

DRAFT BINDING GENERAL RULING (MINERAL ROYALTY)

DATE:

ACT : MINERAL AND PETROLEUM RESOURCES ROYALTY ACT 28 OF 2008
SECTION : SECTION 5(3)(c)(i) AND (ii) AND SECTION 6(3)(a) AND (b)
SUBJECT : TREATMENT OF TRANSPORT, INSURANCE AND HANDLING EXPENSES

Preamble

For the purposes of this BGR –

- “**BGR**” means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011;
- “**EBIT**” means earnings before interest and taxes as determined under section 5;
- “**the Act**” means the Mineral and Petroleum Resources Royalty Act 28 of 2008;
- “**Schedule**” means a Schedule to the Act;
- “**section**” means a section of the Act;
- “**transfer**” means transfer as defined in section 1(1); and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This BGR provides clarity on the treatment of expenditure incurred in respect of transport, insurance, and handling of refined and unrefined minerals for purposes of sections 5(3)(c) and 6(3)(a) and (b), respectively.

2. Background

A royalty is imposed under section 2 upon transfer of a mineral resource extracted from within the Republic. A transfer occurs when an extractor disposes of a mineral resource or when its mineral resource is lost, stolen, consumed or destroyed provided that such mineral resource has not previously been disposed of, lost, stolen consumed or destroyed.

The rate at which the royalty is calculated is determined in accordance with the following formulae contained in section 4:

- $0,5 + [\text{EBIT} / (\text{gross sales} \times 12,5 \text{ for refined mineral resources})] \times 100$
- $0,5 + [\text{EBIT} / (\text{gross sales} \times 9 \text{ for unrefined mineral resources})] \times 100$

The calculation of the rate of royalty payable is therefore dependent on the determination of EBIT and gross sales figures. EBIT is calculated under section 5 and “gross sales” is calculated under section 6.

Gross sales¹ must be determined without any regard to any expenditure incurred in respect of transport, insurance and handling of a refined and unrefined mineral after that mineral was brought to the condition specified in Schedule 1 or 2 (whichever is applicable) or to effect the disposal of that mineral resource.

Similarly, EBIT² must also be determined without any regard to any expenditure incurred in respect of transport, insurance and handling of a refined and unrefined mineral after that mineral was brought to the condition specified in Schedule 1 or 2 (whichever is applicable) or to effect the disposal of that mineral resource.

3. The meaning of “without regard to”

The phrase “without regard to” is not defined in the Act and should therefore be interpreted according to its ordinary dictionary meaning having regard to the context in which it is contained unless the ordinary meaning creates absurdity or ambiguity.³

“Without”, and “regard” are defined in the *Oxford Dictionaries*⁴ as –

“[i]n the absence of” and “[c]onsider or think of in a certain way”

The Online Word Reference Dictionary defines “without regard to” as –⁵

“despite, without considering, regardless of, notwithstanding, regardless, leaving aside, aside from, in spite of, even with, disregarding”.

The phrase “without regard to” is widely defined, therefore the context in which the phrase is used must be considered.

In *Joffin and Another v Commissioner of Child Welfare, Springs*⁶, the court held that the words “have regard to” in their ordinary meaning simply mean “bear in mind” or “do not overlook”. The term “with regard to” and “having regard to” means that something must be taken into consideration, looked at or born in mind, therefore, “without regard to” means something must not be taken into consideration.

Consequently, when one considers the context in which the phrase “without regard to” is contained, the appropriate dictionary meaning would be “disregarding” and the present tense “disregard” is to exclude or ignore something.⁷ It does not imply that there must be a deduction in respect of transport, insurance and handling expenses that have been incurred after the mineral resource is brought to the condition specified or to effect the disposal of that mineral resource.

¹ Section 6(3)(a) and (b).

² Section 5(3)(c)(i) and (ii).

³ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

⁴ www.oxforddictionaries.com/definition/english/extract [Accessed: 02 November 2016].

⁵ [www.wordreference.com/synonyms/without regard to](http://www.wordreference.com/synonyms/without%20regard%20to) [Accessed 22 September 2016].

⁶ 1964 (2) SA 506 (T).

⁷ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

4. Treatment of transport, insurance and handling costs

Expenditure incurred in respect of transport, insurance and handling to bring the mineral resource to the condition specified in Schedule 1 or 2 (whichever is applicable) must be taken into account in the determination of gross sales and EBIT.

All expenditure in respect of transport, insurance and handling incurred after the mineral resource is brought to the condition specified in Schedule 1 or 2 must not be taken into consideration when calculating gross sales and EBIT.

Only transport, insurance and handling expenditure incurred in order to bring the mineral resource to the condition specified in Schedule 1 or 2 can be taken into account when determining gross sales and EBIT.⁸

5. Ruling

The ordinary dictionary meaning of the phrase “without regard to”, as contained in sections 5(3) and 6(3) respectively, means that the expenditure incurred in respect of transport, insurance and handling –

- after the mineral resource is brought to the condition specified in Schedule 1 or 2; or
- to effect the transfer of that mineral resource,

must not be taken into account when determining gross sales and EBIT for purposes of calculating the royalty percentage. Such costs will not qualify as a deduction in the determination of gross sales or EBIT.

In the event that such costs are on charged and included in the price of the mineral resource sold, the sales price may be adjusted to disregard such amounts from the calculation of gross sales and EBIT. The onus of proof rests with the extractor to prove that such amounts were taken into account and included in the price of the mineral resource.

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

This BGR is applicable in respect of a mineral resource transferred on or after 1 March 2010.

6. Period for which this ruling is valid

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

**Executive: Legal Advisory
Legal Counsel
SOUTH AFRICAN REVENUE SERVICE**

⁸ Sections 5(3) and 6(3).