

INTERPRETATION NOTE 100

DATE: 5 June 2018

ACT : MINERAL AND PETROLEUM RESOURCES ROYALTY ACT 28 OF 2008
SECTION : SECTIONS 1 AND 6A(1)(b)
SUBJECT : MEANING OF “EXTRACTED”

Preamble

In this Note unless the context indicates otherwise –

- “**EBIT**” means earnings before interest and taxes as determined under section 5;
- “**gross sales**” means gross sales referred to in section 6;
- “**MPRDA**” means the Mineral and Petroleum Resources Development Act 28 of 2002;
- “**royalty**” means a royalty imposed under the Act;
- “**Schedule**” means a schedule to the Act;
- “**section**” means a section of the Act;
- “**the Act**” means the Mineral and Petroleum Resources Royalty Act 28 of 2008;
- “**transfer**” means transfer as defined in section 1; and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This Note provides clarity on the interpretation of the word “extracted” used in section 6A(1)(b).

2. Background

A person must pay a royalty for the benefit of the National Revenue Fund in respect of the transfer of a mineral resource extracted from within the Republic.¹ The Act distinguishes between refined mineral resources (Schedule 1) and unrefined mineral resources (Schedule 2). Different formulae apply to refined and unrefined mineral resources for the purposes of determining the royalty. Since refined mineral resources generate higher sales value than unrefined mineral resources, a smaller percentage is applied to the gross sales of refined mineral resources. The purpose is to compensate the state for the value of the minerals extracted and not to impose the royalty on the value added through beneficiation.

¹ Section 2.

The term “unrefined mineral resource” is defined in section 1(1) to mean any mineral resource listed –

- solely in Schedule 2; or
- in Schedule 1 and Schedule 2 that has not been refined to or beyond the condition specified in Schedule 1 for that mineral resource.

The condition specified for mineral resources is important in determining the gross sales and EBIT for purposes of calculating the royalty payable under the Act. An unrefined mineral resource transferred beyond the condition specified in Schedule 2 requires a determination to be made under section 6A(1)(b) which deems the transfer to take place at the higher of –

- the condition specified for that mineral resource; or
- the condition in which that mineral resource was extracted.

This Note examines the meaning of the words “condition in which that mineral resource was extracted”.

The point of extraction of an unrefined mineral resource creates uncertainty and it is necessary to determine at which point a mineral is considered to be extracted. Differing views exist on what the point of extraction is. This Note sets out what SARS’s view is.

3. The law

The relevant sections of the Act are quoted in the **Annexure**.

4. Application of the law

4.1 Introduction

The term “mineral resource” is defined in section 1(1) as follows:

“**[M]ineral resource**” means a mineral or petroleum as defined in section 1 of the Mineral and Petroleum Resources Development Act, regardless of whether that mineral or petroleum undergoes processing (as defined in section 1 of that Act) or manufacturing;

The terms “mineral”, “petroleum”, “processing” and “beneficiation” are defined in section 1 of the MPRDA as follows:

“**[M]ineral**” means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth or in or under water and which was formed by or subjected to a geological process, and includes sand, stone, rock, gravel, clay, soil and any mineral occurring in residue stockpiles or in residue deposits, but excludes—

- (a) water, other than water taken from land or sea for the extraction of any mineral from such water;
- (b) petroleum; or
- (c) peat;

“**[P]etroleum**” means any liquid, solid hydrocarbon or combustible gas existing in a natural condition in the earth’s crust and includes any such liquid or solid hydrocarbon or combustible gas, which gas has in any manner been returned to such natural condition, but does not include coal, bituminous shale or other stratified deposits from which oil can be obtained by destructive distillation or gas arising from a marsh or other surface deposit;

“**[B]eneficiation**”, in relation to any mineral resource, means the following—

- (a) primary stage, which includes any process of the winning, recovering, extracting, concentrating, refining, calcining, classifying, crushing, screening, washing, reduction, smelting or gasification thereof;
- (b) secondary stage, which includes any action of converting a concentrate or mineral resource into an intermediate product;
- (c) tertiary stage, which includes any action of further converting that product into a refined product suitable for purchase by minerals-based industries and enterprises; and
- (d) final stage, which is the action of producing properly processed, cut, polished or manufactured products or articles from minerals accepted in the industry and trade as fully and finally processed or manufactured and value added products or articles;

“**[P]rocessing**”, in relation to any mineral, means the winning, extracting, concentrating, refining, calcining, classifying, crushing, screening, washing, reduction, smelting or gasification thereof;

Processing therefore falls within the first stage of beneficiation.

The meaning of “extracted” is important in determining which value should be attached to a mineral resource transferred at a condition beyond that which is specified in Schedule 2 (see the Example).

4.2 The meaning of “extracted”

The word “extracted” is not defined in the Act or in the MPRDA. In *Natal Joint Municipal Pension Fund v Endumeni Municipality* the Supreme Court of Appeal stated in relation to the process of interpretation that –²

“consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors.”

The *Oxford Dictionaries*³ contains the following meanings of “extract” relevant to the present circumstances:

“1 remove or take out, especially by effort or force. ‘the fossils are extracted from the chalk’

1.1 Obtain (a substance or resource) from something by a special method. ‘lead was extracted from the copper’.”

The dictionary meaning of “extract” is therefore of little assistance because it could refer to the first point of extraction or the process of winning a mineral.

² 2012 (4) SA 593 (SCA) at 604.

³ <https://en.oxforddictionaries.com/definition/extract> [Accessed 5 June 2018].

Regard must therefore be had to the context in which the word is used, taking into account the purpose of the legislation. As noted in 2, the purpose of the royalty is to compensate the state for the loss of its mineral resources. Such compensation is not intended to be a tax on beneficiation. Basing the meaning of “extracted” on the condition at the initial point of extraction would be in line with the purpose of the legislation.

In examining the context in which section 6A(1)(b) appears, it is helpful to compare the treatment of an unrefined mineral resource which has its condition specified as a range of values in Schedule 2, since consistency in treatment would be expected to apply to unrefined mineral resources which have their condition specified as a single value in that Schedule.

Section 6A(1A) 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.

By implication section 6A(2)(b) deals with unrefined mineral resources having a condition specified as a single value. It provides that an unrefined mineral resource which is transferred in a condition beyond that specified in Schedule 2 must be treated as being transferred at the higher of –

- the condition specified for that mineral resource in Schedule 2; or
- the condition in which the mineral resource was extracted.

An extractor would be treated in a manner consistent with section 6A(1A) if the “condition in which that mineral resource was extracted” is taken as referring to the condition prevailing at the initial point of extraction. In that way subsequent beneficiation beyond the condition specified in Schedule 2 will not be taken into account when determining gross sales.

Example – Iridium transferred in condition beyond the condition specified in Schedule 2

Facts:

After undergoing primary processing, iridium was extracted as a concentrate of 140ppm and after further processing transferred at 180ppm. The condition specified for iridium in Schedule 2 is 150ppm.

Result:

The iridium was transferred beyond the condition specified in Schedule 2 of 150ppm and requires an adjustment to gross sales and EBIT. Section 6(2)(b) applies to determine which value will be used to calculate gross sales and EBIT.

The 140ppm will be regarded as the calorific value at point of extraction. Therefore, 150ppm will be used in the calculation of gross sales and EBIT.

5. Conclusion

Should a mineral resource be transferred in a condition beyond that specified in Schedule 2, the mineral resource must be treated as having been transferred at the higher of the condition specified in Schedule 2 and the condition in which it was extracted.

The expression “condition in which that mineral resource was extracted” in section 6A(1)(b) is regarded as the condition in which an unrefined mineral resource is initially extracted, that is, when the mineral resource is removed from the earth before it undergoes a process of beneficiation.

The condition in which a mineral resource is deemed to be transferred may result in an adjustment to gross sales and EBIT if the actual condition at the time of transfer differs from the condition specified.

Legal Counsel
SOUTH AFRICAN REVENUE SERVICE

Annexure – The law**Section 1(1)**

“**mineral resource**” means a mineral or petroleum as defined in section 1 of the Mineral and Petroleum Resources Development Act, regardless of whether that mineral or petroleum undergoes processing (as defined in section 1 of that Act) or manufacturing;

“**unrefined mineral resource**” means a mineral resource –

- (a) listed solely in Schedule 2; or
- (b) listed in Schedule 1 and Schedule 2 that has not been refined to or beyond the condition specified in Schedule 1 for that mineral resource.

Section 6A(1)(b)

6A. Application of Schedule 2.—(1) If any unrefined mineral resource—

- (a);
- (b) 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.