

DRAFT INTERPRETATION NOTE

DATE:

ACT : MINERAL AND PETROLEUM RESOURCES ROYALTY ACT 28 OF 2008
SECTION : SCHEDULE 2
SUBJECT : MEANING OF “BULK” IN SCHEDULE 2

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Preamble

In this Note unless the context indicates otherwise –

- **“gross sales”** means gross sales referred to in section 6;
- **“mineral resource”** means a mineral resource as defined in section 1;
- **“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 and application of the word “bulk” as contained in Schedule 2.

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). Each Schedule contains a list of mineral resources. Apart from separating the mineral resources into refined and unrefined mineral resources, the Schedules also specify a condition for each mineral resource. The condition specified differs depending on the type of mineral and whether it is refined or unrefined.

The term “unrefined mineral resource” is defined in section 1 and means a mineral resource –

- listed solely in Schedule 2; or
- 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.

The condition specified represents the point at which the mineral is considered to be in an acceptable condition for transfer and is important in determining the royalty payable under the Act. The gross sales for a particular mineral resource will therefore be determined when that mineral has reached the condition specified in the Schedules.

The condition specified is generally represented by a numeric value contained in Schedule 1 (refined mineral resources) and Schedule 2 (unrefined mineral resources). However, the conditions specified for the following unrefined mineral resources listed in Schedule 2 do not have a numeric value attached to them and merely refer to “bulk”:

- Aggregates
- Clay used for bricks
- Kaolinite clay used by paper and ceramic sectors
- Granite
- Sandstone
- Slate
- Shale
- Gneiss
- Marble
- Sand
- Other minerals not listed elsewhere not rendered in a concentrate²

The word “bulk” is not defined in the Act and may result in inconsistent interpretation and application when determining gross sales. Differing views exist on “bulk” as a condition specified in Schedule 2. This Note sets out what SARS’s view is.

¹ Section 2.

² See Schedule 2 for a list of examples.

3. The law

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

4. Application of the law

4.1. Introduction

Under section 2 a person must pay a royalty in respect of –

- the transfer of a mineral resource,
- extracted,
- from within the Republic.

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

- a mineral; or
- petroleum,

as defined in section 1 of the MPRDA regardless of whether that mineral or petroleum undergoes processing (as defined in section 1 of the MPRDA) or manufacturing.

The terms “mineral” and “petroleum” are defined in the MPRDA as follows:

“mineral”

“**[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;

“petroleum”

“**[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;

A royalty may therefore be imposed on any mineral or petroleum extracted within the Republic and transferred, regardless of whether such mineral or petroleum has undergone processing or manufacturing.

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

“**[T]ransfer**” means—

- (a) the disposal of a mineral resource; or
- (b)

- (c) the consumption, theft, destruction or loss of a mineral resource, other than by way of flaring or other liberation into the atmosphere during exploration or production,

if that mineral resource has not previously been disposed of, consumed, stolen, destroyed or lost;

The royalty chargeable under the Act is expressed as a percentage of the gross sales amount received by or accrued to the extractor on the transfer of the mineral resource. Gross sales for unrefined mineral resources are determined under section 6(2). An unrefined mineral resource transferred at the condition specified will not require any adjustment to the amount received or accrued for the disposal of that unrefined mineral resource. Any unrefined mineral resource transferred below or beyond the condition specified will require an adjustment to the amount received or accrued upon transfer. Section 6A is an adjustment provision which assists in determining the arm's length price when an unrefined mineral resource is transferred below or beyond the condition specified. The application of section 6A is limited to unrefined mineral resources listed in Schedule 2.

An unrefined mineral resource transferred in a condition below the condition specified in Schedule 2 is deemed to be transferred at the condition specified.³ To the extent that the condition specified in Schedule 2 comprises a range, section 6A(1A)(a) deems the unrefined mineral resource to be transferred at the minimum of that range of the condition specified.

Coal is an example of an unrefined mineral resource having a condition specified as a range of values. The determination of gross sales of coal transferred below and above the condition specified is illustrated in Example 1 and Example 2 below for the purposes of contrasting its treatment with mineral resources having a condition specified as "bulk".

Example 1- Coal transferred below the condition specified

Facts:

Company X extracted coal at a calorific value of 16 MJ/kg and transferred it at 18 MJ/kg. The condition specified for coal in Schedule 2 is a calorific value between 19.0 MJ/kg to 27 MJ/kg.

Result:

Coal has been transferred below the condition specified in Schedule 2. An adjustment is required under section 6A(1)(a) read with 6A(1A). Section 6A(1)(a) requires an adjustment to be made to bring it in line with the condition specified in Schedule 2. Schedule 2 specifies the condition specified for coal at a range between 19.0MJ/kg and 27 MJ/kg. Section 6A(1A)(a) applies when the condition specified for an unrefined mineral resource is a range and requires the adjustment to be made to the minimum of the condition specified. Company X is deemed to transfer the coal at 19.0 MJ/kg.

³ Section 6A(1)(a).

An unrefined mineral resource transferred beyond the condition specified is deemed to be transferred at the higher of –⁴

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

In the event that the condition specified for an unrefined mineral resource consists of a range, and the mineral resource is transferred beyond the condition specified, an adjustment under section 6A(1)(b) read with section 6A(1A)(c) must be made for purposes of determining gross sales.

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

Facts:

Company X extracted coal at a calorific value of 26 MJ/kg and transferred it at 30 MJ/kg. The condition specified for coal in Schedule 2 is a calorific value between 19.0 MJ/kg to 27 MJ/kg.

Result:

Coal has been transferred beyond the condition specified in Schedule 2. An adjustment is required under section 6A(1)(b) read with 6A(1A)(c). Section 6A(1)(b) deems the transfer of the coal to take place at the higher of the condition specified or the condition in which the coal was extracted. Schedule 2 specifies the condition for coal at a range between 19.0 MJ/kg and 27 MJ/kg. Section 6A(1A)(c) applies when the condition specified for an unrefined mineral resource is a range and requires the adjustment to be made to the maximum of the range of the condition specified. Therefore Company X is deemed to transfer the coal at 27 MJ/kg.

Section 6A applies only to unrefined mineral resources transferred below or beyond the condition specified in Schedule 2.

4.2. Meaning of “bulk”

As noted in 2, some unrefined mineral resources listed in Schedule 2 have their condition specified as “bulk” rather than as a numerical value or range of values. In some situations the value of these mineral resources may be enhanced through processing (for example, crushing, washing and sorting) between the time of extraction and the time of transfer. There is a view that the condition specified as “bulk” should be determined at the point of extraction rather than at the point of transfer in order to achieve a lower gross sales value and hence a lower royalty. SARS does not accept this view.

The *Oxford Dictionaries* defines “bulk” as follows:⁵

“1.1 Large size or shape

1.2 A large mass or shape.

...

1.5 Cargo in an unpackaged mass such as grain or oil.”

⁴ Section 6A(1)(b).

⁵ <https://en.oxforddictionaries.com/definition/bulk> [Accessed 22 February 2018].

In the context of Schedule 2 “bulk” refers to a body of a particular type of mineral resource which is treated as a single mass, the intention being to not require an analysis of its quality, as opposed to other unrefined minerals for which a quality standard is specified.

Section 6(2)(a) provides that the amount of gross sales for the disposal of an unrefined mineral resource is the amount received or accrued during the year of assessment in respect of the transfer of that mineral resource. In using the word “bulk”, a range of values was not envisaged and hence there is no need for an adjustment under section 6A to the default value set out in section 6(2)(a). The gross sales amount for unrefined minerals with the condition specified as “bulk” is thus equal to the amount received by or accrued to the extractor from the disposal.

Example 3 – Determination of royalty on aggregate

Facts:

Company X extracts an aggregate. At the time of extraction the value of the aggregate was R40 000 and the condition specified for the aggregate was bulk. At the time of transfer the aggregate was valued at R55 000 which is also the amount received by Company X after washing, crushing and sorting. The condition specified at the point of transfer remains bulk. Gross sales on transfer of the unrefined mineral resource amounted to R55 000 as determined under section 6(2)(a). EBIT after taking into account all allowable expenditure under section 5(2) was R25 000.

Result:

Since the mineral is transferred at the condition specified in Schedule 2, no adjustment under section 6A is necessary and the gross sales amount under section 6(2)(a) is R55 000.

The royalty rate is calculated as follows:

$$\begin{aligned}
 \text{Royalty rate} &= 0.5 + [\text{EBIT} / (\text{gross sales} \times 9)] \times 100 \\
 &= 0.5 + [R25\,000 / (R55\,000 \times 9)] \times 100 \\
 &= 0.5 + [R25\,000 / R495\,000] \times 100 \\
 &= 0.5 + R\,0.05 \times 100 \\
 &= 0.5 + 5.05 \\
 &= 5.55
 \end{aligned}$$

Under section 4(2) the number determined above is the percentage to be multiplied by the gross sales in order to determine the amount of the royalty to be paid. The rate determined under section 4(2) may not exceed 7%.

$$\begin{aligned}
 \text{Royalty payable} &= 5.55\% \times R55\,000 \\
 &= R3\,052,50
 \end{aligned}$$

5. Conclusion

Section 6A allows for adjustments to the gross sales amount when an unrefined mineral resource has been transferred below or beyond the condition specified in Schedule 2. These adjustments will be applied in the determination of gross sales to determine the arm's length price for that mineral resource.

The gross sales amount of any unrefined mineral resource disposed of that has "bulk" specified as its condition in Schedule 2 is equal to the amount received or accrued as set out in section 6(2)(a). Such amount is not subject to adjustment under section 6A because the legislature did not envisage "bulk" to comprise a range of values.

Legal Counsel
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Annexure A – The law

Section 1

1. Definitions.—In this Act, unless the context otherwise indicates —

“**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 6(2)

6. Gross sales.—(1) N/A

(2) Gross sales in respect of an unrefined mineral resource transferred—

- (a) as mentioned in paragraph (a) of the definition of “transfer” in section 1 in the condition specified in Schedule 2 for that mineral resource is the amount received or accrued during the year of assessment in respect of the transfer of that mineral resource;
- (b) as mentioned in paragraph (a) of the definition of “transfer” in section 1 in a condition other than that specified for that mineral resource in Schedule 2 is the amount that would have been received or accrued during the year of assessment in respect of the transfer of that mineral resource had that mineral resource been transferred in the condition specified in Schedule 2 for that mineral resource in terms of a transaction entered into at arm’s length; and
- (c) as mentioned in paragraph (b) or (c) of the definition of “transfer” in section 1 is the amount that would have been received or accrued during the year of assessment in respect of the transfer of that mineral resource had that mineral resource been transferred in the condition specified in Schedule 2 for that mineral resource in terms of a transaction entered into at arm’s length.

Section 6A(1) and (1A)

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

- (a) is transferred below the condition specified in Schedule 2 for that mineral resource, the mineral resource must be treated as having been brought to the condition specified for that mineral resource; or
- (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.

(1A) If any unrefined mineral resource with a range is transferred—

- (a) at a condition below the minimum of the range of conditions specified in Schedule 2 for that mineral resource, the mineral resource must be treated as having been brought to the minimum of the range of conditions specified for that mineral resource;
- (b) at or within the range of conditions specified in Schedule 2, the mineral resource must be treated as having been transferred at that condition; or

(c) at a condition above the maximum range of conditions specified in Schedule 2, the mineral resource must be treated as having been transferred at the maximum of the range of conditions specified for that mineral resource.

(2) N/A

Annexure B – Schedule 2

Mineral resource name	Unrefined condition
Aggregates	Bulk
Antimony	65% Sb content in the concentrate
Barite	Concentrates with 97% BaSO ₄
Beryllium	70% beryl concentrate
Chrome ore in lump, chips and fines	(i) 37% to 46% Cr ₂ O ₃ in concentrate; (ii) 4% to 10% SiO ₂ and a (iii) Cr/Fe ratio of 1.25 to 1.45 (<u>chip and lump</u>) or (iv) 0.8% to 6% SiO ₂ and (v) Cr/Fe ratio of 1.3 to 1.6 (<u>fine < 1mm</u>)
Clay used for bricks Kaolinite clay used by paper and ceramic sectors	Bulk
Coal	Calorific value of 19.0MJ/kg to 27MJ/kg
Cobalt	7% Co in a polymineralic matte
Copper	20% to 30% Cu
Diamond	Rough Diamonds
<u>Dimension stone:</u> Granite, Sandstone, Slate, Shale, Gneiss, Marble	Bulk
Fluorspar	80% concentrate
Graphite	86% carbon content
Iron ore	Plant feed of 61.5% Fe content
Lead	Concentrate of 50% Pb
Limestone	Concentrate of 54% CaCO ₃
Manganese	Manganese ore: Mn 37% to Mn 48% and Si + Al less than 11 %
Mica	48% concentrate

Mineral resource name	Unrefined condition
Ilmenite	80% FeTiO ₃
Rutile	70% TiO ₂ concentrate
Zircon	90% ZrO ₂ + SiO ₂ + HfO ₂
Nickel	1.4% Ni content
Niobium	45% Ni ₂ O ₅ in concentrate
Platinum Group Metals (iridium, palladium, platinum, rhodium, ruthenium and osmium)	150 ppm in concentrate together with all other metals and minerals contained in the concentrate
Sand	Bulk
Silver	800g/t Ag in polymineralic base metal
Tantalum	In concentrate 30% Ta ₂ O ₅ , Max 0.5% U ₃ O ₈ and ThO ₂ combined
Tin	80% cassiterite concentration
Tungsten (CaWO ₄) and Wolfram	65% WO ₃ in concentrate
Uranium	80% Uranium Oxide in the uranium concentrate sold
Vanadium	Concentrate < 10% V ₂ O ₅ equivalent and less than 2% calcium and silica bearing gangue minerals (SiO ₂ + CaO)
Zinc (Base metal)	27% Zn in concentrate
Other minerals not listed elsewhere	Concentrate or where the specific mineral is not rendered into a concentrate, bulk e.g. Phosphate Rock, Gypsum, Vermiculite, Semi-precious gemstones (like rose quartz, tiger's eye; corundum; etc). Precious gemstones (like sugilite), Feldspar, Garnet, Peat, Perlite, Rare Earth Elements, Silica, Soda Ash, Wollastonite, Zeolite, etc.