



# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

**Vol. 521 Cape Town**

**24 November 2008**

**No. 31635**

## **THE PRESIDENCY**

No. 1260 24 November 2008

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 28 of 2008: Mineral and Petroleum Resources Royalty Act, 2008.**



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*(English text signed by the President.)  
(Assented to 17 November 2008.)*

# ACT

**To impose a royalty on the transfer of mineral resources and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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**1. (1)** In this Act, unless the context indicates otherwise—

“**Administration Act**” means the Mineral and Petroleum Resources Royalty (Administration) Act, 2008;

“**earnings before interest and taxes**” means earnings before interest and taxes mentioned in section 5; 30

“**extractor**” means a person mentioned in section 2;

“**gross sales**” means gross sales mentioned in section 6;

“**Income Tax Act**” means the Income Tax Act, 1962 (Act No. 58 of 1962);

“**Mineral and Petroleum Resources Development Act**” means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002); 35

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

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mineral or petroleum undergoes processing (as defined in section 1 of that Act) or manufacturing;

“**person**” includes an insolvent estate, the estate of a deceased person and a trust;

“**refined mineral resource**” means a mineral resource—

(a) listed solely in Schedule 1; or

(b) listed in Schedule 1 and Schedule 2 that has been refined to or beyond the condition specified in Schedule 1 for that mineral resource;

“**Republic**” means the Republic of South Africa and includes the sea as defined in section 1 of the Mineral and Petroleum Resources Development Act;

“**royalty**” means the royalty imposed by this Act;

“**transfer**” means—

(a) the disposal of a mineral resource;

(b) the export of a mineral resource; or

(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, exported, consumed, stolen, destroyed or lost;

“**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;

(2) Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Administration Act bears that meaning for purposes of this Act.

**Imposition of royalty**

2. A person that wins or recovers a mineral resource from within the Republic must pay a royalty for the benefit of the National Revenue Fund in respect of the transfer of that mineral resource.

**Determination of royalty**

3. (1) The royalty mentioned in section 2 in respect of the transfer of a refined mineral resource is determined by multiplying the gross sales of the extractor in respect of that mineral resource during the year of assessment by the percentage determined in accordance with the formula in section 4(1).

(2) The royalty mentioned in section 2 in respect of the transfer of an unrefined mineral resource is determined by multiplying the gross sales of the extractor in respect of that mineral resource during the year of assessment by the percentage determined in accordance with the formula in section 4(2).

**Royalty formulae**

4. (1) The percentage mentioned in section 3(1) is—

$0.5 + [\text{earnings before interest and taxes}/(\text{gross sales in respect of refined mineral resources} \times 12.5)] \times 100.$

(2) The percentage mentioned in section 3(2) is—

$0.5 + [\text{earnings before interest and taxes}/(\text{gross sales in respect of unrefined mineral resources} \times 9)] \times 100.$

(3) (a) The percentage determined in terms of subsection (1) must not exceed 5 per cent.

(b) The percentage determined in terms of subsection (2) must not exceed 7 per cent.

### Earnings before interest and taxes

5. (1) For purposes of the formula in section 4(1), "earnings before interest and taxes" in respect of a year of assessment means the aggregate of—

- (a) the gross sales of the extractor during that year in respect of refined mineral resources; and 5
- (b) so much of the amount allowed to be deducted from income in terms of the Income Tax Act (whether in that year or a previous year of assessment) in respect of the use of assets, or expenditure incurred, directly in respect of mineral resources transferred on or after 1 May 2009 to win, recover and develop those mineral resources to the condition specified in Schedule 1, as is included in the income of the extractor during that year of assessment in terms of section 8(4) of that Act (disregarding the exception in respect of section 15(a) of that Act), but not including an amount that is received or accrued from the disposal of assets the cost of which has in whole or in part been included in capital expenditure taken into account as mentioned in the definition of "capital expenditure incurred" in section 36(11) of that Act, 10 15

less any amount which in terms of that Act is allowed to be deducted from the income of the extractor during that year of assessment in respect of assets used or expenditure incurred directly to win, recover and develop those refined mineral resources to the condition specified in Schedule 1 for those mineral resources. 20

(2) For purposes of the formula in section 4(2), "earnings before interest and taxes" 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 25
- (b) so much of the amount allowed to be deducted from income in terms of the Income Tax Act (whether in that year or a previous year of assessment) in respect of the use of assets, or expenditure incurred, directly in respect of mineral resources transferred on or after 1 May 2009 to win, recover and develop those unrefined mineral resources, as is included in the income of the extractor during that year of assessment in terms of section 8(4) of that Act (disregarding the exception in respect of section 15(a) of that Act), but not including an amount that is received or accrued from the disposal of assets the cost of which has in whole or in part been included in capital expenditure taken into account as mentioned in the definition of "capital expenditure incurred" in section 36(11) of that Act, 30 35

less any amount which in terms of that Act is allowed to be deducted from the income of the extractor during that year of assessment in respect of assets used or expenditure incurred directly to win, recover and develop those unrefined mineral resources to the condition specified in Schedule 2 for those mineral resources. 40

(3) For purposes of subsections (1) and (2), "earnings before interest and taxes" is determined without regard to—

- (a) any deduction in respect of a financial instrument as defined in section 1 of the Income Tax Act (other than an instrument that is an option contract, forward contract or other instrument the value of which is derived directly or indirectly with reference to mineral resources); 45
- (b) any deduction allowed in terms of section 11(a) of the Income Tax Act in respect of the royalty;
- (c) (i) in the case of mineral resources refined to the condition specified in Schedule 1 for those mineral resources, any deduction for expenditure 50

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incurred in respect of transport, insurance and handling of those refined mineral resources after those mineral resources were refined to that condition or any amount received or accrued to effect the disposal of that mineral resource; or

- (ii) in the case of mineral resources brought to the condition specified in Schedule 2 for those mineral resources, any deduction for expenditure incurred in respect of transport, insurance and handling of those unrefined mineral resources after those mineral resources were brought to that condition or any amount received or accrued to effect the disposal of that mineral resource; 5 10

(d) any balance of assessed loss mentioned in section 20(1)(a) of the Income Tax Act, unless the balance of assessed loss arises in respect of capital expenditure taken into account for purposes of paragraph 5(1) of the Tenth Schedule of the Income Tax Act;

(e) any deduction allowed in terms of section 241 of the Income Tax Act; 15

(f) any determination in respect of an impermissible tax avoidance arrangement contemplated in Part IIA of the Income Tax Act; or

(g) any deductions contemplated in paragraph 5(2) of the Tenth Schedule to the Income Tax Act.

(4) (a) For purposes of determining "earnings before interest and taxes" in the case of a composite of refined mineral resources and unrefined mineral resources, the refined and unrefined proportions of the composite mineral resource must be determined in accordance with a method of reasonable apportionment that is consistently applied. 20

(b) For purposes of determining "earnings before interest and taxes", if the value of the refined proportion of a composite mineral resource as determined in terms of subsection (1) does not exceed 10 per cent of the total value of that composite mineral resource, that composite mineral resource may be treated solely as an unrefined mineral resource, and if the value of the unrefined proportion of a composite mineral resource as so determined does not exceed 10 per cent of the total value of that composite mineral resource, that composite mineral resource may be treated solely as a refined mineral resource. 25 30

(5) For purposes of this section, if "earnings before interest and taxes" is a negative amount that amount is deemed to be nil.

**Gross sales**

6. (1) Gross sales in respect of a refined mineral resource transferred— 35

(a) as mentioned in paragraph (a) of the definition of "transfer" in section 1 in the condition specified for that mineral resource in Schedule 1 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 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 1 for that mineral resource in terms of a transaction entered into at arm's length; and 40 45

(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 1 for that mineral resource in terms of a transaction entered into at arm's length. 50

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