms of the Royalty Act based on the methodology disputed by Appellant.

[5] Appellant seeks a relief to refer the assessments back to SARS for further examination and assessment, in terms of section 129(*c*) of the Tax Administration Act (TAA), encompassing directions as to the correct methodology to use.

Applicable legislation

[6] The Royalty Act provides as follows regarding the imposition and determination of royalties:

> **"2. Imposition of royalty.—**A person who wins or recovers a mineral resource within the Republic must pay a royalty to the National Revenue Fund in respect of the transfer of that mineral resource extracted.
>
> **3. Determination of royalty.—**(1) …
>
> (2) The royalty in respect of the transfer of an unrefined mineral resource is determined by multiplying the gross sales of the extractor by the percentage determined in accordance with the formula in section 4(2).
>
> **Payment of royalty—**The royalty payable is determined in accordance with the formula in section 4(2) of the Royalty Act.

> **Determination of gross sales—**One of the elements in calculating the formula is the mining company's gross sales. These are to be determined in accordance with section 6 of the Royalty Act …"

[7] "Gross sales" in respect of unrefined mineral resources (in this instance PGMs) transferred at below the condition specified in Schedule 2 of the Royalty Act (150 ppm) is effectively a notional amount that would have been received at arm's length had those PGMs been transferred in concentrate at the grade specified of 150 ppm. Thus, section 6(2)(*b*) of the Royalty Act requires a notional adjustment to be made to actual gross sales to arrive at the hypothetical gross sales that would have been received had the unrefined mineral resource been transferred at that specified condition.

[8] The other variable component of the royalty formula earnings before intertest and taxes (EBIT), which is determined with reference to both gross sales and deductible expenditure is also affected by a deeming provision. Section 5(2) reads, to the extent relevant, as follows:

> "[EBIT] in respect of a year of assessment means the aggregate of—
>
> *(a)* the gross sales of the extractor during that year in respect of unrefined mineral resources; and
>
> *(b)* so much of the amount allowed to be deducted from income tax … as is included in the income of the extractor [as a recoupment or under paragraph (j) of gross income],—
>
> less any amount which in terms of that Act—
>
> (i) is deductible from the income of the extractor during any year of assessment in respect of assets used or expenditure incurred to win, recover and develop those unrefined mineral resources to the condition specified in Schedule 2 for those mineral resources; or
>
> (ii) would have been deductible from the income of the extractor during any year of assessment in respect of assets used or expenditure incurred to win, recover and develop those unrefined mineral resources had those unrefined mineral resources been developed to the condition specified in Schedule 2 for those mineral resources."

[9] Section 5(2)(*b*)(ii) of the Royalty Act (the deduction clause) defines EBIT for a year of assessment as the aggregate of specified amounts less any amounts deductible under the Income Tax Act 58 of 1962 (ITA), that would have been deductible had the unrefined mineral resource been developed to the condition specified in Schedule 2.

[10] The determination of EBIT, accordingly, involves a hypothetical inquiry into what would have been required to upgrade PGMs from the actual grade to the 150 ppm specified, and at what cost. The EBIT for royalty purposes is linked to allowable deductions under the ITA, which includes mining capital expenditure.

[11] These provisions read with Schedule 2, respectively, apply when unrefined mineral resources are transferred below the specified condition, thus necessitating adjustments to both gross sales and EBIT.

[12] The amounts of "gross sales" and "EBIT" applicable to a taxpayer in respect of a year of assessment are merely components in the formula giving rise to the tax liability, and do not themselves constitute a tax liability that is assessed.

Issue

[13] The issue concerns the proper quantum of royalty liability in respect of PGMs. The matter therefore turns on the interpretation and application of section 6(2)(*b*), section 5(2) – paragraph (ii) of the deduction clause read with section 6A(1)(*a*) of the Royalty Act, which govern the calculation of gross sales and EBIT when unrefined mineral resources are transferred below the condition specified in Schedule 2.

Summary of facts

[14] Appellant extracts minerals from the western limb of the Complex B, a mineral-rich geological formation containing PGMs, chrome, iron, vanadium, and others.

[15] Appellant's mining process comprises three stages: mining (open-pit extraction of run-of mine ore (ROM)), crushing and milling, and concentration (producing chrome and PGM concentrates). Appellant has two processing plants, Plant A and Plant B which operate at capacities of 1.2 million and 3.6 million tonnes of ore per annum, respectively. While similar in process, each plant operates differently.

[16] Chrome extraction initially occurs by gravitational spirals, with Plant A producing higher-grade foundry and metallurgical concentrates and Plant B producing chemical and metallurgical grade concentrates. The tailings from spirals undergo milling and thickening, followed by flotation to produce PGM concentrate through rougher and subsequent cleaner flotation stages. Chrome concentrate is further refined via secondary spirals. Waste with no commercial mineral value is disposed of into tailings dams.

[17] In relation to the relevant tax periods, Appellant sold unrefined mineral resources in the form of PGMs at an average grade of 113.5 ppm instead of the 150 ppm specified in Schedule 2.

[18] For the 2015 tax period, Appellant declared gross sales of R2.154 billion and EBIT of nil (due to offset of unredeemed capital expenditure), calculating royalty at 0.5%, amounting to R10.7 million. It did not gross-up sales or EBIT to reflect the lower concentrate grade and Appellant assessed itself regarding the royalty liability (on PGMs) for its actual sales and its actual EBIT. In 2016 and 2017, Appellant applied a straight-line gross-up method to sales and EBIT, multiplying actuals by 150/113.5.

[19] SARS audited Appellant's royalty returns for 2015, 2016, and 2017. While audit adjustments were made for all years, additional assessments were only raised for 2015 and 2017. The additional assessment increased gross sales figures to R2.472 billion for 2015 (a R318.7 million adjustment) and increased gross sales figures to R3.775 billion for 2017.

[20] For 2015, the disputed amount related to the gross-up adjustment not reflected in the 2015 return. The EBIT was zero, the royalty rate was still 0.5% and the amount of tax went up from R10 million to R12.3 million. The amount in dispute was approximately R1.5million which involves grossing up what had not been grossed up in Appellant's 2015 return.

[21] The 2016 tax period, although not subject to an additional assessment, remains relevant to the calculation for 2017. This is because SARS disallowed the notional adjustments to EBIT raised by Appellant. Hence, the 2016 tax period is before court (although there was no additional assessment issued). Therefore, the court is called upon to order that the assessment for 2017 tax period must be based on the proper treatment of the 2016 tax period. SARS accepts in its heads of arguments that, to the extent that the outcome of this appeal in respect of the 2015 tax year impacts the balance of unredeemed capital expenditure carried forward to 2016, the 2016 balance of unredeemed capital expenditure may be updated accordingly in terms of section 99(2)(*d*) of the Tax Administration Act 28 of 2011 (TAA).

[22] As regards 2017, Appellant had self-assessed based on a linear increase in gross sales and an increase in costs. SARS again adjusted down the EBIT component of the calculation removing the costs claimed.

[23] For the 2017 period, Appellant calculated and applied the same principles and methodology applied in 2016. In this year, EBIT became relevant because of the manner SARS had applied the formula, the unredeemed capex ran out in that year and therefore EBIT was a positive number.

[24] Appellant had R3.775 billion gross sales and included an amount in respect of EBIT, the royalty tax was now calculated at 0.54%. The 0.5% had crept up slightly in that year leading to a royalty liability of R22.2 million.

[25] SARS included an amount of R83 million as EBIT and Appellant's notional EBIT adjustment in the sum of R234 million was disallowed and reversed. That pushed the formula up from 0.5% to 2.95% and resulted in a royalty liability of R111million. The 2017 additional royalty liability was therefore the product of the audit adjustments to gross sales and EBIT in 2015 and to EBIT in 2016 and 2017, each of which also impacted on unredeemed capex for those years.

[26] On 15 July 2024, SARS reconsidered its earlier decision to disallow the EBIT expenditure adjustment. This reconsideration was based on a detailed breakdown and allocation of operating costs provided by Appellant, which included – for the first time – a specific itemisation of variable costs. SARS subsequently calculated and accepted an amount to be included in the EBIT calculations for the 2015, 2016, and 2017 tax years, taking into account certain costs it had previously excluded.

[27] SARS agreed to allow an adjustment for the variable costs of the processing plant, calculated by grossing up the actual amounts on a straight-line basis using a factor of 150/113.5 ppm. SARS maintains its offer to revise the additional assessments accordingly. The revised notional EBIT adjustments are as follows:

- 2015: R73.5 million
- 2016: R78.5 million
- 2017: R89.7 million

[28] The actual ounces disposed to Mine-Ampa were at the following actual grades:

i. 2015: from 118 041 oz disposed, 134.4 ppm
ii. 2016: from 132 587 oz, 120.5 ppm
iii. 2017: from 143 578 oz, 122.8 ppm

Evidence

[29] The only evidence led is that of Appellant. Three witnesses, i.e. Mr Witness 1 (Mr Witness 1); Mr Witness 2 (Mr Witness 2) and Mr Witness 3 (Mr Witness 3) testified.

[30] Appellant's Chief Financial Officer (CFO), Mr. Witness 1, testified that the internal finance team prepared the 2015 tax calculations, while PricewaterhouseCoopers (PwC) advised Appellant to adopt the straight-line grossing up basis for 2016 and 2017.

[31] Under cross-examination, he stated that Appellant was unaware of the 2014 legislation requiring gross-up. However, thereafter and upon advice from PwC Appellant adopted the straight-line basis of gross up method for 2016 and 2017.

[32] Mr Witness 1 stated that Appellant could not produce at the conditions specified for PGMs of 150 ppm because of its mining uniqueness in terms of its ore body and operational constraints. Appellant's neighbouring mines such as Mine-Sam, only mine chrome or Mine-Ban/Mine-Ampa only mine PGMS but may extract chrome as a by-product (and they mine underground) whereas Appellant mines in an open pit.

[33] Appellant's mining activities do not involve smelting or refining of the PGMs. Its operations are only concerned with ore extraction and concentration. As such, it produces largely fresh material from four groups of the middle ground ("MG") chromite layers, namely, MG4 (MG4A and MG4), MG3, MG2 and MG1.

[34] Therefore, Appellant mines the MG reef horizons, which are low in both chrome and PGMs not typically exploited independently. The reef horizons are relatively low in both chrome and PGM content (due to nature) that are not typically exploited by mining companies. More so, because it does not make economic sense to be extracting either chrome or PGM on its own at those grades. However, the appellant through innovative integrated processing plants and infrastructure co-produces PGMs and chromes as primary products in concentrate form at economically viable levels.

[35] Production ramped from 4.4 million tonnes in 2015 to 4.9 million tonnes in 2017, exceeding nameplate capacity in 2017. Processing fresh competent ore from deeper in the pit improved PGM recovery rates from 65.82% in 2015 to 79.74% in 2017.

[36] Mr Witness 1 further testified in relation to the offtake agreement with Mine-Ampa (to whom the PGM concentrate was sold in 2015 to 2017). He further elaborated as to the terms of concentrate quality (minimum 96 ppm PGM, chrome oxide <3%), pricing mechanisms based on metal content, and the commercial impossibility and economic disincentives of producing concentrate at 150 ppm due to recovery-grade trade-offs and capacity constraints.

[37] Independent expert Mr. Witness 2, qualified in Extractive Metallurgy stated that industry benchmarks confirm that Appellant's ore, being weathered oxide ore rather than fresh ore, yields recoveries in the range of 45-65%, consistent with its operational data.

[38] Mr Witness 2 further testified about Appellant's unique ore profile and processing challenges. Thus, confirming the inverse relationship between grade and recovery as well as the accuracy of Appellant's cost and recovery calculations, as submitted by Mr Witness 1. He contested opposing expert statements of Mr Wonder which was not substantiated in oral evidence. He affirmed the industry-standard offtake agreements. SARS' efforts to discredit Mr Witness 2's evidence on the basis that he was biased because once worked for Appellant came to nought. SARS could not dispute that Mr Witness 2 had worked on Appellant's assignment on De Loitte's instance as Appellant had a contract with De Loitte.

[39] Appellant's General Manager for Processing, Mr. Witness 3, corroborated testimony of other witnesses, in particular Mr Witness 1. The evidence pertained to operational efficiencies, recovery targets, and the commercial realities of concentrating PGMs and chrome as joint primary products.

[40] The evidence of all the witnesses is found credible and acceptable.

Appellant's contentions

[41] Appellant contends that SARS erred in applying a straight-line gross-up method to gross sales and EBIT for PGMs and that the appellant's earlier self-assessed methodology should not be discredited as SARS has done. Furthermore, that the statutory adjustment should not be mechanical or arbitrary, without regard to the realities of recovery rates, production costs, and commercial viability.

[42] Appellant further contends that SARS' reliance on its self-assessment for periods 2016 and 2017 return by applying the straight-line increase is opportunistic. Appellant was ill advised, of significance is not how Appellant made the calculations, the critical issue is the interpretation and application of the Royalty Act.

[43] It is further contended that by processing the concentrate from 113 ppm to 150 ppm, PGM ounces would be lost. Moreover, that there would be fewer Troy ounces of PGM to sell to Mine-Ampa, whilst the amount of gross sales that it would receive would be the actual gross sales amount at the 113 ppm, less the loss in revenue it would incur had the mineral been transferred at a condition specified of 150 ppm (based on the inverse relationship between grade and recovery).

[44] Additional beneficiation would not realise more money for the same minerals. In other words, based on its agreement with Mine-Ampa, the price Appellant was paid per Troy ounce of PGM did not differ, whether the PGM is delivered at 113 ppm or 150 ppm or not. Therefore, there is no basis in principle to adjust gross sales upwards.

[45] The only way to make up for the inverse relationship between the grade and the recovery, as well as downward adjustment, is by mining and processing more so that Appellant can produce and make up the lost ounces. Appellant proposed two scenarios for addressing the notional EBIT adjustment:

i) Increasing the EBIT expenditure based on an improved grade from 113 ppm to 150 ppm, without maintaining the same quantity of PGM ounces actually sold to Mine-Ampa (EBIT Scenario 1).

OR

ii) increasing the EBIT expenditure on the basis that more ore would have to be mined to produce the same amount of PGM ounces which were actually sold to Mine-Ampa and gross sales would be the actual gross sales to Mine-Ampa.

[46] In respect of EBIT Scenario 1, no comprehensive calculations were submitted to support same. EBIT Scenario 2 is based on the supposition of the establishment of a new plant, plus variable and other incremental costs to achieve 150 ppm.

Respondent's contentions

[47] In its pleaded case, the respondent, SARS argued that if the mineral was transferred below the condition specified in Schedule 2, the royalty liability should be increased. SARS contended that all evidence presented to support Appellant's new method—based on the inverse relationship between grade and recovery was irrelevant to determining the appropriate notional adjustment. SARS cited gross sales adjustments for 2015 (from R2.154 billion to R2.472 billion) and for 2017 (R3.775 billion).

[48] However, SARS did not substantiate why the evidence presented by Appellant on the inverse relationship between grade and recovery should be considered irrelevant. SARS' argument is that the notional adjustment must be applied rigidly, holding the appellant liable for royalties on the hypothetical higher-grade amount irrespective of recovery realities.

[49] SARS's stance in its closing heads of argument contended that the tailings and or wastage should be considered lost minerals. Those were **"extracted and transferred"** and that Appellant should be held liable for royalties on the ounces that were lost to tailings and included in the wastage.

[50] It is a well-established principle that a party is bound by its pleadings. In *Africa Cash& Carry (Pty) Ltd v Commissioner for South African Revenue Service*,[1] it is held:

> "Being a court of revision does not mean that a tax court is free of restrictions. It too must observe an administratively fair process. That will entail inter alia that the dispute must be resolved on the issues raised by the parties and the enquiry confined to the facts placed before court. In this regard the pleadings are important, and the parties will be kept to their pleadings, where any departure from the pleadings would cause prejudice or prevent a full enquiry. But within those limits a tax court has a wide discretion, for pleadings are made for the court and not the court for pleadings. Where a party has had every facility to place all the facts before the tax court and the investigation into all the circumstances has been thorough, then there is no

[1] (783/18) [2019] ZASCA 148; [2020] 1 All SA 1 (SCA); 2020 (2) SA 19 (SCA); 82 SATC 73 (21 November 2019) [para 53].

justification to interfere simply because the pleadings had not been as explicit as they might have been."

[51] The argument advanced by SARS regarding "lost" minerals or "waste" was not included in its Rule 31 statement. Furthermore, Rule 34 of the Tax Court Rules provides that the issues in an appeal are those contained in the statement of grounds of assessment and opposition, read together with the grounds of appeal and any reply thereto.

[52] Appellant responded to a case based on "transfer" (i.e., the disposal of a mineral resource). SARS's case was never about lost minerals or waste (as envisaged in section 6(2)(c) of the Royalty Act. To entertain SARS's new pleadings will be prejudicial to the appellant. Therefore, only pleaded issues shall be considered.

Discussion

[53] The central issue is what amount would have been received or accrued during the 2015 and 2017 assessment years for the transfer of Appellant's PGMs, had they been transferred at the 150 ppm grade specified in Schedule 2, under an arm's length transaction?

[54] To determine the correct royalty liability, the Court must engage in an interpretative exercise. As established in *Natal Joint Municipal Pension Fund v Endumeni Municipality,*[2] interpretation must consider the context, circumstances surrounding the creation of the provision, and the material known to those responsible for its drafting.

[55] Building on Endumeni, in *Capitec Bank Holdings v Coral Lagoon Investments 194 (Pty) Ltd*[3] it is held at paragraph [25] that the triad of text, context, and purpose should not be applied mechanically. Instead, interpretation involves understanding the relationship between the words used, the concepts they express, and the provision's place within the broader legal framework. The starting point remains the language of the provision.

[56] At paragraph 50, it is further held that meaning is the most coherent and compelling account the interpreter can provide, using all interpretative sources not a selective use of materials aimed at a predetermined outcome.

[57] Finally, paragraph 51 clarified that while "context is everything", it must be used to elucidate the text not to argue for meanings disconnected from the text and its structure.

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2 *[2012] ZASCA 13; 2012 (4) SA 593 (SCA) para 18.*

3 *[2021] ZASCA 99, 2022 (1) SA 100 (SCA).*

[58] In *Commissioner for South African Revenue Service v United Manganese of Kalahari Pty Ltd (UMK)*[4] the following is stated:

> "The difference in the genesis of statutes and contracts provides a different context for their interpretation. Statutes undoubtedly have a context that may be highly relevant to their interpretation. In the first instance there is the injunction in s 39(2) of the Constitution that statutes should be interpreted in line with the spirit, purpose, and objectives of the Bill of Rights. Second, there is the context provided by the entire enactment. Third, where legislation flows from a commission of enquiry, or the establishment of a specialised drafting committee, reference to their reports is impermissible and may provide helpful context. Fourth the legislative history may provide useful background in resolving interpretational uncertainty. Finally, the general factual background, to the statute, such as the nature of its concerns, the social purpose to which it is directed and, in the case of statutes dealing with specific areas of public life or the economy, the nature of the areas to which the statute relates, provides the context of legislation. It follows that context is as important in construing statutes as in construing contracts or other documents and the contrary suggestion is incorrect."

Interpretation of the Royalty Act

[59] The key statutory provisions relevant here are sections 6(2)(*b*); 6A(1)(*a*), and section 5(2)(*b*)(ii) of the deduction clause of the Royalty Act. These provide for a notional adjustment of gross sales and EBIT where unrefined mineral resources are transferred below the specified grade concentration as set out in Schedule 2.

[60] The rationale is to establish a hypothetical amount that would have been received had the mineral met the Schedule 2 condition, thereby ensuring the National Revenue Fund receives a royalty equivalent to that hypothetical optimum transfer.

[61] In *UMK*[5] it is held:

> "In exchange for the right to extract portion of South Africa's mineral wealth, mining companies pay royalties to the National Revenue Fund under Section 2 of the Mineral and Petroleum Resources Royalty Act 28 of 2008 (Royalty Act) in exchange for the right to extract mineral resources from South Africa and sell them for profit. The royalty amount is calculated according to the formula set out in Section 4(2) of the Royalty Act. One key element in this formula is the company's gross sales, which must be determined as per Section 6 of the Royalty Act."

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4 2020 (4) SA 428 (SCA), para 17.

5 ibid para1.

[62] The Royalty Act's background reflects that South Africa is a country rich in minerals, primarily exploited by private companies under a strict regulatory regime. Mining has long been vital to South Africa's economy. Royalties are payable in exchange for rights to mine these resources. The Royalty Act's two schedules show that some minerals undergo refining locally while others are exported with limited processing.

[63] Those responsible for this legislation, Explanatory Memorandum and Practice Notes would have been aware of this fundamental context. In the Explanatory Memorandum for the Mineral and Petroleum Resources Royalty, 2008 the following is stated:

> "**1. Tax base**
>
> The tax base (i.e. the value of the mineral) is generally defined as gross sales (excluding costs incurred to transport the 'final' product/ mineral between the seller and the buyer). This royalty liability is often triggered when the minerals are **sold** (**or deemed to be sold**) instead of the time of extraction/at the mine mouth. This decision to require royalty payments only at the time when the resources are sold (or deemed to be sold) takes into account the cash-flow position of the extractor liable for the royalty payments. In most instances, it is also difficult to attach a value to a mineral at the moment when that mineral is extracted/mined …
>
> It accordingly, follows that the gross sales value (i.e. the tax base) of a mineral increases the longer that mineral undergoes processing in the value – chain before being sold in its 'final' condition."

(Emphasis added)

[64] Accordingly, it is appropriate to interpret sections 5 and 6 on the basis that the drafters had knowledge of established trading patterns, even if these are not uniform in every instance.

[65] Section 6(2)(*b*) of the Royalty Act stipulates:

> "Gross sales in respect of an unrefined mineral resource transferred (b) as described in paragraph (a) of the definition of 'transfer' in Section 1 in a condition different from that specified for that mineral in Schedule 2 shall be the amount that would have been received or accrued during the assessment year if that mineral resource had been transferred in the condition specified in Schedule 2 under an arm's length transaction."

[66] Section 6A(1A) of the Royalty Act provides special rules for unrefined mineral resources which have a range as their condition specified in Schedule 2. Mineral resources which are transferred in a condition below the minimum of the range are treated as having been brought to the minimum of the range, while mineral resources that are in a condition beyond the maximum of the range are treated as being transferred at the maximum of the range.

[67] Section 5(2)(*b*)(ii) of the Royalty Act specifies that for the purposes of determining the royalty percentage for an unrefined mineral resource, you add 0.5% plus a calculation involving the EBIT divided by the product of gross sales for the unrefined mineral resource and the number 9. This formula is a component of the royalty calculation, with the resulting percentage being applied to the gross sales of the unrefined resource.

[68] In *ASPASA NPC and others v Commissioner of the South African Revenue Service*,[6] the functional approach with proper context must be applied. Paragraph 100 states:

> "The applicants argue that the term 'bulk', as used in the Act, should be understood in the context of the mining industry—not by its ordinary meaning. Since the term is specialized, its correct meaning must be identified within the mining milieu, as it may acquire a technical meaning distinct from general usage."

[69] At paragraph 107, the court added:

> "Interpretation must be functionally appropriate. Therefore, 'bulk' should be defined in reference to the mining industry rather than common usage, especially within a Schedule that is technical in nature."

[70] The proper context in this case is the mining industry; interpretation must be functionally appropriate and consistent with industry norms.

[71] The term "transfer" in section 1 of the Royalty Act means "*disposal of a mineral resource*." Within Appellant's factual matrix, disposal means selling PGMs. By nature of the mining milieu, extraction must precede disposal. Extraction and disposal are separate processes; extraction occurs independently of disposal, but disposal cannot occur without extraction. However, not all extraction results in disposal.

[72] It is undisputed that in the years in question, the concentrate produced contained PGMs at 113.5 ppm, which is below the specified condition. It is accepted that the evidence, especially the off-take agreements, has proved that the price paid was based on 96 ppm and that no additional revenue would be earned if the ppm was higher.

[73] Appellant has shown that additional costs would have been incurred to upgrade the PGMs from 113.5 ppm to 150 ppm and it would have been uneconomical for it to continue processing to 150 ppm. Appellant's evidence, supported by expert testimony, establishes that attempting to produce concentrate at the 150 ppm grade would materially decrease recoveries and increase costs, including incurring capital expenditure, operating expenses, and

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[6] 2023/099811 [2024] ZAGPPHC 1286 (6 December 2024).

increasing capacity requirements. There is overwhelming evidence of increased costs and interpreting the legislation to yield an unbusinesslike outcome is impermissible.

[74] Moreover, there is no industry precedence or commercial feasibility for producing at the 150 ppm standard from MG reef horizons. This evidence supports a nuanced interpretation of the Royalty Act that recognizes these practical constraints.

[75] SARS's reliance on a mistake by Appellant in using the straight line gross up methodology, which was corrected upon undisputed evidence, is untenable. The inverse relationship between grade and recovery has been comprehensively addressed.

[76] Royalties are based on actual transfers under section 3(2) and calculated by multiplying an extractor's gross sales by the formula in section 4. Appellant's gross sales must be adjusted to the amount that would have been received if the PGM concentrate had been transferred at the specified condition, and its EBIT must be adjusted accordingly for costs to bring the concentrate to that condition. The Royalty Act requires a notional adjustment to reflect hypothetical gross sales and EBIT as if the minerals were transferred at the specified condition.

[77] Effect must be given to the object of the Royalty Act to impose royalties on actual transfers of mineral resources, but within the statutory formula that contemplates adjustments for unrefined minerals transferred below specified conditions. The adjustment should fairly reflect the economic realities of mining and beneficiation at Appellant's operation, factoring the actual mining and processing conditions, recovery rates, and economic considerations.

[78] Further, in *Telkom SA SOC v CSARS,*[7] it is held that the *contra fiscum* rule remains applicable. If interpretative approaches do not resolve the matter, the circumstances favour applying the *contra fiscum* rule, thus the interpretation should favour Appellant.

[79] Appellant also submitted that SARS made an error which was manifestly erroneous, unfair and unreasonable which error arose out of employing an illogical and incongruous methodology. in *Avenant v CSARS*[8] the court found that SARS's assessment was deficient in at least 3 respects as follows:

> "With the paucity of evidence adduced on what could constitute a fair and reasonable method of quantification, this court is not in a position to substitute respondent's calculation with that of its own"

[7] (239/19) [2020] ZASCA 19 (25 March 2020).
[8] (367/2015) [2016] ZASCA 90 (1 June 2016).

[80] Reasonableness requires that SARS must have struck a balance fairly and reasonably open to SARS on the facts available to SARS as held in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism.*[9] A balance must be struck between a range of competing considerations and must therefore be context-specific, as stated in *Head Western Cape Education Department v Governing Body, Point High School.*[10]

[81] In conclusion, SARS did not act within reason in applying a rigid, straight-line gross-up method for calculating Appellant's royalty liability on PGMs sold below the Schedule 2 grade specification of 150 ppm. The straight-line gross-up method proposed by SARS oversimplifies these complexities and does not accord with the Royalty Act's intent when read in context.

[82] The methodology replicating the actual effect on the appellant's gross sales of producing PGMs in concentrate should be applicable. The quantum of royalty must be determined by a method that reasonably approximates the notional gross sales and EBIT; taking into account the operational realities on recoveries and related costs.

Finality of assessments

[83] In July 2024, shortly before the hearing, SARS in its Rule 33 statement submitted that the appellant was not entitled to challenge the "gross sales" component of the additional assessments for the 2016 and 2017 tax years. This argument did not apply to the 2015 tax year, as SARS accepted that the appellant's MPR3 return for that year did not include a gross-up of the gross sales achieved. Therefore, the basis for SARS's argument regarding the finality of the gross sales figures in 2016 and 2017 was not applicable to 2015.

[84] SARS's argument was based on the fact that the additional assessments for 2016 and 2017 did not alter the "gross sales" figures from those declared in the appellant's MPR3 returns.

[85] SARS further contended that the appellant had not objected to the gross sales figures declared in its MPR3 returns for those years. Accordingly, SARS argued that, in terms of section 99(1)(*b*) read with section 100(1)(*b*) of the TAA the gross sales amounts for 2016 and 2017 had become "prescribed," meaning they were final and conclusive.

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[9] 2004(4) SA 490 (CC).

[10] 2008 (5) SA 19 (SCA).

[86] As a result, the figures which are subject of this appeal could no longer be changed by the court under section 129(2)(*b*) of the TAA, nor could they be referred back to SARS for re-determination under section 129(2)(*c*).

[87] Section 100(1) of the TAA states that an assessment becomes final if it is not objected to as provided for in the Royalty Act. However, section 100(2) clarifies that this does not prevent SARS from issuing an additional assessment. SARS issued the additional assessments therefore, section 100(1)(*b*), which SARS relied upon no longer applied to those assessments. As a result, SARS's argument cannot stand. Consequently, the incorrect gross sales figures reflected in the appellant's MPR3 returns for 2016 and 2017 did not become final under section 99(1)(*b*) and section 100(1)(*b*) of the TAA.

Costs

[88] Section 130 of TAA provides:

> "The tax court may, in dealing with an appeal under this Chapter and on application by an aggrieved party, grant an order for costs in favour of the party, if—
>
> (*a*) the SARS grounds of assessment or 'decision' are held to be unreasonable;"

[89] SARS's ground of assessment is unreasonable as displayed above. SARS failed to take into cognisance the realities of the appellant's operations. To exacerbate the issues, SARS filed notice in respect of expert witness, who did not testify. Moreover, SARS did not provide any evidence supporting its interpretation. Furthermore, SARS made concessions in respect of the notional adjustments to EBIT. From the above it is found that the grounds of assessments are unreasonable, therefore SARS must pay costs.

Order

1. The appeal is upheld.

2. Additional assessments for 2015 and 2017, including the assessments for understatement penalties and interest are set aside.

3. Additional assessments are remitted to the respondent for further examination and assessment.

4. The respondent is directed to determine the appellant's gross sales and EBIT for the relevant years of assessment, the 2016 year of assessment and any subsequent years of assessment on the basis of the said re-determination.

5. The respondent is ordered to pay costs including cost of two counsel, where so employed.

NP MALI
JUDGE OF THE HIGH COURT
JOHANNESBURG

Before:

JUDGE NP MALI	**PRESIDENT**
MS D NAIDOO CA (SA)	**ACCOUNTANT MEMBER**
MS K THAMBI	**COMMERCIAL MEMBER**

Date of hearing: **22-25 JULY 2024; 31 MARCH 2025; 1 & 8 APRIL 2025**

Date of judgment: **5 September 2025**