

DRAFT BINDING GENERAL RULING (MINERAL AND PETROLEUM ROYALTY RESOURCES ACT)

DATE:

ACT : MINERAL AND PETROLEUM ROYALTY RESOURCES ACT NO. 28 OF 2008

SECTION : SECTIONS 1 AND 6A(1)(b)

SUBJECT : MEANING OF “EXTRACT” IN SECTION 6A(1)(b)

Preamble

For the purposes of this BGR –

- **“BGR”** means a binding general ruling issued under section 89 of the Tax Administration Act No. 28 of 2011;
- **“levy”** means royalty levy imposed under the Royalty Act;
- **“MPRDA”** means the Mineral and Petroleum Resources Development Act No. 28 of 2002;
- **“Royalty Act”** means the Mineral and Petroleum Royalty Resources Act No. 28 of 2008;
- **“Schedule”** means a schedule to the Royalty Act;
- **“section”** means a section of the Royalty Act;
- **“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 BGR provides clarity on the interpretation of the statement “condition in which that mineral resource was extracted” referred to in section 6A(1)(b).

2. Background

The purpose of the Royalty Act¹ is to impose a levy on all mineral resources that are removed from the earth within the Republic and transferred to a third party for a profit. The Royalty Act distinguishes between refined mineral resources (Schedule 1) and unrefined mineral resources (Schedule 2) and the amount of levy will differ depending on whether the mineral is transferred in a refined or unrefined condition.

The condition specified for mineral resources is important to determine the gross sales amount for purposes of calculating the levy payable under the Royalty Act that is triggered at transfer of that mineral resource.

¹ This Act came into effect on 1 May 2009.

The transfer of a mineral resource triggers the imposition of a levy payable to the National Revenue Fund. Only the first transfer of a mineral resource triggers the imposition and liability of a levy, any subsequent transfer will not be subject to any levy under the Royalty Act.

Section 6A is limited to unrefined mineral resources. An unrefined mineral resource is defined in section 1 as any mineral resource listed in Schedule 1 or 2 which has not been refined to the condition specified to or beyond the condition stated in Schedule 1. The section finds application where a mineral resource is transferred below or beyond the condition specified in Schedule 2.

For purposes of this BGR, the discussion will be limited to the situation where the mineral resource is transferred beyond the condition specified in Schedule 2.

A mineral resource that is transferred beyond the condition specified in Schedule 2, will be deemed to be transferred at the higher of –

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

The term “extract” is not defined in the Royalty Act and results in inconsistent interpretation and application.

3 The meaning of “extracted”

Since the word “extracted” is not defined in the Royalty Act it should be interpreted according to its ordinary meaning as applied to the subject matter relating to which it is used² unless the ordinary meaning creates an absurdity or ambiguity. It is important when giving words and expressions its ordinary meaning, to consider the context in which such words or expressions are contained.

“Extract” is defined in the Oxford Dictionary –³

“to remove, take out – especially by effort or force”.

The Essential English Dictionary⁴ defines “extract” as –

“to extract a raw material means to get it from the ground”.

Having regard to the context the word “extract” contained in section 6A(1)(b) applies to unrefined mineral resources that are transferred in a condition beyond the condition specified in Schedule 2.

The concepts of “extract” as it appears in the Royalty Act is often confused with the concept of winning a mineral as referred to in the Income Tax Act No. 58 of 1962 or the MPRDA.

² See EA Kellaway Principles of Legal Interpretation of Statutes, Contracts and Wills (1995) Butterworths Durban at 224. See also *Natal Joint Municipality Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

³ Online Oxford Dictionary: www.oxforddictionaries.com/definition/english/extract [accessed 04 March 2015].

⁴ Cambridge University Press, 10 Feb 2011.

In a recent judgment handed down in the Constitutional Court,⁵ the interpretation of legislation, and specifically the interpretation of the same word used in different statutes was considered. The Constitutional Court held that it is, as a general rule, not permissible to use the meanings attributed to words in other statutes to determine what is meant by the words of a different statute. Where Parliament has defined a word used in a statute, it is taken as an indication that Parliament contemplated a special meaning assigned to the word and not an ordinary meaning. If the other statutes traverse the same terrain they might be relevant but whether that is the case depends on their respective subject matter. The concept of winning a mineral cannot therefore be used to give effect to the meaning of the word “extract” for purposes of the Royalty Act.

The definition of a mineral as contained in the MPRDA is further qualified in the Royalty Act by the use of the words “regardless of whether that mineral or petroleum undergoes processing (as defined in section 1 of that Act) or manufacturing”. This would mean that whether the process of beneficiation has commenced is not a determining factor to ascertain whether the substance extracted by the taxpayer is a mineral resource for which a royalty levy is payable upon transfer of that substance.

4. Ruling

Having regard to the ordinary meaning and the context in which it is contained in section 6A the word “extract” means the first point of extraction.

Extraction therefore occurs at the mouth of mine when the mineral resource is extracted from the earth which may include some processing activities and not at the point when the mineral resource is won or recovered (after it has gone through a process of beneficiation).

This ruling constitutes a binding general ruling issued under section 89 of the Tax Administration Act No. 28 of 2011.

5. Period for which this ruling is valid

This BGR will apply from date of issue of the final BGR and will apply until it is withdrawn, amended or the relevant legislation is amended.

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⁵ *Minister of Defence and Military Veterans v Liesl-Lenore Thomas* (judgement in CCT 168/14 delivered on 25/8/2015).