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THE PRESIDENCY

No. 1273

26 November 2008

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

No. 29 of 2008: Mineral and Petroleum Resources Royalty (Administration) Act, 2008.



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Act No. 29, 2008

MINERAL AND PETROLEUM RESOURCES
ROYALTY (ADMINISTRATION) ACT, 2008

(English text signed by the President.)
(Assented to 21 November 2008.)

ACT

To provide for the administration of matters in connection with the imposition of a royalty on the transfer of mineral resources and for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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*Part I**Interpretation*

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Definitions

1. (1) In this Act, unless the context indicates otherwise—
- “**Commissioner**” means the Commissioner for the South African Revenue Service;
- “**financial year**” means a financial year as defined in section 1 of the Income Tax Act; 20
- “**notice of assessment**” means a notice of assessment mentioned in section 9;
- “**registered person**” means a person that qualifies for registration in terms of section 2;
- “**Royalty Act**” means the Mineral and Petroleum Resources Royalty Act, 2008; 25
and
- “**year of assessment**”, in relation to a registered person, means—
- (a) in the case of a natural person or trust, the period commencing on 1 March and ending on the last day of February of the following year; and
- (b) in the case of any other person, the period commencing on the first day of that 30
person’s financial year and ending on the last day of that financial year, and if any financial year begins on any day other than the first day of a month, that financial year is deemed to begin on the first day of that month.
- (2) Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Royalty Act bears the meaning so assigned for purposes of this 35
Act.

*Part II**Registration***Registration**

2. (1) A person qualifies for registration in terms of this Act if that person— 40
- (a) holds a prospecting right, retention permit, exploration right, mining right, mining permit or production right granted pursuant to the Mineral and Petroleum Resources Development Act or a lease or sublease mentioned in section 11 of the Mineral and Petroleum Resources Development Act in respect of such a right; or 45
- (b) wins or recovers a mineral resource from within the Republic.
- (2) A person that qualifies for registration as mentioned in subsection (1)—
- (a) on 1 May 2009 must apply to register with the Commissioner by 30 June 2009; or

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(b) after 1 May 2009 must apply to register with the Commissioner within 60 days after the day on which that person qualifies for registration.

(3) The Commissioner must register a person that qualifies for registration and that registration takes effect from the beginning of the year of assessment during which the person qualifies for registration.

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Cancellation of registration

3. (1) A person registered under this Act that no longer qualifies for registration (or anticipates not qualifying for registration from a specified date) may apply to the Commissioner for cancellation of registration.

(2) Upon receipt of an application mentioned in subsection (1), the Commissioner may cancel the registration of a person mentioned in subsection (1) with effect from the day after the last day of the year of assessment in which that person no longer qualified for registration as mentioned in subsection (1).

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(3) The obligations and liabilities of a person under this Act and the Royalty Act in respect of anything done or omitted to be done by the person while a registered person are not affected by the cancellation of the registration of that person as mentioned in subsection (2).

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Election for unincorporated body of persons

4. (1) Notwithstanding subsection (2), if an unincorporated body of persons—

(a) consists of two or more members; and

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(b) holds a prospecting right, retention permit, exploration right, mining right, mining permit or production right granted pursuant to the Mineral and Petroleum Resources Development Act (or a lease or sublease mentioned in section 11 of the Mineral and Petroleum Resources Development Act in respect of such a right) in the name of that unincorporated body,

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all the members of that unincorporated body may elect that the unincorporated body becomes a person that qualifies for registration in terms of section 2.

(2) On the day on which an unincorporated body qualifies for registration as mentioned in subsection (1)—

(a) all the members of that unincorporated body must elect a year of assessment in respect of that unincorporated body and that year of assessment must be the same year of assessment as that of a member of that unincorporated body; and

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(b) section 10 of the Royalty Act applies to that unincorporated body for as long as that unincorporated body is registered in terms of section 2.

(3) If subsection (2) applies to an unincorporated body—

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(a) the liabilities and duties imposed under this Act and the Royalty Act in respect of that unincorporated body must be applied and performed by that unincorporated body separately from the members of that unincorporated body; and

(b) any other actions that are permitted by a person registered under this Act in respect of that unincorporated body must be performed by that unincorporated body separately from the members of that unincorporated body.

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(4) Each member of an unincorporated body mentioned in subsection (2) is liable jointly and severally with the other members of that unincorporated body for—

(a) the duties of that unincorporated body under this Act and the Royalty Act; and

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(b) the royalty imposed under the Royalty Act on that unincorporated body in respect of all mineral resources transferred by that unincorporated body, while the member was a member of that unincorporated body.

(5) If—

- (a) an unincorporated body mentioned in subsection (2) is dissolved solely as a result of—
- (i) the retirement, withdrawal or death of one or more members of that unincorporated body; or
 - (ii) the admission of a new member to that unincorporated body; and
- (b) the new unincorporated body which is brought into being as a result of the dissolution mentioned in paragraph (a) satisfies the requirements of subsection (1)(a) and (b),

the registration of the dissolved unincorporated body remains in effect for purposes of the new unincorporated body notwithstanding that dissolution.

(6) All the members of an unincorporated body mentioned in subsection (1) may at any time elect to terminate the registration of that unincorporated body with effect from the day after the last day of the year of assessment in which that election was made.

Part III

Payments and returns

Payments in respect of estimated royalty 20

5. (1) A registered person must submit an estimate of the royalty payable in respect of a year of assessment within six months after the first day of that year and must make a payment (together with such return for that payment as the Commissioner may prescribe) equal to one-half of the amount of the royalty so estimated.

(2) A registered person must submit an estimate of the royalty payable in respect of a year of assessment by the last day of that year and submit a payment (together with such return for that payment as the Commissioner may prescribe) equal to the amount of the royalty so estimated less the amount paid as mentioned in subsection (1).

Submission of return and final payment

6. (1) A registered person must submit a return (as the Commissioner may prescribe) for the royalty payable in respect of a year of assessment within six months after the last day of that year.

(2) If the amount of the royalty mentioned in subsection (1) that is payable in respect of a year of assessment exceeds the sum of the two payments made as mentioned in section 5, that excess must be paid within six months after the last day of that year.

Form, manner and place determined by Commissioner

7. All registrations, returns, forms and payments required in terms of this Act or the Royalty Act must be submitted in such form, manner (including electronically) and place as determined by the Commissioner in respect of any matter necessary to administer this Act or the Royalty Act.

Maintenance of records

8. (1) A registered person must retain such records as are necessary to satisfy the requirements of this Act and the Royalty Act, including—

- (a) particulars of “earnings before interest and taxes” as mentioned in section 5 of the Royalty Act with sufficient detail to identify all the gross sales, income and allowable deductions in respect of those earnings;

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- (b) particulars of "gross sales" as mentioned in section 6 of the Royalty Act with sufficient detail to identify all transferred mineral resources in respect of those gross sales and the persons acquiring those transferred mineral resources;
- (c) the quantity of mineral resources extracted but not transferred and those transferred by that registered person with sufficient detail to identify those extracted and transferred mineral resources; 5
- (d) the accounting income with sufficient detail to identify the "earnings before interest and taxes" as mentioned in section 5 of the Royalty Act that relate to that accounting income;
- (e) a ledger, cash book, journal, cheque book, bank statement, deposit slip, paid cheque, invoice, other book of account or financial statement; and 10
- (f) any information required by the Commissioner.
- (2) A registered person must retain the records mentioned in subsection (1) (either in their original form or in any other form permitted by the Commissioner) for five years after the date of the submission of the return to which those records relate. 15

Part IV**Assessments****Notices of assessment**

9. (1) If—
- (a) the Commissioner has reason to believe that a registered person has failed to pay the royalty for which that registered person is liable as mentioned in section 6; 20
- (b) the registered person fails to furnish a return in respect of the royalty for which that registered person is liable as mentioned in section 6; or
- (c) the Commissioner is not satisfied with a return mentioned in paragraph (b) furnished by the registered person, 25
- the Commissioner may issue to that person a notice of assessment of the royalty payable for the assessment period concerned, notwithstanding sections 81(5), 83(18) and 83A(12) of the Income Tax Act.
- (2) If— 30
- (a) a registered person defaults in furnishing a return mentioned in subsection (1) or any information in respect of that return;
- (b) the Commissioner is not satisfied with the return or information mentioned in paragraph (a); or
- (c) the Commissioner is not satisfied with the amount of the royalty paid by that person as mentioned in subsection (1). 35
- the Commissioner may estimate the amount in relation to which the return or information is required (or of the royalty otherwise properly chargeable under this Act) for purposes of the notice of assessment mentioned in subsection (1).
- (3) The Commissioner must, in a notice of assessment, give notice to a registered person that an objection to or appeal against that notice of assessment must be noted as described in sections 81, 83 and 83A of the Income Tax Act. 40
- (4) A registered person that receives a notice of assessment must pay the amount of the royalty so assessed to the Commissioner within 30 days after the date of issue of that notice of assessment. 45

(5) A registered person that lodges an objection or appeal against a notice of assessment must pay the tax so assessed in respect of that notice of assessment within 30 days after the date of issue of that notice of assessment, and if that notice of assessment is not final by the last day of five years from the date of issue of that notice of assessment, that person must retain all records relevant to that objection or appeal until that notice of assessment becomes final. 5

Reduced assessments

10. (1) Notwithstanding the fact that an objection or appeal has not been noted, the Commissioner may reduce a notice of assessment—

- (a) to rectify a processing error made in issuing the notice of assessment; or 10
- (b) if it is proven to the satisfaction of the Commissioner that in issuing the notice of assessment any amount which—
 - (i) was taken into account by the Commissioner in determining the registered person's liability in respect of the royalty, should not have been taken into account; or 15
 - (ii) should have been taken into account in determining the registered person's liability in respect of the royalty, was not taken into account by the Commissioner:

Provided that such notice of assessment, wherein the amount was so taken into account or not taken into account, as mentioned in subparagraph (i) or (ii), as the case may be, was issued by the Commissioner based on information provided in the registered person's returns for the current or any previous year of assessment. 20

(2) The Commissioner may not issue a reduced notice of assessment mentioned in subsection (1)—

- (a) after the expiration of five years from the date of issue of the notice of assessment; or 25
- (b) if the amount was assessed in terms of a notice of assessment which was made in accordance with the practice generally prevailing at the date of that notice and was accepted by the registered person.

Withdrawal of notice of assessment 30

11. (1) The Commissioner may withdraw a notice of assessment that is—

- (a) issued to an incorrect person; or
- (b) issued in respect of an incorrect assessment period.

(2) For purposes of this Act, any withdrawn notice of assessment mentioned in subsection (1) is deemed not to have been issued. 35

Time limit for notice of assessment

12. (1) The Commissioner may not issue a notice of assessment in respect of a return more than five years after the date of submission of that return.

(2) The five-year limit with respect to a notice of assessment mentioned in subsection (1) does not apply if the Commissioner has reason to believe that a registered person failed to pay the royalty to which that notice of assessment relates due to fraud, misrepresentation or non-disclosure of material facts. 40

*Part V**Refunds, penalty and interest***Refunds**

13. (1) A registered person may claim a refund of any amount of royalty paid as mentioned in section 6 to the extent that the amount exceeds— 5
- (a) in the case where that amount was paid in respect of a notice of assessment, the amount so assessed; or
 - (b) in any other case, the amount of royalty properly chargeable under the Royalty Act with respect to that registered person.
- (2) The Commissioner may not authorise a refund under subsection (1)(b) if— 10
- (a) the amount was previously paid in accordance with the practice generally prevailing at the date of the payment; or
 - (b) that refund is claimed by that registered person after a period of five years from the date of the official receipt acknowledging the payment or, if more than one payment was made, the date of the official receipt acknowledging the latest of those payments. 15
- (3) The Commissioner may refuse to authorise a refund under subsection (1) if the registered person has failed to furnish—
- (a) a return in respect of a payment required in terms of section 6 until that person has furnished that return; or 20
 - (b) the Commissioner in writing with particulars of that registered person's banking account or account with a similar institution to enable the Commissioner to transfer a refund, if any, to that account until that registered person has furnished the particulars as required.
- (4) If a refund contemplated in subsection (1) is due to a registered person that has failed to pay any amount required under this Act or any other Act administered by the Commissioner, within the period prescribed for payment of the amount, the Commissioner may set off against the amount which that registered person has failed to pay, any amount which has become refundable to that registered person under this section. 25

Penalty for underestimation of royalty payable 30

14. (1) If the royalty mentioned in section 6(1) in respect of a year of assessment exceeds the amount paid as mentioned in section 5 in respect of that year and that excess is greater than 10 per cent of the royalty mentioned in section 6(1), the Commissioner may impose a penalty that may not exceed 20 per cent of that excess.
- (2) A penalty imposed as mentioned in subsection (1) is payable within 30 days from the date on which it was imposed. 35

Adjustments of estimated royalty

15. (1) The Commissioner may require a registered person to justify any estimated amount paid by that person as mentioned in section 5 or to furnish particulars in respect of that amount and, if the Commissioner is dissatisfied with that amount, the Commissioner may substitute an estimate of an increased amount in lieu of the estimated amount paid as mentioned in section 5 to the extent that the Commissioner considers reasonable. 40
- (2) If a registered person fails to submit any estimated amount as required by section 5, the Commissioner may estimate that amount. 45
- (3) Any estimate made by the Commissioner under subsection (1) or (2) is deemed to take effect in respect of the year of assessment within which the estimated amount in respect of that estimate is required to be paid in terms of section 5.

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- 16.** (1) The Commissioner must pay interest calculated on a monthly basis in respect of an amount or royalty paid to the extent that that amount exceeds—
- (a) in the case where that amount was paid in respect of a notice of assessment, the amount so assessed; or 5
 - (b) in any other case, the amount of royalty properly chargeable under the Royalty Act,
- if that excess is not refunded within 30 days after the later of—
- (i) the date which is six months after the last day of a year of assessment in respect of which the royalty giving rise to that excess is required to be paid as mentioned in section 6; or 10
 - (ii) the date of receipt of a refund claim mentioned in section 13 in respect of that excess.
- (2) A registered person must pay interest calculated on a monthly basis—
- (a) in respect of so much of the estimated amount that must be paid as mentioned in section 5(1) as is not paid on the day by which that payment was required to be made in respect of the six months after the first day that that estimated payment is due; 15
 - (b) in respect of so much of the estimated amount that must be paid as mentioned in section 5(2) as is not paid on the day by which that payment was required to be made in respect of the six months after the first day that that estimated payment is due; or 20
 - (c) in respect of so much of the amount that must be paid as mentioned in section 6 as is not paid on the day by which that payment was required to be made in respect of any period after the first day that that payment is due. 25
- (3) Interest required under this section must be calculated at the rate mentioned in paragraph (b) of the definition of “prescribed rate” in section 1 of the Income Tax Act.

Part VI**Miscellaneous****Administration of Act** 30

- 17.** (1) The Commissioner is responsible for administering this Act and the Royalty Act.
- (2) For purposes of this section, “administering this Act and the Royalty Act” means—
- (a) determining the correctness of a return, financial statement, document, declaration of facts, or notice of assessment relevant to this Act or the Royalty Act; 35
 - (b) determining and collecting any amounts due under this Act or the Royalty Act;
 - (c) ascertaining whether an offence has been committed under this Act or the Royalty Act; and 40
 - (d) performing any other administrative function necessary for carrying out this Act or the Royalty Act.

Applicability of Income Tax Act

- 18.** (1) The provisions of the Income Tax Act relating to—
- (a) the exercise of powers and performance of duties; 45
 - (b) preservation of secrecy;

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- (c) the production of information, documents or things, enquiries, searches and seizures and evidence on oath;
- (d) objections and appeals;
- (e) settlement of disputes;
- (f) the payment and recovery of tax, interest and penalties; 5
- (g) offences;
- (h) reporting of unprofessional conduct; and
- (i) jurisdiction of courts as contained in section 105,
- apply (with changes required by the context) to the royalty in terms of this Act and the Royalty Act. 10
- (2) Any person that is not satisfied with any decision given in writing by the Commissioner—
- (a) in terms of section 2 notifying that person of the Commissioner's decision to refuse to register a person that qualifies for registration in terms of this Act;
- (b) in terms of section 3 notifying that person of the Commissioner's decision to refuse to cancel that person's registration in terms of this Act; 15
- (c) in terms of section 9 in respect of a notice of assessment issued to that person;
- (d) in term of section 10 in respect of the Commissioner's decision to refuse to reduce a notice of assessment;
- (e) in terms of section 11 in respect of the Commissioner's decision to refuse to withdraw a notice of assessment; 20
- (f) in terms of section 13 in respect of the Commissioner's decision to refuse to make a refund;
- (g) in terms of section 14 in respect of the Commissioner's decision to impose a penalty; or 25
- (h) in terms of section 15 in respect of the Commissioner's decision to substitute an estimate or to make an estimate,
- may note an objection thereto as contemplated in subsection (1)(d) with the Commissioner.

Reporting 30

19. (1) In respect of a year of assessment an extractor must annually submit to the Minister of Finance a report advising the Minister of—
- (a) the volume of mineral resources transferred by that extractor;
- (b) the gross sales of that extractor as mentioned in section 6(1) and (2) of the Royalty Act; and 35
- (c) the percentage determined in terms of section 4(1) and (2) of the Royalty Act.
- (2) The Minister of Finance and every person employed or engaged by him or her must preserve and aid in preserving secrecy with regard to all matters that may come to his or her knowledge by virtue of subsection (1), and may not communicate any such matter to any person whatsoever other than the Minister or the registered person concerned or his or her lawful representative nor suffer or permit any such person to have access to any records in the possession of the Minister or person except in the performance of his or her duties as required by the laws of the Republic or by order of a competent court. 40
- (3) Every person employed or engaged as contemplated in subsection (2) must, before acting under this section, take and subscribe before a magistrate or justice of the peace or a commissioner of oaths, such oath or solemn declaration, as the case may be, of fidelity or secrecy as may be prescribed. 45
- (4) The provisions of subsection (2) do not apply in respect of information relating to any person where that person has consented in writing that such information may be published or made known to any other person. 50
- (5) Any person who contravenes the provisions of subsection (2) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

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(6) Any person employed or engaged as contemplated in subsection (2) that carries out any of the provisions of this section before he or she has taken the prescribed oath or solemn declaration is guilty of an offence and liable on conviction to a fine not exceeding R500.

(7) The provisions of this section may not be construed as preventing the Minister of Finance from disclosing to the Commissioner any information submitted under this section. 5

Regulations

20. The Minister of Finance may make regulations—

- (a) to ensure that all foreign currency translations are consistently applied; 10
- (b) in respect of circumstances when a year of assessment may be shorter or longer than 12 months; or
- (c) with respect to any matter necessary to administer this Act or the Royalty Act.

Short title and commencement

21. This Act is called the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, and comes into operation on 1 May 2009. 15