

The National Treasury hereby releases the 4th and final draft of the Mineral and Petroleum Resources Royalty (Administration) Bill, for comment. Public comments should be restricted to **technical comments** only as the policy framework has been finalised after extensive public consultation and deliberation by Parliament's Portfolio Committees on Finance and Minerals and Energy. The deadline for public comment is **Wednesday 11 June 2008**.

Comments must be sent to sharon.payne@treasury.gov.za and mmule.majola@treasury.gov.za.

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REPUBLIC OF SOUTH AFRICA

**MINERAL AND PETROLEUM RESOURCES ROYALTY (ADMINISTRATION)
BILL**

*(As introduced in the National Assembly (proposed section 75)); explanatory
memorandum of Bill published in Government Gazette No. X)
(The English text is the official text of the Bill)*

(Minister of Finance)

[B ?—2008]

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BILL

To administer matters in connection with the imposition of a royalty on mineral resources transferred by an extractor and matters connected thereto.

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

MINERAL AND PETROLEUM RESOURCES ROYALTY (ADMINISTRATION) BILL

Definitions

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

“**Commissioner**” means the Commissioner for the South African Revenue Service;

“**financial year**” means financial year as defined in section 1 of the Income Tax Act;

“**notice of assessment**” means a notice of assessment mentioned in section 9;

“**registered person**” means a person that qualifies for registration as mentioned in section 2;

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

“**year of assessment**”, in respect of a registered person, means—

- (a) in the case of a natural person or trust, the period commencing on the 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 person’s financial year and ending on the last day of that financial year,

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and if any financial year begins on any day other than the first day of a calendar 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 Act.

Registration

Registration

2. (1) A person qualifies for registration in terms of this Act if that person—

- (a) holds a prospecting right or retention permit, exploration right, mining right or permit, or production right granted pursuant to the Mineral and Petroleum Resources Development Act; or
- (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 register with the Commissioner by 30 June 2009; or
- (b) after 1 May 2009 must register with the Commissioner within sixty days after the day 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 registered person 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 a registered person's registration with effect from the day after the last day of the year of the assessment in which the registered person does not qualify for registration.

(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 the person is a registered person are not affected by the fact that the Commissioner has cancelled the person's registration.

Election procedure for transfers within a body of unincorporated persons

4. (1) Notwithstanding subsection 2, if an unincorporated body—
- (a) consists of at least two or more members, and
 - (b) has a prospecting right or retention permit, exploration right, mining right or permit, or production right granted pursuant to the Mineral and Petroleum Resources Development Act under the name of that unincorporated body,

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

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

- (a) all of the members of that unincorporated body must elect a year of assessment in respect of that unincorporated body and the year of assessment must be the same year of assessment 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—
 - (a) liability for the royalty in respect of all mineral resources transferred by that unincorporated body during a year of assessment is determined independently of any of the members of that unincorporated body; and
 - (b) the duties imposed under this Act and the Royalty Act in respect of that unincorporated body must be performed by that unincorporated body separately from any other duties that the Royalty Act imposes on the members of that unincorporated body.
- (4) Every member of an unincorporated body mentioned in subsection (2) is liable jointly and severally with other members of that unincorporated body for—
 - (a) performing the duties of that unincorporated body under this Act and the Royalty Act; and
 - (b) paying the royalty imposed under the Royalty Act (and paid under this 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 an unincorporated body mentioned in subsections (2)—
 - (a) is dissolved solely because—
 - (i) of the retirement or withdrawal of one or more members of that unincorporated body; or
 - (ii) of the admission of a new member to that unincorporated body; and

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- (b) the new unincorporated body which is brought into being as a result of the dissolution mentioned in paragraph (a) satisfies 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.

Payments and Returns

Payments in respect of estimated royalty payable

5. (1) A registered person must submit an estimate of the royalty in respect of the year of assessment to which that estimate relates within six calendar months after the first day of that person's year of assessment and submit 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 in respect of the year of assessment to which that estimate relates by the last day of that year of assessment and submit a payment (together with such return for that payment as the Commissioner may prescribe) equal to the amount of royalty so estimated less the amount paid as mentioned in subsection (1).

Final payment and return of royalty payable

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

(2) If the royalty mentioned in subsection (1) exceeds the sum of the two payments that have been paid as mentioned in section 5 in respect of the year of assessment to which that royalty relates, that excess must be paid within

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six months after the last day of that year of assessment mentioned in that subsection.

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 the 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 records necessary to observe the requirements of this Act and the Royalty Act, including—
- (a) particulars of that registered person's 'earnings before interest and taxes' as mentioned in section 5 of the Royalty Act with sufficient detail to identify all of the gross sales, income and allowable deductions in respect of those earnings;
 - (b) particulars of that registered person's 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 transferred by that registered person with sufficient detail to identify those extracted and transferred mineral resources;
 - (d) the accounting basis for and the accounting income for each of that registered person's mining areas 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;

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- (e) a ledger, cash book, journal, check book, bank statement, deposit slip, paid cheque, invoice, other book of account, or financial statement; and
- (f) any information required by the Commissioner.
- (2) A registered person's records must be retained (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 the records relate.
- (3) If—
 - (a) a registered person notes an objection or appeal against a notice of assessment; and
 - (b) that notice of assessment is not final by the last day of five years, the registered person must retain all records relevant to that objection or appeal until that notice of assessment becomes final.
- (4) For purposes of subsection (1)(d), “**mining area**” means mining area as defined in section 1 of the Minerals and Petroleum Resources Development Act.

Assessments

Assessments to re-determine, recalculate and estimate amounts

- 9.** (1) The Commissioner may issue to a registered person a notice of assessment of the royalty in respect of a payment mentioned in section 6 if—
- (a) the Commissioner has reason to believe that the registered person has failed to pay the royalty for which the registered person is liable;
 - (b) the registered person fails to furnish a return in respect of that payment; or
 - (c) the Commissioner is not satisfied with a return mentioned in paragraph (b) furnished by the registered person.
- (2) If a registered person—

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- (a) defaults in furnishing a return mentioned in subsection (1) or information in respect of that return;
- (b) the Commissioner is not satisfied with that return or information; or
- (c) the Commissioner is not satisfied with the amount of royalty paid by that registered person,

the Commissioner may estimate the amount upon which the royalty is payable in respect of that return and the information in respect of that return.

(3) The Commissioner must, in a notice of assessment, give notice to a registered person that an objection or appeal to that notice of assessment must be noted as described in section 81 of the Income Tax Act.

(4) A registered person receiving a notice of assessment must pay the amount of the royalty so assessed to the Commissioner within thirty calendar days following the date of the notice of assessment.

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

(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

(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

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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.

(2) The Commissioner will 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
- (b) if the amount was assessed in terms of a notice of assessment accepted by the registered person and which was made in accordance with the practice generally prevailing at the date of that notice of assessment.

Withdrawal of assessments

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.

Time limit for assessments

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

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

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Refunds and Interest

Refunds

13. (1) A registered person may claim a refund of any amount of royalty paid to the extent that amount exceeds—

- (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—

- (a) that refund was 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.

(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 mentioned in section 6 required to be submitted by this Act until that registered person has furnished that return as required; or
- (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 of tax, additional tax, duty, charge,

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royalty, interest or penalty levied or imposed 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.

Penalty for underpayment of estimated royalty payable

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(2) in respect of that year of assessment 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 calendar days from the date it was imposed.

(3) The Commissioner may call upon a registered person to justify any estimated amount paid as mentioned in section 5 by the registered person or to furnish particulars in respect of that amount; and, if the Commissioner is dissatisfied with that amount, the Commissioner may increase that amount to an amount the Commissioner considers reasonable.

Interest

15. (1) The Commissioner must pay interest calculated on a monthly basis in respect of an amount of royalty paid in respect of an amount paid to the extent that amount exceeds—

- (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,

if that excess is not refunded within thirty calendar days after receipt of a refund

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claim mentioned in section 13 in respect of that excess.

(2) A registered person must pay interest calculated on a monthly basis—

- (a) for an amount due in respect of the estimated payment mentioned in section 5(1) to the extent that amount is not paid on the day for which that payment was required to be paid as mentioned in that section, in respect of the six calendar months after the first day that the estimated payment is due;
- (b) for an amount due in respect of the estimated payment mentioned in section 5(2) to the extent that amount is not paid on the day for which that payment was required to be paid as mentioned in that section, in respect of the six calendar months after the first day that the estimated payment is due; or
- (c) for an amount due in respect of a payment mentioned in section 6 to the extent that amount is not paid within the day for which that payment was required to be paid as mentioned in that section, in respect of any period after the first day that the payment is due.

(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.

Miscellaneous

Administration of Act

16. (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;
- (b) determining and collecting any amounts due under this Act

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- or the State Royalty Act;
- (c) determining whether an offence has been committed under this Act or the Royalty Act; and
- (d) performing any other administrative function necessary for carrying out this Act or the Royalty Act.

Applicability of Income Tax Act

17. (1) The provisions of the Income Tax Act relating to—
- (a) the exercise of powers and performance of duties;
 - (b) preservation of secrecy;
 - (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;
 - (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.
- (2) Any person that is not satisfied with any decision given in writing by the Commissioner—
- (a) in terms of section 3 notifying the person of the Commissioner's decision to cancel any registered person's registration in terms of this Act or the Commissioner's refusal to cancel such registration;
 - (b) in terms of section 4 in respect of the Commissioner's refusal to register an unincorporated body mentioned in section 4 in terms of section 2;

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- (b) in terms of section 9 in respect of a notice of assessment issued to that person;
 - (c) in terms of section 13 in respect of the Commissioner's refusal to make a refund; or
 - (d) in terms of section 14 in respect of the Commissioner's increase of an estimated amount paid in terms of section 5,
- may note an objection thereto with the Commissioner.

Reporting

18. (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 the extractor;
- (b) the gross sales of the extractor as mentioned in section 6(1) and (2); and
- (c) the percentage determined in terms of section 4(1) and (2).

(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 extractor 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.

(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.

(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.

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(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.

(6) Any person employed or engaged as contemplated in subsection (2) who 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.

Rules

18. The Commissioner may make rules with respect to any matter necessary to administer this Act or the Royalty Act, including rules to ensure that all foreign currency translations are consistently applied.

Act binding on State and application of other laws

19. This Act will bind the State and no provision in any other law will be construed as applying or referring to the royalty unless the royalty is specifically mentioned in that provision.

Short title and commencement

20. (1) This Act is called the Mineral and Petroleum Resources Royalty (Administration) Act, 2008.

(2) This Act comes into operation on 1 May 2009.