SECOND AND FINAL REPORT ON

HARD-ROCK MINING

FOR THE MINISTER OF FINANCE

Intended use of this document:

The Davis Tax Committee is advisory in nature and makes recommendations to the Minister of Finance. The Minister will take into account the report and recommendations and will make any appropriate announcements as part of the normal budget and legislative processes.

As with all tax policy proposals, these proposals will be subject to the normal consultative processes and Parliamentary oversight once announced by the Minister.

THE DAVIS TAX COMMITTEE

December 2016

Dear Minister

We, as the Members of the Davis Tax Committee, have the honour and privilege to provide you with this report which has been:

Prepared by:

Professor Deborah Tickle	30/11/2016
Dr Tania Ajam	30/11/2016
Professor Nirupa Padia	30/11/2016

Reviewed and supported by:

Judge Dennis Davis (Chairperson)	30/11/2016
Professor Annet Oguttu	30/11/2016
Professor Ingrid Woolard	30/11/16
Professor Matthew Lester	30/11/2016
Dr Nara Monkam	
Professor Thabo Legwaila	30/11/2016

We were ably assisted by the following ex-officio Members:

Cecil Morden (National Treasury)

Kosie Louw (SARS)

And the following ad hoc Members:

Mr Andrew Wes (SARS and report writer)

Mr Antony Cohen (SARS)

Mr Christoffel du Plessis (SARS)

Mr Warren Harris (National Treasury)

Mr Andries Myburgh (ENS)

Professor Frederick Cawood

Professor Gavin Keeton

Mr Gert Meiring (PWC)

And the Secretariat for the Davis Tax Committee

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A. ABBREVIATIONS AND ACRONYMS

ACC	Allowance for Corporate Capital
ACE	Allowance for Corporate Equity
AETR	Average Effective Tax Rate
AMD	Acid Mine Drainage
AsgiSA	Accelerated and Shared Growth Initiative for South Africa
ATO	Australian Taxation Office
B-BBEE or BEE	Broad-Based Black Economic Empowerment
BEPS	Base Erosion and Profit Shifting
CAGR	Compound Annual Growth Rate
CGT	Capital Gains Tax
CIT	Corporate Income Tax
COMSA	Chamber of Mines of South Africa
Customs and Excise Act	Customs and Excise Amendment 91 of 1964
DEA	Department of Environmental Affairs
DMR	Department of Mineral Resources
DWT	Dividends Withholding Tax
EBIT	Earnings Before Income and Tax
Draft Reviewed Mining Charter	Draft Reviewed Broad Based Black-Economic Empowerment Charter for the South African Mining and Minerals Industry of 2016
DTC	Davis Tax Committee
DTI	Department of Trade and Industry
EFTA	European Free Trade Association
EI	Extractive Industries
EITI	Extractive Industry Transparency Initiative
ETR	Effective Tax Rate
FDI	Foreign Direct Investment
GAAP	Generally Accepted Accounting Principles
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GEAR	Growth, Employment and Redistribution
IFRS	International Financial Reporting Standards
IMF	International Monetary Fund
Income Tax Act	Income Tax Act 58 of 1962
Katz Commission	Katz Commission of Inquiry into Taxation
Marais Committee	Marais Technical Committee on Mining Taxation
Margo Commission	Margo Commission of Inquiry into the Tax Structure of the Republic of South Africa
The Minister	The Minister of Finance
MPRDA	Mineral and Petroleum Resources Development Act 28 of 2002
MPRR	Minerals and Petroleum Resources Royalty
MPRRA	Mineral and Petroleum Resources Royalty Act 28 of 2008
MPRRAA	Mineral and Petroleum Resources Royalty Administration Act 29 of 2008
MRRT	Minerals Resource Rent Tax Act No. 13 of 2012 (Australia)
NDP	National Development Plan

NEMA	National Environmental Management Act 107 of 1998
NGP	New Growth Plan
NPC	National Planning Commission
NSR	Net Smelter Return
NT	National Treasury
OECD	Organisation for Economic Co-operation and Development
PAYE	Pay As You Earn Tax
PBO	Public Benefit Organisation
PGM	Platinum Group Metals
PIT	Personal Income Tax
R & D	Research & Development
RDP	Reconstruction and Development Programme
RRT	Resource Rent Tax
SA	South Africa
SABS	South African Bureau of Standards
SACU	Southern African Customs Union
SADC	Southern African Development Community
SARS	South African Revenue Service
SIMS	State Intervention in the Minerals Sector, ANC Policy Discussion Document
SLP	Social and Labour Plan. An agreement that licensees of mineral exploitation rights in terms of the MPRDA are required to adhere for purposes of assisting local mining communities with infrastructure and other social amenities.
STC	Secondary Tax on Companies
SWF	Sovereign Wealth Fund
TAA	Tax Administration Act 28 of 2011
TDCA	Agreement on Trade, Development and Co-operation etween South Africa and the European Union
TOR	Terms Of Reference
Treaty shopping	Use of treaty networks to reduce total tax liability
VAT	Value Added Tax
VAT Act	Value Added Tax Act 89 of 1991
VCC	Venture Capital Companies
WTO	World Trade Organisation

B. EXECUTIVE SUMMARY

1. This document constitutes a final, updated version of the Davis Tax Committee (DTC) mining report, submitted for the attention of the Minister of Finance. It follows an interim report tendered to the Minister for consideration in June 2015, and subsequently published to solicit stakeholder comments and engagement. This report concentrates on traditional mining, and does not deal with oil and gas extraction, for which a separate report will be tendered. It further concerns itself mainly with income tax and the mineral royalty charge imposed in terms of the Mineral and Petroleum Resources Royalty Act.
2. A confluence of adverse conditions has shaken the mining industry of late which include, amongst other things, labour unrest, low commodity prices, policy uncertainty and electricity supply failures. These and other factors have eroded investor confidence in the industry. Importantly, whilst tax design policy has an impact on investment decisions, its relative importance in terms of overall investor sentiment is relatively low. This is not to say that tax policy should be neglected, but that changes to tax design should be approached cautiously, without trying to achieve too much at the same time, or to compensate for problems which lie outside the tax system.
3. Mining has long functioned as the mainstay of the South African economy and as a catalyst for economic growth in the country as a whole. Whilst its relative importance in terms of GDP and revenue collections has declined, it still remains a vital sector in terms of job creation and foreign exchange generation for South Africa's balance of payments (because of the disproportionately high level of exports it achieves).
4. The mining life cycle consists of certain distinct phases, all of which carry major costs and risks which are unique to mining. These phases include: *the exploration phase* (this involves the search and finding of minerals); *the development phase* (which involves the sinking of shafts, development of mine infrastructure and exposing the ore body for production); *the production phase* (the stage when minerals are mined) and *the closure phase* (which necessitates rehabilitating the mine to prevent environmental and safety hazards which arise as externalities of mining). Mining involves very substantial upfront investment costs at the development phase of the mine, typically followed by a prolonged time lag before mining production (and hence generation of income) commences. This prolonged interval between upfront investment and generation of income is subject to heightened risks posed by adverse changes in commodity prices, and geological risks.
5. To ameliorate the risks associated with the mining life cycle, the legislature has enacted certain tax incentives which are available exclusively to mining taxpayers. These incentives provide for upfront capital allowances for exploratory and development

expenditure, and for deductions which are designed to ensure adequate provision is made for the closure and rehabilitation of mines.

6. Taxpayers engaged in gold mining have long been treated differently to those in other mining subsectors, due chiefly to the substantial and disproportionate impact gold mining has had on the South African economy compared to other mining industries (including job creation). Thus, in addition to the special allowances available to other mining taxpayers, taxpayers conducting gold mining are entitled to an additional annual tax incentive at 10% or 12%, depending on when the mine was established, of the opening balance of qualifying capital expenditure and qualifying capital expenditure incurred annually. Furthermore, the tax rate applicable to gold mines is determined on the basis of a unique formula designed to encourage deep level mining, and the mining of marginal mine ores. The gold formula achieves this by creating a so-called tax tunnel, whereby taxpayers operating with a profitability ratio below 5% are exempt from tax on taxable income. The gold formula is also designed to tax gold mines at an increasing marginal rate, depending on profitability, ensuring that the more profitable gold mines pay tax at a disproportionately high rate compared to other taxpayers.
7. Various ring fence provisions have been created, which aim to limit the benefits obtained from the tax mining allowances to mining taxpayers only. This is done by preventing these taxpayers from off-setting the special mining allowances against non-mining income within the same tax entity and against income from other mines within the same entity.
8. Further efforts to protect the fiscus from leakage (arising from the provision of the special tax allowances) involve the enactment of unique recoupment provisions applicable to mining taxpayers only (in essence, on the sale of a mining going concern). In terms of these provisions, the sales of mining assets need to be valued by the Department of Mineral Resources.
9. The MPRDA, which seeks to regulate the mining industry, was enacted in 2002. This Act sets a platform for the licencing of mining rights, recognising that resources of the country belong to, and are for the benefit of, the nation as a whole. The Act also seeks to ensure that mining is conducted in a sustainable, socially and environmentally responsible manner, redressing the racial injustices of the past through transformation of the industry.
10. In 2010, MPRRA was enacted, which provides for a royalty to be charged on the transfer of mineral resources. The royalty charge is imposed according to a formula which sets a minimum charge to be imposed at 0.5% on adjusted gross sales, irrespective of the profitability of the entity being charged the royalty (this accords with the philosophy that since the minerals belong to the State, the State must be compensated for the depletion

of its finite mineral resources regardless of whether the entity exploiting the resource is profitable or not). This does not mean that the royalty formula disregards profitability completely as, beyond the minimum royalty rate, the royalty rate increases marginally, on the basis of profitability, up to a maximum of 7% of adjusted gross sales.

11. The review of existing mining taxes by the DTC has yielded *inter alia*[1] the following recommendations:

11.1. The DTC is of the view that it is time to work towards aligning the mining corporate income tax regime more closely with the tax applicable to other taxpaying sectors, generally, leaving the royalty system to respond to the non-renewable nature of mineral resources. The DTC has moreover not been persuaded that the current mining tax system does much to encourage the much sought after investment which these rules were originally intended to attract. The recommended approach would also bridge many of the chasms caused by breaches of the principle of neutrality that are created by the current mining tax system.

Many of the recommendations which follow will be made with this overriding strategy of alignment in mind.

11.2. The upfront capex write-off regime should be discontinued and replaced with an accelerated capex depreciation regime, which is in parity with the write-off periods provided for in respect of the manufacturing (40/20/20/20) basis. This capital expenditure should be written off from the date at which such expenditure was incurred. The cost base applicable to the above write-off period covers expenditure contained in sections 36(11)(a), 36(11)(b) and 36(11)(e)[2] in so far as it relates to capex expenditure allowable in terms of the current tax regime. Write-offs of assets in existing legislation, for example, in terms of sections 36(11)(d) and 36(11)(f), which specify longer write off periods should retain their current write-off periods in future legislation.

11.3. The removal of the upfront capex tax allowance regime (and hence the promotion of intersectoral neutrality) paves the way for the removal of ring fences aimed at preventing the set-off of future capex expenditure against the tax base of other mines and against non-mining income. The removal of these ring fences should adequately compensate taxpayers for the removal of the upfront capex allowance and the lost tax benefits associated with falling within the tax tunnel applicable to

[1] Only the significant recommendations are set out in this executive summary.
[2] A new section 36(11)(eA) is proposed in published bill at the time of writing and should be included in this list, if promulgated-see Clause 56 of the Taxation Laws Amendment Bill 17 of 2016

the gold mining tax formula (see, however, paragraph 11.5 below where the proposed tax treatment specifically of gold mines is discussed). Removal of ring fences is likely to promote added investment, as losses related to failed mining ventures will not be sterilized for purposes of set off against other mining income or ventures. A further consequence of the removal of ring fences may be to encourage the mining of marginal ores. This could occur in circumstances where a low-profit mining venture is effectively cross-subsidized through absorbing tax losses from previously (but no longer) ring fenced sources.

11.4. According to a SARS study conducted for purposes of assessing the cost of removing existing ring fences, an estimated cumulative amount of R140 billion unredeemed capex (old capex) is currently being carried forward by taxpayers. Allowing this amount to be converted to an assessed loss for offset without ring fences in the future would constitute a prohibitive and unjustified cost for the fiscus to absorb. For this reason it is recommended that the removal of ring fences should be done prospectively so as to confine offsets of capex (without application of ring fences) to capex incurred or accumulated in a future standardised tax regime (new capex)

In this regard the DTC recommends that going forward past unredeemed capex expenditure remain ring fenced as per existing ring fencing rules. However, new capex, which, as per the DTC's recommendations above, would be allowed on a 40/20/20/20 basis, will not be subject to any of the current ring fence rules. This means new capex expenditure, which is not set-off against income in a current year of assessment, will be carried forward in future as part of a regular assessed loss. Care will be needed developing appropriate transitional rules to enable companies with multiple ring fences and balances of "old capex" and "new capex" to calculate their tax liability in a consistent and logical manner, until such time as the "old capex" is exhausted.

11.5. Ideally the DTC prefers to bring the taxation of the gold mining industry into line with the tax regime applicable to non-gold mining taxpayers. However, it is recognised that gold mining remains a major contributor to employment and that jobs could be jeopardised as a consequence of a recommendation which results in the removal of the gold formula for existing gold mines. In order not to precipitate further decline in employment, particularly in marginal mines, the DTC recommends that the gold mining formula be retained for existing gold mines (i.e. brownfield gold mines), unless the relevant mine elects to move to the proposed regime (see below). Retention of the gold formula should apply to existing gold mines only, as new gold mines are unlikely to be established in circumstances where profits are marginal or where gold mines are conducting mining of the type intended to be encouraged by provision of the gold formula. Accordingly, the DTC recommends that the gold formula should not apply to newly established gold mines. Given the retention of the gold formula for existing gold mines, it would be necessary to retain ring fences in mines where the gold formula subsists. Since existing gold mining taxpayers will retain their ring fences, it is recommended that, subject to 11.6, they also be entitled to continue being able to claim upfront capital allowances to alleviate the burden of remaining subject to ring fences**.**

It is recognised that some existing gold mines might have a preference for removal of ring fences, despite this entailing the loss of the gold mining tax benefits typically available to them. In such instances, it is recommended that these taxpayers be given a once off option to elect to stay in the regime applicable to existing gold mining taxpayers, or to be treated like all other taxpayers who are not subject to the special gold mining tax dispensation, i.e. such taxpayers could elect to forego applicability of the gold mining formula and upfront capex allowances in favour of the removal of ring fences going forward.

11.6. With regard to the additional capital allowances available to gold mines, the DTC recommends that such allowances should be discontinued for all gold mining taxpayers (including for brownfield gold mines). In doing this, restrictions on the deduction of interest expenditure (where applicable) should be lifted to accord with normal tax principles. In compiling the interim version of this report, the DTC indicated a proposed measure of flexibility relating to options for a phased removal of these additional capital allowances. On further reflection, the DTC no longer supports phasing the process, as the lengthy time span involved in translating these recommendations into enacted legislation will likely provide affected taxpayers with sufficient respite.

11.7. The mining industry has changed substantially over the last 20 years, creating an environment conducive to smaller companies participating meaningfully in the mining industry (who often adopt a contract mining business model). Existing tax legislation pre-dated, and perhaps did not envisage, all the tax ramifications flowing from contract mining, which now forms an integral part of the mining dispensation. The MPRDA limits mining to persons who ‘hold’ mining rights in terms of the Act. This creates problems as some contract miners are technically falling foul of the MPRDA by mining on behalf of third party mineral rights holders without holding the mining rights themselves. This opens some contract miners to possible criminal sanction and, conceivably, disallowance by SARS of expenditure incurred pursuing contract mining activities. Contract mining arrangements might also lead to uncertainty whether the owner of the mining right or the contract miner could claim the relevant tax allowances. The DTC views the heart of the problem, and possibly its solution, to lie in recognising that the principles of an agency and principal need to be firmly co-ordinated for the contract mining system to function properly. This means that the person doing the contract mining should not be operating as an independent contractor, but strictly as an agent for the principal who holds the mining right. The DTC recommends that a template contract be devised as a guide to parties concluding contract mining arrangements. The template should contain contract terms designed to ensure that, in the said arrangements, the contract miner conducts mining on behalf of its principal as opposed to conducting mining on an independent contract mining basis. The contract terms must ensure that mining activities are tightly controlled by the mining right holder and that the risks and rewards of the mining activities remain firmly with the principal. It would appear that with adherence to these principles, most contract miners would be able to claim a manufacturing tax allowance for their contract mining activities. It is worth noting that many of the problems (formerly associated with the taxation of contract mining) would fall away should the recommendations made by the DTC be accepted. This is because the incentive to classify expenditure as mining, rather than manufacturing, would in any event disappear with the move towards equalising the write-off regimes for mining and manufacturing.

11.8. Over the last few years, there have been various calls to change or introduce new tax instruments to the mining tax system, such as windfall taxes, rent resource taxes, surcharges based on cash flows and separate flat royalty charges. The DTC takes the view that new tax instruments are not necessary, particularly since the mineral royalty has been carefully designed to balance responsiveness of the royalty to different economic circumstances, capturing rents when profits are high and ensuring a measure of cover (for the fiscus) in the form of a minimum revenue stream during weak economic cycles and low commodity prices. The mineral royalty charge is reasonably new and, thus, needs to be given a chance to prove itself.

11.9. The interim Davis report had previously broadly supported the retention of the mineral royalty regime. However, it was recognised that various aspects of the royalty regime still needed to be clarified and improved. At that stage the DTC undertook to provide more detailed recommendations in its final report, which are listed below:

11.9.1. The DTC does not wish to prescribe any changes to the formula rates and factors. This recognises that the current formulation was optimised following extensive deliberations, consultations and negotiations which preceded the introduction of the royalty.

11.9.2. The DTC does not recommend a blanket exemption of the royalty charge for extractors in the aggregate/sand industry. This would be counter to the principle in the MPRDA which requires (without exception) a royalty for all types of minerals extracted from within the Republic of South Africa. Many of the problems with imposing a royalty on these types of extractors (mostly relating to low margins in this industry) can be addressed by sharply increasing the small business exemption contained in the MPRRA. The DTC accordingly recommends an appropriate increase in the small business exemption.

11.9.3. Pivotal to the difficulties with compliance in terms of the MPRRA is that the schedules to the MPPRA are out of date, are not sufficiently comprehensive or accurate in terms of coverage of minerals, mineral purity levels and setting appropriate levels for conditions specified. This has resulted in much uncertainty in terms of application of the legislation. The DTC accordingly recommends a thorough update and refinement of these schedules. It is further recommended that for purposes of flexibility, the schedules should no longer form part of the primary royalty legislation but should be published by the Minister as a regulation in the government gazette.

11.9.4. Many of the concepts and terms encompassed within the MPRRA do not bear the same meaning as they do amongst the accounting profession or IFRS, for example the meaning of 'EBIT' and 'gross sales'. This has led to differing interpretations and uncertainty in the law. There are various other interpretation difficulties canvassed in this report such as in relation to the meaning of "consumption"; establishing points where transfer takes place; and the circular difficulty arising when royalty charges are revised and the impact these changes have in the income tax context. Further differences in interpretation of application of the laws are also widespread, for example taxpayers who are required to gross up or down their gross sales for purposes of the MPRRA have no prescribed methodology for doing so. While it is the DTC's view that a wholesale legislative intervention is not appropriate here, clear guidance is required. It is recommended that SARS issue a comprehensive Interpretation Note on this subject to dispel any uncertainty prevalent in the industry.

11.9.5. The recommendation, elsewhere in this report, for the removal of the upfront capex allowance has an impact on the determination of 'EBIT' in terms of the

MPRRA. This is because the carryover of operational losses in the determination of 'EBIT' is currently not allowed. This exclusion does not, however, apply to unredeemed capital expenditure which may reduce 'EBIT' under the current dispensation. Conversion of this unredeemed capital expenditure to operational losses (which will automatically follow from the new dispensation) means that extractors will no longer be able to carry their former unredeemed capital expenditure for set off against 'EBIT'. The DTC is sympathetic to this issue and recommends that for MPRRA purposes taxpayers be allowed to continue computing and setting off the unredeemed capital allowances against 'EBIT'.

11.10. Requests to channel a portion of royalties directly to mining communities have been received. The DTC does not support such a vast departure from current government policy on fiscal management. Such a recommendation would also be at odds with the South African Constitution, which explicitly establishes a single National Revenue Fund.

11.11. The DTC had requested the IMF to conduct a study to appraise options for the future reform of South Africa's mineral taxation regime. The IMF has presented various tax reform options for consideration. The DTC most favours elements of the IMF's option 2 (although it does not support this option in its entirety). Option 2 essentially favours maintenance of the current tax structure (with emphasis on retention of the existing mineral royalty) but with partial reforms. The approach favoured by the DTC differs from the IMF to the extent that the DTC favours reform which will see the mining tax provisions moving closer to the taxation system applicable to most other non-mining sectors.

11.12. Various conflicts and tensions have been detected relating to disparate pieces of legislation such as the MPRDA, MPRRA, the Income Tax Act and the National Environmental Management Act (NEMA). In addition, various technical problems relating to the legislation have been observed; for example, in relation to the effectiveness of the ring fencing rules. In this report, the DTC has articulated a recommended methodology for National Treasury to solve these technical problems and inconsistencies, and has assisted in identifying aspects of the legislation which require remedy.

11.13. The DTC conducted a general technical review based on submissions received for which various recommendations were made. Of these, the most notable relates to section 37 of the Income Tax Act, which deals with recoupments relating to mining assets. In this regard the DTC took the view that the issues arising in this space are not very different to recoupments which take place on the sale of non-mining assets. In light of this and based on the DTC's recommendations elsewhere to conform the write off of capex with other sectors, the DTC recommends, subject to the below, the removal of section 37, with a view to bringing mining asset recoupments in line with the law applicable to non-mining taxpayers. Elsewhere in this report, the DTC has stated that brownfield gold mines should continue to operate in terms of a tax dispensation, essentially, the same as before. Also, the DTC has stated that transitional rules need to be crafted to deal with accumulated unredeemed capex losses derived from all existing mines. In this regard it is recommended that the provisions of section 37 remain applicable to both brownfield gold mines and to existing mines carrying pre-existing unredeemed capex losses by virtue of the transitional rules. Thus, section 37 should continue to apply, in these exceptional circumstances, in so far as the rules facilitate the transfer of pre-existing unredeemed capex between seller and buyer. However, because of the challenges associated with obtaining DMR valuations, it is recommended that the DMR valuation aspect of section 37 should cease going forward, not only for greenfield mining taxpayers but for brownfield gold mining taxpayers as well.

11.14. A negative by-product of mining is the environmental damage linked to the operations of mines. Mining companies are therefore required by law to make upfront financial provision to mitigate environmental damage at the closure of mines. Various statutes and provisions have been enacted which, amongst other things, seek to regulate the rehabilitation responsibilities of mining companies. The applicable legislation comprises the National Environmental Management Act (NEMA), the MPRDA, the Income Tax Act and miscellaneous regulations issued in terms of these statutes. It is apparent that various discrepancies and inconsistencies exist in relation to these mining rehabilitation laws. These incongruities have been exacerbated by recent draft regulations published in terms of NEMA (released subsequent to the interim version of this report). These regulations do not recognize certain rehabilitation companies or rehabilitation trusts, despite these entities being endorsed in both the MPRDA and the Income Tax Act.

The recently published interim DTC Oil and Gas Report contains recommendations for technical amendments to be made to the Income Tax Act which seek to resolve anomalies arising from these regulations. Despite the proposed amendments contained in the Oil and Gas report, which are affirmed in the final hard rock mining report, various anomalies highlighted in the interim version of this report subsist. Accordingly the recommendations espoused in the interim version of this report are reiterated. Thus in light of the cross-governmental impact of likely reforms, the DTC's recommendation remains that a small inter-governmental task team be convened to co-ordinate a joint investigation and legislative response to remedy these issues (consisting of SARS, NT, DMR and the DEA).

11.15. Subsequent to the release of the interim version of this report, the Minister of Mineral Resources published an invitation to comment on a draft reviewed broad based black-economic empowerment charter for the South African mining and minerals industry. Whilst an updated version of the Draft Reviewed Mining Charter will profoundly impact the mining industry, it is not productive to extensively analyse a document which encompasses draft policy formulations that remain subject to change. Suffice to reinforce a caution to policy makers, expressed elsewhere in this report, of the importance of designing future mining tax legislation with full cognition of the spectrum of costs being imposed on taxpayers. In this regard clarity needs to be provided by National Treasury and SARS of the tax treatment thereof, bearing in mind the principle provided in the Warner Lambert case[3], which confirmed that costs which a taxpayer is obliged to regularly incur by virtue of regulation are deductible for tax purposes.

11.16. The DTC has received various submissions pertinent to either the provision of new tax incentives or requests to modify existing tax incentives. Some of the issues relevant to tax incentives which have been considered by the DTC include the following:

11.16.1. *Greenfield exploration*: Greenfield exploration is undoubtedly a pre-requisite for continued future development of the mining industry. At the moment it appears that few investments are taking place in this arena. The DTC is not convinced that fiscal incentives or the lack thereof, comprise a complete answer to encouraging greenfield exploration. Information received by the DTC suggests that certain regulatory impediments and prolonged policy uncertainty are more likely to deter such investment. Thus, it seems that non-tax measures also need to be put in place to encourage exploration. Whilst tax incentives may ultimately serve as an inducement in encouraging greenfield investment, it is necessary to first conduct an in-depth examination of the current regulatory framework applicable to greenfield investors (as prescribed by the MPRDA) before advocating further tax incentives. The issue of the value and efficacy of tax incentives is controversial and requires additional empirical evidence and analysis. To this end the DTC will publish a report devoted to tax incentives and which will address the issue of greenfield tax incentives.

[3] Warner Lambert SA (Pty) Ltd v Commissioner for South African Revenue Service (277/02)[20034 ZASCA 59 (30 May 2003)

11.16.2. *Depletion allowance*: International research suggests that depletion allowances are typically not available in instances where ownership of mining rights (or custodianship as in the case of South Africa) vests in the State. Nonetheless, in the interim version of this report, the DTC had expressed a willingness to explore this issue further as a degree of sympathy was felt for providing such incentives where taxpayers have obtained such rights on an arm's length basis from a third party, sometimes at a substantial cost. On further reflection on this issue, it is apparent that application of the Capital Gains Tax (CGT) system largely facilitates a measure of depletion of value into the CGT calculation. This usually occurs pursuant to the onward sale of a depleted right which typically would achieve reduced proceeds on sale (the rights having diminished in value due to depletion) which would likely result in reduced CGT or CGT losses. As a consequence of the above, and general international treatment of such rights, the DTC does not recommend a depletion allowance.

11.16.3. *Deductions of expenditure in terms of Social and Labour Plans:* In order for taxpayers to obtain mining rights, the MPRDA requires such persons to sign a Social and Labour Plan (SLP) whereby they agree to assist with communities through projects. Currently, the tax law is not clear as to the extent to which such expenditure may be claimable for tax purposes, particularly in so far as it relates to provision of infrastructure. The DTC made a recommendation in the interim mining tax draft report that all infrastructure costs incurred in terms of an SLP be allowed for tax purposes, even if such expenditure benefits the community at large and not just the direct employees of the mining taxpayer. It is noted that National Treasury has since embraced this proposal, in the 2016 Budget Review (p. 49) and draft legislation (section 36(11)(eA)), signalling its intent to make the tax amendments which will bring the applicable change of law into force. The DTC recommends that expenditure incurred outside the ambit of an SLP should be channelled through the Public Benefit organisation (PBO) system. In this regard a separate DTC PBO report will consider more fully whether the current tax design of the PBO income tax legislation adequately caters for the exigencies associated with this type of expenditure. With regards to appropriate write off periods for SLP expenditure in the future, the DTC holds that the time frames contained in section 36(11)(d) and draft 36(11)(eA) of the Income Tax Act should not be changed, as these time frames were originally conceived to be aligned with write off periods for similar infrastructure contained elsewhere in the Income Tax Act.

I. INTRODUCTION:

1. Scope of this Report

In February 2013, the then Minister of Finance, Mr Pravin Gordhan, announced the establishment of the DTC. This was followed by his announcement[4] of the members of the Tax Review Committee[5] as well as the Committee's Terms of Reference[6].

In formulating its recommendations, the DTC constituted various working streams which have different focus areas of deliberation. This report concentrates on traditional mining and does not concern itself with oil and gas extraction for which a separate report will be tendered at a later stage. Furthermore, although mines are liable for various direct and indirect taxes, levies and customs charges, the scope of this report, in the main, is limited to income tax and mineral royalties.

The DTC recognises that some of the recommendations made in this report represent a significant departure from the existing mining tax paradigm. It has thus been a worthwhile exercise to release a draft version of this report for public comment, the responses to which were instrumental in finalising this current report[7].The changes recommended in this document in the DTC's view represent the most appropriate long term and sustainable direction for taxation of the industry. However, introduction of significant change requires sensitivity and careful management which the DTC's guidance has aimed to achieve (especially in an industry already under severe strain).

The Terms of Reference (TOR) require the DTC to submit an interim report and a final report which will be published on dates to be determined after consultation between the DTC and the Minister of Finance. This document constitutes the final report of the DTC on hard rock mining, submitted to the Minister.

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4 On 17 July 2013

5 The Committee was to be chaired by Judge Dennis Davis.

6 For terms of reference, see http://www.taxcom.org.za/termsofreference.html

7 The first provisional mining tax report was released on 13 August 2015 and provided time for the public to comment until 31 October 2015

2. Consultation

In preparing this report, the DTC has consulted widely and received submissions and assistance from various persons and sources. The DTC is extremely grateful to all those who have made submissions, without whom this report would not have been possible. "Annexure A" contains a list of people from whom submissions and assistance were received.

In the course of processing submissions and developing this report, it was found that certain issues were better suited for consideration by other working streams of the DTC. Alternatively they required attention by certain government departments or, because of the interplay of legislation pertinent to the three distinct spheres of government, required work to be done inter-governmentally. In each such instance, the report provides specific direction for these matters to be considered elsewhere (referrals for consideration elsewhere have been summarised and annexed as "Annexure B").

3. The Terms of Reference (TOR) and Mandate of the DTC

The TOR set out the broad mandate for the DTC as a whole and specific terms of reference for various focus areas, such as for small business, base erosion and profit shifting and the current mining tax regime.

The following extract from the TOR constitutes general guidance to the DTC:

> … to inquire into the role of the tax system in the promotion of inclusive economic growth, employment creation, development and fiscal sustainability. The DTC will take into account in its work recent domestic and global developments and, in particular, the long term objectives of the National Development Plan (NDP). The Committee should also evaluate the South African tax system against the international tax trends, principles and practices, as well as recent international initiatives to improve tax compliance and deal with tax base erosion.

In mandating specific areas for attention, the TOR have the following to say about mining[8]:

> As noted in the 2013 Budget Review (BR), the DTC will consider
> a) Whether the current mining tax regime is appropriate, taking account of:

[8] Supra note 6 at paragraph 4.

- The agreement between Government, Labour and Business[9] to ensure that the mining sector contributes to growth and job creation, remains a competitive investment proposition and all role players contribute to better working and living conditions
- The challenges facing the mining sector, including low commodity prices, rising costs, falling outputs and declining margins, as well as its current contribution to tax revenues.

In fulfilling its mandate, the TOR prescribe the following tax objectives which need to be taken into account:

a) Revenue-raising to fund government expenditure is the primary objective of taxation;
b) Social objectives, building a cohesive and inclusive society can be met partially through a progressive tax system and by raising revenue in order to redistribute resources;
c) Market failures can be corrected by applying a tax on production and/or consumption to internalise negative externalities, e.g. pollution or consumption of harmful products;
d) The tax system can influence behavioural changes by encouraging certain actions (e.g. savings) and discouraging others (e.g. smoking);
e) Taxes and tax incentives are sometimes used in targeted ways to encourage higher levels of investment to help facilitate economic growth;
f) International competitiveness is important, although the tax system is not the main driver of international competiveness. Innovation and productivity improvements are far more important. We should guard against the "race to the bottom" in the DTC's efforts to strive for a "competitive tax system".

Finally, the TOR provide an element of discretion to the mandate of the DTC, requiring that the DTC:"…study any further tax issues which, in the Committee's view, should be addressed in order to promote inclusive economic growth, employment creation, development and fiscal sustainability."

[9] Draft Framework Agreement For A Sustainable Mining Industry Entered Into By Organised Labour, Organised Business And Government – 14 June 2013. See http://www.treasury.gov.za/publications/other/Draft%20Framework%20Agreement%20for%20a%20sustainable%20mining%20industry%20entered%20into%20by%20organised%20labour.pdf- Last accessed 25 March 2015

4. Impact of tax system design on wider government objectives

The mandate of the DTC requires that the DTC take various factors and policy objectives into account. Some of these objectives compete with each other, requiring a realistic assessment and careful balancing of interests to accommodate objectives as far as possible. The primary objective concerns revenue-raising to fund government expenditure in a manner that least distorts economic activity. Other areas of government which the tax regime may impact follow on from the above objectives, such as: industrial policy including beneficiation in the mining sector, balance of payments (given that mining is a major export earner), environmental policy (mining rehabilitation), as well as social policy; for example, the promotion of BEE. In particular, certain sensitivities around the history of the mining sector need to be noted. For example, the migrant labour system (and its legacies) render it an especially socially and politically contested terrain (these issues will be expanded upon later).

A recurring concern raised in submissions received related to the impact mining tax policy could have on investment. It is important to note that the tax system[10] is but one of many factors driving choices and decisions to invest in or divest from a particular country. Table 1 of Annexure C, presents the outcome of a survey developed by the United Nations which lists the key criteria for investment decision making for exploration and mining companies. Importantly, tax issues appear relatively low on the list of priorities in relation to other broader mineral policy issues. In this regard it is notable that a large portion of the priority investment criteria for exploration and mining relates to the need for a predictable, stable and competitive policy and legislative framework. This is not to say that tax policy design is unimportant, but that other factors besides tax also have a bearing on investment decisions. With this in mind, it is essential that changes to the tax system are not seen as a panacea for all investment woes befalling the country. That being said, radical changes to the tax system should be approached with circumspection lest tax design issues create further uncertainty and discourage investment. Accordingly, changes should be made cautiously and only where necessary and should be systematically phased in.

[10] This report concerns itself mainly with Income Tax and Mineral royalties, although taxpayers conducting mining are subject to various other taxes, including amongst other things Value Added Tax, Carbon Tax, Export levies etc.

5. Guiding principles of report

Finding the right balance of policy and taxation instruments may be helpful in unlocking investment in exploration and ultimately, investment in mining. In order to become competitive South Africa requires a stable, predictable and equitable policy environment that promotes long-term investment. Accordingly, over and above the prescribed mandate of the DTC, the DTC has been guided by the following international best practice principles for designing mining tax regimes in conceiving its recommendations:

a) Stability

A tax system must be stable and competitive. This entails consistency and certainty in all policy development.

b) Predictability

The necessity to provide a predictable taxation system is particularly germane to mining taxes because of the need to accommodate volatile fluctuations typical in commodity cycles. During commodity troughs it is important for the system not to undermine mining by imposing regressive taxes which take no account of the ability of companies to pay. In commodity booms, the taxation system must be flexible to allow the State to receive a fair share of the benefit.

c) Fairness

A taxation system should promote a fair and appropriate sharing of risks and rewards between the investor and the government. A competitive taxation system will encourage investment, growth, employment creation and development and provide a significant boost to economic activity.

d) Flexibility

An efficient tax system recognises the inherent risks of the industry from which its tax base is sourced. In the case of mining this includes exposure to fluctuating commodity cycles, the overall project life cycles, the risks posed by geology and attendant technical risks.

e) Simplicity

Requires that tax laws are easy to administer and comply with.

f) Efficiency

Given its importance for investors, there should be administrative efficiency, low compliance and administrative costs. Transitional arrangements should be made if new laws are enacted; changes to tax laws should be applied progressively and not retrospectively and there should be a reasonable timeframe.

g) Neutrality

A fiscal instrument is neutral if investment and production decisions for a resource project are not distorted by the tax. Typically, the neutrality criterion is used to evaluate the extent to which some projects that are viable before tax may become unprofitable after a fiscal instrument is applied, resulting in efficiency losses.

h) Tax equity

This concept comprises two types of equity, horizontal and vertical equity:

- **Horizontal Equity**

  Horizontal equity prescribes that people in identical situations should be treated the same. With regards to taxes, this implies that those with the same resources and levels of income should be taxed at the same rate as others falling within that income bracket. The progressive marginal rate system of tax applicable to individual taxpayers in South Africa recognises that people falling within the same tax bracket should be taxed at the same tax rate.

- **Vertical Equity**

  The concept of vertical equity states that those who earn more income should pay more tax in accordance with the “ability to pay principle of taxation”. Vertical equity has at its heart a redistributive effect on income. To a lesser extent it also recognises the concept of the “benefit principle of taxation” which holds that wealthier members of society tend to enjoy greater benefits from government services and should accordingly pay more taxes for such enjoyment. Thus, for example, higher earners benefit more from the police, military and regulation of the banking system than lower earners as they stand to lose more in times of insurrection (because of the greater resources they have which require protection). Thus vertical equity promotes taxation in a progressive fashion. This principle has been embraced in the design of the South African personal income tax system where higher income earners are taxed at higher progressive marginal rates in accordance with their income brackets. It is important to note that South African corporate income tax does not recognise the ability to pay concept. The level of a company's profit will be determined by its market performance. Thus the individual circumstances of a company's finances are generally not taken into account for purposes of taxation with most companies currently being taxed at a flat rate of 28%[11].

i) Transparency

This concept embraces a framework that encourages consultation and on-going constructive relations between government and taxpayers in conjunction with the development of legislation.

[11] As will be discussed later, the gold mining industry is exceptional in that corporates are taxed at a progressive rate in terms of the gold formula.

II. OVERVIEW OF MINING IN SOUTH AFRICA

This section provides a brief overview of the historical development trajectory of the mining industry and the current regulatory regime, as well as a synopsis of non-tax challenges facing the sector.

1. History of the mining industry

Many of the contemporary challenges faced by the mining sector have their origins in its long history. This section provides a brief overview of the historical development trajectory of the mining industry in South Africa and the current regulatory regime, as well as a synopsis of non-tax challenges facing the sector.

1.1. Early history

The origins of mining in South Africa may be traced back to the discovery of coal in the 1840's. However, the economic importance of the sector was only widely recognised with the discovery of kimberlite pipes in Kimberley in 1870 and the later discovery of gold on the Witwatersrand in 1886[12]. The discovery of gold led to the establishment of Johannesburg, undoubtedly, at the time, one of the most prosperous mining towns in the world.

The discovery of gold in South Africa eventually led to the ascendancy of the large mining houses. By 1890, many small mines in the Witwatersrand basin were facing production challenges. The combination of a recession, the vastness of gold deposits (albeit low in grades) in the Witwatersrand basin and the complexity of mining gold reefs as well as the difficulty of raising capital, led to the consolidation of mining claims. The large mining houses took the opportunity (by using their capital or access to capital) to take over struggling mines, which ultimately led to the establishment of large mining conglomerates[13]. By the 1940s and 1950s ownership of diamond and gold mines was concentrated in a few hands, most notably Anglo American Corporation (AAC), which was founded to mobilise capital from British and American investors[14].

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[12] Robinson, I.C. and von Below, M.A., 1990. "*The role of the domestic market in promoting the beneficiation of raw materials in South Africa. Journal of the South African Institute of Mining and Metallurgy"*, Volume 90, No. 4. Pages 91-98.

[13] Mawby, A. A., 2000. Gold mining and politics: Johannesburg, 1900-1907: the origins of the old South Africa. Volume 1. Edwin Mellen Press: Lewiston, N.Y.

[14] Segal, N. and Malherbe, S. (2000). A Perspective on the South African Mining Industry in The 21st Century: An independent report prepared for the Chamber of Mines of South Africa. The Graduate School of Business, University of Cape Town and Genesis Analytics, South Africa. Mimeo. (Previously available at page 19: <http://www.bullion.org.za/Publications /Other%20reports.htm> link not working 8 April 2015)

1.2. Mining as a catalyst for industrial development

In the decades following World War II, South African Industrial policy developed with a focus on leveraging South Africa's vast mineral and coal energy resources. This gave rise to the development of the so-called Mineral Energy Complex (MEC)[15], which essentially consisted of mining, minerals processing, the energy sector and related industries linked to these sectors. Focusing on the mineral complex, the key constituents of which are locally sourced, further enhanced the inward directed economic policies of government which predominated in the 1970's to 1980's. According to Altman and Mayer[16] this inward industrial policy originated in the 1920's with import protection and subsidisation policies being aimed at addressing the "poor white problem". Increased international isolation led government to focus its industrial policy on developing heavy industry tied to the MEC, which included development of the steel industry, synthetic fuels and the defence industry[17].

1.3. Social and political factors arising from mining

At the end of the 19th century, the value of South Africa's gold output exceeded $40 million[18]. These substantial gold yields were derived partly because of an abundant supply of mineral reserves and partly on the back of a ready supply of cheap labour drawn from the so-called "independent states" and black homelands of apartheid South Africa as well as neighbouring states. Containing labour costs was advantageous for mining companies as, despite technological improvements, the mining industry was and remains labour intensive. This low cost workforce was chiefly sourced from migrant labour[19] which was more economical to employ than workers who lived with their families[20]. A migratory labour force (housed in single sex hostels) was also conceived because mines (by necessity) are established at the

[15] Fine, B. and Rustomjee, Z. 1996. The Political Economy of South Africa: From Minerals–Energy Complex to Industrialization. London: Hurst.
[16] *Altman, M, Mayer, M. (2003) Chapter 3-Overview of Industrial Policy.* Human Resources Development Review 2003, Education, employment and skills in South Africa (pp. 65-82), HSRC. Retrieved from:
http://www.hsrcpress.ac.za/product.php?productid=1981&freedownload=1&js=n# Last Accessed 24 April 2015
[17] Supra note 16 at page 68 where examples of heavy industry which developed included Iscor in relation to steel, Sasol and Mossgas which developed synthetic fuels and the reference to the defence industry (although not specifically stated) probably refers to Denel and Armscor.
[18] Curtis 2009, Mining and tax in South Africa: Costs and benefits: p. 1, accessed 8 April 2015 from http://www.curtisresearch.org/SAfrica.MiningTax.Feb09.Curtis.pdf
[19] Migrant workers live most of the year on or near their place of employment (the mines), with family and homesteads being located elsewhere (usually in rural areas found in South Africa, Lesotho, Malawi or Mozambique.)
[20] Martin Nicol, M, 6 June 2013 Beneath our land: The Mines – An unintended beneficiary of the Land Act, Research Unit, Parliament of the Republic of South Africa, available at: http://www.parliament.gov.za/content/Land%20Act%20-%20Nicol%20-%20Research%20Paper%20-%20The%20Mines%20and%20the%20Land%20_Version5.pdf. Accessed on 8 April 2015.

source of mineral endowment, which often does not coincide with existing residential infrastructure.

Efforts (by mines) to contain labour costs[21] were enhanced by discriminatory government policies and legislation (mostly enacted during the course of the last century). Various laws ensured that the wages of non-white mining labour were severely depressed compared to those of white employees for whom more senior and better paid work was reserved. In an industry where, internationally, workers are generally paid in excess of workers in other sectors (because of the risks and hard work mining entails[22]), black mine workers were at times receiving as little as a third of the remuneration of black workers in other sectors[23]. Other laws prevented black people from having significant stakes in the economy, mineral wealth and land ownership[24]. Laws were also passed which controlled the movement of black workers, effectively restricting where they could work and reside[25, 26]. This had the effect of limiting the work options for black workers, thus enhancing the domestic mine labour supply (despite suppressed wages). This boost in labour supply was particularly useful for mines which were faced by a foreign labour shortage (in 1974), arising from the suspension of South African recruitment agencies in Malawi and the independence of Mozambique from Portugal[27] (which threatened the subsistence of a long standing labour agreement between Mozambique and South Africa). Making matters worse for the advancement of black mine employees (and other black employees alike) were laws which restricted the education attainable by black pupils[28].

In many ways the lot of black miners began to change with advances in collective bargaining, the consequent increased strength of the trade union movement and reduced cost containment pressures which arose pursuant to the freeing of the gold price after 1971[29]. Nicol[30] argues that the new generation of mineworkers which was organised from 1982 by the National Union of Mineworkers, provided the impetus to weaken apartheid and usher in the political changes which brought about a democratic South Africa.

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[21] Pressures to contain costs were exacerbated (between 1944 to 1971) because of gold being fixed at $35 per ounce and the Rand exchange rate being fixed over the same period. Thus, as mines were extended deeper, costs rose, but the price received was left unchanged.
[22] Nicol, supra note 20 at page 7, citing: Labour Research Service (1987) and Donham (2011:117 and 119).
[23] Nicol, supra note 20 at page 7.
[24] Such as the Natives Land Act 27 of 1913.
[25] Nicol, supra note 20 at page 9.
[26] Such as the Group Areas Act 41 of 1950.
[27] Nicol, supra note 20 at page 8.
[28] Such as the Bantu Education Act 47 of 1953.
[29] Supra note 17.
[30] Nicol, supra note 20 at page 9.

1.4. Post-apartheid and National Development Plan

With the demise of apartheid, the democratically elected government committed itself to address many of the ills visited by the apartheid system (and colonialisation) many of which were epitomised by the management of the mining industry, as outlined above. In this regard Government devised various strategies and socio economic programmes to ensure a sustainable growth projection for the country, ranging from the Reconstruction and Development Programme (RDP[31]) to the current National Development Plan (NDP[32]), adherence to which forms part of the mandate of the DTC.

1.5. Commissions of Enquiry

Over the years, various commissions of enquiry or committees have been constituted to review the tax affairs of the country[33]. The most recent enquiry, exclusively dedicated to mining taxes, was the Marais Committee of 1988 (referred extensively to later in this document). Much has changed in the mining industry since the Marais Committee findings, in part prompting the current enquiry into the taxation of the mining industry. A further tax Commission, namely the Katz Commission of 1994, delved comprehensively into the tax system as a whole, but did not concern itself with mining taxes specifically. The Katz Commission findings, however, gave rise to significant changes to the tax system as a whole (including to the mining industry). Such changes included, inter alia, the introduction of

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[31] The most well-known of these programmes include as follows:

- The Ready to Govern programme which developed into the Reconstruction and Development Programme (RDP);
- The RDP (1994);
- The economic policy framework (1996);
- Growth, Employment and Redistribution (GEAR) of 1996;
- The Accelerated and Shared Growth Initiative for South Africa (AsgiSA) of 2005;
- The New Growth Path (NGP) of 2012; and
- National Development Plan (NDP) of 2012

[32] In May 2010, President Jacob Zuma appointed the National Planning Commission (The NPC is an advisory body drawn from people largely from outside government) to draft a vision and NDP plan for consideration by Cabinet and the country. After releasing the plan in November 2011, the NPC consulted with a broad spectrum of South African stakeholders with a view to achieving widespread participation in the development of the plan. The NDP is a long term detailed plan (until 2030) which serves as a blueprint for the country towards the eradication of the triple challenges of poverty, unemployment and inequality.

[33] Included amongst the Commissions and Committees of enquiry mentioned in this document are:

- The Corbett Committee of 1935/36 constituted to investigate the taxation of gold mines;
- The Holloway Committee of 1945/46 constituted to investigate the taxation of gold mines;
- The Margo Commission of Inquiry into the tax structure of the Republic of South Africa 1986/87, which although concerning itself with the tax system as a whole looked into mining (Chapter 14) and recommended that a specific Committee be convened which could dedicate its efforts exclusively to mining taxes (giving rise to the Marais Committee of 1988);
- The Marais Committee of 1988;
- The Katz Commission of 1994.

Capital Gains Tax (CGT) and the replacement of source with residence as a primary indicator for determining contested taxing right jurisdiction status within the international tax arena.

1.6. Significant changes to the administration of tax (SARS) since 1994

Much has changed in terms of tax administration on a macro level. Globalisation and broader acceptance into the world economic trade arena[34] has vastly complicated issues relating to international tax. This has provided the impetus for the ever increasing problem of Base Erosion and Profit Shifting (BEPS[35]) and the development of substantially more sophisticated structured finance schemes.

As an organisation, SARS has transformed substantially. New legislation in 1997 saw the establishment of the South African Revenue Service[36], which made SARS an administratively autonomous organ of the state. Thus, South Africa's tax regime is set by the National Treasury but is managed by SARS.

In the last decade SARS has changed from being a paper bound organisation to being more technologically driven, in the process realising administrative efficiencies. These efficiencies, however, have not been fully achieved in the mining industry, as submission and processing of mining tax returns remains predominantly manual. The reason for this delay is due to the added complexities and differences in tax treatment imposed by the law on mining taxpayers. These differences have rendered it uneconomical (thus far) for SARS to create modernised systems exclusively dedicated to a single industry.

Another key change to administration stems from the promulgation of the Tax Administration Act (TAA)[37].This Act is chiefly aimed at simplifying administration, mainly by consolidating the administrative aspects of various tax acts administered by SARS (in so far as possible). The TAA has had considerable impact on the administration of taxes which naturally includes administration of mining related taxes.

[34] Resulting in an expanded international tax treaty network.

[35] The issue of BEPS is by no means an exclusively South African problem and troubles tax administrators and governments worldwide (The topic is currently being significantly studied by the Organisation for Economic Co-operation and Development (OECD)). The issue is also currently being reviewed by another stream of the DTC but is no less a problem to the mining industry than any other.

[36] Act 34 of 1997.

[37] The Tax Administration Act 28 of 2011 became effective on 1 October 2012.

2. Regulatory landscape and non-tax related challenges facing the mining industry

The mining industry faces various challenges arising from a range of risks, intrinsic and extrinsic, to the mining industry. Of late, some of these risks have materialised and converged to place the industry under strain.

2.1. Life cycle of mines

The nature of mining is such that mining operators are exposed to protracted lead times before the generation of revenue. This problem is exacerbated by the high upfront capital infrastructure costs associated with establishing a mine. Therefore, in the early period of operations, risks and expenditures are very high, while revenue inflows are delayed for a considerable time (this issue is discussed in greater detail as a prelude to the discussion on tax incentives proffered to mining taxpayers). This clearly has significant cash-flow implications for a newly established mine.

2.2. Geography and geology of mining

Mining takes place at the source where minerals are geographically located. This means that mining activities are captured at the place where the minerals are to be found. Other industries are relatively mobile and are able to relocate to different jurisdictions, should the political or legislative environment change detrimentally. This lack of mobility places the owners of mines at risk in the case of political change and legislative changes, after they have made a large scale investment.

2.3. Economic risk

The life cycle risks (highlighted above), cause mines to be particularly vulnerable to changing economic conditions. This is particularly so given the high upfront expenditure involved in commissioning a mine: there is the reasonable expectation that such costs will be recovered once revenue is generated. This expectation can be frustrated in times of low commodity prices or periods of plunging mineral demand (as occurred following the great recession of 2008). This risk is compounded by the fact that mines, subject to global market forces, are generally price takers, leaving mines vulnerable to low mineral prices.

2.4. Labour

The mining industry is relatively labour intensive, although employment in the industry has been steadily declining, from employing 828,672 people in 1986 to 495,568 people in 2014[38] (See Annexure C, Table 2). Making matters more difficult for mining businesses is that their labour costs have been increasing, on average by 11.9 per cent per annum in the last 20 years[39]. The average mining wage in respect of 2014 was R206,012, compared to the average South African industrial wage (which excludes the agricultural sector) of R191,640[40] in respect of the same year.

Competitive wages (which are excess of the many other industries), has been achieved in the mining sector in the midst (some would argue as a consequence) of the most fractious and serious labour disputes since the end of apartheid. These disputes include the strikes at the Rustenburg Marikana platinum mines in 2012 (which resulted in the deaths of 34 people[41]) and the 5 month platinum strike at Lonmin, Anglo American Platinum and Impala Platinum mines in 2014[42].

2.5. Electricity

The typical electricity consumption[43] [44] needs of a mine are substantial[45]. Whilst mines which are supplied electricity directly from Eskom are not subject to "load shedding", interventions exist to constrain electricity demand when, and to the extent, it becomes necessary. Accordingly, demand management programmes exist where electricity consumers agree to

[38] Information obtained from the COMSA.
[39] See Annexure C –Table 5.
[40] Calculation of annual gross earnings taken from quarterly average earnings contained in :Statistics SA (December 2014) ,"Statistical release-Quarterly Employment Statistics", from: http://www.statssa.gov.za/publications/P0277/P0277December2014.pdf -Accessed 13 April 2015
[41] Harding, A. Marikana massacre: Should police be charged with murder? BBC News. Retrieved from http://www.bbc.com/news/world-africa-30002242 Accessed 13 April 2015.
[42] Cropley E. (2014)"Union says wage deal to end South African platinum strike is imminent". Reuters. Retrieved from: http://uk.reuters.com/article/2014/06/13/uk-safrica-strike-idUKKBN0EO0HV20140613. Last accessed: 13 April 2015.
[43] Eskom integrated annual report, available from: http://integratedreport.eskom.co.za/dow-pdf.php (see Annexure "D"-Figure 7 of this report).
[44] Supra at page 94, total electricity sales to the mining sector represent 14.6% of total direct sales (31611GWh) for 2012/13 and 14.1% (30 667GWh) for 2013/2014 (see Annexure "D"-Figure 7 of this report).
[45] Electricity is an important input for all forms of mining and is required inter alia for the transport of personnel, material and ore, production machines and mineral processing. In addition it is the source of vital health and safety related applications such as the pumping of water, ventilation and refrigeration.

or are required[46] to curtail demand, in some cases on receipt of compensation[47]. Since 2008, various Eskom electricity supply shortages have forced mines to reduce demand, resulting in substantial production cutbacks and at times bringing mines to a complete standstill[48]. In an industry where continuous production is often required for economic viability, cessation of mining activity for even a single day can be financially disastrous[49].

An erratic electricity supply has not been the only woe to befall the mining industry relating to its electricity consumption requirements. In addition, mines have had to endure severe electricity price increases (in recent years) which have placed upward pressure to its input costs of production (electricity being a major component of a mine's costs). Management of production costs is particularly important to the mining industry as prices are generally set by the market and cannot be passed onto the consumer (i.e. mines are price takers). This means that substantial cost increases can jeopardise the viability of certain mining operations, reduce profitability and deter potential investment in mines. Since 2008 average electricity prices have increased by 20% per annum, an amount sharply above the consumer price index, which has averaged 6% per annum over the same period (see Annexure C, Table 25).

2.6. Regulation

Of particular importance to the mining industry was the enactment of the Mineral and Petroleum Resources Development Act[50] (MPRDA), which broadly regulates the mining industry. Its stated objectives in its preamble set the foundation for areas which the MPRDA seeks to regulate:

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[46] Mandatory demand curtailment in terms of specification NRS 048/9 (The NRS Project Management Agency produces NRS specifications for the Electricity Supply Industry in collaboration with the South African Bureau of Standards (SABS) on behalf of the Electricity Suppliers Liaison Committee.) NRS 048/9 specifies conditions for mandatory demand reduction.

[47] An example of this is the Demand Market Participation Programme which was introduced in 2004 for large industrial customers.

[48] Between 24 January 2008 and 4 February 2008 a substantial number of mines were forced to bring production down to a state of almost complete cessation as the stability of the entire Eskom electricity supply was in jeopardy (although still critical the electricity supply was partially restored on 4 February 2008). In a written submission to the DTC, dated 5 May 2015, the COMSA estimated that every day that the mining industry was closed cost the country about R1 billion in export earnings and another R700 million in lost capital expenditure, payment to suppliers, dividends to shareholders, wages to labour and taxes to government.

[49] Information from COMSA (dated 6 May 2015) shows that the 5 major gold producers collectively lost 221,948 kg of gold production (0.5% of total production) due to load curtailment from 1 January 2015 to 30 April 2015. At the prevailing gold price of US$1175-95/oz., this equates to a loss of US$8 391 332-25 or R101m in revenue. So far gold producers have not retrenched any personnel as a direct result of load curtailment, but at least one major producer was considering the option.

[50] Act 28 of 2002.

a) It acknowledges that South Africa's mineral and petroleum resources belong to the nation and that the State is the custodian of these resources. Adoption of this principle has a significant impact on the manner in which the MPRDA deals with the licencing of these resources;

b) It affirms the State's obligation to protect the environment, in the process of providing a framework for exploitation of mineral and petroleum resources. The MPRDA sets a platform for appropriate environmental management and prescribes efforts that have to be taken by mine owners to ensure that mines are properly rehabilitated for environmental purposes at the end of use[51];

c) It recognises the need to promote local and rural development and the social upliftment of communities affected by mining. The MPRDA gives effect to this principle by tying the provision of mining exploitation rights with certain contractual obligations on licensees, requiring such licensees to adhere to Social and Labour plans (SLP's), geared at assisting the mining community;

d) It affirms the State's commitment to guaranteeing security of tenure in respect of prospecting and mining operations;

e) It emphasises the need to create an internationally competitive and efficient administrative and regulatory regime;

f) It affirms the State's commitment to bring about equitable access to South Africa's mineral and petroleum resources, to eradicate all forms of discriminatory practices in the mineral and petroleum industries and confirms the need for the State to take legislative and other measures to redress the results of past racial discrimination. In this regard the MPRDA prescribes that a charter be drafted which sets targets for achievement of these objectives. The implementation of Broad Based Black Economic Empowerment (B-BBEE[52]) or Black Economic Empowerment (BEE) legislation flowing from this legislation has particularly impacted on the industry. The Mining Charter[53] regulates B-BBEE in the mining industry and is implemented by the

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[51] Many of these provisions of the MPRDA have prescribed application in conjunction with provisions laid down in terms of the National Environmental Management Act 107 of 1998.

[52] BBBEE in the mining industry is regulated by the amended broad-based socioeconomic empowerment charter for the South African mining and minerals industry (the Mining Charter), promulgated in 2010 in terms of the MPRDA.

[53] The charter imposes various targets, including amongst other ones required percentage levels for procurement of goods and services through BEE entities and levels of ownership necessary to achieve BEE status (currently set at 26% by 2014). Highly topical at the moment is the issue of whether a company which has achieved empowerment status continues to be empowered if a BEE person disposes of its BEE shareholding to a non-BEE person, i.e. whether the "the once empowered always empowered principle" applies. In this regard government is seeking a declaratory court order on the issue: see: http://www.bdlive.co.za/opinion/columnists/2015/04/09/sticky-issue-of-

Department of Mineral Resources (DMR). The Draft Reviewed Mining Charter is expected to impact the industry further.

ownership-at-heart-of-empowerment; last accessed 9 April 2015 *[Ed. also Money Web discussion approx. 18th June 2015]*

III. ECONOMICS AND FINANCIAL STATE OF THE MINING INDUSTRY

Although the relative contribution of the mining industry to the economy has declined over time, it still remains a vital sector of the economy. Areas of value added to the economy include amongst others: the creation of jobs, its contribution to GDP, its indirect linkages with other industries, the tax revenues it generates and the positive impact it has on the balance of payments of the country. This chapter seeks to provide some measure of these positive spinoffs to the economy.

1. Relative contribution to the GDP

In the early 1970's, the mining sector contributed around 8.4% (nominal) of Gross Domestic Product (GDP), rising to double digits from 1974. This rise in contribution occurred mainly due to the price of gold surging in dollar terms. At its peak (in 1980) the mining sector contributed 19.4% to the GDP, moderating to the 8.3% currently reported (See Annexure C, Table 6, which sets out the nominal GDP, Mining GDP and the relative contribution).

During the boom period gold acted as a safe haven, providing shelter against volatility as a result of the oil crisis. South Africa's industrial policy during the seventies and eighties was inward looking with the mining sector being more important as an export sector. From the 1990s onwards, the mining sector's contribution to the GDP reduced to single digits due to the increasing contribution from the financial and manufacturing sectors.

On a nominal basis, mining has contributed between a low of 5.9% (1997) and a high of 8.7% (2008) to nominal GDP. Despite the recent financial crisis, the mining contribution to GDP has not dropped below 8.2%, which is well above the levels that were attained prior to 2008 (See Annexure C, Table 6).

Studies have demonstrated that although not the largest contributors to GDP, the mining and manufacturing sectors have the greatest relative impact (compared to other sectors) in terms of the volatility of GDP growth rates (See Annexure D, Figure 1). Marked negative pressures on profit margins and related tax profits from the mining sector during lower or recessionary growth phases can also be observed[54] (See Annexure D, Figure 2).

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[54] An exception to this trend is observable with regard to CIT Tax collections during 2008/09 relative to the commodity price index, due to the impact of the platinum price boom during this period. In this regard it is to be noted that that there is a strong correlation in mining CIT collections and metal prices (See Annexure D, Figure 2).

2. Mining as an indirect contributor to GDP and the economy (linkages and multipliers)

Whilst the direct contribution made by mining to the GDP is approximately 8%, the Chamber of Mines (COMSA) estimates that, indirectly, mining contributes an additional 9% to GDP (in totality contributing 17% of South African GDP[55]). This indirect contribution may be explained by multiplier and induced effects of mining on the rest of the economy (through upstream procurement, downstream beneficiation and the induced effects of the sector). COMSA further estimates that another R300 billion in downstream turnover and 200 000 jobs are created in beneficiation industries that use minerals mined in South Africa. In addition, mining is a major contributor to the creation of employment in South Africa, helping to create employment for 1.4 million South Africans throughout the economy in 2012 (of these jobs created, 880 000 jobs are estimated to have been created in associated industries and through the induced effects of mining).

Not only does the mining sector already contribute significantly to the economy, but both the NDP and Department of Trade and Industry (DTI) also recognise that it is capable of contributing significantly more. Much of present DTI policy focuses on increasing beneficiation of domestic goods in South Africa. The concept of beneficiation is described in the DTI website as[56]:

> … value-added processing, involving the transformation of a primary material (produced by mining and extraction processes) to a more finished product, which has a higher export sales value. Beneficiation involves a range of different activities including: Large-scale, capital-intensive activities, such as smelting; sophisticated refining plants; and Labour-intensive processes, such as craft jewellery, metal fabrication and ceramic pottery. Each successive level of processing permits the product to be sold at a higher price than the previous intermediate product or original raw material and adds value at each stage.

The NDP is also favourably disposed towards beneficiation, asserting in this regard as follows[57]:

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[55] Estimates on the contribution by the mining sector to GDP have been provided by COMSA in a submission to the DTC dated10 June 2014.
[56] http://www.dmr.gov.za/beneficiation-economics.html
[57] National Planning Commission (2012). "National Development Plan". NPC - At page 125

…Beneficiation or downstream production can raise the unit value of South African exports. In this regard, resource-cluster development, including the identification of sophisticated resource-based products that South Africa can manufacture, will be critical…Substantially more attention will be devoted to stimulating backward linkages or supplier industries (such as capital equipment, chemicals and engineering services). Demand is certain - there is an opportunity for specialised product development, and the product complement is diverse. They are also more labour-absorbing than typical downstream projects. Such products have the potential for servicing mining projects globally, which is an advantage should the commodity boom persist.

Mining companies have an explicit requirement to participate in local development, and have the resources to do so in South Africa and the region. The sector could stimulate local economic development more substantially if the mining charter was aligned to these goals. More could be done on human-resource development, local economic development and procurement.

Notwithstanding the difficulties, it should be possible to create about 300 000 jobs in the minerals cluster, including indirect jobs.

3. Attraction of domestic savings and foreign capital

The mining industry attracts domestic savings and foreign capital. With regard to foreign direct investment (FDI) the industry contributed 14% of South Africa's FDI in 2013, down from 25% in 2010[58]. Through pension funds and life assurance contributions, many South Africans have their retirement savings invested in the mining sector. At the end of 2014, mining shares constituted 18.7% of the total value of the JSE based on market cap (down from 30% in 2010). For the 3 years 2011 to 2014, the shareholder returns to investors through dividend payments were 3.7% of total expenditure[59].

There has been a significant decline in mining revenue since 2010 and investors appear to be demanding increased shareholder returns. Weakening commodity prices across South African mining sectors and increased external mining disruptions have resulted in the reduction of the mining sector's profitability. The reduction in mining share prices appears to signal shareholders being dissatisfied with returns on their investments relative to the risk

[58] Information obtained from COMSA dated 20 April 2015.
[59] Ibid.

involved in investing in mining equities. Over the last 5 years (to March 2015), the South African mining sector equity values have had a negative return to shareholders of 6.4% per annum compared to a positive return to the "All share JSE equity" index of 12.7% per annum over the same period[60].

4. International commodity (metal) prices and corresponding investment

Metal commodity prices in the 1990's were fairly stagnant. This situation was reversed from 2003 onwards, with world commodity prices experiencing a boom and with steep price rises occurring until the beginning of the global financial crisis in 2008. At the height of the crisis, prices plunged to their lowest levels since the onset of the boom (almost reaching pre-boom prices), particularly in the fourth quarter 2008 and first quarter 2009. Prices, however, made a recovery in 2010, achieving pre-2008 levels and substantially exceeding such heights in February 2011. Since 2011, prices have declined but remain well in excess of 1990 prices, trading more or less at prices similar to those achieved shortly before the 2008 recession (See Annexure D, Figure 8).

One would have expected the commodities boom to have resulted in an increase in investment in the South African mining sector as it did in other mining economies. This has not been the case with investment remaining fairly suppressed, especially over the last 5 years (See Annexure D, Figure 9).

5. Volumes: mineral reserves and mineral mix

5.1. Estimates of South Africa's mineral reserves (non-energy)

Estimates of South Africa's unexploited mineral reserves vary; while Citibank estimates the mineral reserves (non-energy) at US$2.5 trillion[61], the DMR estimates the value of reserves as being closer to US$3.5 trillion [62].EcoPartners estimates the country's total in situ resources to be US$4.71 trillion [63]. Whatever the exact value, all agree that South Africa's mineral reserves are vast and constitute the largest mineral reserves in the world.

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[60] Ibid.

[61] Sainsbury et al. (13 September 2011) *"A Guide to the World of Metals & Mining Made Simple". Citi Investment Research & Analysis - a division of Citigroup Global Markets Inc*. Retrieved from: http://www.wisburg.com/wp-content/uploads/2014/09/Citi-A-Guide-to-the-World-of-Metals-Mining1.pdf Last accessed 20 April 2015.

[62] Reply to a parliamentary question by Minister of Mineral Resources-Minister Susan Shabangu as reported: Parliamentary Monitoring group (November 2012), Question 2768. Retrieved from https://pmg.org.za/ last accessed 4 May 2015- See annexure "C"-Table 24.

[63] Baartjes, N. Gounden. (September 2011) *" Synopsis of the first report of mineral resources and reserves in South Africa"*. Retrieved from http://www.kwikwap.co.za/ecopartners/docs/Mineral%20Resource%20and%20Reserves%20of%20South%20Africa.pdf last accessed 20 April 2015.

Most of the US$2.5 trillion mineral reserve estimation by Citibank comprise the platinum group metals (PGM) which amount to US$2.25 trillion of these reserves, gold comprising US$151 billion and iron ore US$37 billion (see Annexure C, Table 12). Of these resources, South Africa has 91% of the world's PGM reserve resources, 6% of its gold resources and 1% of the iron ore (see Annexure C, Table 13). These figures can be contrasted with DMR estimates which differ in value but are similar with regard to proportions (see Annexure C, Table 24).

5.2. Changes to the mineral mix

Gold mining has long been the backbone of the mining industry; this has however changed over the past years. Declining gold ore grades and increasing costs have meant a steady decrease in gold mining production over the years: from 68% in 1970 to 6% of world production in 2012 (see Annexure D, Figures 4 and 5). Gold mining, however, remains a large employer (although employment rates have been declining from over 550,000 people in 1987 to 119,000 people in 2014[64]). It also remains a large exporter[65] and a significant generator of foreign exchange. Other minerals, such as the PGMs[66], have to some extent alleviated the void caused by reducing gold reserves[67] (see Annexure D, Figure 6, which charts relative mineral production changes since 1975).

5.3. Mining sector contribution to tax revenue

5.3.1. Total mining collections

In interpreting tax information pertaining to the mining sector[68], the following aspects need to be taken into consideration as part of determining the composite tax yield:

- The mining sector pays Income Tax chiefly by way of provisional tax payments. Once assessments or audits are completed, provisional taxes already paid are either supplemented (by means of additional payments) or refunds are made by SARS in respect of over-payments;

[64] See Annexure C, Table 2.
[65] See Annexure C, Table 7.
[66] According to COMSA, South Africa contains 95.5% of world's PGM reserves; see: Chamber of Mines of South Africa. (2014)"Facts and Figures 2013/2014". COMSA. Retrieved from: https://commondatastorage.googleapis.com/comsa/f_f_2015_final.pdf Last accessed 23 April 2015. At page 10
[67] Although the relatively high labour absorption of gold mining cannot be fully replaced by other more capital intensive minerals.
[68] As provided by SARS.

- As in other sectors, mining employers are required to collect Employees' Tax [Pay-As-You-Earn (PAYE)] from employees in fulfilment of employee income tax obligations[69];
- Since the mining sector predominantly supplies goods by way of export, the industry generally finds itself in a VAT refund position[70]. The net effect of this serves to reduce overall mining tax collections.

The contribution of the mining sector to Corporate Income Tax (CIT) has changed significantly over the course of time. Post-recession (2010/11 – 2013/14), the contribution by the mining sector to CIT, Personal Income Tax (PIT) and VAT was, on average, 1.8% (as a percentage of total tax revenue). This was significantly lower than its peak of 3.3% in 2008/09. This highpoint in CIT collections stemmed from the commodity price boom which coincided at the time[71]. Furthermore, high commodity exports to China and a weaker rand[72] also contributed to top performance.

The recession had a severe impact on the mining sector, causing a significant decline in its net relative contribution to total tax revenue, which fell to 0.4% in 2009/10. An improvement was seen in 2010/11, with a relative contribution to total tax revenue of 2.4%. This was soon dampened by the labour strikes of 2012/13 which saw the relative contribution of mining declining to 0.7%. However, collections for 2013/14 have started to show signs of improvement with a relative contribution of 2.0% post the recession (see Annexure C, Table 15)[73] but which declined in 2014/15 to 1.5% due to lower commodity prices as well as electricity supply constraints..

5.3.2. Corporate Income Tax (Provisional payments plus assessment payments less refunds)

Mining CIT has been growing steadily from R1.0bn in 1992/93 to R2.1bn in 1998/99, a compound annual growth rate (CAGR) of 13.5% (see Annexure C, Table 17). During this

[69] Employees' Tax refers to the tax required to be deducted by an employer from an employee's remuneration paid or payable. The process of deducting or withholding tax from remuneration as it is earned by an employee is commonly referred to as PAYE.

[70] VAT is levied at the standard rate on supplies made by the mining sector to SA consumers. Where goods are exported, VAT is levied at the zero rate. The mining sector pays VAT on goods or services acquired from local VAT vendors and pays VAT on importation of goods into SA. Refunds to the mining sector are therefore a result of the extent of input tax claimable (incurred locally together with VAT paid on importation) against standard and zero-rated supplies.

[71] The gold price reached an average of US$969 in the month of March 2008 whilst the platinum price reached an average of US$2,059 in the month of May 2008.

[72] The rand was trading as high as R10.12 to the US$ in November 2008.

[73] The main taxes are composed of Net CIT (CIT provisional and assessment payments, interest on overdue taxes less CIT refunds), STC/DT, PAYE, domestic VAT payments, import VAT less VAT refunds and diesel refunds.

period, mining CIT as a percentage of total tax revenue remained on average at 1.2% (arguably an understated contribution, as this amount only included income generated by the mines from mining and not from other income[74]). From 2000/01 until 2013/14 mining CIT included both the mining and non-mining revenue of mining companies; the percentage contribution of total tax revenue thus increased to 2.3% on average.

As noted earlier, a number of challenges have presented themselves in the mining sector between 2000/01 to 2013/14, some of which have included fluctuating commodity prices, declining profitability, high electricity tariffs, escalating labour costs and weakening demand. This notwithstanding, the sector has registered impressive growth (in CIT revenue) from R3.9bn in 2000/01 to R21.5bn in 2013/14; in other words a compound average growth rate of 14.0% was achieved.

During 2006/07 to 2008/09, CIT mining payments experienced positive growth, with average growth of 69.2% over this two year period, as demonstrated in Annexure C, Table 17.

CIT mining payments of R22.4bn were collected in 2008/09, resulting in a year on year growth of R9.2bn (69.2%) emanating from higher commodity exports to China, a weaker rand reaching R10.12 to the US$ in November 2008 and rising commodity prices. The gold price reached an average US$ 969/oz. in the month of March 2008, whilst the platinum price reached an average US$ 2,059/oz. in May 2008. The platinum sector was a significant contributor to the growth in 2008/09 as it contributed 20.6% of the total mining CIT collections for 2008/09.

The global economic crisis had a severe impact on demand and commodities prices, which slowed down significantly. CIT declined significantly too as a result of this. Between 2008/09 and 2009/10 the platinum sector was the most severely affected, as CIT collections slumped by R3.6bn (78.8%).

A slight improvement was evident in 2010/11 and 2011/12 in CIT mining payments, when R17.7bn and R21.0bn was collected respectively, levels last seen prior to the recession. Platinum and gold prices improved significantly during 2010/11 and 2011/12. The platinum price reached a high of US$1827/oz. in February 2011, whilst the gold price reached US$ 1 776/oz. in September 2011.

The mining labour strikes in 2012/13 had a severe impact on CIT as mining companies suffered significant losses which translated into lower CIT collections, particularly from the

[74] For example, interest income.

platinum sector. The 2012/13 CIT mining collections declined by R6.3bn (29.8%) from 2011/12, as a result of the strikes. For the 2013/14 fiscal year, CIT collections recovered by 6.8bn (45.9%) when compared to 2012/13.

The rand weakened in 2013/14 and was close to R10 to the US$ in May 2013, its lowest level in 4 years. Instability in the global market as well as the unrest in the mining sector, combined with the trade deficit, were the primary drivers of the volatility in the rand.

The recovery in 2013/14 emanated particularly from the chrome as well as the Iron ore sectors which pulled the industry up by R2.1bn (107.6%) and R4.0bn (83.5%) respectively. Although the platinum sector was subject to various labour strikes, it still managed year on year growth of R0.8bn (78.3%). On the downside, the gold and uranium sector declined slightly by R0.4bn (34.8%) on the back of labour unrest.

The last quarter of 2013/14 and the first quarter of 2014/15 were hit by the longest strike in the history of the mining industry. Although this lasted for 5 months (23 January 2014 to 24 June 2014), the impact on CIT was not as severe as expected as a result of stockpiles that could be utilised, although the impact on related industries was probably more severe.

The 2014/15 collections declined by R3.5bn (16.2%) as a result of the strikes as well as lower commodity prices, particularly the collections from iron ore. The tax collections from iron ore declined by R1.7bn (19.6%) followed by chrome, which fell by R1.2bn (30.7%).

5.3.3. Secondary tax on companies (STC) /Dividends withholding tax (DWT)

STC collections from the mining sector have been growing steadily; from R1.9bn in 2006/07[75] collections reached a peak in 2011/12 of R3.2bn overall (Annexure C, Table 19 reflects STC payments more fully). The recession in 2009/10 had a significant effect on STC payments during that year as only R0.7bn was collected, a significant decline of R1.6bn (69.6%). The platinum sector was the most severely affected by the recession as STC collections slumped by R0.9bn (60.3%) between 2008/09 and 2009/10.

An improvement of R1.5bn from a lower base was seen in 2010/11 due to improved profitability. In 2011/12, R3.2bn was collected, representing a significant growth of R1.0bn (44.8%), indicative of further improved profitability. The iron ore sector showed the strongest recovery post the recession as STC collections grew by R1.0bn (561.2%) and R0.7bn (58.7%) in 2010/11 and 2011/12 respectively.

[75] Although to some extent slowed by the recession in 2009/10.

The introduction of Dividends Withholding Tax (DWT), from 1 April 2012 is likely to have affected the dividend policies of companies, as the dividend could be fully exempt or subject to tax at a lower rate, depending on the nature and residency of the shareholder.

STC was replaced by DWT, which is a tax levied on shareholders (beneficial owners of dividends) when they receive dividend distributions from companies. DWT imposed on shareholders is withheld from dividend payments. The amount withheld is paid over to SARS by the company paying the dividend, rather than by the beneficial owner (the recipient of the dividend). Some companies paying dividends may, however, use regulated intermediaries to carry out the same function (normally the case with listed companies). The regulated intermediaries are in the financing, insurance, real estate and business services sectors; dividends tax paid to SARS on behalf of the shareholders is thus not allocated to the specific sector. The sector allocation of dividends tax paid by intermediaries is significantly distorted as payments cannot be allocated to the specific sectors of the companies declaring dividends, but are classified under financing, insurance, real estate and business services (hence figures for 2012/13 and 2013/14 could not be provided; however, Annexure C, Table 19 reflects the commodity-level break down of STC collections from 2006/07 to 2011/12).

5.3.4. PAYE

On average, PAYE collections from mining companies increased from R6.0bn to R17.7bn over the period 2006/07 to 2013/15 (details of PAYE payments per commodity are set out in Annexure C, Table 20). Growth peaked at 31.2% in 2008/09 and dropped to 5.3% in 2009/10 because the recession dragged down this sector. The growth of 22.5% during 2010/11 is a result of a general rise across all commodity groups. In 2011/12 PAYE collections grew by 21.3%, buoyed by an incentive bonus pay-out, made by an iron ore mine. The growth in collections during the 2012/13 year slowed down to 4.9%, partly due to the high base in the iron ore sector, as a result of the incentive bonus pay-out in the previous year. The slowdown could also be ascribed to strikes and unrest and falling employment in the mining sector. Collections for 2013/14 have, however, started to show signs of improvement with a year on year growth of 8.3%, particularly in the platinum, diamond and coal sectors by R0.7bn (20.5%), R0.1bn (19.7%) and R0.2bn (11.4%) respectively. Included in “Other” are mines such as copper, manganese and quarrying operations and mines with unspecified sub-activities.

Platinum, gold and coal are the major mining subsectors contributing to PAYE payments. Wages account for a significant proportion of the mining sector production cost. Increases in labour costs and the attendant labour unrest may have contributed to the decline in employment in the sector. The proportion of wages to total cost is highest in the gold sector followed by the PGM sector and then the coal sector, explaining the prominent declining trend in employment in the gold sector.

5.3.5. Minerals and Petroleum Resources Royalty (MPRR)

The Mineral and Petroleum Resources Royalty Act (MPRRA) came into effect on 1 March 2010 (Annexure C, Table 21 contains a list of MPRR collections by commodity). MPRR collections in 2010/11 were R3.6bn, which increased to R5.6bn in 2011/12. The year-on-year increase of R2.1bn (57.9%) was mainly due to the royalty being in effect for a full year for all companies subject to MPRR. Collections in 2012/13 slowed to R5.0bn and recovered to R6.4bn in the 2013/14 fiscal year. During this period, MPRR collections increased by R1.4bn (28.0%) as a result of improved trade in the mining sector after recovering from the impact of the 2012 mining strikes.

The iron ore commodity has been the main contributor to the MPRR, accounting for 51.9% of collections in 2013/14. One of the reasons for this dominance is that the MPRR rates are determined according to a formula which differentiates between the refined and unrefined conditions of the resources. MPRR rates for unrefined mineral resources are set at a higher rate and would attract higher collections from iron ore, most of which is exported in unrefined form.

6. The effect of mining on the balance of trade

South Africa is one of the world's largest producers of platinum, chrome, coal, iron ore and manganese, with most of these being exported. Hence these items drive much of South Africa's trade balance.

The consistently strong trade surplus for the mining sector is attributable to platinum, iron ore and gold and uranium, which combined, make up around 60% of this surplus[76]. South Africa's trade account[77] for the calendar year 2014 reported a deficit of R94.5bn compared to the R71.4bn deficit in calendar year 2013. The 2013/14 fiscal year[78] showed a trade account

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76 Further details on the trends of the trade balance according to commodity are shown in Annexure C, Table 7. The impact of the widespread labour strikes is evident in the 2012/13 figures, with most commodities being adversely affected.

77 Information on the SA trade account is available on the SARS website under Monthly merchandise trade stats-http://www.sars.gov.za/ClientSegments/Customs-Excise/Trade-Statistics/Pages/default.aspx Last accessed 20 May 2015.

78 Information on the SA fiscal account is available on the SARS website as a table for import VAT and customs statistics in the tax statistics booklets: http://www.sars.gov.za/About/SATaxSystem/Pages/Tax-Statistics.aspx Last accessed 20 May 2015

deficit of R76.9bn, with the deficit increasing to R99.9bn in 2014/15. However, the mining commodities comprise little to none of this deficit, with South Africa's mining trade account for 2012/13 showing a surplus of R318.4bn. This is a drop of 7.7% from the R345.1bn surplus of 2011/12, which can be largely attributed to the mining strikes that commenced in August of 2012. In 2013/14, the account surplus recovered to R367.8bn, which is a 15.5% year on year growth, before dropping by 9.8% in 2014/15 with a trade surplus of R331.6bn. For calendar year 2013, the mining trade reflected a surplus of R359.7bn, which is a 14.1% increase on the R315.3bn surplus of 2012. However, this figure contracted by 4.6% to R343.3bn in 2014 (Annexure C, Table 7 records the trade balance between 2012/13 and 2014/15).

The strong trade balance pertaining to mining makes it clear that South Africa is a net-exporter[79] of minerals, with imports being of relatively less importance, consisting mainly of imports of high grade coal and semi-finished diamond products[80] [81] . Over the last decade mining has on average contributed 32%[82] of the country's merchandise exports and is a vital earner of foreign exchange. In this regard, if the values of beneficiated exports, such as ferro-alloys, chemicals, plastics and steel are included then the contribution of the minerals complex to merchandise exports rises to over 50%[83].

[79] Annexure C, Table 8 illustrates exports in the mining sector from 2012/13 to 2014/15 with details of the top 6 traded commodities
[80] Annexure C, Table 9 indicates the trends on imported mining goods between 2012/2013 and 2014/15
[81] Annexure C, Table 10 illustrates trends of the top 3 imported mining merchandises and a more detailed breakdown of their countries of origin).
[82] Chamber of Mines of South Africa. (2014)"Facts and Figures 2013/2014". COMSA. Retrieved from: https://commondatastorage.googleapis.com/comsa/f_f_2015_final.pdf Last accessed 23 April 2015. At page 8.
[83] SARS submission to the Davis Report dated October 2014 based on information obtained from COMSA.

IV. THE MINING TAX SYSTEM

The mining tax regime has a long history in South Africa, having evolved over many years by case law and in response to the South African geological, economic, social and environmental context. The MPRDA sector legislation and the royalty regime (introduced relatively recently in 2010) were superimposed upon the pre-existing tax regime. This section outlines provisions of the general income tax legislation applicable to the mining industry, the mining specific tax dispensation applicable to this sector only, as well as the royalty regime.

1. South African income tax

In many respects South African taxpayers who derive taxable income from mining activities are charged income tax in the same manner as taxpayers in other sectors[84]. There are, however, areas of departure which serve to distinguish the taxation of businesses conducting mining from the businesses in other industries. Before considering the aspects which make mining tax unique, it is essential to have (at least) a rudimentary understanding of how income tax is charged for most taxpayers and the differences in which corporates and individual taxpayers are taxed.

Income tax is charged on taxable income (for companies and individuals) at the current rate of 28%[85] for companies, a 40% tax rate for trusts and on a progressive rate for individual tax payers[86] . It is beyond the scope of a report of this nature to deal with the concept of taxable income in detail, however, a portion of a document published by SARS[87] has been adapted, and explains this concept in summary, as follows:

The income tax act provides for a series of steps to be followed to determine a taxpayer's "taxable income" for any year of assessment or period of assessment.

- **The first step**

Establish a taxpayer's "gross income"[88] for any year or period of assessment, namely, in the case of:

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[84] By and large taxpayers conducting business in other sectors are taxed substantially the same way, save for certain exceptional sectors, such as the life insurance industry.

[85] Income Tax rates are published annually by the National Treasury in the Government Gazette.

[86] The National Treasury publishes tax tables which contain the marginal rates applicable for taxpayers, which is chargeable on their taxable income.

[87] Taxation in South 2014/15- http://www.sars.gov.za/AllDocs/OpsDocs/Guides/LAPD-Gen-G01%20-%20Taxation%20in%20South%20Africa%20-%20External%20Guide.pdf, Last accessed 20 March 2015

[88] Gross income is defined in section 1 of the Income Tax Act.

• any person who is a resident[89], the total amount of income (worldwide), in cash or otherwise, received by or accrued to or in favour of that person; or

• any person who is a non-resident[90], the total amount of income, in cash or otherwise, received by or accrued to or in favour of that person from a source within South Africa, during that year or period of assessment, excluding receipts or accruals of a capital nature[91], but including those amounts referred to in paragraphs (a) to (n)[92] of this definition, whether of a capital nature or not.

❖ **The second step**

Determine "income"[93], by deducting all amounts that are exempt[94] from income tax under the Act from gross income.

❖ **The third step**

Determine "taxable income"[95] by:

• deducting all amounts allowed to be deducted or set off under the Act from income[96];

[89] Subject to certain exceptions South African residents are subject to income tax on income earned anywhere in the world. Prior to 2001, income tax was charged on a source based system; that is, income earned in South Africa (from a South African source) was taxed in South Africa. Income sourced in South Africa which is not earned by a South African resident is still based on a source basis but taxation on this basis may be moderated or nullified in terms of double tax treaty agreements signed between South Africa and the country of which the person sought to be taxed is resident.

[90] Ibid.

[91] The courts have long grappled with distinguishing whether receipts or accruals are capital in nature. The distinctions can be somewhat nebulous which has resulted in a massive body of case law with no litmus test to answer the question. An analogy is often drawn of distinguishing a tree from the fruit that it bears, with the tree being akin to capital and revenue being the fruit. Therefore money invested in a bank is regarded as capital and interest thereon the fruit (this paradigm can easily be disrupted depending on the use to which the capital is put).

[92] These sections aim to include certain otherwise not includable income that is taxable as part of gross income, mainly to counter various tax avoidance schemes which have arisen over the years.

[93] "Income" is defined In terms of section 1 of the Income Tax Act.

[94] Section 10 of the Income Tax Act lists various amounts which would otherwise be added to gross income to determine income but which, notwithstanding, are treated as exempt; for example, an amount received by way of a scholarship as detailed in section 10(q) of the Income Tax Act.

[95] "Taxable income" is defined In terms of section 1 of the Income Tax Act.

[96] Employees are generally barred from claiming expenditure incurred in generating employment income. Businesses housed in corporates or operating as going concerns, however, have much more latitude to claim day-to-day operational expenditure or losses incurred in the production of income. Generally, operational expenses are deductible when incurred. The Act also provides for certain wear and tear expenditure which recognises the limited life span of certain assets and provides for expensing of such assets as they depreciate (the expected life spans of assets are estimated by SARS and published in Interpretation Note No. 47 (Issue 3) dated 2 November 2012 "Wear-and-Tear or Depreciation Allowance".) The Income Tax Act also allows for certain special allowances including allowances of up to 40%; 20%:20%; 20% for certain manufacturing assets in terms of section 12C of the Income Tax Act. Expenditure which is capital in nature is not deductible for Income Tax purposes (similar complexities arise in determining whether expenditure is capital or revenue in nature to those which arise in determining whether receipts or accruals are capital in nature) although it can form part of the capital gains base cost.

• adding all specified amounts to be included in income or taxable income under the Act.

Ultimately, a portion of capital gains[97] made on the disposal of capital assets is also added to taxable income, which together with taxable income is taxed at the applicable rate chargeable for companies, trusts or individuals. Finally, if a taxpayer has assessed losses from previous years[98], the balance of assessed loss can be used to reduce taxable income.

2. South African mining income tax

In addition to the general income tax provisions, the mining sector is also eligible for various deductions, capital and other tax incentives as described below.

2.1. Evolution of special mining tax incentives

The life cycle of a mine is shaped by various factors which differentiate it from manufacturing concerns. These factors need to be understood in order to have some appreciation for those drivers giving rise to the provision of special tax incentives to the mining industry.

Mining is a cyclical industry and investments in the different stages of the mining industry lifecycle (exploration, development, production and mine closure) tend to follow these cycles. In general, as already noted, mining is a long-term activity requiring significant upfront capital investment and expertise to develop large ore-deposits to the mining production stage. The steps of moving from greenfields exploration[99] through to the development of operating mines (when income is finally generated) may involve multiple decades and many billion rands to bring a project to fruition. Over this period the project will be exposed to fluctuating commodity cycles, changing technology and risks on the geology and technical side of a project, as well as other extraneous potential risks. Mining is also a geographic location bound activity which is subject to significant risk from sudden changes described earlier. Other industries are far more mobile and will relocate to different jurisdictions should the political or legislative environment change significantly.

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[97] The Eighth Schedule to the Income Tax Act deals with capital gains and capital losses arising from the disposal of capital assets.

[98] An assessed loss arises when deductions and allowances exceed the sum of income and taxable capital gains for year assessment. Since the law does not provide for a negative taxable income, section 20 of the income tax act allows for the so-called balance of assessed loss to be carried forward to a future year of assessment, to be set-off to the extent that there is taxable income in that year to offset. Any shortfall of income in the future year of offset means that a rollover of the balance of assessed loss can be carried to further future years for further set-off against taxable income.

[99] Greenfield Exploration has been defined as: “uncharted territory, where mineral deposits are not already known to exist” as opposed to Brownfield exploration which is defined as referring to”... areas where mineral deposits were previously discovered”. Accessed on 13 March 2015 from http://www.undervaluedequity.com/Mineral-Exploration-Companies-Greenfield-Exploration-vs.-Brownfield-Exploration.html

In an effort to ameliorate the risks posed to mines during their production life cycle, special tax allowances have been provided over the years (discussed more fully below). These incentives provide for the following allowances:

a) To cater for the large upfront investments made by mines;

b) The costs of decommissioning mines (mostly environmental rehabilitation costs);

c) In the case of gold mines (for many years gold was the mainstay of South African mining), providing certain additional allowances (mainly intended as a proxy for the cost of money involved in financing the capital outlays involved in commissioning a mine);

d) Also specifically in the case of gold mining, tax relief for those taxpayers mining marginal ore bodies.

2.2. Tax base and rates in respect of mining taxpayers

2.2.1. Tax base and rates relating for Mining taxpayers (except gold mining taxpayers)

All taxpayers are taxed at a percentage of taxable income. Normally, mining companies are taxed at the same rate as other companies, i.e. currently at a flat rate of 28% of taxable income. Trusts conducting mining operations are taxed at a flat rate of 41% of taxable income as determined[100]. Similarly, most individual taxpayers are taxed at the same progressive tax rates as any other individual taxpayer.[101]

2.2.2. Tax base and rates relating to gold mining taxpayers

Taxpayers who conduct gold mining are taxed at a rate determined by a formula known as the gold formula. Application[102] of this formula applies to all natural persons, trusts and corporate taxpayers. Whilst individuals and trusts are theoretically subject to the gold formula, in practice only incorporated entities conducting gold mining form part of the tax base. This is most probably due to the capital intensive nature and funding requirements associated with the gold mining industry. For purposes of discussion of the gold formula, reference will in general therefore be made to corporate tax.

[100] From information obtained from SARS (dated 15 April 2015) it is evident that trusts which conduct mining operations are not common, consisting of approximately five taxpayers of the total mining tax base.

[101] The progressive tax rates are gazetted on an annual basis in respect of taxable income relevant to the taxpayer's year of assessment.

[102] The trigger for application of the gold formula lies in the definition of "mining for gold" as contained in section 1 of the Income Tax Act read together with Appendix I (paragraph 3(b)) of the annual rates and monetary amounts and amendments of the Revenue Law Act, as promulgated annually.

The current formula is as follows:

y = 34 – (170 ÷ x) where:

"y" = the tax rate to be determined

"x" = ratio of taxable income to income, as defined

The formula in effect provides that mines with a mining taxable income of less than 5% pay no corporate tax, whereas mines with margins of more than 25% (profit ratio[103]) are taxed at 32.3[104]. This formula not only discriminates incisively between mines with richer or poorer deposits (marginal mines), but also adjusts to cater for the extreme volatility applicable to commodity prices.

2.3. Deductions

2.3.1. Operational expenditure

Generally speaking, there is no difference in the treatment (deductibility) of operating expenditure incurred by taxpayers conducting mining operations or taxpayers conducting other business activities. The normal rules apply to all taxpayers, requiring that expenditure be incurred for purposes of trade and must not be of a capital nature[105]. This type of expenditure qualifies for immediate write-off and can lead to the creation of a current year loss from mining operations. Such loss may then be set off against taxable income from other trades in determining a net taxable income/assessed loss during a tax period.[106]

In certain instances, however (during the construction phase of a mine and during periods of non-production; see paragraph 2.3.2.1 in this regard), operating expenses are capitalised to capex[107], for tax purposes

[103] A class of financial metrics that are used to assess a business's ability to generate earnings as compared to its expenses and other relevant costs incurred during a specific period of time. http://www.investopedia.com/terms - Last accessed on 22 April 2015.
[104] Effective rate after discounting the 5% taxable income that would have otherwise not have been subject to corporate income tax? in terms of the gold formula.
[105] Section 11(a) of the Income Tax Act.
[106] Section 20 of the Income Tax Act.
[107] Capex is a generally understood abbreviation in the mining industry referring to capital expenditure as defined in and governed by section 36 of the Income Tax Act.

2.3.2. Depreciation

Normally taxpayers are allowed to write off assets acquired and used for purposes of trade over the useful life of such assets [108]. Special write-off allowances are granted for manufacturing operations, owners of commercial property, owners of hotels, pipelines, and so forth[109], but for purposes of this report this is not elaborated on. To the extent that part of a mining taxpayer's operations do not constitute mining operations as defined, it therefore has to avail itself of these general write-off allowances.

The abovementioned is of importance in that these general provisions are only overridden[110] as far as they pertain to a mining taxpayer carrying on mining operations. Furthermore, mining taxpayers are entitled to a 100% capital redemption allowance (discussed below), giving rise to unredeemed capital expenditure, in lieu of the allowances that would otherwise be granted (not in addition) to non-mining taxpayers[111].

It is important to bear in mind that the 100% capital redemption allowance is not elective. Once a taxpayer satisfies the requirements of the definition of mining operations and mining, such a taxpayer is compelled to claim the 100% capital redemption allowance as envisaged in section 15 read with 36 of the Income Tax Act.

The various components of the 100% capital redemption regime are discussed below.

2.3.2.1. 100% capex and partial annual allowances

2.3.2.1.1. Broad outline of capex allowance

The legislation applicable to capital expenditure is found in section 36 read with section 15 of the Income Tax Act, most notably in the application of sections 36(7C), 36(7E), 36(7F), 36(7G) and 36(11). It effectively provides for a 100% write off of capital expenditure incurred against taxable income from mining operations (which are subject to various ring-fencing requirements[112]).

The capital redemption regime can be summarised as follows:

1. Section 36(7C): Provides for redemption of capital expenditure from any producing mine, subject to sub-provisions (7E), (7F) and (7G);

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108 Section 11(e) of the Income Tax Act.
109 Sections 12C, 12D, 12DA, 12F, 13, 13*bis*, 13*ter*, 13*quin*, 13*sex* and 13*sept* of the Income Tax Act.
110 Section 15 of the Income Tax Act.
111 In terms of sections 11(e), (f) (gA), (gC), (o), 12D, 12DA, 12F and 13*quin* of the Income Tax Act.
112 A ring fence is a fiscal boundary within which costs and revenues of companies in common ownership may be consolidated for tax purposes (this concept is discussed in greater detail later in this document).

2. Section 36(7E): Provides for the redemption of such capital expenditure from mining income only;
3. Section 36(7F): Further limits the redemption of qualifying capital expenditure solely to a specific mine (to the extent where more than one separate and distinct mining operations is carried out);
4. Section 36(7G): Provides for the partial relaxation of sub-section (7F) to the extent where new operations are commenced after 14 March 1990.

In essence [113] mining companies are entitled to deduct 100% of qualifying capital expenditure[114] incurred in any given year from mining income, in lieu of the normal wear and tear, manufacturing, building and other capital allowances available to other taxpayers[115].

The deduction of such qualifying capital expenditure is, however, limited to the available mining income.

In other words, to the extent that enough capital expenditure is available, it can be used to reduce mining income to zero. Any unused balance of capital expenditure is carried forward to the next year as unredeemed capital expenditure. Thus the deduction of capital expenditure is limited to the available taxable income from mining in any given tax year and it cannot create or increase a loss from mining operations.

The determination of mining taxable income from different mines is ring fenced. Principally, ring-fencing means that a silo approach is taken to each separate and distinct mine within a legal entity. Non-mining income is furthermore ring fenced from mining income. Therefore, capital expenditure can only be redeemed against mining income in relation to a specific mine and it cannot be redeemed against non-mining taxable income.

The ring-fencing of mining versus non-mining income is applicable to all mines which commenced operations after 5 December 1983, while the ring fencing of income from different mines is only applicable to new mining ventures after 5 December 1984.

When mining operations are commenced by a taxpayer after 14 March 1990, in respect of a new mine, a partial relaxation of the ring-fencing principle is provided. Accordingly the "old mines" in the same entity may have access to the unredeemed capital expenditure of the

[113] The principles relating to the set-off of capex and the associated ring fencing implications have most recently been reaffirmed in a judgement handed down in August 2014 in the case of Armgold/Harmony Freegold Joint Venture (Pty) Ltd v Commissioner for South African Revenue Service [74 SATC 351].
[114] As defined in the Income Tax Act.
[115] Section 15(a) of the Income Tax Act.

"new mine", but limited to 25% of the remaining taxable income of the "old mines" after they have exhausted all their applicable capital expenditure in a given tax year.

The write off of capex can essentially be divided into two categories:

a) 100% write off allowances
b) partial annual allowances.

The latter comprises an allowance of the cost pertinent to certain capital assets which must be included as capital expenditure and which is deductible in annual instalments.

2.3.2.1.2. Capital allowance assets

Section 36(11) deals with specific types of capital expenditure, comprised as follows (and discussed in greater detail below):

- (a) During production (100% of cost)
- (b) Pre production and periods of non-production (100% of cost)
- (c) Additional annual capex allowance for post-1973 and post-1990 gold mines (either 10% or 12%, depending on when the mine was established, of the opening balance of qualifying capital expenditure and qualifying capital expenditure incurred annually)
- (d) Partial redemption allowances, that is, railway lines, vehicles, housing, conveyer systems (10% or 20% of cost per annum) (*addressed in 2.3.2.1.3 below*)
- (e) Expenditure pursuant to obtaining any right under MPRDA (100% of cost)
- (f) Residential housing for sale to employees (10% of cost per annum) (*addressed in 2.3.2.1.3 below*)

During production

The definition of capital expenditure for purposes of section 36 is extremely wide and effectively includes all expenditure incurred on shaft sinking and mining equipment. The definition requires a very wide interpretation of the ordinary meaning of these two terms and effectively includes all capital expenditure used in the carrying out of mining operations as envisaged in the definition of mining operations.[116]

[116] Section 1 of the Income Tax Act.

Interest and finance charges[117], and expenditure pertaining to the partial annual redemption allowance (discussed further below), are specifically excluded from being regarded as capital expenditure for purposes of this sub-section.

Pre-production and periods of non-production

The legislation is designed to heed and address the prolonged lead times involved in the construction and commissioning of a mine and scenarios where existing mining operations are curtailed and placed on care and maintenance due to economic pressures.

Accordingly, expenditure incurred in the development, general administration, management, and any interest and other charges[118] on loans utilised for mining purposes, are to be claimed under the 100% capital expenditure allowance regime.

Effectively, operating expenditure (prior to the commencement of production or during any period of non-production) is capitalised for tax purposes, forming part of unredeemed capital expenditure and preventing such expenditure from contributing towards any assessed loss.

Expenditure pursuant to obtaining any right under MPRDA

Recognition is accorded to the significant expenditure commitments placed on mining taxpayers in terms of the Social and Labour Plans (SLP's) which taxpayers have to adhere to under the MPRDA[119]. Thus, taxpayers are permitted to include expenditure incurred in terms of a mining right pursuant to the MPRDA as part of capital expenditure[120]. Specifically excluded from the ambit of this section, however, is expenditure incurred on infrastructure and environmental rehabilitation.[121]

2.3.2.1.3. Partial annual redemption allowances[122]

[117] Section 36(11)(a) of the Income Tax Act.
[118] This applies only to charges payable after 31 December 1950.
[119] The MPRDA requires mining businesses to agree to abide by SLPs as a prerequisite for obtaining the mining rights necessary to operate a mine. MPRDA, Regulations 2004, Part 2, provisions 40 to 46.
[120] This excludes expenditure in respect of infrastructure or environmental rehabilitation which is allowable in terms of other provisions of the Act.
[121] Subsection (e) of section 36(11) was added to by section 44(1)(d) of Act No. 60 of 2008 to make provision for a deduction of expenditure incurred by a taxpayer to acquire a licence necessary for the carrying on of a trade. It was replaced by section 43(1)(d) of Act No. 17 of 2009 to extend the expenditure allowable to cover social and labour plan expenditure. Currently, the wording of the Act refers to "any expenditure incurred in terms of a mining right pursuant to the Mineral and Petroleum Resources Development Act, 2002". The 2016 Draft Tax Laws Amendment Bill proposes the introduction of s36(11)(eA) which is designed to clarify and extend these deductions.
[122] Covered by Sub-section (d) Partial redemption allowances, that is, railway lines, vehicles, housing, conveyer systems (10% or 20% inclusion).

Employee related and transport specific infrastructure

Employee related and certain transport specific infrastructures have been singled out for special tax treatment[123]. Accordingly, such expenditure may be written off over a five or ten year period, depending on the asset category, and is accumulated in the unredeemed capital expenditure balance. Such expenditure includes:

a) Housing for mining employees and furniture for such housing[124];

b) Infrastructure developed for sale to the taxpayer's employees;

c) Any hospital, school, shop or similar amenity;

d) Recreational buildings and facilities owned and operated by the taxpayer;

e) Any railway line or system having a similar function for the transport of minerals;

f) Motor vehicles for the private or partly private use of the taxpayer's employees.

Residential housing for sale to employees

Pursuant to the RDP and other government growth programmes, government has expressed a clear commitment to assist with the provision of low cost housing. In support of such initiatives, income tax incentives are currently available to encourage the building of such housing[125].

The income tax act provides allowances separately (i.e. separately from the legislation applicable to non-mining taxpayers claiming such allowances) for the provision of low-cost residential unit disposals to employees in the case of mining companies[126]. Thus, mining employers engaging in these types of disposals fall under the special capital expenditure regime for mining. Of necessity, mining has been kept separate because this deduction is required to be part of the capital expenditure rules associated with mining, i.e. the application of sections 36(7E) and 36(7F).

2.3.3. Prospecting (exploration)

[123] In terms of section 36(11)(d)

[124] This allowance is applicable to employer owned assets made to available to employees on a rental basis. This is distinct from the allowance provided under section 36(11)(f) pertaining to building and financing of residential accommodation by the employer for sale to its employees.

[125] Sections 13*sex* and 13*sept* of the Income Tax Act were introduced to deal with "residential units" and "low-cost residential units" which are both defined in section 1 of the Act. Both sections came into operation on 21 October 2008.

[126] In terms of section 36(11)(f) of the Income Tax Act which came into operation on 21 October 2008.

Prospecting expenditure can be claimed in full against mining taxable income to the extent that it is incurred within the Republic of South Africa[127].

The relevant section does not contain a definition of the term "prospecting expenditure"; neither is one contained in section 1 of the Income Tax Act. The wording, rather, refers to prospecting expenditure including costs incurred in terms of surveys, boreholes, trenches, pits, or other prospecting work preliminary to the establishment of a mine. In the absence of any specific definition, the words or term are to be interpreted widely and are afforded the ordinary meaning.

Prospecting expenditure is not ring-fenced between different mining operations (with the exception of mining for diamonds[128]) and does not differentiate between expenditure being capital or revenue in nature. The legislation, however, contains a ring-fencing principle between types of minerals in so far as prospecting expenditure of one mineral type cannot be offset against the mining income of another variety of mineral.

In turning to the mining for diamonds activities, the Commissioner for the SARS may direct that any expenses referred to shall be deducted in a series of annual instalments[129].

Unlike the 100% Capex regime[130], the relevant section does not provide for the carrying forward of such expenditure incurred in any year in which no income was derived from mining operations. Notwithstanding, if no income is earned in any given tax year, then these expenses are still capitalised to unredeemed capital expenditure[131], as an accepted practice prevailing in SARS [132] [133].

[127] Section 15(b) of the Income Tax Act.
[128] Section 15(b)(i) of the Income Tax Act.
[129] Section 15(b)(i) of the Income Tax Act.
[130] Section 36 of the Income Tax Act.
[131] As is envisaged in section 36(11)(b) to the Income Tax Act.
[132] This practice poses a dichotomy as a clear distinction between the exploration (prospecting) mining phase and mining operations has been drawn by the courts, with the result that exploration activities cannot be seen to be expenditure incurred during a period prior to production or a period of non-production as envisaged.
[133] Section 36(11)(b).

2.3.4. Additional capital allowances

The income tax act allows post-1973 and post-1990 gold mines[134] to claim an additional capital annual allowance on top of actual capital expenditure incurred[135]. A post-1973 gold mine can claim an allowance of 10%[136] per annum whilst a post-1990 mine can claim an allowance of 12%[137] per annum[138]. This means that there is an uplift of R10 (or R12 depending on the circumstances) for every R100 of qualifying capital expenditure incurred. The additional capital allowance is then added to the capital expenditure and becomes part of the unredeemed capital expenditure carried forward to the next year, on which amount a capital allowance of 10% or 12% (depending on the circumstances) is then claimed again. This means that the allowance is cumulative in effect. The additional capital allowance is subject to a condition that in the year in which the mine earns taxable mining income, or does not create a loss (i.e. all capital expenditure and capital allowances have been redeemed), the additional capital allowance benefit falls away. The cumulative effect of this allowance results in the provision of a significant incentive to the gold mining companies. The benefits obtained through this incentive are further boosted because the allowance impacts on the calculation of the gold mining formula, effectively lowering the tax rate[139].

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[134] Both post-1973 and post-1990 gold mines are defined in terms of section 1 of the Income Tax Act. The capital allowance applicable to a post-1973 gold mine applies to companies in respect of which a mine was established after 1 January 1974 and before 13 March 1990. The capital allowance applicable to a post-1990 gold mine applies to companies in respect of which, in the opinion of the Director-General: Mineral and Energy Affairs, are independent workable propositions and in respect of which a mining authorisation for gold mining was issued for the first time after 14 March 1990.

[135] The allowance was first introduced into the Act in 1956 (Minerals and Mining Leases Act) to compensate for the fact that in the case of gold mines for which a lease has been granted to carry on mining operations at depths in excess of 2 286 metres, it may take a considerable time to bring the mine into production, the redemption of the investment in capital expenditure only commencing thereafter.

[136] According to SARS information, there are currently only 7 companies that qualify under this definition.

[137] It is virtually impossible to accurately determine the number of taxpayers who qualify for this allowance, apart from working through the entire gold mining tax base. The reason for this is that this information is not separately disclosed on the form IT14 and furthermore, it is applied per separate and distinct mine. SARS estimates that around 20 gold mining companies are currently claiming this allowance, which is inclusive of certain post-1990 gold dump reclamation activities.

[138] The 10% and 12% rates respectively are prescribed in terms of section 36(11)(c) of the Income Tax Act.

[139] The claiming (allowing) of the Additional Capital Allowance effectively results in an increase of 10% or 12% of the available unredeemed capital expenditure to be set-off against taxable income from mining for gold. This has a decreasing effect on the “x” factor in the gold mining formula in that the ratio of taxable income from mining for gold over the income from mining for gold is decreased.

2.3.5. Sales or recoupment of assets

Special recoupment provisions[140] apply in respect of the sale of mining assets which differ from the normal rules applicable to the sale of non-mining assets. When mining property and capital equipment are disposed of[141], the recoupment values relating to the capital expenditure are determined by the Department of Mineral Resources which decides on the effective value of the mining property and capital expenditure as required by the legislation. This effective value is determined on a basis similar to insurance replacement value. Accordingly, the effective value of the assets is determined in current monetary terms, with the result bearing little resemblance to the actual proceeds passing between the parties or the depreciated value of the asset.

This amount (value) is recouped by the seller and is regarded as part of gross income[142]. The seller would therefore be liable to tax on this recoupment to the extent that it exceeds any unredeemed capital expenditure brought forward. Conversely, the purchaser of the assets is allowed to claim this calculated effective value as opening capital expenditure.

2.3.6. Rehabilitation

The tax legislation[143] is designed to cater for the costs attendant on rehabilitating a mine on closure so as to minimise the adverse environmental impact which results from operating a mine over its lifetime. The law provides a tax exemption from normal tax on certain bodies, trusts or companies which have as their objective the accumulation of funds set aside to fulfil the closure rehabilitation obligations entrenched with any right issued in terms of the MPRDA. The legislation further provides for the exemption from normal tax of any investment gains made by such body, trust or company from the investment of such funds. In turn, the contribution in cash will rank as a section 11(a) deduction in the hands of the contributing company. Certain investment limitations are imposed on such a rehabilitation entity, as well as mechanisms to combat possible avoidance activities.

In short, once funds are contributed to the rehabilitation vehicle, the monies can only be used for meeting the established objects, being closure rehabilitation activities of a particular mining operation. Certain provisos[144] permit the transfer of excess funds, upon completion of rehabilitation activities to a similar entity or the Department of Mineral Resources. Such

[140] Section 37 of the Income Tax Act.
[141] These transactions are usually disposed of as a going concern, including mining assets.
[142] In terms of paragraph (j) of the definition of gross income as contained in the Income Tax Act.
[143] The relevant legislation is contained in section 37A of the Income Tax Act and came into effect in respect of any year of assessment commencing on or after 6 November 2006.
[144] Sections 37A(3) 37A(4) of the Income Tax Act.

excess funds, however, may not be returned or transferred to the donor, after contribution to such body, trust or company.

3. Mineral royalty

The novelty[145] of the mineral royalty together with some reform required by the system (as highlighted in the chapter on the review of existing mining taxes), has prompted a more detailed technical discussion on its application than that accorded to income tax above.

Royalty payments (levies) are governed by the MPRRA[146] . A separate Act in turn, i.e. the Mineral and Petroleum Resources Royalty (Administration) Act[147] (MPRRAA), provides for the registration of persons liable to pay a royalty under the MPRRA as well as the administration of the royalty[148].

In brief, the mineral royalty is charged on the transfer of mineral resources[149] and the percentage royalty calculated is based upon a floating rate[150], which rate takes into account an extractor's profitability as well as the value of the mineral resource determined at a specified point[151].

3.1. Imposition of the royalty charge

In terms of the MPRRA, an extractor is subject to the payment of a royalty when the following requirements are met:

- There must be a transfer
- of a mineral resource
- which has been extracted from within the Republic.

The liability is created by a transfer as defined and not the actual extraction of the resource. The term "Extractor" is defined[152] as a person who transfers a mineral resource extracted from within the Republic. A "Transfer"[153] effectively means the disposal of a mineral

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[145] The mineral royalty is unique in as much as it measures both profitability and value of a mineral resource at a specified point for purposes of determination of liability.
[146] 28 of 2008.
[147] 29 of 2008.
[148] The mineral royalty is one component of the Acts administered by the SARS (section 17 of the MPRRAA) and the revenue collected forms part of Treasury's National Revenue Fund.
[149] In terms of the MPPRA, this charge is imposed on or after 1 March 2010.
[150] Section 4 of the MPRRA.
[151] Section 6 of MPRRA read with Schedules I and II of the MPRRA.
[152] In terms of section 1 of the MPRRA.
[153] Section 1 of the MPRRA.

resource, or the consumption, theft, destruction or loss of a mineral resource other than flaring[154] or liberation into the atmosphere during exploration or production. A “Transfer” is therefore defined to include the point at which a mineral resource is used for further beneficiation/manufacturing.

Furthermore a “Transfer” will only arise upon the first disposal, consumption, theft, destruction or loss of a mineral source. This ensures that a royalty is only imposed once, and on the first transfer where a mineral resource is involved in a series of transfers.

A “mineral resource”[155] is defined in the MPRRA with reference to the MPRDA[156]. The MPRDA defines a mineral resource as:

> 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…

The adoption of “mineral resource” as defined in the MPRDA causes the interpretation to be extremely wide and therefore extractors[157] will pay a mineral royalty in circumstances where they may not necessarily be engaged in mining operations as defined for Income Tax purposes. This definition is applicable regardless of whether the mineral resource undergoes processing or manufacturing.

3.2. Royalty rate and base

Integral to the determination of the royalty and the royalty rate formula is the requirement to determine gross sales (at the condition specified) and EBIT (Earnings Before Interest and Tax: a profitability measure). Since these definitions are common to both the determination of the royalty and the royalty rate, a discussion of these definitions follows in paragraph 3.3.

[154] To heat (for example a high-zinc brass element) to such a high temperature that the zinc vapours begin to burn, or to discharge and burn (excess gas) at a well or refinery - http://dictionary.reference.com/browse/flaring - Accessed 4 May 2015.
[155] Section 1 of MPRRA.
[156] The MPRDA became effective on 1 May 2004.
[157] Section 1 of the MPRRA.

3.2.1. Royalty base (determination of royalty)

The mineral royalty is determined on the basis of a formula[158] consisting of the royalty rate (the royalty rate formula is discussed in 3.2.2) multiplied by the gross sales [159](at the condition specified[160]) of the extractor of the mineral resource. This determination is expressed in terms of the following formula:

> Gross sales of extractor (at the condition specified) X royalty percentage (i.e. royalty rate for refined or unrefined mineral resources).

3.2.2. Royalty rate formula

There are 2 different applicable royalty rate formulae[161], depending upon whether the relevant minerals are refined or unrefined, which are as follows:

- Refined mineral resources:
  - 0.5 + [EBIT/(gross sales i.r.o. refined x 12.5)] x 100
  - Maximum of 5%

- Unrefined mineral resources:
  - 0.5 + [EBIT/(gross sales i.r.o. unrefined x 9)] x 100
  - Maximum of 7%

The formulae contain a minimum royalty rate of 0.5% for both refined and unrefined mineral resources. The resulting royalty percentage obtained from the formula has an upper cap of 5% or 7%, depending on the rate formula used. Accordingly, the rate formula is designed in a progressive fashion so as to capture a higher royalty percentage as the profits of the extractor increase and also to ensure a minimum royalty when profits are low. Furthermore, the formula applicable to refined mineral resources has a higher denominator constant than

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[158] Section 4 of the MPRRA.
[159] Gross sales at the condition specified constitutes the base for determination of the royalty.
[159] Section 6 of the MPRRA.
[160] Schedules I and II to the MPRRA and discussed later in this document.
[161] The royalty formulae are designed so that a higher rate results from the unrefined minerals than for refined. The apparent rationale for this is that the State wants to place a levy on taxpayers to the extent they have depleted national resources belonging to the country and not on the value added due to beneficiation.

for unrefined, the idea being that refined minerals should attract a lower royalty levy rate than that applicable to unrefined[162] mineral resources.

3.3. Definitions

3.3.1. Definition of refined and unrefined condition

Schedule I to the MPRRA prescribes the ‘‘condition specified’’ for refined mineral resources, whereas Schedule II prescribes the ‘‘condition specified’’ for mineral resources which are unrefined.

The conditions specified are theoretical points at which a mineral resource is transferred. The schedules classify and list minerals as being of a condition type based on purity. To the extent that a transfer occurs outside these values or ranges, gross sales and allowable expenditure in terms of calculating EBIT[163] (discussed later)) are to be “grossed up or down” to reflect the sales value/expenditure had the transfer occurred at the specified condition[164].

3.3.2. Gross sales

Gross sales are determined[165] with reference to the “condition specified” as set out in Schedule I and Schedule II.

In essence, where the mineral resource is transferred within the “condition specified”, gross sales will be the amount received or accrued in respect of the sale of the mineral resource. Alternatively, gross sales may need to be determined even if a sale has not taken place in situations where the mineral resource is consumed (for purposes of the Act), for example, at the stage immediately prior to clay being transformed into a brick[166].

Where the mineral resource is disposed of outside of the “condition specified”, gross sales comprise the amount that would have been received in the case of an arm’s length sale had the mineral resource been disposed of at the “condition specified”. If gross sales are not

[162] The mineral royalty regime was designed recognising that beneficiation is advantageous to the South African economy. The ideal situation would be to impose a royalty on minerals at the “mouth of the mine”. This is impossible to do as all minerals have to go through some form of beneficiation (e.g. crushing, washing, etc.) before they can be sold. As a result, the principle is to establish “the value” at the “first saleable point”, which will inherently have an element of beneficiation. A compromise was reached in which unrefined minerals would be subject to a royalty rate that is slightly lower than that which would have been used at the mine mouth, and refined minerals are subject to an even lower rate, thus recognising the beneficiation effort.
[163] EBIT is essentially an accounting profitability measure.
[164] These “grossing up or down” deeming provisions provisos are contained in section 5 and 6 of the MPRRA respectively.
[165] Section 6(1) for refined mineral resources or section 6(2) for unrefined mineral resources in the MPRRA.
[166] Sections 6(1)(b) and 6(2)(b) of the MPRDA.

regarded as an arm's length price, the Commissioner may adjust the gross sales as provided for in the MPRRA[167].

Where a mineral resource is exported, lost, consumed and so forth, the gross sales consists of the amount that would have been received in case of an arm's length sale at the condition specified.

Sections 6(3)(a) and (b)[168] exclude amounts in respect of transport, insurance and handling after the specified condition has been reached.

The MPRRA further[169] provides for gross sales in respect of the transfer of mineral resources to be adjusted if the amount received is more than the amount accrued[170] or less than the amount accrued[171]. This may arise in a situation where, for example, a mineral is exported (at which stage it is regarded as transferred) but later a higher or lower gross sales amount is actually achieved. Amounts received by or accrued to a person which are in a foreign currency must be translated into Rands using the average spot rate on the date on which that amount was so received or accrued..

3.3.3. Gross sales – Outside the "condition specified"

It should be noted that in practice, minerals are not sold outside the "condition specified" when dealing with refined minerals: since they are refined, they are by definition in a pure metal state as stated on the Schedule I condition (hence no gross sales adjustment needs to be made).

Section 6A governs how the MPRRA should be applied in instances where a mineral resource is sold outside of the condition specified in Schedule II (unrefined condition)[172].

If an unrefined mineral resource is transferred below the condition specified (in Schedule II), the resource must be treated as having been brought to the minimum condition specified and transferred at such condition specified[173].

[167] Section 6(4) of the MPRRA.
[168] Section 6 of the MPRRA.
[169] Section 6(5) of the MPRRA.
[170] Include the difference between amounts in gross sales by adding this difference to the gross sales amount.
[171] Subtract the difference in amounts between gross sales and amounts received and reduce gross sales accordingly.
[172] Where a concentrate consists mainly of unrefined mineral resources and the price is determined solely with reference to the mineral resource listed in Schedule II, the specified condition for the other minerals in the concentrate must not be taken into account for purposes of the application of that schedule.

Conversely, where an unrefined mineral resource is transferred above the minimum condition specified (in Schedule II) for that mineral resource, the mineral resource must be treated as having been transferred at the higher of:

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

3.3.4. EBIT

EBIT differs from the traditional understanding of the term as used for accounting purposes as it excludes specific expenditures (costs) which would normally have been allowed in arriving at the same acronym[174] as used for accounting purposes.

Whether at a refined or unrefined condition or a combination of both, it is effectively the net amount between gross sales[175] and the allowable expenditure incurred, as defined in section 5[176], to win, recover and develop the mineral resource to its "condition specified"[177]. It is therefore a measure or indication of the profitability of extracting and transferring a mineral resource at a specific condition. A further prerequisite for the deductibility of such allowable expenditure is that (in addition to it being incurred to win, recover or develop such mineral resource to the specified condition) it should also be deductible in terms of normal income tax principles, i.e. be deductible in terms of the Income Tax Act.

Specifically excluded from being allowable deductions are:

- financial instruments[178], (other than instruments that are option contracts, forward contracts or other instruments that derive their value directly or indirectly with reference to the mineral resource);
- the deduction of the royalty liability itself[179] ;

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[173] Effectively, the gross sales are to be determined at an arm's length price as if the mineral resource has been disposed of at the condition as specified. By way of example, the condition specified for lead is a concentrate of 50% Pb. If an extractor extracts and transfers a lead concentrate at say 35% Pb, and the price achieved is $ 300 per tonne, then the sales price must be accordingly grossed up to reflect an arm's length price at a concentrate of 50% Pb. A straight linear adjustment would result in a price of R428 although this may not necessarily be a correct arm's length price, so various other economic factors are then taken into account to determine such price. The methodology for the adjustment to be applied is not prescribed in the MPRRA.

[174] The acronym normally stands for Earnings Before Interest and Tax.

[175] As defined in section 6 of the MPRRA.

[176] Section 5 to the MPRRA.

[177] Schedules I and II to the MPRRA.

[178] Section 5(3)(a) of the MPRRA.

[179] Section 5(3)(b) of the MPRRA.

- transport, insurance and handling costs incurred after the mineral resource has reached its condition specified or costs incurred to effect the disposal of the mineral resource[180];
- the balance of any assessed losses as determined for Income Tax purposes[181];
- Section 24I[182] deductions in respect of foreign exchange differences, other than foreign exchange differences affecting gross sales[183] [184].

Should the EBIT calculation result in a negative amount, the EBIT amount is deemed to be nil. In terms of the application of the royalty formula, this still results in a 0.5% royalty rate (i.e. the minimum) in the application of the royalty formula[185]. Furthermore, expenditure or losses incurred by an extractor that are in a foreign currency must be translated into Rands using the spot rate on the date on which that expenditure or loss was so incurred.

[180] Section 5(3)(c) of the MPRRA.
[181] Section 5(3)(d) of the MPRRA.
[182] Of the Income Tax Act.
[183] Gross sales as defined in section 6 of the MPRRA.
[184] Section 5(3)(e) of the MPRRA.
[185] Section 4 of the MPRRA.

V. REVIEW OF EXISTING MINING TAXES

Whilst much of the existing mining taxation regime appears to be suitable to address the country's present day needs, certain areas of tax design have been identified as ripe for change. Amongst matters to be addressed are broad legislative structural design issues, legislative inconsistencies (particularly discrepancies between disparate Acts dealing with mining) and certain technical deficiencies in the law. The areas requiring consideration have been distilled and broadly categorised into themes which are discussed below.

1. Current mining tax regime

In this section the DTC examines the pillars of the existing mining tax regime to assess its strengths and shortcomings in order to inform the DTC's recommendations.

1.1. Mining taxpayers (other than gold companies)

1.1.1. **Tax rate and base**

As already discussed in the previous chapter, all taxpayers conducting mining (save for gold mining companies), are broadly taxed at the same rates as non-mining tax paying entities on their respective taxable incomes.

Recommendation

In advancing the principles of tax neutrality and equity, the DTC is content with the status quo of generally taxing persons conducting mining operations at the same rates as other non-mining taxpayers and on the same taxable income tax base (See, however, discussion on existing gold-mining companies, below at paragraph 1.3).

1.1.2. **Special upfront capex allowances**

Taxpayers conducting mining operations are entitled to 100% upfront allowances on their capital expenditure[186], including their exploration expenditure.

Provision for accelerated capital expenditure allowances for mining operators has long been the subject of debate. The Margo Commission[187] was of the view that the expensing of capital for mines should be determined on the same basis as the write off of expenditure for

[186] Taxpayers are thus accorded two benefits from this tax incentive, namely: an accelerated allowance and a deduction of certain capital expenditure (which being capital in nature would otherwise not be deductible), including some capital expenditure incurred pre-commencement of trading.

[187] Paragraphs 14.34 and 14.35 of the 1986 Margo Commission.

manufacturing[188], i.e. over a period of three years (on a 50/30/20 percentage basis[189]at the time). The Commission further took the view that such an approach would foster tax neutrality by removing discrimination among sectors. The Margo Commission was generally averse to tax expenditures which it felt distorted the tax system and could lead to a misallocation of resources (preferring that assistance be provided outside the tax system if deemed necessary[190]).

The Marais Committee [191] (in contrast), whilst not completely dismissing the notion of removing the capex allowance, felt that the difference between a 50/30/20 allowance and a 100% allowance was small, opting instead to retain the 100% allowance for purposes of simplicity[192]. The Marais Committee supported its views pertaining to simplicity as follows: "the nature of mining operations makes it difficult to distinguish between capital and current expenditure once a mine has started operations".

This DTC has attempted to verify the degree of difficulty in distinguishing between capital and current expenditure at the time when a mine commences operations. This investigation has been done because the Marais Committee appears to have been partially swayed to retaining the 100% upfront allowance because of apparent difficulties in making such distinctions. Our investigations reveal that, in practice, it is not difficult to distinguish between capital and current expenditure for this purpose, as taxpayers in any event maintain this information for accounting and record keeping purposes.

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[188] It is interesting to note that prior to the Margo Commission, certain *ad hoc* depreciation incentives for plant and machinery were provided but these were temporary in nature. Further, whilst allowances of this type were introduced from time to time, they were provided without the reinforcement of an underlying formalised policy framework. The Margo Commission sought to formalise the policy on the issue, in the process introducing various proposals for depreciation treatment of assets, including *inter alia* for hotel allowances, ships and aircraft, plant and machinery etc. (See paragraph 9.49 of the Margo Commission). The Margo Commission felt particularly pressed to make provision for this depreciation regime having regard to the high inflation rate prevalent at the time. In this regard, the Margo Commission made the point that in the event of inflation rates changing, depreciation rates would probably have to be revisited (depreciation rates being less generous in times of low inflation and more generous in times of high inflation). The legislature largely headed the recommendations, by formalising these recommendations into legislation, predominantly between 1988 till 1990.

[189] The Margo Commission recommended that manufacturing assets be written off on a 50/30/20 basis and that mining assets likewise be brought into line (at paragraph 9.49 of the Margo report). The current income tax rules (section 12C) usually provide for a write-off on a 40/20/20/20 basis, that is a write-off over a 4 year period.

[190] It appears that the Margo Commission had in mind marginal gold mines with reference to possible assistance from government outside the tax system.

[191] Marais Committee of 1988.

[192] Interestingly, Dr G Franzsen dissented (at paragraph 1.26) saying that the Commission was foregoing the opportunity of broadening the tax base (and hence lowering tax rates generally) by not spreading such capex over an extended period (comparisons in this regard were made to Australia and the USA where capex was spread by, "some form or other of economic life depreciation")

In further augmenting its support for retaining the 100% upfront capex allowance, the Marais Committee stated[193] :

> Accelerated depreciation is important for ensuring continued investment in mining. Special circumstances in the mining sector increase risk from the investor's view point. A shorter depreciation period produces faster payback of investment, compensating to a certain extent for this perception. According to the Chamber of Mines it is unlikely that any new gold mines would have been opened over the past three decades without the immediate write off of capital expenditure. The same argument applies to future projects.[194]

Reliance on what was said by COMSA in 1988 (as quoted by the Marais Committee) needs to be contextualised to the present. Firstly, it is likely that the gold mines referred to by the COMSA were marginal deep level mines which are generally not viable (not cost effective) today, even with upfront incentives. Secondly, at the time of the Marais Committee, the current manufacturing allowance regime did not exist, meaning that taxpayers could not avail themselves of the manufacturing allowances in the absence of the upfront capital allowance. It must be noted that the COMSA still supports retention of the upfront capital allowances[195] as a device to facilitate investment in South African mining. In support for its retention, the current COMSA drew comparisons with the Australian tax dispensation, which although not providing upfront capex allowances[196] has, as a mitigating factor, a system of group taxation and no ring fencing.

A practical issue, which was not addressed by either the Margo or Marais Committees, was the considerable time lags prevailing in the mining industry between capex investment and the subsequent generation of income. Often the receipt of upfront capital allowances as opposed to spreading them over a number of years is academic. This is because taxpayers do not have taxable income against which to offset their capex, resulting in a carrying forward of capex, as unredeemed capital expenditure, to future years when taxable income is finally available for offset[197].

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[193] At paragraph 8.19.
[194] At paragraph 8.19.
[195] Page 13 of a submission to the DTC by the COMSA dated 30 March 2014.
[196] Mining assets in Australia are written off over the "effective life" of an asset (the effective life is determined by the taxpayer–subject to audit–or subject to a safe harbour value for the effective life determined by the Commissioner.
[197] The exception to this is when capex expenditure is incurred on an existing operating mine.

Much energy and cost has been expended by tax practitioners and SARS officials alike over the years to establish the boundaries where mining ends and manufacturing begins. These distinctions have been especially important because of the different tax consequences which followed, depending on whether operations are regarded as mining or manufacturing. Standardising the write-offs for mining and manufacturing would doubtless relieve the tension in this area.

The issue of upfront capex cannot be considered in isolation from the mining tax ring fencing provisions. This is because, in part, the ring fences were introduced to prevent the set-off of upfront capex against:

a) non-mining income generated within the same mine[198];

b) income earned within the same entity but within a different mine; or

The purported mischief which initiated the creation of these ring fences was that non-mining enterprises could otherwise be the undue beneficiaries of incentives designed exclusively to assist pure mining initiatives. This in turn could compromise horizontal equity as only taxpayers with income to shield against such expenditure could benefit from the upfront capex write off.

Aligning the capex allowance deductions with the manufacturing allowances paves the way for removal of the ring fences aimed at protecting the set off of upfront allowances against non-mining income, income from other mines or other trade income (this issue is discussed further under Ring fences-see paragraph 1.2).

Comparisons with other jurisdictions are often used as motivations for advancing changes to legislation. Unfortunately, when it comes to mining tax legislation, a simplistic analysis of this nature could lead to a skewed representation of South Africa's legislation and its effect. This is because South African mining tax legislation is unique world-wide, having developed in response to the unique mining tax environment and the exigencies applicable to the South African mining industry. Suffice to say, that most other countries which impose income tax, have an income tax system for mining tax which is no different to that applicable to other sectors within their economies and which is similar to the South African income tax design applicable to taxpayers falling outside the mining sector (See Annexure D for an international comparison of different mining jurisdictions compiled by PWC).

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[198] For example, interest income.

Recommendation

- The DTC is of the view that the time has come to work towards standardising the mining income tax regime to closer accord with the tax system applicable to other taxpaying sectors, generally (in the process also bringing the South African mining income tax regime closer in line to foreign jurisdictions). Doing so, serves to simplify an unnecessarily complex system of income tax taxation which has accreted over decades. The current convolution and resulting uncertainty has also had the unwanted effect of mystifying and discouraging potential foreign investors, has been difficult to administer, and has limited tax compliance to the agency of a select few mining tax experts (who themselves have grappled with understanding and complying with existing mining tax rules). A standardised approach should also bridge many of the chasms caused by breaches of the principle of neutrality created by the current mining tax system. Furthermore, the DTC has not been persuaded that the current mining tax system does much to encourage the much sought after current investment which these rules were originally intended to attract. Many of the recommendations which follow will be made with this overriding strategy in mind.
- It is thus recommended that the upfront capex write off regime be discontinued and replaced with a capex depreciation regime which is in parity with the write off periods provided for in respect of manufacturing[199] (40/20/20/20 basis[200]). The cost base applicable to this write-off period covers expenditure contained in sections 36(11)(a), 36(11)(b) and 36(11)(e)[201] in so far as it relates to capex expenditure allowable in terms of the current tax regime. Write-offs of assets in existing legislation, for example, in terms of sections 36(11)(d) and 36(11)(f), which specify longer write-off periods should retain their current write-off periods in future legislation.
- The DTC wishes to pursue parity between the mining and manufacturing regimes insofar as it is possible and expedient. Doing so to its fullest extent entails that mining assets be written off at cost and from the date such assets are first brought into use (as opposed to when the expenditure relating to such asset is incurred). Adopting

[199] On release of this report, a concern was articulated in the public comment phase about this recommended change. The concern was that taxpayers who previously would have had an upfront allowance would be prejudiced if having commenced the write-off of an asset on a 40/20/20/20 basis, the asset being written off breaks or becomes obsolete in for example the first year of write-off. This in the DTC's view is not an insurmountable challenge as the taxpayer should be able to claim a 'scrapping'/ obsolescence allowance and, if not, the legislation bringing about this change to the tax system should craft such an allowance into the legislation.

[200] See section 12C of the Income Tax Act.

[201] Supra Note 2.

such a stringent approach, however, gives rise to potential complications such as difficulties pertaining to defining when assets are brought into use (a matter which is more complicated when assets are brought into use on a batch basis with reference to when mining production commences[202]). With these difficulties in mind and having regard to the hardship taxpayers may experience by having to wait till a date is established when assets are first brought into use, **it is recommended that assets be written off from the date on which expenditure is incurred as opposed to when it is brought into use.**

- The cost base applicable to the abovementioned write-off should cover expenditure contained in sections 36(11)(a), 36(11)(b) and 36(11)(e) in so far as it relates to capex expenditure allowable in terms of the current tax regime[203].

1.2. Ring fences

As noted previously, there are two main ring fences in the mining industry. Variations exist and limited breaches are permitted in certain circumstances, but essentially these ring fences serve to either restrict the set off of mining allowances against the income of other mines within the same corporate entity or to restrict the set off of mining allowances against non-mining income, for example, interest income.

It is noted that the Margo Commission did not favour the imposition of ring fences on mining companies stating[204]: "At this stage it is sufficient to say that granting generous allowances and then having to restrict their application by ring-fencing contains an element of the ridiculous, like depressing the brake and the accelerator at the same time."

The Marais Committee, in contrast, appeared to have mixed feelings on the issue. On the one hand it embraced the position taken by the Margo Commission, but on the other seemed to draw support for the retention of ring fences by referring to other jurisdictions where tax arbitrage or curtailment of tax base erosion was enhanced by some form of ring fence. This is demonstrated by the following passage from the Marais Committee report[205]:

[202] At paragraph 14.35, the Margo Commission recommended that mining be treated in the same manner as manufacturing and that: "this be done on a consistent basis; that the mine must be in production and the equipment in operation…".
[203] Effectively, this means that the partial allowances will retain their current write-off periods and will not be depreciated on a 40/20/20/20 basis (with a view towards seeking alignment of write off periods of non-mining long term infrastructure).
[204] At paragraph 14.4 of the Margo Commission.
[205] At paragraph 8.39.

> The ring fence is an arbitrary device to prevent the (unacceptable) erosion of the tax base, and, as discussed by the Margo Commission, it might, inter alia, be the result of the lack of intersectoral tax neutrality. It is a practice followed by a number of countries in which extractive industries are relatively important. In the United States an important part of the 1986 tax reform comprises a considerable tightening of measures aimed at combating tax sheltering and tax arbitrage. These include limitation of losses, especially those arising from "passive" activities, and more stringent at-risk-rules and higher minimum taxes. In the UK ring fencing is applied to prevent an erosion of the company tax base. For the purposes of the company tax, a ring fence is drawn around North Sea profits, so that losses made onshore may not be offset against North Sea profits. Company tax, unlike the other taxes, is levied on a company and not a field basis. In South Africa, as elsewhere, close attention will have to be given to the incidence of tax sheltering and how this affects the tax base in the mining industry. The benefits accruing from tax shelters require the imposition of higher tax rates than would otherwise be necessary to raise a given amount of revenue, thus penalising other taxpayers.

In expanding its views on ring fencing, the Marais Committee additionally made the following statement[206]:

> The Committee agrees with the Margo Commission that ring fencing represents a breach of tax neutrality and should be abolished. The relaxation or elimination of ring fencing is the most effective way of reducing the flotation payment for new mines. However, simply to do away with ring fencing poses an unacceptable risk to the tax base. Two proposals have been made to address the problem of erosion of the tax base. The first is that ring fences should continue, but the Minister be granted the powers to lift them partially or fully for projects he regards worthy of support. The second is that ring fencing be abolished and a minimum tax be instituted. The Committee favours the first proposal.

Accordingly, whilst supporting the abolition of ring fencing, the Marais Committee paradoxically refused to recommend its removal. Instead, it opted to allow the Minister of Finance to partially relax ring fences in situations which he considered appropriate[207].

[206] At paragraph 8.39.
[207] See paragraph 8.49.

Following publication of this proposal, the legislature duly amended the law to give effect to this recommendation[208].

The DTC agrees with the Margo Commission that ring fencing becomes necessary in circumstances where there is a lack of intersectoral tax neutrality. Indeed, lack of neutrality gives rise to tax sheltering, tax avoidance and arbitrage opportunities. In circumstances where there is intersectoral tax neutrality, however, South Africa's law generally recognises a global set off of expenditure and losses against differing trade income within a single entity (not having group taxation in South Africa, however, means that expenses and losses cannot be set off between group companies/entities). Whilst such sideways relief may assist taxpayers towards achieving optimal tax outcomes, the legislature generally does not discourage such tax relief since it is accepted as part of South African tax policy and recognised as endemic to the tax structure and design of the tax system. No doubt allowing this form of sideways relief in the normal course is recognised as the best way to encourage taxpayer investment patterns.

Interestingly, in a report prepared by the IMF for purposes of assisting the DTC[209], the IMF stays clear of pronouncing its views as to whether the ring fencing provisions should ultimately be removed. It is, however, critical of the technical wording of the ring fencing provisions, highlighting many instances where the legislation lacks clarity, is confusing and in certain circumstances, ineffective[210].

Recommendation

- The removal of the upfront capex tax allowance regime (and hence the promotion of intersectoral neutrality) paves the way for the removal of ring fences aimed at stopping the set off of unredeemed capital expenditure against a non-mining tax base. The removal of these ring fences should adequately compensate taxpayers for the removal of the upfront capex allowance. Further investment into the mining industry will likely follow the removal of ring fences. This is because potential investors will undoubtedly be less apprehensive about losses being trapped in unsuccessful mining ventures without the option of set off against income from other, more successful, ones. A further consequence of the removal of ring fences may be

[208] Section 26(c)of Act No 101 of 1990.
[209] Daniel, P., Grote, M., Harris, P., Shah, A. (April 2015) "Fiscal Regimes for Mining and Petroleum: Opportunities and Challenges" IMF (Fiscal Affairs Department).
[210] Supra note 209 at paragraphs 68-91.

to encourage the mining of marginal ores. This could occur in circumstances where a low-profit mining venture is effectively cross subsidized through absorbing tax losses from previously (but no longer) ring fenced sources. **Subject to the limitation indicated below removal of the non-gold mining ring fences is thus recommended.**

- The DTC does not support the Marais Committee recommendation for providing the Minister with the discretion to partially remove ring fences where deemed appropriate. In the DTC's view this type of subjective application of discretionary delegated legislative authority leads to disputes and is administratively burdensome.
- It is recognised that an immediate removal of ring fences could trigger a stampede of trapped losses and unredeemed capital expenditure set offs against non-mining income and other previously ring fenced mining income, resulting in tax collections being compromised. In an effort to analyse the potential impact of removing the ring fences, SARS conducted a study to estimate the cost to the fiscus of removing the ring fences. The key findings of this study were released in the interim version of this report[211]. Notable is that the results previously articulated were preliminary in nature. As a result, concurrent with the development of this final report, the study was to be expanded by testing a larger sample of taxpayers. The initial SARS study estimated that the fiscus stood to lose R903 million in tax if ring fences were removed upfront over a single year. The final and more comprehensive SARS study estimates that if the ring fencing provisions were to be removed, the capital expenditure immediately allowable would result in R522 million in taxes being forfeited in the year in which the ring fences are removed[212]. This R522 million potential forfeiture of tax is not the only potential cost to the fiscus if all ring fences were removed with immediate effect, as it does not take into account the remainder of trapped unredeemed capital expenditure for which there currently is no income against which to effect an offset. According to the study, allowing this remainder of unredeemed capital expenditure (previously trapped) to be carried forward as a converted assessed loss available for set off against any other income in the relevant company would result in an additional

[211] The study was conducted by collating a sample of mining taxpayers carrying forward large unredeemed capital expenditure and which were known to have income against which they could offset this.
[212] The discrepancy between the initial and final SARS studies, resulting in R378 million rand less tax being lost to the fiscus is attributable to the latter study being based on a larger mining population which took into account tax returns submitted post the date that the DTC interim report numbers were quoted.

assessed loss cumulatively being carried forward by the mining industry of R140 billion[213].

- As a measure of simplicity it would have been easy to recommend that all ring fences be removed concurrently with the changeover to the recommended standardised tax regime for capital allowances. However, the cost ramifications of forfeiting R522 million in tax upfront and, more importantly, allowing an amount of R140 billion rand to be carried forward as an assessed loss, without being subject to ring-fencing rules, would be an untenable cost for the fiscus to absorb. With this in mind, careful transitional rules will need to be applied. In this regard, the DTC recommends that going forward, past assessed unredeemed capital expenditure remain ring fenced as per existing ring fencing rules. However, new capex, which, as per the DTC's recommendations elsewhere, will be allowed to be deducted on a 40/20/20/20 basis, will not be subject to any of the current ring fence rules. This means new capex expenditure, which is not set off against income in a current year of assessment will be carried forward in future as part of a regular assessed loss. As indicated above, again, appropriate transitional rules will need to be crafted to enable companies with multiple ring fences and balances of "old capex" and "new capex" to calculate their tax liability in a consistent and logical manner until such time as the "old capex" is exhausted. The unavoidable complexity arising from this recommendation entails that taxpayers wishing to utilize their existing unredeemed capex losses will need to keep dual records for ring fenced unredeemed capital expenditure and for new capex until such time as all unredeemed capital expenditure from the previous regime is fully redeemed against ring fenced income. This should not pose any serious additional administrative hardship as; in any event, dual records remain necessary for taxpayers wishing to minimize their royalty charge obligations (as EBIT can be reduced by subtracting accumulated unredeemed capex-see recommendation at page 98). Administrative complexities aside, there is conceptual harmony in not allowing unredeemed capital expenditure incurred under the previous mining tax regime to be redeemed without the application of ring fences, as mining investments made in that period were done with cognisance of the tax paradigm of the time, and without expectation that elements of the regime would be relaxed in the future.

It is anticipated that the phasing out period (see above) for removal of ring fences may be prolonged (and as later discussed, dedicated ring fences may need to be

[213] This in conjunction with an existing assessed loss of R10 billion means that the industry cumulatively will be carrying forward an assessed loss of R150 billion.

retained exclusively for existing gold mining companies). Accordingly, the technical shortcomings (identified by the IMF in relation to ring fences[214]) should still be remedied with a view to protecting the fiscus during the course of the phasing out period.

- The IMF hinted that a domestic transfer pricing regime could serve to bolster the protection afforded by the mining ring fences against revenue. In the DTC's view, the introduction of a domestic transfer pricing regime[215] would signal a major tax policy shift in South African tax law which would extend beyond the confines of taxation in the mining sector. The DTC has refrained, in its BEPS report, from proposing a domestic transfer pricing regime. This does not mean that SARS is impotent in countering domestic transfer pricing abuses, as recourse is available through effective application of existing laws, such as the anti-avoidance rules contained in Part IIA and section 103(2) of the Income Tax Act. In this regard it is recommended that SARS issue an interpretation note to provide guidance for taxpayers in determining market value pricing, not only in the context of taxpayers bypassing ring fences, but also where required by various laws, such as in terms of the MPRRA.

1.3. Gold mining

For many years gold mining was the mainstay of the mining industry. As discussed earlier[216] this is no longer the case, with economic gold reserves currently severely depleted and the gold mining sector in decline. As noted previously (see Tax base rates relating to gold mining taxpayers at paragraph 2.2.2), the tax system in respect of gold mining distinguishes itself from other mines and non-mines, principally in the following respects: Unlike other companies (all of which, including non-gold mines, are taxed at a flat rate of 28%) gold mining companies are taxed in terms of a formula at a progressive rate. Furthermore, the formula provides a measure of support for marginal gold mining companies, by creating a so-called tax free tunnel in which mines with a mining profit of less than 5%, pay no company tax. Confluence of the tax tunnel and the progressive tax rate imposed by the formula means that taxpayers end up paying an average rate of 32.3% at the highest margin.

Moreover, over and above, the normal capex allowances applicable to other mining taxpayers, gold mining companies are also entitled to additional capital allowances at a

[214] Ibid.
[215] Supra note 209 at paragraph 214 and 215.
[216] See page 38 of this report.

rate of 10% or 12% per annum on unredeemed capital expenditure (these differing rates are applicable, depending on the year in which the company was established)[217]. These capital allowances are added to the capital expenditure and become part of the unredeemed capital expenditure carried forward to the next year, on which amount a capital allowance of 10% or 12% is then claimed again (creating a compounding effect)[218].

1.3.1. Gold mining formula

The present construct of the gold mining formula has been in existence since 1936[219] although the factors in the formula have changed significantly over the years, resulting in marked differences in tax rates[220]. In addition to the gold mining formula, taxpayers (at the time of the Marais Committee) were also subject to a flat surcharge[221] which was abolished on the recommendation of the Marais Committee.

The Marais Committee examined the pros and cons of retaining the gold mining formula exhaustively. In so doing, it referred to the Margo report which had tentatively recommended the removal of the gold mining formula to synchronise gold mining with the rest of mining tax legislation. The Margo Commission additionally recommended the abolition of the gold formula on the basis that the flat surcharge was undermining the efficacy of the tax tunnel which had been designed to encourage the mining of marginal and deep level gold ores. The Marais Committee felt that the Margo commission had focused too narrowly on the surcharge as a basis for discarding the gold formula[222]. They, (the Marais Committee) were of the view that in preference to completely abolishing the formula, the surcharge could be modified to remove distortions which the surcharge posed to the gold formula[223]. The Committee conducted a fairly rigorous economic analysis of the advantages and disadvantages of the gold formula[224], the main disadvantage of the formula being its distortive effect on the allocation of resources. Whilst the steep marginal rate increase embedded in the formula has the effect of

[217] In theory these allowances are to compensate taxpayers for the finance cost of the capex.
[218] The additional capital allowance remains in place until the year in which the mine earns taxable mining income or does not create a loss, at which stage such an additional capital allowance benefit falls away.
[219] See Van Blerck 1992: C-4 to C-5.
[220] See Van Blerck 1992: C-1.
[221]This surcharge could be quite onerous reaching a peak of 25% in 1985.
[222] See paragraph 9.13 of the Marais Report.
[223] The Marais Committee ultimately recommended that the surcharge be abolished-at paragraph 9.37.
[224] See paragraphs 9.8 -9.26 and Appendix 9.1 of the Marais Committee.

inducing the mining of marginal ores, it does so through a mechanism where, at a certain level of profit, the tax system sponsors increased costs. The Marais Committee stated[225]:

> The formula can [*sic*] lead to reduced efficiency and the misallocation of resources. The high marginal rates imply that about 79% of any increase in costs is borne by the fiscus. Protagonists of the flat rate believe that this characteristic can discourage efficiency and encourage the investment by existing mines in marginal incremental capacity. The inherent subsidy can promote capital projects by existing mines, aimed at the exploitation of low grade ores, which would not have been viable without it.

In the final analysis, it seems that the weakness of the formula was also its strength. This is because notwithstanding the distortive economic cost, the Marais Committee recognised[226] that the formula would result in increased gold production in the long run and an extension of the lives of the country's mines.

Despite significant shrinkage of mineable gold reserves and the consequential decline of profits in the gold sector over the years, gold mining remains important to the South African economy. It is still a major source of employment (especially in rural areas), including jobs at marginal mines[227]. It is a further source of substantial economic linkages[228] into other sectors and continues to generate significant foreign exchange[229]. Accordingly, just as it was important to support this sector during the time of the Marais Committee, such support still remains important.

Proposals have been received to extend the gold mining formula to the platinum sector. Faced with the same proposals, both the Margo Commission[230] and Marais Committee refused to extend the gold formula to other minerals, in particular to platinum[231]. The Marais Committee, commenting with reference to the Margo Commission's refusal to extend the formula, had this to say:

> *[sic]* The formula tax system has not been extended to other mines, probably because it can only operate effectively where ore grades are highly-variable, and

225 At paragraph 9.19.
226 At page 162, Appendix 9.1.
227 According to information obtained from the DMR (See Annexure C, Table 3) employment figures have been consistently declining in the gold mining sector from 517,713 people in 1989 (the year following the Marais Committee) to 119,075 people in 2014 (representing 24% of total employment in the mining sector as a whole). Whilst employment in the gold mining sector has declined substantially over the years it is still the second largest employer after PGMs in the mining sector.
228 See Annexure C, Table 23 and page,35 of this report.
229 See Annexure C, Table 7 and page 43 of this report.
230 Paragraph 14.74 of the Margo Commission.
231 At paragraph 1.4 of the Marais Commission.

> relatively large tonnages of marginal ore are present. Platinum grades are not highly-variable...[232]

The Marais Committee furthermore had the following to say:

> In the case of the platinum mines there is an ample resource base and therefore a tax system aimed at promoting the mining of marginal ore is not justified. Furthermore there is no need for South Africa to subsidize the production of a commodity where it accounts for 80 per cent of world output.

Recommendation

- Despite the distortions and the breaches to tax neutrality which might be caused by the gold mining tax formula, the DTC is satisfied that as far as existing gold mines are concerned, it is a necessity because of the positive externalities it bestows. The mandate of the DTC includes a directive to be mindful of the agreement between Government, Labour and Business[233] to ensure that the mining sector contributes to growth and job creation[234]. **In order not to precipitate further decline in the labour market the DTC recommends that the gold mining formula be retained in existing gold mines, should they not wish to elect (see below) into the full regime proposed for new gold and other mining entities**. It seems likely, given the rapid decline in the gold mining industry, that challenges posed by retention of the gold mining formula may gradually disappear through attrition of the sector.
- **With regard to new gold mines, the DTC is of the view that the gold mining formula should be abolished and that new gold mine taxpayers be subject to the same tax rules as other mining companies.** In this regard, it is clear that new entrants into the gold mining sector will not do so in order to mine marginal ores or to further sweat existing sunk assets. New investment is likely to be based on the viability of the mine alone and not on whether the gold formula is retained. As such, removing the gold formula for new gold mining companies will not cause any job losses or hinder any new investment.
- The DTC does not support the extension of the gold mining formula to the platinum sector or to any other mineral. In so far as it is possible, the DTC's objective is to

[232] At paragraph 4.3.
[233] Draft Framework Agreement For A Sustainable Mining Industry Entered Into By Organised Labour, Organised Business And Government – 14 June 2013.
[234] See Chapter 3 of this report which delves, inter alia, into issues of gold's contribution to the South African economy and the depletion of South Africa's gold resources over time.

implement simplicity, tax neutrality and equity in the tax system: it is one thing to retain the formula (with all its challenges) with reference to a sector where it has resided for many decades and quite another to extend it to new beneficiaries. The latter extension is a change that cannot be countenanced.

1.3.2. Upfront Capex Allowance

In addition to having distinct tax features such as the gold mining formula and the additional capex allowances, the gold mining sector also enjoys the same upfront capex allowances applicable to the rest of the mining sector.

Recommendation

- Aligned to the recommendation that the gold mining formula be retained for existing gold mines is a further DTC recommendation that for the same reasons, the upfront capex allowances be retained for existing gold mines, rather than a move to the 40:20:20:20 regime going forward.

1.3.3. Gold mining ring fences

The ring fences for non-gold mining companies are also applicable to gold mining companies. The gold mining ring fences, however, serve to protect extra tax base to that which is applicable to non-gold mining companies. This is because additional capital allowances are available exclusively to gold mining companies (discussed below) and are not intended to benefit other types of mines. Similarly, depending on profitability, the gold formula applies different tax rates to different gold mines (which may be operating at different marginal tax rates) and also different rates to the 28% flat rate applicable to all non-gold mines. Gold mines are taxed separately, on a mine by mine basis, with the gold formula calculation, capex expenditure and additional capital allowances being calculated separately for each mine. Accordingly, ring fencing rules are required to ensure that no expenditure is set off beyond the mine from which it arose.

Various anomalies and difficulties arise with regard to the treatment and allocation of assessed losses where such losses are derived from the same company but not necessarily from the same mine.

Recommendation

- Because of the differentials in tax rates and allowances applicable to gold mines it is necessary to retain ring fences for existing gold mines (for which the DTC has recommended retention of ring fences).
- As mentioned, the IMF[235] has identified various technical weaknesses, uncertainties and anomalies pertinent to the ring fencing provisions. In so far, as it is necessary to retain ring fences, i**t is recommended that these technical deficiencies be remedied as part of the legislative review advocated elsewhere in this document.**
- **It is further recommended that clear rules be enacted for the treatment of assessed losses, with explicit allocation rules for set off against different mines within the same tax entity and different types of income within the same gold mine (mining and non-mining income)[236].**
- It is recognized that some existing gold mines might have a preference for removal of ring fences, despite this entailing the loss of the gold mining tax benefits typically available to them. In such instances, it is recommended that these taxpayers be given a once off option to elect whether to stay in the regime applicable to existing gold mining taxpayers, or to be treated like all other taxpayers who are not subject to the special gold mining tax dispensation, i.e. such taxpayers could elect to forego applicability of the gold mining formula and upfront capex allowances in favour of removal of ring fences going forward.

1.3.4. Gold mining additional capital allowances

The additional capital allowances for gold mining companies have traditionally been in place to encourage deep level mining in particular and to compensate taxpayers for the high risks involved in undertaking this type of mining. Concerning this, the Marais Committee argued[237]:

The capital allowance provides for the special risks which arise from the long lead times of mining projects and is therefore a direct and effective encouragement to invest capital in new mines and deep level expansion of existing mines. It partially compensates for the time cost of money if the cost of capital is more than 10 per cent and adds an incentive if the cost is less than 10 per cent.

[235] Supra note 209 at paragraphs 68 to 86.
[236] These deficiencies in the legislation are listed in Ibid.
[237] At paragraph 8.55.

A study into interest rates from 1988 (the date of the Marais Committee findings) until the present reveals that on average, the prime lending rate has been standing at 14.87% since 1988 (See Annexure C, Table 11 and Annexure D, Figure 3). With declining interest rates, the prime average interest rate has come down to 10.29% since 2008, which makes the rate more balanced compared to the 10% or 12% additional capital allowance.

The Margo Commission stated the following in negating proposals for an extension of the capital allowances to other sectors[238]: "... Allowing the deduction of notional expenditure is an exceptionally expensive method of purchasing an increase in the tax base, especially in an industry where marginal tax rates are high."

The above Commission then went on to suggest say that the feasibility of assisting new and ultra-deep level mines outside the tax system should be investigated, by way of direct grants[239], making the point that given the comparatively small number of recipients of this benefit, it would be a simple matter to target aid in this fashion[240].

In contrast, the Marais Committee presented evidence to the effect that these allowances could have a serious impact on attracting mine investment, hence purchasing new tax base for the fiscus[241]. It also made the following statement in support of the additional capital allowances:

> Capital allowances are primarily given as encouragement to open new mines and to assist ultra-deep mines. They have an advantage compared to other tax expenditures in that they are funded from the project itself rather than by the existing tax base. However, they should be evaluated in the light of possible alternative sources of assistance against the background of the Margo Commission's premises in this regard.

[238] At paragraph 14.101.
[239] At paragraph 14.89.
[240] It is interesting that the number of gold companies claiming this allowance still appears to be low. According to SARS information there are currently only 7 post-1973 established gold mine companies that qualify and claim the additional capital allowance. With regard to mines established post-1990, it is virtually impossible to accurately determine the number of taxpayers who qualify for the allowance, apart from working through the entire gold mining tax base. The reason for this is that this information is not separately disclosed on the form IT14 and furthermore, it is applied per separate and distinct mine. SARS estimates that around 20 gold mining companies are currently claiming this allowance, which is inclusive of certain post-1990 gold dump reclamation activities.
[241] At paragraph 8.55 the Marais Commission cites the work of Krige, D. in which he argues that the allowance increases the tax base by encouraging the opening of new mines. (Krige, D: "An Analysis of the potential benefits to the State of realistic adjustments to the mining tax structure", *Journal of the South African Institute of Mining and Metallurgy* July, 1979.)

Ultimately, the Marais Committee recommended that the additional capital allowances be retained. In doing so, it added the following caveat: [242]

> The need for capital allowances is a function of the rate of tax. The higher the tax rate, the more necessary the capital allowance is to ensure the viability of new mines. With the very high prevailing tax rates it is an essential feature of the existing tax system. Conversely, if tax rates are significantly reduced the need for the capital allowance disappears.

It is clear that circumstances have changed considerably since the Marais Committee opted for retention of this allowance, particularly in the following respects:

- Gold mine tax rates existing in 1988 have come down considerably with the highest effective marginal rate currently standing at 32.3% (not much higher than the flat corporate tax rate applicable to most other companies) and with most gold mine companies in fact paying at a lower marginal rate than the 28% corporate rate. This can be compared to the average tax rate of 56% applicable at the time of the Marais Committee findings[243]. It is important to reiterate that the Marais Committee itself mentioned that a significant reduction in tax rates would be reason to do away with the additional capital allowances.
- Compensation for the cost of capital was seen as an important reason for the allowance in 1988. The cost of capital has, however, since come down considerably and is hence available at a lower rate than that at the time when the Marais Committee endorsed continuation of the allowance (See Annexure C, Table 11 and Annexure D, Figure 3). In certain instances, but not in all[244], mining taxpayers are permitted a tax deduction for interest arising from their finance costs, effectively meaning that in such situations the additional capital allowance gives rise to a double tax deduction[245]. Another respect in which the additional capital allowance appears to over compensate taxpayers arises from the compounding nature of the allowance. This compounding effect has left some

[242] At paragraph 8.5.6.
[243] See Van Blerck 1992: C1.
[244] Supra note 209 at paragraph 57 the IMF discusses instances where interest deductions in respect of capital expenditure are or not available.
[245] Since they are able to claim deductible interest in respect of finance expenditure and receive a capital allowance-which is also meant to compensate for the cost of capital borrowing.

taxpayers carrying forward unredeemed capital expenditure almost perpetually throughout the life time of the gold mine, hence never paying tax.

- The DTC has noted the argument for subsistence of additional capital allowances as a means of promoting preference neutrality for equity investments (for which there is otherwise no tax allowance available) as opposed to debt investment (for which interest tax deductions may be available). In the DTC's view, existing tax legislation already addresses debt/equity and thin capitalisation, particularly in the transfer pricing space. In this regard the asymmetrical legislative intrusion in the gold mining sector (other sectors in the mining industry do not benefit from this allowance) should be curtailed to remedy perceived thin capitalisation discrepancies, and create neutrality.

Recommendation

The DTC recommends that the additional capital allowances should be discontinued for all gold mining taxpayers (including brownfield gold mines which, as already recommended, may continue to be subject to the gold mining formula and upfront capital allowances-unless an election is made otherwise). This will, to some measure, bring the gold mining tax regime into parity with the tax system applicable to taxpayers as a whole. In compiling the interim version of this report, the DTC expressed a measure of flexibility relating to options for a phased removal of these additional capital allowances. On further reflection, the DTC no longer supports phasing the process, as the protracted time span involved in translating these recommendations into enacted legislation will likely provide affected taxpayers with sufficient respite.

1.4. Contract mining

Prior to the 1994 democratisation of South Africa, the mining environment was dominated by the big mining houses who owned most of the means of mining production[246]. Business models in the mining industry have since changed, creating an environment more conducive to smaller entrants (contract miners) taking part meaningfully in the mining industry. This change has been occasioned by the promotion of BEE and declining ore grades which are not cost effective for the big mining players to exploit. Contract mining involves contractual

[246] These mining houses employed vertically integrated production techniques, in which they owned most of the capital assets used in mining operations, as well as the mining rights.

relationships between mine owners (or owners of mining rights) with entities or persons that are paid to conduct mining activities on behalf of these mineral rights holders.

Existing tax legislation predated and perhaps did not envisage all the tax ramifications flowing from contract mining which now forms an integral part of the contemporary mining dispensation. Submissions have been received which suggest that the challenges facing the contract mining industry arise from problems associated with current legislation. The crux of the problem is two-fold:

a) It appears that the MPRDA makes contract mining unlawful in certain circumstances as section 5A provides that: "[n]o person may... mine... or commence with any work incidental thereto on any area without... a... mining right"[247] [248]. In the event of such mining being unlawful, it would seem that SARS may disallow expenditure related to contract mining on account of such expenditure not being in the production of income or for purposes of trade[249];

b) The tax legislation does not cater for contract mining at a fundamental definitional level. Although the definitions of “mining operations” and “mining[250] appear extremely wide, the requirement that minerals be “won”[251] can negate the breadth of these definitions by bestowing an element of finality on a single taxpayer winning the mineral. It is thus required that a decision be made as to who is carrying on mining operations as it is exclusively that person who can gain access to the mining capital allowance regime. Moreover, section 15(a) of the Income Tax Act requires that income should be generated from “such mining operations” and the courts have held that this requires a direct connection to the activity carried on. The problem which arises is in the interpretation of which party is carrying on such mining operation.

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[247] Section 98(a)(viii) together with section 99(g) of the MPRDA make such conduct an offence punishable with a “fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment”

[248] See supra note 209 at paragraph 30 where the IMF points out that “…. it difficult to reconcile this section 5A with section 11 of the MPRDA, which requires the permission of the Minister of Minerals and Energy for transfer of a mining right but under which the Minister may also permit a lease (or sublease) of a mining right. The DMR confirms that it is not their practice to permit leases of new order mining rights”.

[249] In practice, SARS does not appear to disallow contract mining expenditure on this basis; however, there is some case law which would support this. See ITC 1490 53 SATC 108 at 114; In Port Elizabeth Electric Tramway Co Ltd v CIR 1936 CPD 241, 8 SATC 13 at 17 it was held obiter that “If the act done is unlawful or negligent and the attendant expense is occasioned by the unlawfulness or, possibly, the negligence of the act, then probably it would not be deductible”.

[250] These definitions are contained in section 1 of the Income Tax Act.

[251] Ibid.

A useful starting point in deliberating on this issue is to fathom the reasons the MPRDA limits mining activities to the mining right holder. From the legislation, it would seem that this was done mainly as a mechanism to regulate the mining activity taking place in terms of the right. Thus, by controlling the mining rights which are issued, the DMR can, for example, enforce safety regulations in the mines, ensure environmental rehabilitation and also that commitments are made to the social upliftment of neighbouring communities. Furthermore, the MPRDA also strictly governs the persons benefiting from the right with reference to empowerment of previously disadvantaged persons or other criteria which are deemed important. Strictly linking the mining rights to the mining activity thus becomes a means of securing accountability by the rights holder for compliance with the requirements associated with the mining rights. It also ensures that the intended beneficiaries of the rights (the mining rights holder) do not subvert their rights contractually to someone else. Loose contractual arrangements, by mining right holders with third parties to conduct mining, may have the effect of attenuating control by the regulator (DMR) of the mining process.

It would thus seem that the heart of the problem and possibly its solution, is to recognise that the principles of agency and principal need to be firmly co-ordinated for the contract mining system to function properly. This means that the person doing the contract mining should not be operating as an independent contractor, but rather strictly as an agent for the principal who holds the mining right. Accordingly, the contractual arrangements between the parties need to be such that the mining activities conducted by the contract miner are tightly controlled by the mining rights holder. Other factors which weigh heavily in ensuring the subsistence of a principal/agency relationship pertain to the distribution of risk and reward between the principal and agent. Thus, for a principal/agency relationship to exist one would expect the contract miner not to be sharing in the risk and reward of a mining venture but to be receiving a fixed remuneration; for example, to be receiving remuneration based per volume of mineral. With the mining rights holder retaining full control of the mining activities as principal, ultimate compliance and accountability to the requirements of the MPRDA remain with the mining rights holder. From a tax perspective, this means that the principal rights holder will be regarded as the person conducting the mining, the contract miner in effect being similar to an employee.

Recommendation:

- The DTC is of the view that contract miners carry out very similar and sometimes identical work to traditional mining houses and that the current tax treatment and legal framework should ideally reflect this.

- **In the DTC's view the challenges faced by the industry can be largely remedied through interpretation and through better defined contractual arrangements between holders of mineral rights and contract miners.** To be clear, if the contractual arrangements are such that the contract mining concern is not regarded as an independent contractor, but is, rather, strictly controlled by its principal, then:
    - Contract miners will probably not be regarded as mining without a mining right and, hence, would not be in contravention of section 5A of the MPRDA;
    - The contract miner taxpayer (not acting unlawfully) would give SARS no argument to disallow expenditure associated with such mining.
- **The DTC recommends that a template contract be devised as a guide to parties concluding contract mining arrangements and should be drafted by SARS in conjunction with the DMR. This template should contain certain essential contract terms, designed to ensure that in contract mining situations, the contract miner conducts mining on behalf of its principal as opposed to conducting mining on an independent contract mining basis.**
- Acceptance of the DTC's prior recommendations that the write off periods for mining capex expenditure and manufacturing be placed on a par could potentially reduce any incentive which contract miners would have to be classified as conducting actual mining operations, as opposed to manufacturing.
- It would seem that "manufacturing", whilst not being defined in the legislation, is broadly interpreted in terms of the SARS Interpretation Note[252] to cover most contract mining activities. This means that contract miners would often be able to claim their expenditure incurred as manufacturing expenditure.

1.5. Mineral royalty

The mineral royalty regime was introduced in 2010, which is to say that it is very new and that there is little by way of data to measure its success at this stage[253]. In a most informative internal economics analysis compiled by the National Treasury[254], the Treasury[255] benchmarks the design of the royalty to best international practice. Some of the concepts outlined in this treasury document are summarised as follows: Firstly, it is necessary to

[252] SARS' Practice Note, No. 42, dated 27 November 1995.
[253] See page 43 and Annexure "C"-Table 21 of this document for collection information on royalties since 2010.
[254] National Treasury (March 2013)." *Mining taxation – the South African context: Economic Tax Analysis*".
[255] In its analysis the Treasury relied on an article by Hogan & Goldworthy 2010, for classification of tax instruments and for features and design of comparison of such instruments.

differentiate between rent based[256]/profit based instruments[257] and output based tax instruments. The former type places emphasis on the need for taxpayers to be profitable in order for taxes to be charged. Output taxes on the other hand are relatively indifferent to profits and costs, with the tax base normally being derived from some measure of output production. Different tax instruments tend to offer specific advantages and disadvantages, which often differ from the perspective of government and taxpayers. These advantages and disadvantages can be measured broadly by the following criteria set out by Hogan and Goldworthy[258]: economic efficiency; rent collection and government risk as well as administration and compliance costs.

Economic efficiency: this includes concepts of neutrality in terms of which investment and production decisions for resource projects are not distorted by tax. Rent and profit based taxes tend to score highly with regard to economic efficiency because of the flexibility built into these taxes. These types of taxes take taxpayers' abilities to pay into account, meaning that taxpayers' tax risk is diminished in times when they are unable to afford payment. It also includes project risk which relates to the market risks associated with a project in relation to the tax instrument. Another factor to consider is sovereign risk, which comprises the investor's assessment of countries associated with a project. The fiscal settings over the life of a project are important in this space. Rent and profit based taxes rank favourably here as varying tax revenue means that both the investor and government share in the risks in deteriorating market conditions.

Rent collection and government risk: Taxes supportive of rent collection entail flexibility so that government is able to collect a reasonable share of resource rent under a range of market outcomes. Again, rent and profit based taxes rank more highly here. The advantages of rent collection can be contrasted to the government risks of fiscal loss and revenue delay, which are often associated with taxes supportive of rent collection. This occurs because in low performing economic situations government cannot rely on a stable revenue stream, since taxes are delayed until times of profitability[259]. Accordingly, this creates a risk in the

[256] The concept of rent taxes is epitomised by the proposed rent resource tax (discussed later in this document), which seeks to tax surplus profits at a relatively high rate so that government can enjoy a greater take in such surplus. Surplus profits are seen as being profits in excess of that amount which covers an investor's risk and required return on investment. Proponents of resource rent taxes justify the tax particularly in relation to minerals on account of the latter being owned by the State.

[257] Profit based taxes are epitomised by the current income tax which, although also relying for its tax base on profits, does not seek to tax "surplus profits" any more onerously than lesser profits (hence a flat tax rate on profits).

[258] Hogan & Goldworthy, supra.

[259] This is to say that in the event of non-profitability no taxes are collected.

maintenance of revenue buoyancy.[260] Output based royalty type instruments perform better here as revenue is contingent on production and not on the generation of profits or losses.

Administration and compliance costs: Administration and compliance costs tend to be higher for rent /profit based instruments because assessing profitability requires relatively more onerous calculations compared to output calculations. That being said, the flexibility aspect of profitability/rent instruments means that there is less imperative to adjust or modify these instruments in accordance with changing economic conditions.

Based on the above criteria it is possible to gauge the relative merits or demerits of the mineral royalty imposed in terms of the MPRDA. The mechanics of the royalty charge have already been dealt with elsewhere; however it is worth revisiting some of the main features of the tax with reference to the abovementioned criteria. The royalty rate is essentially worked out based on a formula which calculates the value of the mineral (*ad valorem*) but also has a component which takes the profitability of the taxpayer into account.

This profitability factor is important as it means that the rate of the royalty is determined to some extent with reference to the ability of the taxpayer to pay. The royalty rate formula is designed to increase the rate of taxation marginally depending on the profitability of the mine. In other words, within a certain profitability range the rate formula is designed to capture rents. This capture of rent provides relative tax neutrality as revenue varies based on project profitability. Moreover, according to the Treasury document, [261]from a project risk perspective the royalty is not rigid and[262]: "...it recognises that there are likely to be changes in the industry's cost structure over time. The maximum and minimum rates reflect government's readiness to share in both the rents and risks of mining."

From an administrative perspective, the determination of profitability could add complexity to calculations (as mentioned above) but, as the Treasury document explains[263]:

> The royalty formulae do require more calculations than a simple *ad valorem* tax would for example, but the calculation is fairly straightforward and much simpler to administer and comply with than a resource rent tax (that requires defining and calculating an appropriate tax base and a 'normal rate of return'). When comparing

[260] Buoyancy in this context refers to the ability of a tax system to extract revenue over the entire business or commodity cycle. It is important that revenue does not dry up in times of economic downturns.
[261] Supra note 254 at page 15 of Internal Treasury document.
[262] Supra note 254 at page 15 of Internal Treasury document.
[263] Supra note 254 at page 16 of Internal Treasury document.

South Africa's royalties with a resource rent tax in this sense, a resource rent is more difficult to administer – both in terms of defining the tax base and calculating the rent.

The DTC agrees with the Treasury that the calculations for the royalty are relatively simple compared to those for a resource rent tax. However, it is apparent that the profitability measure represented by EBIT can still be simplified further. This is especially so when it comes to determination of the adjusted gross sales figure which informs the EBIT factor in the rate formula and which also comprises the tax base. It has been noted that, as matters stand, taxpayers are arriving at inconsistent results with this determination, especially when it comes to adjusting the gross sales figure to exclude value add to the gross sales component.

Another component of the royalty rate formula sets out a minimum rate of payment which has no bearing on affordability (currently 0.5% of adjusted gross sales). Hence the fiscus can rely on receiving at least a minimum royalty revenue receipt in times of low profitability. This also means that a political imperative is achieved by securing compensation to the State for the depletion of minerals which belong to the nation as a whole. This concept, embodied in the Freedom Charter and NDP, suggests that since the mineral wealth is owned by the nation as a whole, the nation must be compensated for the depletion of such mineral wealth. Implicitly, such compensation is due regardless of whether the person depleting such minerals is profitable or not. Also built into the formula is a maximum rate for which a mine can be taxed (currently 7% for unrefined and 5% for refined minerals), which means that taxpayers only pay a royalty up to a specified rate.

In order to work out the royalty payable, the rate as determined in terms of the formula is multiplied by an adjusted gross sales figure (the tax base). he tax is imposed on the transfer of the mineral but is only charged on a single transfer (so that there is no double taxation). The Act distinguishes between refined and unrefined minerals (the two types are listed in a Schedule I and II) and taxes these minerals at different rates (in terms of slightly different formulae). Since the idea is to tax on value, refined minerals are taxed at a lower rate than unrefined minerals because the legislature only wishes to impose tax on the intrinsic value of the mineral and not on any extra value added by the mining extractor.

Although the State Intervention in the Mineral Sector ANC policy (SIMS)[264] document calls for a fair share of resource rents for the state[265], it does so without classifying how such a fair

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[264] ANC Policy Document (March 2012.) "Maximizing the Developmental Impact of the People's Mineral Assets: INTERVENTION IN THE MINERALS SECTOR (SIMS)"- ANC Policy Discussion Document.

share amount should be determined. Here, government has to strike a careful balance to ensure that the tax imposed does not transgress tax neutrality (and discourage investment by over-reaching) but at the same time enables government to collect adequate resource rents. In this regard it is noted that South Africa has received relatively low levels of investment in mining over the last few years compared to other countries (although this is probably due in large part to non-tax factors)[266].

The Treasury makes the following point in support of the need to design taxes soberly without undue regard to short term economic cycles[267]:

> A general trend seems to have emerged that is fundamentally driven by periods of ups and downs in commodity prices. When commodity prices are on the increase (e.g. during the 1970s price shocks and 2002-2008 commodity boom), nationalisation and/or capturing higher rents tend to list high on governments' agendas, while a decrease in prices (experienced during 1980s and 1990s) has led to calls for privatisation and restricting government's role to one of regulation and investment promotion. Other influential factors include changes in ideology linked to changes in governments and the re-negotiation of charters / commitments where perhaps previous agreements were concluded during less favourable periods. This entrenches the concept that a country should design its mineral fiscal regime very carefully to avoid changes based on commodity booms and busts or the ideology of the day. The ideal should be a stable regime that factors all elements in, i.e. commodity prices, profitability and risks.

- Whilst the need to broadly retain the royalty regime was recommended in the interim version of this report, it was recognised that various aspects of the mineral royalty regime still needed to be clarified and improved. It was accordingly indicated that at that stage the DTC was not ready to make comprehensive recommendations on this issue but would attempt to do so in this final version of the report. In the same interim report, three alternative options to the existing royalty regime were discussed as feasibilities, using a combination of proposals and options developed in the IMF Report and by the National Treasury[268]. These options tend to provide rougher results, but also have the

[265] Supra note 264 at Page 36 of SIMS.
[266] See paragraph the discussion on International commodity prices and corresponding investment at page 37 of this report.
[267] Supra note 246 at page 9.
[268] The options covered in the second and third bullet points following this paragraph were derived from a presentation delivered to the DTC by Cecil Morden, Chief Director (Economic Tax Analysis) of the National Treasury, on 10 June 2015.

advantage of being administratively more simple and consistent. The 3 options are as follows:

- The IMF has recommended a flat mineral royalty[269]. In this regard it would seem that rates of between 2 and 4 per cent on gross sales in the case of metals and minerals, and a flat rate of 2 per cent for sands and aggregates might be appropriate. As mentioned later[270], a flat rate is not always sufficiently flexible for adjustment to changing commodity prices. The vagaries of fluctuating commodity prices, however, tend to be less pronounced in the case of sands and aggregates. This means, on the face of it, that a flat rate on gross sales may ultimately prove more viable and cost effective to apply for sands and aggregates, as compared to other more valuable commodities.
- Retain the current variable mineral royalty rate structure, but with the following amendments:

    - The base should be gross sales with no or very little adjustment;
    - Such an approach will probably require an anti-avoidance connected party rule (to ensure arm's length prices between connected parties);
    - The current royalty rate formula for refined minerals should be retained, but such minerals (as contained in schedule 1) should be limited in application to the following metal types: gold, silver and platinum.
    - The royalty formula should be revised for all other minerals with a common applicable formula such as Y = 0.5 + X/10.5 (X = EBIT / Gross Sales).
    - Thought should be accorded to supplementing this option with a separate flat rate of 2 per cent for sands and aggregates.

This option suffers the disadvantage of not being flexible with regards differentiation in the royalty rate for different levels of beneficiation taking place. This, in the DTC's view, is a major flaw, as government policy is to encourage beneficiation and to position the royalty such that imposition thereof is limited to a charge for depletion of State resources, and not on any added value caused by beneficiation of the mineral.

[269] It is to be noted that this flat rate is envisaged together with a surcharge or RRT (aimed at capturing windfall profits). See later discussion on the IMF recommendations at pages 106 to 113.
[270] See discussion page 106 .

- One royalty formula should apply to all minerals (obviating the need for condition specified schedules), where for example: $Y = 0.5 + X/10.5$ (X = EBIT / Gross Sales) for all types of minerals. Once again, thought should be accorded to supplementing this option with a separate flat rate of 2 per cent for sands and aggregates.

This option also suffers the disadvantage of not being sufficiently sensitive to different levels of beneficiation of minerals taking place.

In applying its collective mind towards resolving the outstanding issues outlined above, the DTC considered various submissions made during the public comment process, and which were raised following release of the interim report. Further, comment was sought on this topic by arrangement of workshops with an array of tax practitioners, industry specialists, government departments and taxpayer representatives[271].

Despite some heated debate, it was generally agreed by stakeholders that, as a political imperative, retention of some form of royalty regime is a necessity. Some dissatisfaction was expressed in relation to the 0.5 per cent minimum royalty rate and the progressive nature of the royalty rate formulae. In this regard a suggestion was made that if the 0.5 per cent minimum royalty was not retracted in totality then consideration should at least be accorded to providing a deferral of payment of the royalty in times of hardship, in particular when the continued financial viability of an extractor's business was in jeopardy. A postponement of liability was, however, ultimately rejected on the basis that regardless of the financial situation of the extractor, extractions of minerals result in a benefit to the extractor and a depletion of State resources. This thus raises the question as to why the State, and therefore the Country, should be the party to carry the burden of a delay in such circumstances.

Furthermore, a clear consensus emerged, establishing that the main cause hindering an efficient application of the royalty levy is that the Schedules (particularly schedule 2) do not adequately and accurately cover all the forms[272], types and various mineral purity levels applicable to the minerals listed. The likely reasons for this are attributable to the practical commercial application of the royalty, following the theoretical compilation of the schedules; changes in commercial imperatives which have created markets for minerals falling below the current minimum listed conditions specified for minerals; and the extraction of minerals which were not originally listed in the schedules because there was no demand for such minerals at the time of compilation of the

[271] The first such meeting was convened on 13 May 2016, followed up an additional workshop on 21 June 2016 with a smaller more focused group.

[272] For example the condition specified for coal, in Schedule 2, only caters for bituminous coal and not for anthracite or coking coal.

schedules. All agreed that improving the schedules would go a long way towards reducing the current uncertainty in the application of the royalty legislation. In particular, whilst not entirely eliminating the problem, it would substantially diminish the need for extractors to make artificial adjustments to gross sales and EBIT when minerals are transferred or consumed below or above the defined conditions specified.

It has been established that the following aspects of the royalty legislation are uncertain either with regards interpretation or in application:

- Interpretational issues exist, particularly in relation to the 'EBIT' and 'gross sales', as defined in the legislation. One of the difficulties is that both of these terms, when used in the royalty formula, have different meanings to those used in IFRS[273] and other common accounting standards. Thus, interpretational issues arise in relation to both these unique versions of 'EBIT' and 'gross sales' pertaining, in particular, to the exclusion of transport, handling and insurance costs after the condition specified, and the allocation of direct and indirect costs.
- As a result of mismatches between conditions specified and actual mineral purities, taxpayers frequently have to do calculations of notional gross sales and of EBIT. The results of these calculations are proving to be inconsistent because there is little legislation or policy guidance by way of best practice for performing these calculations. The DTC has been advised that these calculations sometimes involve elaborate transfer pricing type calculations which are particularly onerous to perform for less sophisticated taxpayers, who do not have the resources to procure the services of consultants to assist them.
- Interpretational issues need to be clarified pertaining to the transfer point of the mineral royalty, specifically in relation to the meaning of "consumption"[274] as described by the legislation. Another related difficulty which arises in relation to 'consumption' is in determining a value for the mineral 'consumed' in this process.
- The application of section 6A, of the MPRRA, to unrefined mineral resources is challenging as it depends on the interpretation of the "condition specified" in Schedule 2 as well as the transfer point. In addition, section 6A(1)(b) refers to 'extraction', but it is unclear whether extraction is at the "mine mouth" or at a point which is comparable to the condition specified in the Schedule, for example, at the processing plant, which could still be seen as "extracting" the mineral resource.

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[273] International Financial Reporting Standards
[274] For example it is unclear whether limestone is "consumed" to create lime.

- A circular interpretation and application problem arises with regards the inclusion or deductibility of the royalty charge in the Income tax Act. This occurs because it is uncertain as to how such an inclusion or deduction is to be treated in circumstances where the royalty is adjusted either upwards or downwards following a SARS audit thereof, and this is only finalised in a following year. It can, for example, be argued that in the case where royalty is reduced, the amount previously deducted is recouped in the year in which the royalty is reduced; alternatively, it could be argued that the original assessment should be re-opened and re-assessed

Another issue which the DTC has considered, following the release of its interim report, relates to a complication which arises following its recommendation elsewhere in the report for the removal of the upfront capex allowance. Acceptance of the DTC's recommendations pertaining to the removal of the upfront capex allowance, and its replacement with an allowance on a 40/20/20/20 basis impacts the future treatment of whether capital expenditure can be claimed in determining 'EBIT' in the royalty formula. Such capital expenditure is currently claimable on a 100% basis, in determining 'EBIT', but if reduced to either 40% or 20%, depending on when the asset is first written off, this calls into question whether adjustment should be made to allow the entire expenditure for the year to be set off against 'EBIT' under the new proposed dispensation, as is currently the case. This is an important question as unredeemed capital expenditure can be carried forward for set off against 'EBIT' in the following year in the current dispensation, but not so operational expenditure, which gives rise to assessed losses. As an alternative, it was considered whether it may be necessary for the capital allowance to be allowed to be set off at all, especially in light of capex expenditure not being a determinant of operational cash flow[275] (this alternative was ultimately rejected by the DTC as it was considered detrimental to the industry).

A final issue considered by the DTC in relation to the royalty regime related to whether certain mineral resources, such as stone and aggregates should be excluded from the Schedules altogether and hence excluded from the royalty. Since these resources comprise mainly Bulk, and are of little value, the attendant revenue contribution to the fiscus is relatively small, calling into question whether the effort required to administer the royalty charge for these resources is worthwhile. Other factors which militate for these types of mineral resources to be excluded from the royalty regime include the following:

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[275] Meaning that capex expenditure does not go towards the day to day ability of an extractor to pay daily expenditure or royalty charges.

- These extractors are not treated as miners for income tax purposes and, as such, do not benefit from the current preferential income tax regime that extractors of other minerals enjoy. Hampering this sector with this levy is thus perceived as unfair as these taxpayers experience the worst of both the income tax and royalty regimes (this disparity will reduce, however, should the DTC's recommendation be implemented to equalise the income tax treatment of the mining sector with other sectors).
- Unlike minerals of higher value, these resources are predominantly consumed in the domestic market and are not exported. Effectively this means that royalty costs are passed onto the local consumer whom it is designed to benefit. In many cases this gives rise to a form of 'circular taxation' as Government takes its portion through the royalty, the cost of which is then passed on to the community, often paid for by Government.
- There are few barriers to entry for extractors in this sector. This means that illegal aggregate mining by smaller players is common place. This results in some extractors either intentionally not paying the royalty or the royalty not being paid due to lack of sophistication and lack of knowledge about the royalty charge or how to apply it.

Recommendations

- Over the last few years, there have been various calls to change or introduce new tax instruments. In the DTC's view this is unnecessary, especially since the mineral royalty has been carefully designed to achieve a strong balance towards ensuring that the royalty is responsive to different economic circumstances, capturing 'rents' when profits are high and ensuring a measure of cover in the form of a minimum revenue stream during weak economic cycles and low commodity prices. For this reason, there is little reason to depart from the current royalty regime framework, or to modify the regime to accord with any of the alternative options mentioned in the discussion leading up to this recommendation (the other 3 options, although somewhat expedient, are not sufficiently flexible to reflect the policy intent of government). The mineral royalty is a relatively new instrument which needs to be given time to prove itself. It is not good practice to be changing or adding taxes/levies unnecessarily, especially having regard to the uncertainty and perceptions of risk this creates, and the administrative expense involved in doing so. **The DTC therefore recommends that the current royalty regime should be broadly retained although some refinements to the regime are recommended, as set out below, as a means of the making the system more effective.**

- The DTC recognises that the factors in the royalty formula were identified after extensive deliberations, consultations and negotiations. As such the DTC does not wish to prescribe any particular changes to the formula rates, but recommends that, should any review be undertaken in the future, changes should only be made following a rigorous economic analysis by the National Treasury. Further, to achieve an optimally designed mineral royalty formula, all other tax costs imposed on taxpayers, which might be easily overlooked in such an exercise, should be taken into account. This includes *inter alia*: income tax, various indirect taxes, export taxes, levies and costs related towards implementing BEE and government sanctioned social expenditure imposed in terms of the MPRDA. As mentioned already, any adjustments need to be conducted with a great deal of caution so as not to jeopardise investment in the industry. Put otherwise, it is worth having regard to the Holloway Committee [276] which emphasised the following warning that concerns excessive taxation of gold mining, but which is also applicable to all taxes:

  > As long as the development of new fields is left to private enterprise, it is of the utmost importance that there should be sufficient incentive to capital investment and risk-taking. … The flow of capital to new mining ventures is therefore a useful index of the taxable capacity of the industry. Gold mining is a lottery as well as an investment. If a lottery offered no substantial prizes it would not flourish. … It is not possible for the State to extort the last pound which might be derived from gold mining without threatening the investment in gold mines. It must be remembered that even if a mine produces no revenue at all for the Exchequer it still produces wealth, and provides a living to a large number of workers, and a market to many industries. As no objective measure is available, it would therefore be wiser to err on the side of giving more than enough than of giving less than enough encouragement to the opening up of new mines.

- Whilst the DTC recognises that there are stark differences in the circumstances of extractors in the aggregate/sand industry verses extractors of higher value/less bulk mineral types, it is hesitant to propose a blanket exemption or a modification to the rate formula for this sector. Creating such an exemption would contradict government policy and the MPRDA, which requires the imposition of a State royalty for the depletion of the nation's resources of which the State is custodian[277]. That being said, the DTC realises that royalty compliance is particularly onerous for the many small players in this sector

[276]Holloway Committee 1946 at paragraph 136.
[277] See section 3 of the MPRDA.

and that the royalty, from an administrative perspective is often burdensome (for SARS and smaller extractors alike) if compared to the relatively low royalty collected from some of the smaller bulk extraction businesses. In the DTC's view, this problem can best be rather addressed by substantially increasing the small business exemption in the MPRRA[278], which currently sets a fairly low ceiling for extractors to be exempt from the royalty[279]. It is noted that this ceiling has not been revised since promulgation of the MPRRA, in 2008. It has thus not kept pace with inflation and in the DTC's view was, in any event, too low even at the time of promulgation, to address the anomalies which have been canvassed in this report. The small business exemption also has a provision[280] which limits the exemption to circumstances where the "royalty in respect of all mineral resources transferred that would be imposed on the extractor for that year does not exceed R100 000.00". This provision is problematic, as it forces all extractors, no matter how small and unsophisticated, to perform the complex royalty calculations to determine whether they fall below the hypothetical royalty level necessary for exemption. It is accordingly recommended that this latter requirement be deleted.

- As indicated above, some commentators have recommended the removal of the 0.5 per cent minimum royalty rate or, alternatively that extractors should be provided with a deferral mechanism for payment of the royalty in times of hardship. The DTC does not support either of these proposals (see above). In this regard it is also important to remember that the royalty is not regarded as a tax but is a royalty, akin to a 'rental' for the use of resources of which the State is custodian. Removal of the minimum royalty would likely sever the distinction of the royalty being a levy as opposed to a tax, i.e. in such an instance the royalty would be regarded as a tax. Classifying the royalty as a levy and not as a tax constitutes more than semantics, as this classification enables the royalty to be tax deductible for income tax purposes (whereas taxes in the ordinary sense are not tax deductible). Whilst on this point, it is important to note that tax deductibility of the royalty means the effective minimum royalty rate is in fact 0.39 per cent, somewhat lower than the official 0.5 per cent minimum royalty (assuming taxable income exists against which to offset the deduction).
- Pivotal to the difficulties with compliance in terms of the MPRRA is that the schedules to the MPPRA are not sufficiently comprehensive or accurate in terms of coverage of minerals, mineral purity levels and setting appropriate levels for conditions specified.

[278] Section 7 of the MPRRA.
[279] Section 7(1)(a) of the MPRRA exempts extractors from the royalty if their gross sales in respect of all mineral resources transferred does not exceed R10million.
[280] Section 7(1)(b) of the MPRRA.

Originally these schedules were compiled by Mintek[281] with input from relevant stakeholders. These schedules urgently require updating and likely will need to be updated in the future to keep pace with changing markets, mineral conditions, uses of minerals etc. It is recommended that the schedules be thoroughly reviewed, with comprehensive input from industry stakeholders and that the coverage range of different mineral types and purities is wide as possible. Further, it is recommended that a mechanism be put in place to ensure that these revised schedules remain current and up to date. It is recommended that the schedules be removed from the main body of the MPRRA legislation (the primary legislation) and that they be published as secondary legislation as regulations in the government gazette. This will enable greater flexibility in updating the 'condition specified' schedules without incurring the inevitable delays of regularly taking the legislation through protracted Parliamentary processes. Extractors will accordingly be in a position to engage the Treasury where it is found that the Schedules are not providing adequate coverage of minerals being extracted.

- Many of the concepts and terms encompassed within the MPRRA do not bear the same meaning as they do amongst the accounting profession or IFRS, for example the meaning of 'EBIT' and 'gross sales'. This has led to differing interpretations and uncertainty in the law. Other interpretation difficulties have already been canvassed in this report such as in relation to the meaning of "consumption"; establishing points where transfer takes place; the circular difficulty arising when royalty charges are revised and the impact this change has in the income tax context. Further differences in interpretation of application of the laws are also widespread, for example, taxpayers who are required to gross up or down their gross sales for purposes of the MPRRA have no prescribed methodology for doing so (it is anticipated that updating the schedules will alleviate this problem, but may not eradicate it completely). While it is the DTC's view that a wholesale legislative intervention is not appropriate here, clear guidance is required. It is recommended that SARS issue a comprehensive Interpretation Note on this subject to dispel any uncertainty current in the industry.
- The DTC's recommendation, elsewhere in the report, for the removal of the upfront capex allowance has an impact on the determination of 'EBIT' in terms of the MPRRA. This is because the carry-over of operational losses in the determination of 'EBIT' is currently not allowed. This exclusion does not, however, apply to unredeemed capital expenditure which may reduce 'EBIT' under the current dispensation. Conversion of

[281] An autonomous research and development statutory organisation which reports to the Minister of Mineral Resources and specializes in all aspects of mineral processing, extractive metallurgy and related technology.

unredeemed capital expenditure to operational losses (which will automatically follow if the new dispensation does not allow for capex deductions) means that extractors will no longer be able to carry their former unredeemed capital expenditure forward for set off against ‘EBIT’. The DTC is sympathetic to this issue and recommends that for MPRRA purposes taxpayers be allowed to continue setting off unredeemed capital expenditure ‘EBIT’. This unfortunately will create inevitable complexity, as taxpayers will have to keep dedicated records for this purpose.

- It is worth noting that the calculation of the royalty charge and its imposition is currently done on a mine by mine basis, reflecting the ring fencing regime contained in the income tax act[282]. The policy thinking behind applying the legislation in this manner supports a disposition to impose the royalty as close to the source of the extraction of the mineral as possible. Imposing the royalty in aggregated fashion across mines would logically frustrate this objective. Thus, notwithstanding the DTC’s recommended move away from ring fences in the income tax context, the DTC does not recommend a similar departure in the realm of the royalty regime where for purposes of calculating the royalty and set off of the unredeemed capital expenditure (referred to in the previous recommendation) existing type ring fences should be expressly retained.

2. Proposals for the introduction of new tax instruments

Proposals received by the DTC range from relatively minor technical changes to recommendations for the introduction of completely new tax instruments (to either replace or supplement existing instruments). In this section the DTC deals with the latter type of proposals, i.e. proposals for new instruments. Many of the proposed tax instruments are designed to collect on a tax base already covered by existing tax instruments. In this context, one needs to evaluate whether these proposed tax instruments confer sufficient improvement on existing instruments so as to justify the administrative cost of their introduction into the South African tax system.

[282] This is in keeping with the requirements of section 5 of the MPRRA.

2.1. Windfall Taxes

These types of taxes are levied in circumstances where economic conditions allow industries to enjoy above average profits. Essentially these taxes are designed to ensure that the state enjoys fair participation in such windfalls.

Recommendation

The issue of windfall taxes often creates a platform for controversy and debate. Presently, however, windfall taxes do not appear to be the subject of popular discourse. This is most probably due to the current recessionary environment and concurrent depressed mineral resource prices. The subject will, however, be addressed by the DTC as changing economic circumstances do not detract the need for debate.

Both the mineral royalty and the gold mining formulas have components of rent capture entrenched. **For this reason and for the reasons given for not supporting a dedicated rent resource tax, the DTC does not support the enactment of a dedicated windfall tax**.

2.2. Rent resource tax (RRT)

A proposal for an RRT (a type of windfall tax[283]) has received support in the SIMS report. The concept of a resource rent is explained in the SIMS report as follows[284]:

> Resource rents represent surplus revenues from a deposit after the payment of all exploration, development, and extraction costs, including an investor's risk adjusted required return on investment[285]. Since rent is pure surplus, it can be taxed whilst

[283] Some economists draw the distinction between ex-ante taxation of expected economics rent (in RRT) and the ex-post taxation of unanticipated (i.e. windfall) economic rents. In this regard see : Z. Rustomjee, R. Crompton, A. Maule, B. Mehlomakulu, G. Steyn (National Treasury), Possible reforms to the fiscal regime applicable to windfall profits in South Africa's liquid fuel energy sector, with particular reference to the synthetic fuel industry, (2007) at page 46, paragraph 4.2, Retrieved 4 April 2015 from: http://www.treasury.gov.za/publications/other/windfall/Liquid%20Fuel%20Windfall%20Profits%20Final%20Report%20-%20%209%20February%202007.pdf

[284] Supra SIMS document note 264 at page 15.

[285] At page 20 of SIMS, an RRT is said to be taxed only on pure economic rent which "is the excess profit or supernormal profit and is equal to revenue less costs where costs include normal profit or a 'normal' rate of return (NRR) to capital. This NRR, which is the minimum rate of return required to hold capital in the activity, has two components: a risk-free rate of return, and a risk premium that compensates risk adverse private investors for the risks incurred in the activity". At page 36 of SIMS,

upholding the core taxation principle of neutrality. Furthermore, governments aim to capture the resource rent, not least because minerals are typically owned by the state.

It is important to note that in ensuring that investors are taxed only on surpluses, taxpayers are allowed to carry forward their losses and are only taxed once accumulated losses have been recovered against profits. This poses a revenue risk to the Government as its income from RRT is wholly contingent on the generation of mining profit surpluses. This also means that Government potentially faces a delay in receipt of revenue as the RRT only generates an income stream at a certain specified profit threshold. This delay is normally extensive, as mentioned, because of the protracted development period necessary for mines to achieve profitability (and even longer periods to achieve surplus profits). The combination of uncertain and delayed income streams subjects government tax collections to uncertainty and instability.

When mining royalties are levied on standard or fixed rates, there is no opportunity for governments to share in resource rents when these are created during commodity price boom periods. There are several ways to deal with this matter, but two stand out. The first is to establish a stand-alone RRT whereas the second is to build rent-earning capability into the royalty regime, which is the approach South Africa has taken with the new royalty regime.[286]

It seems likely that whilst the authors of the SIMS report drew inspiration from the Australian move towards an RRT, they did not fully account for the differences in the Australian and South African tax dispensations. In this regard, as noted in an unpublished internal treasury

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for purposes of introducing an RRT, a "normal rate of return" for determining the threshold for the RRT is recommended as being the treasury long bond rate plus 7% (which was about 15% at the time).

[286] RRT is aimed at profits after a certain minimum threshold internal rate of return has been realised. Companies will argue that they need these excess profits to pay for downward cycle of commodity price swings but there is a strong case for governments to share in rents as the owner of high quality resources. The advantages for companies is that with an RRT there is an incentive to invest because the tax is only triggered once the threshold is reached and it is payable late in the project's life. The disadvantages of RRT include:

- Setting the appropriate threshold rate is difficult
- Greater administration difficulties that rely on accurate information
- In the absence of other (back-stop) taxes there is more risk of government not receiving any taxes
- There is a risk of gold-plating, i.e. excessive spending on unnecessary items
- Uncertainty in predicting tax revenues and less tax revenue for marginal deposits.

document[287], South Africa already has an element of RRT built into its royalty levy[288]. Australia in contrast operates a federal based system where minerals are often taxed (at federal and State level) on an *ad valorem* or volume basis without regard to profitability.[289] More importantly, the Australian RRT was abandoned soon after its implementation. It is very likely that an RRT will similarly not be embraced in South Africa because of ideological differences and problems associated with administration, complexity in calculation and gaining consensus on valuations on current operations.

Administratively, in common with all profit based taxes, an RRT (as advocated by SIMS)[290] is potentially difficult to administer as the calculations involved are generally complex (more complex than typical output based taxes). One therefore has to be circumspect in broadening the range of South Africa's existing profit based taxes, unless absolutely necessary[291].

From a perspective of fairness, taxing mines exclusively on their rental profits is conceptually appealing as it recognises the ability of taxpayers to afford the costs of mineral extraction. Such an approach, however, excludes the principle embraced by the Freedom Charter[292] (endorsed in the preamble to the MPRDA[293]) of recognising the mineral wealth of the country as belonging to the people and not as the singular benefit of an individual[294].

Recommendation

Whilst tax instruments which capture rents are supported, the DTC believes that an RRT is not the ideal mechanism for doing so. In the DTC's view, it is preferable to have a tax instrument which captures both rents and contains a minimum non-profit based revenue

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[287] Mining Taxation: the South African Context, *Economic Tax Analysis*, 27 May 2013, page 18.

[288] The profitability measure contained in the royalty charge is comparable to an RRT.

[289] The introduction of an RRT in Australia in fact proved itself inflexible towards a downturn in the commodity prices, failing to generate income because of the low profit cycle in which it found itself.

[290] At the time of the release of the SIMS report, Australia was set to introduce an RRT and eventually did so in the form of the Minerals Resource Rent Tax Act No. 13 of 2012 (MRRT). The author of the SIMS report appears to have been encouraged to advocate an RRT bolstered by the pending enactment of the MRRT. The MRRT was severely criticised for, amongst other things, making Australia's tax dispensation uncompetitive. The MRRT was short lived, having been repealed (following a change in government) by The Minerals Resource Rent Tax Repeal and Other Measures Act 2014. The taxes collected from the MMRT, in its short tenure, fell well short of those expectations at the time of enactment (http://www.smh.com.au/business/federal-budget/mining-tax-revenue-slumps-20130514-2jkm1.html#ixzz2TGVDRaYr).

[291] Income tax charged in terms of the Income Tax Act is an example of an existing profit based tax.

[292] 1955.

[293] MAPRDA 28 of 2002.

[294] This by implication suggests that the nation should be compensated for depletion of its minerals, regardless of whether profits or surplus profits are generated from a mining endeavour.

stream (in compensation for depletion of the nation's mineral resources). Such a hybrid type tax has the advantage of both securing a consistent revenue stream (particularly when commodity prices or profits are low) and also capturing surplus rents.

Devising a new hybrid type tax instrument is unnecessary as the existing royalty tax is already designed to achieve this dual function. Whilst the royalty tax formula may need clarity and refinement to better optimally achieve this result (this issue has been expanded on in the discussion on royalties), doing so is far less cumbersome and administratively less burdensome than introducing a distinct and additional rent resource tax. **Accordingly, the DTC does not support the introduction of a new tax of this nature.**

2.3. Sovereign wealth fund

Support for a sovereign wealth fund is to be found in the SIMS[295] report and the New Growth Path[296] (NGP) as an investment vehicle for the proceeds generated from captured mining rents. According to the mentioned SIMS report: "RRT proceeds should ideally be kept in an offshore SWF (Sovereign Wealth Fund) to ameliorate the strengthening of South Africa's currency during commodity booms (the 'Dutch Disease')… and the negative impact of a strong Rand on manufacturing exports and jobs."

These funds are promoted for various purposes, such as a mechanism for building up foreign currency reserves (hence for supporting fiscal stability) or being earmarked for particular uses, such as to promote African development and trade.

Given the current decline in commodity prices and the rand exchange rate, such a fund appears to have lost its allure, with Economic Development Minister, Ebrahim Patel, indicating that plans for such a fund are being indefinitely[297] postponed.

Recommendation

A recommendation pertaining to the establishment of funds for investment of revenues collected falls beyond the scope of the DTC since its mandate pertains to revenue collection as opposed to investment or spending of such revenue**. In the DTC's view, however, the**

[295] Page 34-35, 38 of the SIMS Report.
[296] New Growth Path framework document, published November 2011, Page 12-14.
[297] See: http://www.moneyweb.co.za/moneyweb-economic-trends/sas-sovereign-wealth-fund-off-the-table

notion of a wealth fund should not be wholly discarded based purely on present economic circumstances, which are always subject to change in the long term.

2.4. Export Taxes

As already mentioned, South Africa's industrial policy actively attempts to encourage beneficiation of South African minerals.

Submissions have been received aimed at encouraging beneficiation through the imposition of export taxes on the exports of unbeneficiated product. This approach aspires to make domestic beneficiation more competitive by creating greater supply of the taxed product in the domestic market, hence, artificially lowering the domestic price of the good. It should be noted that there is no World Trade Organisation (WTO) obligation on South Africa against implementing export taxes, although restrictions do apply on quantitative and other restrictions[298]

The success of export taxes as a means for promoting beneficiation is not promising, especially in the light of other non-tax constraints such as electricity. In this regard, the IMF highlights the diamond levy on exports as an example of a thus far unsuccessful government initiative "…designed to promote the domestic cutting and polishing industry"[299]. The IMF defends its downbeat assessment of export taxes by showing a drop in production of locally polished diamonds between 2013 and 2014 of 400,000 carats[300], despite the existence of the diamond levy over this same period[301]. In the international context, the Indian share of global production plummeted following the imposition of an export tax, serving as a valuable example of the dire consequences of imposing such taxes[302].

The IMF also refers to a World Bank article where the case is made that only countries with market power can impose export taxes and record any measure of success[303] (South Africa does not have pricing-making power in this industry). Further price taking countries tend to lose export market share as a consequence of the imposition of such taxes, with negligible

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[298] See Article XI of the General Agreement on Tariffs and Trade (GATT).
[299] Supra note 209 at paragraph 14.
[300] It is to be noted that there is some question as to the reliability of these figures as the statistical methodology for measuring local finished diamond production has changed in recent years. Nonetheless, it certainly does not indicate any improvement.
[301] Supra note 209 at Paragraph 163.
[302] See Sandrey, R.2014. Export Taxes in the South African context. Stellenbosch: Tralac. At page 15.
[303] Devarajan, S., D. Go, M. Schiff and S. Suthiwart-Narueput, 1996, "The Whys and Why Nots of Export Taxation," *Policy Research Working Paper* 1684 (Washington: The World Bank).

attendant tax revenue. Thus, even if government beneficiation objectives were achieved by this means, it would most likely cause hardship to upstream industries wishing to export their produce.

It is to be noted that even if export levies could theoretically assist with beneficiation, there is some doubt concerning the effectiveness of South African export levies which can be bypassed by channelling exports through treaty exempt countries[304].

Recommendation

Whilst the DTC endorses measures to support domestic beneficiation, imposition of export taxes as a means of sponsoring beneficiation is not supported. The DTC prefers that other options (non- tax incentives) be explored in preference to export taxes as means to encourage beneficiation.

2.5. Unitary tax regime

A unitary tax regime has been proposed with a view to confronting the challenges posed by trans-national mining corporations which have operations in South Africa. A unitary tax system requires such companies to present a consolidated or combined report of their accounts to SARS. This report should cover all accounts of the multinational company but exclude all transfers. Pursuant to such disclosure, the multinational group is taxed in South Africa on its portion of global profit at the South African domestic rate on the basis of a

[304] The Southern African Development Community (SADC) Protocol on Trade, prohibits SADC Members from imposing export duties on trade with each other, although they may impose export duties to prevent the erosion of any prohibitions and restrictions that apply to exports outside SADC. The Free Trade Agreement between the Southern African Customs Union (SACU) and the states of the European Free Trade Association (EFTA - Iceland, Liechtenstein, Norway and Switzerland) provides that no new duties may be imposed on any trade between the members and that any export duties on such trade must be eliminated, except as provided for in the agreement. It is to be noted that SACU members may impose restrictions on exports in accordance with national laws and regulations for the protection of: health, humans and plants; the environment; treasures of artistic, historic or archaeological value; public morals; intellectual property rights; national security as well as exhaustible natural resources. Further significant treaties which place limitations on implementing an export charge are: a) the Agreement on Trade, Development and Co-operation (TDCA) between South Africa and the European Union – available at: http://www.sars.gov.za/Legal/International-Treaties-Agreements/Trade-Agreements/Pages/TDCA.aspx. Last accessed 29 May 2015.
b) SADC-EU Economic Partnership Agreement (EPA) – available at:
http://ec.europa.eu/trade/policy/countries-and-regions/regions/sadc/. Last accessed 29 May 2015.

weighted formula. The objective of this approach is to circumvent evasion through transfer pricing.

Recommendation

In the DTC's view, a unitary system of mining taxation is not a feasible solution. Currently the only internationally established systems of taxation for determining international taxing rights are the residence basis and the source based systems of taxation. The DTC is of the view that a complete overhaul of the South African taxation system would not be advisable at this juncture. The case for a unitary mining tax system is accordingly not supported. This proposal of a formulary apportionment has also been rejected in the OECD BEPS Action Plan and similarly rejected in the DTC BEPS report.

2.6. IMF suggestions

As already mentioned, the IMF Fiscal Affairs Department (IMF) was commissioned to prepare a report on the South African mining tax regime. Whilst the DTC has received wide ranging inputs, the IMF report is particularly comprehensive and is extensively referred to in the present report.

In presenting their findings, three options were identified. These options have been modelled by the IMF (on stylised platinum, iron ore and coal projects)[305] with a view to eventual comparison with likely future outcomes for the mining sector under South Africa's current tax regime. The comprehensive model (Option 1) presents 2 scenarios which were separately[306] modelled. It is not the DTC's intention to go into depth pertaining to the outcomes of the simulations (the detail of which can be obtained directly from the IMF document)[307]; suffice it to say that Option 1[308] was able to achieve a notably higher Average Effective Tax Rate (AETR) than Options 2 and 3 in terms of these simulations.

The three options [309] advanced by the IMF are discussed below[310] with recommendations following each option (making reference to each component contained in these options):

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[305] See IMF document (note 209) at pages 40-45 and the separate Analysis Supplement, Chapter II.
[306] The difference between the two modelled Option 1 scenarios was that although both options contain a flat 2% rate charge on gross sales, such 2% charge is creditable against the cash surcharge in scenario 1(a) but not in scenario 1(b).
[307] Supra note 209.
[308] Scenario 1(a) and 1(b) achieved an AETR of 47 and 51 percent respectively, whilst maintaining a post-tax investor return on total funds at approximately 14%.
[309] These 3 options are discussed to a greater or lesser degree at paragraphs 134, page 44, 45 of the IMF document-supra 209. The smaller proposals comprising these options have not been wholly incorporated and are discussed elsewhere in this report.

2.6.1. OPTION 1 (comprehensive reform):

This option consists of the following proposals, dealt with more fully below[311]:

2.6.1.1. A flat royalty, which the IMF modelled at a rate of 2% of gross sales at the point of sale of the first saleable product, was recommended.

2.6.1.2. Standard CIT with a mining ring fence, with economic depreciation and Allowance for Corporate Capital (ACC)[312]. An ACC is an allowance similar to the current additional capital allowance available for gold mines, essentially a notional replacement for the interest which taxpayers are charged for the financing of their capital investments.

2.6.1.3. Additional surcharge[313] on cash flow or RRT which is applicable only in highly profitable circumstances, with royalty as a credit towards it.

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[310] Reforms of a smaller technical nature contained in these options are discussed elsewhere in this document.

[311] For greater detail on different tax instruments and allowance options, see: IMF, 2012, *Fiscal Regimes for Extractive Industries—Design and Implementation* (Washington: International Monetary Fund); available at http://www.imf.org/external/np/pp/eng/2012/081512.pdf

[312] The IMF explains this concept (note 209) at page 38 Box 2 (which it references to another IMF document at: IMF, 2012, *Fiscal Regimes for Extractive Industries—Design and Implementation* (Washington:
International Monetary Fund); available at http://www.imf.org/external/np/pp/eng/2012/081512.pdf) as follows:

"**Allowance for Corporate Equity (ACE) or Capital (ACC) schemes**. The former amends the standard CIT by providing a deduction for an imputed return on book equity; tax depreciation remains, but becomes irrelevant in that faster depreciation reduces equity and hence future deductions by an offsetting amount. The latter also gives the interest deduction at a notional rate, so eliminating any distinction between debt and equity finance. Norway's special petroleum tax approximates the ACC, though its combination of uplift on total investment and limitation on interest deduction differs from a 'pure' ACC. It also offers refund of the tax value of exploration losses and of ultimate losses on licenses."

[313]The IMF explains this concept (note 209) at page 38 Box 2 (which it references to another IMF document at: IMF, 2012, *Fiscal Regimes for Extractive Industries—Design and Implementation* (Washington:
International Monetary Fund); available at http://www.imf.org/external/np/pp/eng/2012/081512.pdf) as follows:

"***Tax surcharge on cash flow***. Adjusting accounting profit by adding back depreciation and interest, and deducting any capital expenditure in full, yields a base of net cash flow. This, too, could form the base for a surcharge. Instead of permitting an annual uplift for losses carried forward, a simple uplift (investment allowance) could be added to capital costs at the start—this is done in the United Kingdom by a time-limited uplift on losses. In the UK, this surcharge is combined with conventional CIT, within the same sector-wide ring fence. The "R-factor" or payback ratio scale used in some Production Sharing Contracts (PSC's) in a further variant, as is the "investment credit" of the Indonesian PSC's."

2.6.1.4. Align South Africa's capital allowances with other mining jurisdictions by bringing depreciation closer to economic depreciation of producing assets. In this regard there should be a unified treatment of exploration and development capital expenditure with write-offs over five years, commencing when the asset is placed into service.

2.6.1.5. Tax incentives such as the section 12I allowance for manufacturing, accelerated capital allowances in the mining industry, and the additional capital allowance in the gold industry should be grandfathered for a time (sunset provision) where the incentive was granted on application.

2.6.1.6. Withdraw the gold mine CIT formula for existing mines and do not extend it to the platinum sector.

Recommendations

At the outset of the discussion on these recommendations (this is also applicable to recommendations applicable to Options 2 and 3 which are discussed later), **it is important to note that the DTC does not support the introduction of new tax instruments unless it is absolutely necessary**. **For reasons outlined extensively in the discussion of the current mineral royalty regime, the DTC is of the view that the design of the royalty enables it to capture rents and also secure a minimum revenue stream in compensation for depletion of resources. For this reason, many of the proposed tax instruments under this option are not recommended.**

Flat Royalty

At face value the introduction of a flat royalty constitutes a major deviation from the current royalty regime. However, the proposed change needs to be considered within the context of the totality of reform measures proposed in Option 1. The reason for the flat rate is that the IMF also recommended a surcharge (a charge on cash flows, essentially an RRT) which, amongst other things, is intended to replace the variable aspect of the mineral royalty. The DTC has already highlighted that it is satisfied with the existing royalty design and does not recommend fundamental changes to the system. **The proposal for a flat royalty is accordingly not recommended.** Another reason for not favouring a flat rate is the lack of flexibility it provides in changing economic cycles. This was illustrated by the Zambian experience, where the revenue authorities were unable to timeously change the prevailing fixed royalty rate (due to prolonged legislative and administrative processes), in response to sharp changes in economic conditions. This meant that they could neither adequately capture rents when commodities did well nor could they provide relief when bad times followed[314].

It is worth noting that petitions for a fixed rate royalty have also been received from parties other than the IMF, essentially based on the concern that the existing variable rate royalty tax system may be subject to manipulation. The DTC is of the view that both fixed and variable royalties are subject to the risk of manipulation if not adequately policed. The DTC, however, has confidence that SARS will undertake the necessary compliance procedures to ensure that the royalty is duly collected.

Standard CIT with mining ring fence with economic depreciation and Allowance for Corporate Capital (ACC)

- **The DTC supports a move towards alignment of mining tax[315] and standard CIT** and ultimately would like to see gold mining move in this direction as well.
- As mentioned elsewhere in this document, the DTC favours the removal of all ring fences but recognises the need for them for existing gold mining companies where at present ring fences need to remain.
- **The DTC does not support the introduction of an ACC**. The ACC is akin to the additional capital allowances applicable to gold mining. Its aim is chiefly to compensate taxpayers for the cost of capital. The DTC accepts the concerns of the IMF about the advantages this creates for neutrality of debt[316] and equity, since actual interest paid in terms of this proposal will not be deductible. **The DTC, however, prefers that interest paid be deductible[317] (as the ACC is a proxy and does not always account for the real cost of capital)**. The IMF has pointed out areas where there are anomalies[318] regarding the deductibility of interest which in the DTC's view can be remedied legislatively (see later discussion on harmonisation of legislation) without the necessity of bringing in an ACC.

Additional cash flow tax or RRT which is applicable only in highly profitable circumstance, with royalty as a credit towards it

[314] Cawood, F.T. (2010)The South African Mineral and Petroleum Resources Royalty Act-Background and fundamental principles, *Resources Policy*, 2010, vol. 35, issue 3, pages 199-209.
[315] The Committee favours a move away from the upfront capex allowances to bring them into line with the manufacturing allowances.
[316] Supra note 209, Box 2 of IMF report.
[317] Subject to debt limitations on interest recently introduced to combat BEPS, e.g. section 23M of the Income Tax Act (and other measures of this nature which may be introduced in the future).
[318] Supra note 209 at paragraph 57.

The DTC does not support the introduction of a surcharge or an RRT as such a charge can be accommodated by the royalty formula. In the DTC's view the modelling of the IMF may give a degree of direction as to the success of amending the royalty to be in line with the surcharge for capturing rents, but as the DTC cautioned earlier, this must be done circumspectly so as not to unduly discourage investment.

Align South Africa's capital allowances with other mining jurisdictions by bringing depreciation closer to economic depreciation of producing assets.

This approach is supported by the DTC and accords with the direction the DTC wishes to recommend, of standardising mining taxation with other sectors.

Tax incentives such as the s. 12I allowance for manufacturing, accelerated capital allowances in the mining industry, and the additional capital allowance in the gold industry should be grandfathered for a time (sunset provision) where the incentive was granted on application.

The DTC would also like to move away from these various incentives. Reforming section 12I, however, falls beyond the scope of this report and will be considered elsewhere in a dedicated incentives DTC report.

Withdraw the gold mine CIT formula for existing mines and do not extend it to the platinum sector.

The DTC partially agrees with this recommendation but would prefer to retain the gold formula for existing gold mines (unless elected out) rather than withdraw it completely (a more in-depth discussion on this is contained elsewhere in this document).

2.6.2. OPTION 2 (Partial reform):

This option consists of the following proposals, dealt with more fully below:

2.6.2.1. Maintain 100 per cent capital allowance, while proceeding with other income tax reforms under Option 1.

2.6.2.2. Defer cash-flow or resource rent tax in favour of reform of the current royalty structure.

2.6.2.3. Adopt a net smelter return (NSR) calculation for the royalty base where bulk concentrates or ores are sold. The IMF defines an NSR as: "…the net revenue that the owner of a mining property receives from the sale of the mine's metal/non- metal products less transportation, processing and refining costs" [319].

2.6.2.4. Provide clear valuation guidelines, publish reference prices, simplify collections and coordinate between the DMR and the State Diamond and Precious Metals Regulator regarding mineral volume and value verification.

Recommendations

Maintain 100 per cent capital allowance, while proceeding with other income tax reforms under option 1

As already alluded to, the DTC does not favour retention of the 100 per cent capital allowance. The DTC is of the view that the capital allowance should be maintained but spread over a four year period to be in conformity with the manufacturing depreciation life span. The DTC agrees to recommend partial reforms, some of which have been raised by the IMF and some conceived elsewhere. The DTC further agrees with the view of the IMF which has the following to say in support of this option over Option 1[320]:

> …the authorities could also maintain the current structure and embark on only partial adjustments: perhaps preferable when the tax regime is not perceived as an impediment to the industry's growth prospects—regulatory uncertainties seemingly constitute the main barrier to further investments and growth of the tax base;

The DTC broadly agrees with the above insofar as it is reluctant to recommend the introduction of new tax instruments. In amplification of the point made by the IMF above, the DTC emphasises that at the moment it appears that tax issues are not the main impediment towards investment in South African mining[321] and does not want them to become so. Further, administrative, teething and learning costs associated with introducing new tax instruments all contribute to a reluctance to change, doing so only to the extent it is absolutely necessary.

Defer cash-flow or resource rent tax in favour of reform of the current royalty structure

The DTC agrees with this sub-option.

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[319] Supra note 209 at paragraph 142

[320] Paragraph 134.

[321] See Annexure C, Table 1.

Adopt a net smelter return calculation for the royalty base where bulk concentrates or ores are sold.

Superficially, a NSR calculation has an enticing simplicity. In this regard its advantages include:

- A more equitable targeting of the first point of sale of the resource, not a beneficiated product (in contradistinction to the current schedule system); and
- If the NSR base is well-defined, it is relatively easy to quantify and administer, provided the authorities have access to a database that can flag mispricing of costs.

These advantages are overshadowed by the following disadvantages which include:

- More costs are deductible, which makes it more difficult to quantify and to administer; and as a result;
- There is more scope for mispricing, miscosting and creative accounting.

As alluded to already, shortfalls of a NSR could be ameliorated by having a complete database (similar to the database required for administering Transfer Pricing) of historic transactions for all minerals so that value-addition costs can be properly understood. In practice, however, because a variable cost structure exists (meaning costs can differ for different mines and types of mining), formulation of a standardised database is difficult if not impossible to achieve. For this reason and because the DTC's preferred alternative of broadly retaining the current royalty system (discussed previously) better fulfils the political imperative of ensuring that mines pay an equitable share to the fiscus for use of resources, it is recommended that an NSR not be adopted.

Provide clear valuation guidelines, publish reference prices, simplify collections and coordinate between the DMR and the State Diamond and Precious Metals Regulator regarding mineral volume and value verification.

The DTC supports this approach.

2.6.3. OPTION 3 (Do very little - a choice in itself)

Recommendation

The DTC does not favour this option.

2.6.4. Assessment of the 3 options overall

The DTC favours a hybrid of the 1st and 2nd options with an overall preference for option 2. The DTC prefers bringing the mining tax system into line with the rest of the tax system in so far as possible (as advocated in Option 1). The DTC, however, does not favour the introduction of a fixed royalty, an ACC or a surcharge (as advocated in Option 1).

Instead of introducing various new instruments the DTC prefers to retain the existing mineral royalty with a view to achieving, within the royalty, many of the objectives intended to be gained by introducing the instruments listed above and supported by the IMF (this approach accords more closely with the IMF's option 2). The DTC notes the large revenue take gained by employing Option 1 as opposed to the other options proposed by the IMF (in terms of the IMF modelling). However, this has to be weighed against the downside of introducing new tax instruments (the benefits of which in the DTC's view can be substantially replicated by making adaptations to the existing mineral royalty system).

3. Growth and Investment

It is of paramount importance that a tax system is designed in a fashion which promotes growth and investment or, at the very least, does not impede such growth. The principle of tax neutrality suggests that investment and production decisions for a resource project should not be altered by tax. Nonetheless, in certain instances government distorts this principle by intervening to incentivise or dis-incentivise business behaviour or investment decisions which are felt not to be adequately addressed by the market. Such intervention often takes the form of special tax incentives, where certain taxpayers receive certain tax benefits, tax allowances or preferable tax rates which are not available across the board to other taxpayers.

Circumspection is required when providing tax incentives because of the distortions they could cause. It is therefore necessary to conduct a review of some of the mining tax incentives. Some of these incentives have already been discussed, being fundamental to the design of the mining tax regime. Incentives already covered include:

a) the 100% upfront capex allowance available to all mines
b) the gold mining formula (which in its composition includes: the tax tunnel for low profit making mines and system of progressive marginal rates)
c) The additional capital allowances applicable to gold mining persons.

Otherwise, current or potential tax incentives are discussed below, referenced by the current stance of the DTC for future treatment of these incentives:

3.1. Promotion of research and development

The Income Tax Act currently provides for a tax incentive aimed at the promotion of research and development by South African companies[322]. This incentive applies to most companies

[322] Section 11D of the Income Tax Act.

(subject to certain exceptions) and is not specifically intended for the benefit of mining companies. Presumably to avoid a double tax incentive, the Act excludes this benefit in so far as it relates to "…mineral exploration or prospecting except research and development carried on to[323] develop technology used for that exploration or prospecting". Arguably this may confer a double tax incentive for mining companies in certain circumstances, but more importantly it highlights the point made by the IMF, of a need to streamline the tax legislation to ensure a consistency of treatment between legislation of general application versus specific rules dedicated to the taxation of mining[324].

Recommendation

Whilst the provision of R & D incentives is generally supported, this issue is not specifically a mining matter and is therefore not considered further in this report.

3.2. Incentives for employing additional labour

The employment tax incentive[325] aims to reduce unemployment amongst the youth by providing a tax incentive to employers who hire from this segment. The employment incentive was intended to apply broadly across industries and was not specifically targeted at the mining industry.

Recommendation

In practice, this incentive has had very little uptake in the mining industry. This is because the remuneration levels of most mine employees fall above the threshold necessary for employers to avail themselves of the incentive[326]. Since this incentive has application beyond the mining industry, it falls outside the scope of this report but will be addressed to some extent in the Small and Medium Enterprises (SME) DTC report.

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[323] Proviso to section 11D(1) of the Income Tax Act.

[324] This issue is expanded upon in greater detail in the section dealing with harmonisation and improvements to legislation.

[325] Employment Tax Incentive Act 26 of 2013.

[326] In terms of section 7(d) of the Employment Tax Incentive Act, employees who earn in excess of R6000 per month do not qualify for purposes of their employers being eligible to partake of this incentive. As can be seen from Annexure C, Table 4, employees in the mining sector on average earn R206,012 per annum (R17,168 per month), an amount way in excess of the maximum qualifying criteria of R6000 mentioned above.

3.3. Promoting South Africa as the financial and mining hub of Africa

In support of promoting South Africa as a financial and mining hub, representations have been made to the DTC for the relaxation of withholding tax on services paid to non-residents.

Recommendation

In the interim version of this report it was stated that a decision on incentivising South Africa as a mining hub in this fashion needed to be balanced against prospective tax base erosion which the fiscus may suffer as a result. It was further stated that exemptions to withholding taxes are not a mining specific issue and might better be reviewed in the BEPS report. Since publication of the interim report, this issue has become moot. This follows an announcement by National Treasury[327] that withholding tax on service fees will be withdrawn from the Income Tax Act and be dealt with under the provisions of reportable arrangements in the TAA. Subsequent to this announcement, a bill has been published which gives effect to this announcement[328].

3.4. Environmental taxation

3.4.1. Rehabilitation funding

A negative by-product of mining is the environmental damage linked to the operations of mines. Mining companies are therefore required by law to make upfront financial provision to remedy environmental damage at the closure of mines. The National Environmental Management Act[329] (NEMA) lays out various mechanisms for mining companies to make financial provision to meet their significant rehabilitation requirements, including the purchase of insurance cover. Whilst insurance products are becoming increasingly popular as a means of funding this type of expenditure, there is no corresponding provision in the Income Tax Act to allow for the deductibility of the relevant premium expenditure (section 23L limits the deductibility of the premiums paid to a short term insurers to the extent that it is not treated as an expense for the purposes of financial reporting in terms of IFRS). Therefore, taxpayers wishing to obtain tax relief are limited to financing their mine rehabilitation through section 37A of the Income Tax Act, which provides for the deduction of cash contributions to accepted rehabilitation trusts and companies.

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[327] See page 163 of Annexure C of the 2016 National Budget
[328] Clause 60 of the Taxation Laws Amendment Bill 17 of 2016.
[329] Act 1077 of 1998.

Since publication of the draft version of this report, regulations have been released[330], in terms of NEMA, which limit the forms of financial provision for abandonment and rehabilitation for mines. These regulations do not recognize rehabilitation companies or rehabilitation trusts (to the extent that such trusts make provision for latent or unforeseen liability post abandonment) for provision purposes, despite these forms of provision being endorsed in both the MPRDA and the Income Tax Act. Companies or trusts falling foul of these new regulations are placed in a quandary because efforts to change funding modalities by withdrawing funds at a pre-rehabilitation stage (to ensure compliance with the NEMA) may result in income tax and penalties being imposed[331]. The DTC's Oil and Gas Report has made recommendations for technical amendments to be made to the law[332], which will enable tax free withdrawals of funds for purposes of reinvestment through acceptable NEMA compliant funding mechanisms.

Recommendation

The limitations contained in section 23L of the Income Tax Act have their origin in deterring certain tax abuses which were prevalent in relation to insurance products prior to enactment of the section. Accordingly, changing such legislation has to be done with caution. It is undoubtedly undesirable for disparities of this kind between different pieces of government legislation to exist (such disparities now having been exacerbated by the newly published regulations to NEMA). Whilst the amendments proposed in the Oil and Gas report are supported, the recommendations of the DTC, espoused in the interim version of this report remain as before. I**t is thus recommended that an investigation be conducted with a view towards providing appropriate tax relief in respect of all the funding mechanisms available in terms of NEMA, subject, of course, to application of due care in not opening any doors to tax avoidance. Because of the cross-governmental impact which changes of this kind may have, it is recommended that a small inter-governmental task team be convened to co-ordinate a joint legislative response (consisting of SARS, NT, DMR and the DEA).**

[330] These regulations were released on 20 November 2105.
[331] Sections Section 37A(7) of the ITA
[332] See the DTC Oil and Gas report.

3.4.2. **Acid Mine Drainage (AMD)**

Scarcity of water resources and mounting awareness of the contamination of South Africa's water supply have made the issue of AMD increasingly topical in the media of late[333]. In simple terms, AMD involves a release of acid into the water supply caused largely by mining activity (coal and gold mining has been a prevalent cause of the problem in South Africa). Whilst a certain level of acid is released naturally (without any adverse environmental impact), the process of mining exacerbates the release of acid from mineral rock.

Recommendation

The issue of AMD has become a serious problem which cannot be understated. It is a matter which needs to be dealt with holistically and not in isolation. It would thus be prejudicial to make recommendations without an appropriate joint governmental strategy and framework to deal comprehensively with the problem. At the very least the issue needs to be addressed by the Treasury in conjunction with other government stakeholders, such as the Department of Mineral Resources, the Department of Environmental Affairs and the Department of Water and Sanitation. Only following such discussions can an appropriate response be devised. The DTC thus postpones espousing a view on the issue until such consultations have taken place.

3.4.3. **Adopting a comprehensive approach to lowering South Africa's carbon footprint**

Various submissions have been raised pertaining to the new carbon tax which seeks to tax businesses on the release of carbon into the atmosphere.

Recommendation

A comprehensive review of carbon taxes has been undertaken by a separate stream of the DTC[334]. For this reason this DTC will refrain from commenting on carbon taxes in this report.

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[333] McCarthy TS. The impact of acid mine drainage in South Africa. *S Afr J Sci*. 107(5/6), Art. #712, 7 pages. doi:10.4102/sajs.v107i5/6.712

[334] Davis Tax Committee, First Interim Report On Carbon Tax for the Minister of Finance, 13 November 2105, Retrieved on 7 December 2106 from: http://www.taxcom.org.za/docs/20151116%20DTC%20Carbon%20Tax%20First%20Interim%20Report.pdf

3.5. Limiting taxation on input costs by means of the diesel rebate

The diesel refund scheme was introduced in 2001 to provide relief to the primary production sectors (agriculture, forestry, fisheries, and mining). Diesel forms an important source of energy used, constituting a significant input cost in primary production and offshore economic activities. The demand for diesel by these sectors is relatively inelastic which means that the imposition of a levy may render these sectors uncompetitive (especially in the international context). For this reason the primary sectors are provided with full or partial relief from diesel fuel taxes. In some instances refunds are also provided on the basis that the diesel is consumed "off-road"[335]. The National Treasury and SARS have noted that there are some technical and administrative challenges in implementing the diesel refund which require review. Such a review is particularly necessary to ensure that the original policy intent of the rebate is still being fully achieved. In this regard it is arguable that the current provisions within the Customs and Excise Act do not adequately cater for the emerging business model in primary production sectors (especially mining) in which sub-contracting and out-sourcing are playing a more prominent role. Hence, some primary producers are being excluded from participating in the diesel rebate incentive because of its current form. On-going system review and consultations will ensure that all primary producers are able to participate in the diesel refund system.

Recommendation

The 2015 annual budget specifies that the National Treasury will be undertaking a comprehensive review of the diesel rebate system in 2015[336]. This review will undoubtedly cover, amongst other aspects, rebate issues pertaining to the mining industry. It is therefore unnecessary for the DTC to make a recommendation on this matter at this stage and it will only do so (in due course) should the issues raised in submissions to the DTC not be fully addressed in this process.

[335] For equity reasons a refund of Road Accident Fund contributions (motor vehicle accident insurance scheme) is provided for some off-road goods transport operations (i.e. rail freight) in respect of which no benefits can be claimed.
[336] See page 149 of Annexure C of the 2015 National Budget.

3.6. Promoting greenfield exploration

Greenfield exploration[337] is undoubtedly the foundation for continued development of the mining industry into the future. At the moment it appears that the development of mines in South Africa predominantly follows exploitation of "brownfield" bodies in the vicinity of existing mines, with relatively little attention being directed to greenfield exploration[338].

The DTC is of the view that it is important that greenfields exploration be encouraged. This is especially so as mining is an economic activity of limited duration (due to the exploitation of non-renewable resources) and as such investing in greenfields is better than allocating public resources towards indefinitely sustaining declining industries. The DTC has noted elsewhere in this report that, from a drafting perspective, the legislation pertaining to mining development expenditure is closely intertwined with prospecting expenditure (which includes greenfield expenditure). Since the DTC has recommended that the claiming of development expenditure be brought into line with other tax legislation, the inevitable redrafting of the law provides impetus for an examination of issues pertaining to exploration expenditure.

A number of submissions have hinted that the current income tax legislation does not do enough to encourage greenfield exploration and have accordingly recommended a number of possible options that could be implemented to provide additional incentives to companies engaging in this area. Amongst these recommended options is a system of "flow through shares" which is applied in Canada, apparently with some success[339]. It is interesting to note that whilst the Australians have recently introduced a tax flow through type incentive[340], they have mostly concentrated their efforts on studying non-fiscal regulatory issues which were identified as inhibiting greenfield investment. This resulted in an extensive Commission enquiry report [341] which identified numerous bureaucratic hindrances to exploration

[337] See note 99 for a definition of greenfield investments.

[338] In a submission by COMSA to the DTC dated 10 June 2014 dated 10 June 2014, COMSA states as follows:
"Compared to the global average of Greenfields exploration accounting for more than 20% of exploration expenditure, the share of Greenfields exploration expenditure is less than 10% of the total in South Africa".

[339] According to COMSA the flow through shares system applies by allowing high net worth individuals to claim an enhanced tax credit on an investment in an exploration company for tax purposes (the tax benefit of the expended capital flows back to the investor).

[340] See ATO website at https://www.ato.gov.au/General/New-legislation/In-detail/Direct-taxes/Income-tax-for-businesses/Exploration-Development-Incentive Last accessed 18 May 2015.

[341] Productivity Commission 2013, Mineral and Energy Resource Exploration, Inquiry Report No. 65, Canberra retrieved from http://www.pc.gov.au/inquiries/completed/resource-exploration/report

investment in Australia. In this regard it is noted that some of the complexities relating to the transfer of prospecting and other mining rights are similar to those existing in South Africa.

Recommendation

- **Having examined the "flow through shares" system, the DTC is not convinced that it will achieve the ends sought in South Africa[342].** It has been noted, however, that some refinements have recently been made to the section 12J venture capital regime but the incentives provided by section 12J may not be enough to stimulate the levels of investment that are needed in this space (see discussion below).
- The DTC is not convinced that fiscal incentives or the lack thereof comprise a complete answer to encouraging greenfield exploration. Information received by the DTC suggests that certain regulatory impediments are a more likely deterrent to such investment. Thus, it seems that non-tax measures also need to be put in place to encourage exploration. Such measures would include certainty in sector legislation around government's share, BEE and other transformation initiatives as well as government investment in Research and Development and in the Council for GeoScience.
- Whilst tax incentives may ultimately serve as a sweetener in encouraging greenfield investment, it is necessary to first conduct an in-depth examination of the current regulatory framework applicable to greenfield investors (as prescribed by the MPRDA) before advocating further tax incentives. Further the issue of the value and efficacy of tax incentives is controversial and requires additional empirical evidence and analysis. The DTC will deal with tax incentives in a separate report.

3.7. Future of section 12J of the Income Tax Act

Section 12J provides income tax incentives to taxpayers who invest in venture capital companies with specific support for junior mining companies. It appears that the uptake in this area has been limited, resulting in submissions to the DTC with a view to improving the viability of the system.

[342] The view of the DTC is that this system fails in so far as overseas investors will not be able to benefit from such a credit for set-off in their home jurisdiction. Further, although there has been growth in the Canadian VCC space (coinciding predominantly with the commodity boom, little evidence emerges of a correlation between the flow through share incentive and growth of VCC's in Canada.

Recommendation

The DTC supports measures to encourage investment in the mining industry. This incentive is aimed at promoting investment both at an exploratory and development phase level. In this regard the Treasury recently made certain refinements to the section 12J system in an effort to improve the uptake of this incentive.[343]In the 2016 annual budget review, the Treasury has further pronounced its intent to mitigate curtain unintended consequences arising from the current legislation which would otherwise result in potential investors abandoning plans to take up the incentive[344]. The DTC is optimistic that these changes will create the necessary momentum to encourage the venture capital investment which has thus far eluded proponents of the incentive. In fact, some evidence is emerging (since publication of the interim version of this report) that the legislative reforms introduced to refine the incentive are bearing fruit, and that the incentive is gaining in popularity (See Annexure C, Table 26[345]). Heartened by these advances in attracting investment, and Treasury's plans to develop the legislation further, the DTC does not wish to offer any further recommendations for further refinements to this incentive.

3.8. Adopting a depletion allowance system for mining rights to reduce capital costs

Submissions have been received advocating an allowance for the depletion of the value of mining rights accorded in terms of the MPRDA. This depletion of the rights purportedly occurs as a result of the mineral reserves associated with the rights being depleted over the course of time. It is worth noting that unless specifically legislated for in law, South Africa's courts do not recognise a tax deduction for this type of expenditure since it is regarded as being capital in nature[346].

In terms of the history of the various Commissions, the Margo Commission declined to make a recommendation[347] on the issue. However, whilst it expressed a measure of sympathy for

[343] Effective 1 January 2015 the book value of R300 million will be increased to R500 million and there is to be no recoupment on the venture capital share expenditure provided the shares are held for more than 5 years (see section 12J(9) of the Income Tax Act).
[344] See 2016 National Budget review at page 162 of annexure C.
[345] Of the 35 VCC's which have registered so far, it is notable that as of yet no junior mining companies have registered as VCC's for purposes of the section12J benefit. This is likely attributable to the current downturn in the mining industry as a whole.
[346] See the case of Commissioner for Inland Revenue Appellant v George Forest Timber Co Ltd Respondent 1924 AD 516-532.
[347] At paragraph 14.9 of the Margo Commission report.

such an allowance[348] it also expressed a degree of trepidation in supporting this allowance after receiving representations from the then Receiver of Revenue which argued that allowing such an incentive could lead to abuse, particularly in relation to assumed values attached to these rights and the transfer of these rights between parties at non-arm's length inflated prices. The Marais Committee also refused to pronounce on this issue as it had not had time to fully study the issues[349].

The DTC is of the view that if such an allowance were made available, it would be based on a notional amount, as practically, the real cost of obtaining these rights in the first instance is relatively negligible (comprising minor administrative expenses which are fully deductible for income tax purposes). It is worth postulating whether a stronger argument exists for a depletion allowance where a mining right is purchased from an original holder at more than a negligible mark-up amount.

The legislative landscape has changed considerably since the Margo Commission's expression of sympathy for an amortisation of these mining rights. Most importantly the MPRDA has been enacted, which removes the concept of private ownership of mineral rights. International comparative research suggests that countries which have state ownership of rights do not have such allowances as opposed to countries with private ownership of rights which do, e.g. the USA. South Africa falls closely with state ownership having custodianship of the mineral wealth in terms of the MPRDA and the constitution. Countries which retain ownership or custody of minerals typically refuse to allow depletion allowances, even in instances where rights are ceded at a substantial cost[350].

Recommendation

In the interim version of this report the DTC indicated that at that stage it was not inclined to recommend an amortisation write off in respect of the various mineral rights accorded in terms of the MPRDA. An undertaking was, however, taken to explore the matter in greater

[348] Stating at paragraph 14.9: "Clearly, this position is anomalous. Mineral rights are likely to decline in value as ore is extracted; and surface rights, especially where opencast or shallow undermining operations are conducted, may suffer a similar fate".

[349] At paragraph 14.8 of the Marais Commission report.

[350] Cawood, F. (2000). "Determining the optimal rent for South African mineral resources". PhD dissertation, University of the Witwatersrand. At Chapters 5 and 6 Prof Cawood has done a comparison of different tax jurisdictions which include: Chile, Argentina, Indonesia, Peru, Mexico, Ghana and South Africa. Of these countries only Ghana has a depletion allowance of 5%. Cawood notes that besides Ghana only the USA operates a system which provides for amortisation of the depletion rights; however, he attributes this to the USA being one of the few jurisdictions which still allows a system of private ownership of such rights (in his view private ownership of these rights is a *sine quo non* for the provision of such an allowance).

depth and to tender a view on the issue in the final report. The tentative reason for not supporting a depletion allowance at the time was based on the international treatment of mineral rights and the general propensity for these rights to be acquired for a nominal amount.

As a final expression of its view on the matter, the DTC is now committed to the recommendation that no depletion allowance should be allowed. This affirmation of its previous stance is based on the reasons outlined previously and also having reflected on the CGT consequences befalling these types of transactions. In short, application of the CGT system largely facilitates a measure of depletion of value into the CGT calculation. This usually occurs pursuant to the onward sale of a depleted right which typically would achieve reduced proceeds on sale (the rights having diminished in value due to depletion) which would likely result in reduced CGT or CGT losses.

4. Social and Labour Development

The mining industry is uniquely constrained in as much as its location of business is determined completely with reference to the source of the minerals being mined. This in turn has led to various unique social, housing, labour and migratory dynamics being caused by the establishment of mines in remote areas. The current tax dispensation caters for this in most instances, but some uncertainty remains.

4.1. Funding for community development in terms of the SLP and the promotion of home ownership

The mining industry is compelled to undertake expenditure for the advancement of communities which develop pursuant to the establishment of mines. These requirements for assistance with the development of communities originate from the BEE charter and other legislation extraneous to the Income Tax Act such as the MPRDA. The MPRDA[351] requires newly established mines to submit an SLP in terms of which applicant mines are required to specify projects which they will undertake for the benefit of the local community, for example: the building of schools, hospitals and housing. In the event of such infrastructure being built for the benefit of employees it is allowed as a deduction[352]over 10 years. However, when expended for the benefit of non-employees of the mine, such expenditure is treated as non-deductible capital expenditure unless the expenditure was included as part of the SLP and

[351] Section 23(1)(e) requires submission of an SLP for purposes of granting a mining right.
[352] Section 36(11)(d) of the Income Tax Act

does not constitute infrastructure (or environmental rehabilitation)[353]. The word "infrastructure" is not defined and accordingly legal interpretation has it that it is defined by its ordinary meaning (the ambit of which is not always certain in this context). Thus (for example) the provision of housing infrastructure to the community at large which is done in terms of an SLP, will not qualify for a deduction.

Recommendation

It is clear that taxpayers are incurring infrastructure spend for the benefit of employees in the community and also in respect of the wider surrounding community who are not employed directly by the mine in terms of the SLP. By doing so, these taxpayers are often assuming constitutionally mandated requirements of government and also assisting the achievement of important Mining Charter and NDP objectives**. Strictly speaking, whilst capital in nature, such expenditure is often expended in the production of income and even if not (in the production of income), should in the DTC's view justly be promoted as deductible expenditure through the tax system since in effect this is cost for such taxpayers of doing business.**

Accordingly the DTC recommends as follows:

- **Infrastructure community spend incurred directly in respect of employees of the mine should continue to be explicitly allowed as deductible in terms of the Income Tax Act. Infrastructure spend incurred for the benefit of the community at large and undertaken in terms of a SLP should be made tax deductible. It is noted that since publication of the DTC's interim Mining tax report, the Treasury has embraced this proposal, signalling its intent (in the 2016 Budget review[354] and draft tax legislation[355]) to make the tax amendments which will bring the applicable change of law into force.**
- **Tentatively, the DTC holds that community expenditure which is done outside of commitments made in terms of the SLP should be channelled through the Public Benefit Organisation (PBO) system. The DTC understands that the PBO system is already used by some taxpayers as a vehicle to structure these types of transactions. The DTC will be separately issuing a report on PBOs in due course and will be considering this issue in greater depth. A final view on this issue will therefore be articulated at a later stage in the report on PBOs**.

[353] Section 36(11)(e) of the Income Tax Act.
[354] See 2016 National Budget Review, Chapter 4 at page 49.
[355] Section 36(11)(eA)

4.2. Community royalties

Submissions have been received proposing that a portion of royalties collected in terms of the MPRRA and MPRRAA should be collected and appropriated directly for the benefit of mining communities.

Earmarking of taxes paid to the State by mining houses for the benefit of communities is contra the current legislative design and policy of allocating monies to the National Revenue Fund for allocation and disbursement by national Government (the creation of the National Revenue Fund is in fact mandated in terms of the Constitution of the Republic of South Africa[356]). These funds are utilised by the Government for the betterment of all South Africans (in the same way as any other tax receipts).

Recommendation

The current policy of allocation and disbursement of funds received at national level through the National Revenue Fund represents a sober and prudent approach from which there should be no departure. Recent cases of fiscal mismanagement, highlighted by the press, serve as a salutary reminder of how poor controls on payments can create opportunities for corruption. **A departure in policy of this nature would require a radical change in government principle and is not supported by the DTC.**

4.3. The Draft Reviewed Mining Charter

Subsequent to the release of the interim version of this report, the Minister of Mineral Resources published an invitation to comment on a draft reviewed broad based black-economic empowerment charter for the South African mining and minerals industry[357]. Whilst the period provided for interested and affected parties to comment has since expired[358], the Department of Mineral Resources has not yet expressly responded to these comments or issued an updated publication. The Draft Reviewed Mining Charter seeks to advance the transformation agenda set out in the MPRDA and Amended Mining Charter of 2010 and assess progress and compliance made so far. Not unexpectedly, the Draft Reviewed Mining

[356] See in particular sections 213 to 217 of the Constitution of The Republic of South Africa 108 of 1996.
[357] South Africa. 2016. Reviewed Broad Based Black-Economic Empowerment Charter for the South African Mining and Minerals Industry, 2016. Notice 450 of 2016. Government Gazette, 450(39933):1-30, April 15.
[358] Interested and affected parties had 30 days in which to respond in writing, from the release date of the Draft Reviewed Mining Charter, on 15 April 2016.

Charter has elicited a great deal of controversy and debate. From a business perspective it has stirred existing arguments particularly in relation to potential escalating BEE costs and aligned to this, debates founded on the "once empowered always empowered" principle.

The current manifestation of the Draft Reviewed Mining Charter explicitly and sometimes implicitly imposes costs and charges on mines and the mining industry as a whole. These costs have potential tax implications for example in relation to fringe benefit\payroll taxes and in relation to the deductibility for tax purposes of various additional costs arising from new mining charter obligations.

Recommendation

Whilst an updated version of the Draft Reviewed Mining Charter will profoundly impact the mining industry, it is not productive to extensively analyse a document which encompasses draft policy formulations that remain subject to change. Suffice to reinforce a caution to policy makers, expressed elsewhere in this report, of the importance of designing future mining tax legislation with full cognition of the spectrum of costs being imposed on taxpayers. In this regard, clarity will need to be provided by National Treasury and SARS, after release of the final version of the Mining Charter, of the relevant concomitant tax implications, bearing in mind the principle provided in the Warner Lambert case[359], which confirmed that costs which a taxpayer is obliged to regularly incur by virtue of regulation are deductible for tax purposes.

[359] Warner Lambert SA (Pty) Ltd v Commissioner for South African Revenue Service (277/02)[20034 ZASCA 59 (30 May 2003)

5. Harmonisation and improvements to legislation

As noted before, the DTC commissioned a report by the IMF which, amongst other things, dealt with and examined the mining tax legal framework[360]. In the process, the IMF has delved extensively into areas of disharmony between disparate pieces of mining legislation and examined shortcomings within the main mining acts themselves. It is not the intent of the DTC to delve as comprehensively into the technical detail provided by the IMF regarding harmonisation of legislation, as the IMF has sufficiently covered this area; those interested are referred to this document for further edification. In short, the IMF and the DTC have identified the following areas of legislation, which require remedy:

5.1. Definitional conflicts between the MPRDA, the MPRRA and the ITA. Although not mentioned in the IMF document the DTC also detected definitional disharmony with other tax legislation such as the VAT Act[361] and Customs and Excise Acts[362] (definitional conflicts occur both between tax Acts and also more broadly between the tax and mining regulatory Acts). Other conflicts with environmental legislation such as NEMA have also been uncovered.

5.2. The MPRDA deals mainly with the broad mining legislative framework, essentially with the rights, duties and obligations of mining operators; the MPRRA deals with royalty charges imposed on the transfer of minerals while the Income Tax Act deals with income tax levied on taxable income. Many of the mining definitions have been codified in the MPRDA; however, the same terms in the Income Tax Act remain without formal codified definitions. Instead the Income Tax Act, which substantially predates the MPRDA, has largely relied on guidance from the courts as a medium to clarify its terminology. Despite the rich mining tax jurisprudence which has developed through the courts, the IMF favours a move to codify the terminology in the Income Tax Act to be in line with the extensively defined mining terminology contained in the MPRDA.

5.3. The IMF has noted various areas of discord within the Income Tax Act where the legislation is unclear as to whether specific mining tax legislation overrides general tax legislation and vice versa. This problem appears to have developed largely

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[360] Supra note 209 at paragraphs 21-28,30-37,39-42,47-50,55-60, 63-66, 68-86,92-93,95-98, 102-106, 115.

[361] Value-Added Tax Act 89 of 1991.

[362] Customs Duty Act 30 of 2014; Customs Control Act 31 of 2014 and Customs & Excise Act 91 of 1964 (this legislation will in due course only deal with Excise taxes and will be replaced by the former mentioned Acts which are not yet operational).

because the mining tax legislation has evolved over time without due adherence to a unified policy and strategic framework.

5.4. In terms of income tax legislation which lacks in clarity and certainty and which is also ambiguous, the IMF identified the accelerated mining capex allowances and ring fence provisions as being particularly problematic.

Recommendations

- **As a general matter, the DTC supports a comprehensive exercise to harmonise, streamline and clean up the relevant mining legislation**. This review is a detailed exercise for which general principled guidance rather than specific direction is appropriate from the DTC. In the DTC's view it is appropriate for National Treasury to assemble a task team to harmonise and clarify uncertainties and ambiguities within existing legislation, having regard to the suggestions proposed by the IMF. It should further evaluate and distill all mining tax legislation from the rest of the Income Tax Act to ensure that it is aligned with other mining legislation in particular the MPRDA.
- **Unclear and ambiguous tax legislation contained in the Income Tax Act should be remedied by the task group, having regard to shortcomings identified by the IMF**. Although the DTC has suggested elsewhere in this document that many of the ring fencing provisions be removed, it still remains important to eliminate legislative wording weaknesses in respect of remaining ring fences (in respect of existing gold mining companies).
- The necessity for harmonisation goes further than alignment and amendment of legislation but includes the need for congruence between the requirements, directives and interpretations of different government agencies and departments. **The DTC recommends that the task team should attempt to reconcile these types of discrepancies as well**.
- The IMF has suggested that a separate schedule, akin to the oil and gas tax legislation contained in the Tenth Schedule to the Income Tax Act, be created to consolidate the mining legislation. This schedule could be used to streamline the mining tax legislation and remedy much of the disharmony currently contained within the Income Tax Act and between other acts and the Income Tax Act. **This approach is supported by the DTC to the extent that this will remain necessary following uptake of its recommendations to bring the mining tax legislation in line with other tax legislation.**

- As a general matter, the MPRDA constitutes the broad regulatory framework for which the mining legislation is governed. This suggests that it should comprise a starting point for definitional alignment when crafting the wording and definitions in the Income Tax Act to avoid tax leading the debate on mineral policy. Thus the income tax definitions should at commencement of drafting be broadly the same as those already contained in the MPRDA. Having established a common foundation, it is for National Treasury to decide the scope and extent of revenue it wishes to tax. At this stage it may be necessary to deviate from the foundational wording in the MPRDA by either adding or subtracting from such wording so as to achieve the desired outcome. This exercise will need to be performed with caution as there may be possible exceptions to the rule of commencing with MPRDA wording (especially where terms in the Income Tax Act were originally deliberately not defined and left to the courts for guidance).

6. Other issues–general technical review

A number of the proposals received by the DTC express the view that mining tax legislation has not kept pace with developments in the industry. The DTC agrees with this and supports calls for the tax legislation to be reviewed to bring it in line with the said developments, to resolve historical uncertainties and to provide clarity on certain issues, as set out above and below. Some specific issues have been identified, mainly from industry submissions which are highlighted below:

6.1. Mining versus manufacturing from a tax perspective

From an income tax perspective, there has long been contention as to when mining ceases and manufacturing activities commence. This debate arises due to the interpretation of “mining” and “mining operations” as defined in section 1 of the Income Tax Act. It is accepted that mining stops when a “mineral” is “won” from the soil. However, as no definition is provided for either of these terms in the Income Tax Act, there is uncertainty as to when a mineral is in fact won from the soil and whether beneficiation is included in such process. This distinction is important as differing tax implications apply depending on where a taxpayer is found to be conducting activities across the mining supply chain.

Aligned to this issue, is the Department of Trade and Industry’s focus on encouraging beneficiation of mining produce. In this area similar borders have to be drawn as to where mining and manufacturing respectively cease and begin.

Recommendation

Consideration needs to be given to whether legislative intervention is required to bring clarity to this space. Deriving a clear delineation of these concepts is difficult and a dearth of domestic case law has not assisted matters. These terms have been overtly defined in the MPRDA which may ease the way for adoption into the income tax law. Whether incorporation of the same wording from the MPRDA into South Africa's law will clear up definitional uncertainties is unclear but as part of the harmonisation exercise discussed earlier it will be a worthwhile area for review.

It seems, at least from a tax perspective, that the adoption of other recommendations of the DTC which seek to equalise the tax treatment of mining and manufacturing activities will likely substantially reduce the importance of distinguishing between mining and manufacturing concepts.

6.2. Carry-over of losses

The DTC has received submissions which proposed that assessed losses should not be carried forward to later years for set off against income. These submissions were founded on the view that the carry-over of assessed losses serves to deprive the South African economy of much needed funds by reducing company profits with losses from previous years.

Recommendation

The carry-over of assessed losses is fundamental to South African income tax design. Disallowing carry-over of assessed losses would mean a complete overhaul of the South African tax system including the collapse of the current mining tax incentive regime. The DTC does not support the proposal.

6.3. Gains made by non-residents on the transfer of shares in mining companies

In terms of the capital gains provisions of the Income Tax[363] Act, a CGT charge may be imposed on gains made by a non-resident company disposing of its shares in a South African company. This occurs where more than 80% of the South African company's assets consists of South African immovable property[364] [365](or, pertinently, any interest or right in such immovable property, which includes a mineral right[366]).

[363] Paragraph 2(2) of the 8th schedule of the Income Tax Act

[364] The rights to tax are subject to limitation by tax treaty.

Submissions have been received stating that these CGT provisions were not aimed at the mining industry but rather at the property industry. Accordingly, it has been proposed that these mining rights should be excluded from immovable property when determining an interest in immovable property for CGT purposes.

Recommendation

The DTC does not share the view that these provisions were intended to apply to the property industry exclusively and not to the mining industry. If the legislature had intended for paragraph 2 of the Eighth Schedule to apply restrictively to immovable property so as not to include mineral rights, it could have easily drafted the legislation differently. Furthermore, this type of legislation is sufficiently common internationally[367] so as not to cast doubt upon whether the legislator had achieved its intention in crafting the legislation. **The DTC accordingly does not recommend that the legislation be changed in accordance with the proposal.**

6.4. Recoupments

Technical problems pertaining to the wording of section 19 of the Income Tax Act (recoupments following from the forgiveness of a debt) have become apparent.

Recommendation

The DTC is informed that this issue is already receiving attention from National Treasury. However, with regard to mining specifically, section 19 correctly refers to sections 8(4) and 8(4)(m), but there is a disconnect between section 19 and the mining recoupment provisions which have resulted in certain instances of revenue lost to the fiscus. **The DTC recommends that this issue also be reviewed by the National Treasury in due course.**

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[365] There are other requirements for a tax to be imposed; for example a non-resident holding shares in a listed South African company is only liable to CGT on disposal provided that at the time of disposal such person has at least 20% of the company's shares.

[366] Duncan S. McAllister, *Comprehensive Guide to Capital Gains Tax* (Issue 4), page 49.

[367] Treatment by the OECD of immovable property as including mineral rights suggests that South Africa is not unique in this aspect. Article 6 of the model tax convention (see Model Tax Convention on Income and on Capital, condensed version, 8th Edition,22 July 2010) specifically includes rights to "mineral deposits '" as forming part of immovable property. Paragraph 2 of the commentary of article 6 states "…to help to avoid difficulties of interpretation over the question whether an asset or a right is to be regarded as immovable property… the paragraph… specifically mentions the assets and rights which must always be regarded as immovable property. In fact such assets and rights are already treated as immovable property according to the laws or the taxation rules of most OECD member countries."

6.5. Tax Administration Act

An issue has been raised relating to the levy of understatement penalties in circumstances where there is no income.

Recommendation:

The DTC is of the view that the submission does not relate specifically to mining and therefore falls outside the scope of this report. The DTC will deal with tax administration matters in a separate report.

6.6. Section 37 valuations

Section 37 deals with the treatment of the sales of mining interests involving the transfer of capex between seller and buyer. The intention behind this section is to empower an independent third party (officials from the DMR) to determine the capital recoupments arising in the hands of the seller and the unredeemed capex opening balance for the purchaser in so far as it relates to mining property and capital expenditure.

A number of very different concerns have been raised which question the continued viability of this section in its current format. The chief concerns can be summarised as follows:

6.6.1. Section 37 was conceived at a time prior to the CGT regime. At the time the selling and buying parties had conflicting interests in relation to the categorisation of assets being sold and the appropriate attribution of the sale/purchase price of the mines to those assets. Accordingly, the seller normally had a preference for attributing the greatest weight of the selling price to the value of the property contained in the mine as no CGT was payable and no recoupments imposed; the buyer in contrast favoured the selling price being weighted to the capex of the mine so that greater deductions could be claimed. Clearly the current CGT reduces the disparity between price setting interests of sellers and buyers;

6.6.2. Submissions have been received holding the view that the DMR has capacity constraints which impede its ability to act as an independent party for purposes of setting an appropriate arm’s length price. In practice, independent auditors are sometimes subcontracted to fulfil this role, provoking the question as to whether it would not be simpler and cheaper to permit an independent assessor to make a direct determination of this issue without involvement by the DMR;

6.6.3. Representations from the gold mining sector suggest that section 37 could be particularly onerous to gold mining interests as recouped allowances are charged at a rate set by the gold mining formula.

Recommendation

- Acceptance of other recommendations contained in this report will assist in mitigating concerns raised in relation to section 37. Firstly, a move to place the upfront capex allowances on a par with manufacturing allowances will lessen the incentive for purchasers to unduly weight the purchase price in favour of capex. Secondly, a phasing out of the gold formula will mean that gold mining companies operating at high profit margins will not be taxed more severely than other taxpayers. **The cumulative effect of the current imposition of CGT and acceptance of the DTC's recommendations enables the DTC to recommend (as it hereby does) that section 37 be removed from the law (save for its application in so far as it applies in the recommendation immediately below), bringing mining taxpayers onto the same footing as taxpayers in other sectors**[368].
- Elsewhere in this report (see pages 74-79), the DTC has stated that brownfield gold mines should continue to operate in terms of a tax dispensation, essentially, the same as before. Also, the DTC has stated that transitional rules need to be crafted to deal with accumulated unredeemed capex derived from all existing mines (see recommendation on page 73 in relation to ring fences). In this regard it is recommended that the provisions of section 37 remain applicable to both brownfield gold mines and to existing mines carrying pre-existing unredeemed capex losses by virtue of the transitional rules. Thus section 37 should continue to apply in these exceptional circumstances in so far as the rules facilitate the transfer of pre-existing unredeemed capex between seller and buyer[369]. However, because of the challenges associated with obtaining DMR valuations, it is recommended that the DMR valuation aspect of section 37[370] should cease going forward, not only for greenfield mining taxpayers, but for brownfield gold mining taxpayers as well.

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[368] This means that mining taxpayers will henceforth face a recoupment based on the cost of the asset as opposed to a value determined by the DMR on sales of mine assets. Any amount in excess of the original cost will attract a CGT charge.
[369] These rules contained in sections 37(1), 37(2) and 37(3) of the Income Tax Act are necessary to facilitate the transfer of unredeemed capex. This is necessary due to the fact that unredeemed capex is a creation of the mining income tax provisions and are not covered by the standard provisions of the act applicable to the sale of business assets.
370 Section 37(4) of the Income Tax Act.

- Problems associated with valuations on the sale of businesses are not unique to the mining industry, especially regarding the valuation of contingent liabilities. It is tempting to recommend that National Treasury be requested to review the sale of business assets in its entirety from a legislative perspective but this would exceed the DTC's mandate. It is also noted that this area is notoriously difficult to resolve legislatively. This difficulty was evidenced in prior years where Treasury attempted to deal with the sales of businesses legislatively, in the end opting for SARS to solve these issues via interpretation[371].

6.7. Base Erosion and Profit Shifting (BEPS)

The problem of BEPS is common to all taxpaying sectors in the economy, no less so in the mining sector.

Recommendation

The DTC will deal with BEPS in a separate report hence it will be dealt with no further in this report.

6.8. Reporting and transparency

South African companies generally have fairly robust and comprehensive financial reporting requirements relative to many other African jurisdictions. South Africa has also featured prominently in terms of government transparency, notably placing second in the 2012 Open Budget Survey[372]. That being said, global perceptions of South Africa in terms of corruption are becoming increasingly negative[373]. Although good reporting and transparency is not an absolute safeguard against corruption, it is helpful.

Recommendation

- **It is within this context that the DTC supports all meaningful efforts to enhance existing reporting and transparency efforts such as affording consideration to joining the Extractive Industry Transparency Initiative (EITI).**
- An area where reporting could undoubtedly be improved is in the field of transfer pricing. Revenue authorities worldwide battle with companies who inaccurately price their charges on goods and services in an effort to transfer profits and expenditure

[371] See 2011 National Budget review at page 191 of annexure C and 2012 National Budget Review at page 191 of Annexure C.
[372] http://www.southafrica.info/about/democracy/budget-290113.htm
[373] http://www.corruptionwatch.org.za/content/global-implications

between jurisdictions (this is done to minimise tax exposure). During the recent tensions between labour and mining industry bosses, suggestion was made that mining houses were understating their profitability by adopting unfair transfer pricing strategies. Whether this is true in substance is up for debate, but certainly more rigorous anti-transfer pricing policy would enable SARS to better enforce this space. Further, the OECD is currently reviewing the issue of adequate reporting with a focus on transfer pricing. More stringent transfer pricing policies, regulations and reporting requirements will undoubtedly constitute the heart of future anti-BEPS efforts and are dealt with by the DTC in the DTC BEPS report. In this regard, however, it is important that transfer pricing reporting requirements are not based on a single template and are structured based on the exigencies of specific industries such as the mining industry.

6.9. Free carry for B-BBEE /discount for BEE

Whilst government is not the intended beneficiary of BEE or B-BBEE largesse, the compulsory transfer of equity stakes of businesses (in all its manifestations) to previously disadvantaged persons comes at an undeniable cost to business, a cost which from the perspective of business is akin to a tax. Similarly, reserved stakes by government in businesses in the form of so-called “free carried interest” (currently subject to debate in the latest MPRDA proposed amendments) carry a similar tax-like cost to business.

Recommendation

These commitments imposed on business undoubtedly come at a cost to the bottom line profitability of businesses. With this in mind it is imperative that government factor these costs into account when devising taxes so as not to unduly discourage investment and competitiveness.

6.10. VAT and mining

The DTC has received a number of VAT proposals which have particular pertinence to the mining industry. The VAT proposals are varied and include amongst other aspects administrative VAT problems being experienced during the exploration phase of mining and a request for VAT refunds in respect of mineral exports.

Recommendation

These issues have been noted and have been reviewed in the final version of the DTC VAT report which is to be issued in due course.

VI. ANNEXURES

1. **Annexure A** (Persons making submissions to the DTC)

List of persons who made submissions and assisted the DTC

	NAME	ORGANISATION
1	Henry Nysschens	Ad hoc member
2	Owen Murphy	Ad hoc member
3	Sandy McGregor	Ad hoc member
4	Bevan Jones	
5	Paul Jourdan	
6	Stephen Meintjes and Michael Jacques	
7		Aggregate & Sand Producers Association of Southern Africa (ASPASA)
8		Alternative Information & Development Centre (AIDC)
9		AngloGold Ashanti Limited
10		Association for Savings and Investment SA (ASISA)
11	Roger Baxter and Colleagues	Chamber of Mines and its various mining house members
12		COSATU
13		Deloitte
14		Department of Mineral Resources
15		Department of Trade and Industry
16		Economic Justice Network
17		ENS
18		EXXARO
19		Harmony group
20		International Monetary Fund
21		KPMG
22		Legal Resources Centre/Oxfam
23		Merafe Resources
24		National Treasury
25		PWC
26		Royal Bafokeng Nation Development Trust
27		SARS
28		SASOL
29		Sentula Group-Contract Mining
30		Sibanye Gold Limited
31		Sizwe Ntsaluba Gobodo
32		Solidarity Trade Union
33		South African Institute of Tax Professionals (SAIT)
34		Trollope Mining Services (2000) (Pty) Ltd
35		Webber Wentzel

2. **Annexure B** (Referrals of issues)

List of referrals for issues to be considered elsewhere

Issue	Page issue discussed in report	Person/s or government department/ or other DTC reports referred to	Nature of what needs to be done
Transfer pricing	Page 74	SARS	Recommendation for SARS to issue an interpretation note to provide guidance for taxpayers in determining market value pricing , not only in the context of taxpayers bypassing ring fences , but also where required by various laws, such as in terms of the MPRRA.
Contract mining	Page 85	SARS and the DMR	It is recommended that SARS and the DMR attend to the drafting of a template contract to serve as guidance for parties concluding contract mining activities.
Mineral royalty	Page 97	SARS	Various interpretational issues arise in the context of the imposition of the Mineral royalty. A comprehensive Interpretation Note on this subject is needed to dispel any uncertainty current in the industry. Amongst the issues requiring clarity relate to interpreting concepts related to “EBIT”, “gross sales”, “consumption”, establishing points where transfer takes place; the circular difficulty arising when royalty charges are revised and the impact this change has in the income tax context. Further differences in interpretation of application of the laws are also widespread, for example, taxpayers who are required to gross up or down their gross sales for purposes of the MPRRA have no prescribed methodology for doing so
Employment tax incentive (ETI)	Page 113	Is dealt with in the DTC SME report	The DTC SME report deals with the efficacy of the Employment tax incentive, not just in the mining sector, but across all business sectors in the economy.
Rehabilitation funding	Page 115	A small inter-governmental	The issues at hand impact across various branches of government. These issues revolve

		task team should be convened to co-ordinate a joint legislative response (consisting of SARS, NT, DMR and the Department of Environmental Affairs).	around whether SARS should be incentivising certain rehabilitation activities, which may or may not be capable of adequately rehabilitating the mines.
Acid Mine Drainage	Page 116	Requires a joint governmental strategy which should be developed amongst stakeholders and which includes: National Treasury, Department of Mineral Resources, the Department of Environmental affairs and the Department of Water and Sanitation.	A joint strategy needs to be reached towards lessening the impact of AMD. Only following inter-governmental consensus can appropriate tax provisions in support of AMD reduction be devised.
Improvements and amendments to the legislation		National Treasury and SARS	As custodians of tax legislation it will be useful for the National Treasury to look into areas of discord contained in law as raised by the IMF and raised in submissions to the DTC.
Carbon taxes	Page 116	A separate DTC report will deal with this	Various issues relating to carbon taxes have been raised which require attention.
Diesel rebate	Page 117	Currently being reviewed by National Treasury	The Treasury is currently reviewing the diesel rebate. The DTC will only consider the issues raised pertaining to diesel should Treasury not deal with all the issues raised in submissions.

Greenfield tax incentives	Page **Error! Bookmark not defined.**	Will be dealt with in a separate tax incentive report	The separate incentive report will consider the viability of tax incentives as a whole and will also look into the issue of greenfield mining tax incentives.
Encouragement of the venture capital regime	Page 120	National Treasury	As announced in the 2014 Budget Review, NT will be reviewing section **12J** with a view to making it more attractive to investors.
Community expenditure which is done outside of commitments made in terms of the SLP	Page 123	DTC report on PBOs	The issue of whether community expenditure which is done outside of commitments made in terms of the SLP can be accommodated by being channelled through the PBO system
Draft Reviewed Mining Charter	Page 125	National Treasury & SARS	The Draft Reviewed Mining Charter imposes various costs, some of which are overt and some more hidden. Should these costs manifest in the final version of the mining charter it will be necessary for SARS and National Treasury to provide clarity on the tax treatment of these costs.
Harmonisation of legislation	Pages 127	National Treasury to set up a task team which should include SARS and the DMR.	The task team should attempt to harmonise tax legislation with DMR legislation in so far as possible.
Tax Administration Act	Page 134	Tax Administration report of the DTC.	Issue relating to the raising of penalties which is not unique to the mining tax but applicable across the board.
Reporting and Transparency	Page 134	Tax Administration report of the DTC	Issues have been raised to encourage greater transparency of reporting pertaining to transfer pricing activities and other financial reporting activity.
VAT	Page 134	DTC VAT Report	Various proposals specifically pertinent to mining.

3. **Annexure C** (Tables)

Table 1: UN survey of priority investment criteria for exploration and mining

	RANKING	
Decision criteria	**Exploration stage**	**Mining stage**
Geological potential of target minerals	1	N/A
Measure of profitability	N/A	3
Security of tenure	2	1
Ability to repatriate profits	3	2
Consistency and constancy of mineral policies	4	9
Company has management control	5	7
Mineral ownership	6	11
Realistic exchange regulations	7	6
Stability of exploration and mining terms	8	4
Ability to predetermine tax-liability	9	5
Ability to predetermine environmental obligations	10	8
Stability of fiscal regime	11	10
Ability to raise external financing	12	14

Source: UN survey as conveyed by Chamber of Mines in 2104 submission to the DTC.

Table 2

TABLE: AVERAGE NUMBER OF PEOPLE IN SERVICE BY COMMODITY												
Year	Gold	PGM's	Iron Ore	Copper	Chrome	Manganese	Diamonds	Coal	Aggregate and Sand	Other	Other including copper	**South Africa**
1980	476 398	77 404	9 262	13 551	10 235	7 990	23 372	128 149	6 792	39 568	53 119	**792 721**
1981	486 429	71 121	9 432	14 581	9 292	6 512	23 009	136 187	7 063	38 554	53 135	**802 180**
1982	484 888	50 026	9 289	14 093	7 207	5 344	20 926	130 411	7 278	36 137	50 230	**765 599**
1983	495 504	49 742	7 128	13 263	6 141	3 165	19 688	114 382	7 438	31 957	45 220	**748 408**
1984	511 282	62 242	6 718	10 978	6 392	2 580	18 848	117 491	7 419	30 663	41 641	**774 613**
1985	527 972	73 880	6 826	9 489	7 347	2 890	18 352	120 959	7 763	31 282	40 771	**806 760**
1986	551 935	74 682	6 620	9 270	7 668	3 128	18 474	120 214	7 294	29 387	38 657	**828 672**
1987	553 713	82 958	6 249	8 688	7 632	2 886	19 346	114 022	7 010	26 269	34 957	**828 773**
1988	536 057	85 322	5 921	8 092	8 157	3 164	19 822	108 988	7 427	26 496	34 588	**809 446**
1989	517 713	89 513	6 356	8 474	9 263	3 851	22 016	107 170	7 747	29 287	37 761	**801 390**
1990	489 963	97 373	6 734	7 966	9 293	4 084	22 982	103 808	6 961	30 563	38 529	**779 727**
1991	438 775	104 723	6 714	6 850	8 813	3 607	21 516	96 207	6 262	28 094	34 944	**721 561**
1992	411 679	104 360	6 468	6 618	5 854	3 386	19 654	76 049	5 442	24 160	30 778	**663 670**
1993	395 419	102 809	6 047	5 193	4 172	3 086	14 880	61 438	4 675	23 282	28 475	**621 001**
1994	392 327	97 643	6 085	4 463	4 617	2 891	15 828	60 187	4 287	22 690	27 153	**611 018**
1995	380 086	91 528	6 111	4 833	6 020	2 993	15 548	62 064	4 880	24 782	29 615	**598 845**
1996	352 039	93 304	6 028	4 618	6 689	2 955	15 700	63 397	4 785	22 551	27 169	**572 066**
1997	339 078	90 876	5 283	4 411	6 652	2 816	14 874	61 607	4 682	23 263	27 674	**553 542**
1998	263 869	89 781	4 882	3 628	6 424	2 723	14 531	60 309	4 343	16 173	19 801	**466 663**
1999	234 206	91 269	5 014	3 330	5 939	2 458	15 161	55 378	3 997	20 276	23 606	**437 028**
2000	216 982	96 273	5 019	3 342	5 425	2 241	15 007	51 346	3 585	19 074	22 416	**418 294**
2001	201 673	99 571	5 022	5 742	5 026	2 001	16 294	50 771	3 345	17 709	23 451	**407 154**
2002	199 378	111 419	5 389	5 107	5 404	2 581	16 543	47 469	3 220	20 415	25 522	**416 925**
2003	198 465	127 673	5 961	4 952	5 961	2 623	18 292	47 239	3 801	19 892	24 844	**434 859**
2004	179 964	150 630	7 142	4 042	7 142	3 243	21 080	50 327	4 080	21 259	25 301	**448 909**
2005	160 634	155 034	7 493	3 746	7 492	3 336	21 976	56 971	5 210	22 240	25 986	**444 132**
2006	159 984	168 530	8 848	3 993	7 901	3 340	20 115	57 777	5 544	20 305	24 298	**456 337**
2007	169 057	186 411	13 858		9 757	3 240	19 655	60 439	5 970	27 087	27 087	**495 474**
2008	166 421	199 948	13 256		12 279	3 934	18 609	65 412	6 438	32 222	32 222	**518 519**
2009	159 925	184 163	**13 727**		**10 966**	**4 998**	**12 109**	**70 792**	**6 773**	28 766	28 766	**492 219**
2010	157 019	181 969	18 216		13 982	5 879	11 468	74 025	7 009	29 339	29 339	**498 906**
2011	145 561	194 979	22 343		16 389	7 356	12 030	78 580	7 086	28 887	28 887	**513 211**
2012	142 193	199 215	23 368		18 177	8 646	12 081	83 245	7 621	29 610	29 610	**524 156**
2013	132 167	191 286	21 174	3 536	18 374	9 877	13 385	87 670	7 505	24 875	28 412	**509 851**
2014	119 075	188 429	21 798		18 658	9 908	15 817	86 025	7 942	27 916	27 916	**495 568**
								411 123				**1**
Source: DMR										0.81		
Prep: COM econ												
2013												

Table 3

TABLE: EMPLOYEE EARNINGS BY COMMODITY - R '000

Gold as a %	Year	Gold	PGM's	Iron Ore	Copper	Chrome	Manganese	Diamonds	Coal	Aggregate and Sand	Other	**RSA mining**
60%	1980	1 447 504	224 332	34 901	57 460	25 474	23 868	107 870	567 409	21 681	107 701	**2 618 199**
61%	1981	1 792 719	277 661	42 130	76 016	27 264	25 664	119 312	738 338	28 557	126 806	**3 254 468**
63%	1982	2 098 463	234 954	48 677	85 022	25 632	26 532	128 587	791 690	34 593	142 451	**3 616 601**
66%	1983	2 438 452	254 041	43 395	89 903	25 712	20 078	133 351	803 233	37 789	144 743	**3 990 697**
66%	1984	2 844 281	341 382	45 985	91 264	29 288	17 572	145 353	903 488	43 323	159 084	**4 621 018**
65%	1985	3 311 465	449 947	52 616	98 518	37 037	20 720	154 368	1 064 495	53 982	188 838	**5 431 988**
67%	1986	3 948 873	570 159	60 162	109 654	46 587	25 540	179 330	1 246 132	56 726	214 896	**6 458 058**
67%	1987	4 852 498	767 563	66 765	117 448	55 925	27 486	216 553	1 383 246	61 219	225 170	**7 773 872**
66%	1988	5 520 764	932 839	77 174	115 558	72 826	33 271	269 231	1 544 872	76 404	272 239	**8 915 179**
65%	1989	6 099 647	1 135 715	100 793	129 891	98 318	44 556	386 042	1 869 947	91 436	350 545	**10 306 891**
63%	1990	6 719 642	1 504 562	125 182	155 967	110 471	58 708	495 016	2 129 635	96 864	441 363	**11 837 410**
61%	1991	6 848 959	1 658 005	147 363	163 962	155 512	63 787	576 883	2 440 860	102 466	478 872	**12 636 670**
62%	1992	6 939 781	1 901 499	163 544	184 494	110 172	68 447	624 117	2 081 563	104 355	469 630	**12 647 602**
64%	1993	7 217 478	2 111 483	171 605	180 421	89 668	66 698	537 664	1 883 545	98 540	495 237	**12 852 338**
64%	1994	7 611 814	2 241 365	193 319	189 892	103 506	67 882	565 921	2 020 594	98 833	549 480	**13 642 606**
63%	1995	8 291 633	2 522 093	235 042	199 525	228 480	82 962	628 396	2 370 974	129 008	799 071	**15 487 185**
62%	1996	8 807 227	2 724 873	285 531	230 509	216 114	100 480	708 508	2 781 716	140 413	919 473	**16 914 845**
61%	1997	9 612 555	2 979 219	306 191	268 316	252 608	106 436	788 600	3 204 101	157 934	979 726	**18 655 685**
57%	1998	9 372 419	3 444 455	303 349	264 975	289 841	114 340	887 040	3 522 812	156 654	884 116	**19 240 000**
54%	1999	9 100 163	3 740 459	323 836	266 449	315 826	122 588	986 492	3 831 148	157 083	1 293 954	**20 138 000**
52%	2000	9 846 411	4 373 273	345 814	295 747	332 768	133 244	1 071 991	4 287 493	158 611	1 281 647	**22 127 000**
50%	2001	10 903 634	4 915 313	379 713	422 852	379 309	132 778	1 290 555	4 452 980	154 038	1 377 827	**24 409 000**
48%	2002	11 323 540	5 936 849	457 804	343 260	338 978	182 034	1 442 411	4 468 143	161 584	1 751 396	**26 406 000**
46%	2003	12 496 400	7 243 123	523 607	438 181	523 607	211 635	2 030 437	5 481 105	203 082	1 649 823	**30 801 000**
40%	2004	12 609 512	9 063 872	575 174	494 533	575 174	241 566	2 239 891	5 863 461	242 043	1 750 774	**33 656 000**
36%	2005	12 153 245	11 357 785	623 842	468 167	623 535	293 319	2 564 066	6 481 823	312 073	1 804 146	**36 682 000**
35%	2006	12 869 406	12 585 340	683 582	514 962	637 236	319 804	2 205 838	7 269 836	388 051	1 514 945	**38 989 000**
34%	2007	14 709 459	18 341 043	1 362 392		876 699	405 313	2 209 121	8 692 064	463 528	3 031 693	**50 091 312**
32%	2008	15 960 305	23 344 340	1 667 837		1 297 315	666 356	2 181 625	11 021 124	538 701	4 198 652	**60 876 256**
32%	2009	17 375 439	24 879 139	2 178 041		1 457 184	**733 793**	**1 809 550**	**12 815 329**	**604 730**	4 242 926	**66 096 132**
31%	2010	19 877 668	26 711 903	3 037 690		2 081 213	935 219	1 937 074	14 112 971	680 770	4 944 041	**74 318 549**
28%	2011	20 948 451	30 523 032	6 504 506		2 705 744	1 263 289	2 142 965	16 094 850	737 739	6 160 436	**87 081 012**
27%	2012	22 045 167	34 409 342	4 677 469		3 204 933	1 546 914	2 371 986	17 419 296	869 740	6 469 552	**93 014 399**
26%	2013	23 445 505	37 210 727	4 843 180	1 245 401	3 778 960	1 923 109	2 830 067	18 863 271	922 382	4 494 168	**99 556 771**
24%	2014	23 374 191	35 629 393	5 691 888		4 042 718	2 275 917	3 688 515	20 540 929	1 078 568	5 770 737	**102 092 854**

Table 4

			Average earnings per employee			
Diamonds % of total earnings	Gold % of total earnings		Gold	PGM's	Coal	average RSA mining earnings
4.12	55%	1980	3 038	2 898	4 428	3 303
3.67	55%	1981	3 685	3 904	5 422	4 057
3.56	58%	1982	4 328	4 697	6 071	4 724
3.34	61%	1983	4 921	5 107	7 022	5 332
3.15	62%	1984	5 563	5 485	7 690	5 966
2.84	61%	1985	6 272	6 090	8 800	6 733
2.78	61%	1986	7 155	7 634	10 366	7 793
2.79	62%	1987	8 764	9 252	12 131	9 380
3.02	62%	1988	10 299	10 933	14 175	11 014
3.75	59%	1989	11 782	12 688	17 448	12 861
4.18	57%	1990	13 715	15 452	20 515	15 181
4.57	54%	1991	15 609	15 832	25 371	17 513
4.93	55%	1992	16 857	18 221	27 371	19 057
4.18	56%	1993	18 253	20 538	30 658	20 696
4.15	56%	1994	19 402	22 955	33 572	22 328
4.06	54%	1995	21 815	27 555	38 202	25 862
4.19	52%	1996	25 018	29 204	43 878	29 568
4.23	52%	1997	28 349	32 783	52 009	33 702
4.61	49%	1998	35 519	38 365	58 413	41 229
4.90	45%	1999	38 855	40 983	69 182	46 079
4.84	44%	2000	45 379	45 426	83 502	52 898
5.29	45%	2001	54 066	49 365	87 707	59 950
5.46	43%	2002	56 794	53 284	94 128	63 335
6.59	41%	2003	62 965	56 732	116 029	70 830
6.66	37%	2004	70 067	60 173	116 507	74 973
6.99	33%	2005	75 658	73 260	113 774	82 593
5.66	33%	2006	80 442	74 677	125 826	85 439
4.41	29%	2007	87 009	98 390	143 815	101 098
3.58	26%	2008	95 903	116 752	168 488	117 404
2.74	26%	2009	108 647	135 093	181 028	134 282
2.61	27%	2010	126 594	146 794	190 651	148 963
2.46	24%	2011	143 915	156 545	204 821	169 679
2.55	24%	2012	155 037	172 725	209 253	177 456
2.84	24%	2013	177 393	194 529	215 163	195 266
3.61	23%		196 298	189 087	238 779	206 012

Table 5

	% increase average earnings per employee					
	Gold	PGM's	Coal	**average RSA mining earnings**		Average worker salary for industry
1980						3 302.80
1981	21.3	34.7	22.4	22.8		4 057.03
1982	17.4	20.3	12.0	16.4		4 723.88
1983	13.7	8.7	15.7	12.9		5 332.25
1984	13.0	7.4	9.5	11.9		5 965.58
1985	12.7	11.0	14.4	12.9		6 733.09
1986	14.1	25.4	17.8	15.7		7 793.26
1987	22.5	21.2	17.0	20.4		9 379.98
1988	17.5	18.2	16.8	17.4		11 013.93
1989	14.4	16.0	23.1	16.8		12 861.27
1990	16.4	21.8	17.6	18.0		15 181.48
1991	13.8	2.5	23.7	15.4		17 512.96
1992	8.0	15.1	7.9	8.8		19 057.06
1993	8.3	12.7	12.0	8.6		20 696.16
1994	6.3	11.8	9.5	7.9		22 327.67
1995	12.4	20.0	13.8	15.8		25 861.76
1996	14.7	6.0	14.9	14.3		29 568.00
1997	13.3	12.3	18.5	14.0		33 702.38
1998	25.3	17.0	12.3	22.3		41 228.90
1999	9.4	6.8	18.4	11.8		46 079.43
2000	16.8	10.8	20.7	14.8		52 898.20
2001	19.1	8.7	5.0	13.3		59 950.29
2002	5.0	7.9	7.3	5.6		63 335.13
2003	10.9	6.5	23.3	11.8		70 829.86
2004	11.3	6.1	0.4	5.8		74 972.88
2005	8.0	21.7	-2.3	10.2		82 592.56
2006	6.3	1.9	10.6	3.4		85 439.05
2007	8.2	31.8	14.3	18.3		101 097.76
2008	10.2	18.7	17.2	16.1		117 404.10
2009	13.3	15.7	7.4	14.4		134 281.96
2010	16.5	8.7	5.3	10.9		148 963.03
2011	13.7	6.6	7.4	13.9		169 678.77
2012	7.7	10.3	2.2	4.6		177 455.59
2013	14.4	12.6	2.8	10.0		195 266.37
2014	10.7	-2.8	11.0	5.5		206 011.80

	% increase average earnings per employee			
	Gold	PGM's	Coal	**average RSA mining earnings**
Last 20 years	**12.1**	**12.1**	**10.9**	**11.9**
Last decade	**11.0**	**12.8**	**8.6**	**11.0**
Last 5 years	**13.1**	**12.0**	**7.9**	**12.0**
Last 2 years	**11.1**	**8.5**	**4.8**	**9.2**
2013	14.4	12.6	2.8	10.0

Source: COMSA

Table 6

GDP and Mining GDP in nominal terms (R million), 1969 to 2013

Year	Mining and quarrying	GDP at market prices	Mining as % of GDP	Gold Price (US $/troy ounce)	Gold Price (y/y%)
1969	1 046	11 654	9.0%	41.0833	6.3%
1970	1 053	12 791	8.2%	35.9417	-12.5%
1971	1 001	14 136	7.1%	40.8042	13.5%
1972	1 321	15 953	8.3%	58.1592	42.5%
1973	1 957	19 740	9.9%	97.3258	67.3%
1974	2 784	24 277	11.5%	159.245	63.6%
1975	2 869	27 323	10.5%	161.029	1.1%
1976	3 265	30 848	10.6%	124.816	-22.5%
1977	3 776	34 261	11.0%	147.721	18.4%
1978	4 980	39 416	12.6%	193.239	30.8%
1979	7 219	47 100	15.3%	306.667	58.7%
1980	12 146	62 730	19.4%	607.88	98.2%
1981	10 064	72 654	13.9%	459.754	-24.4%
1982	10 035	82 462	12.2%	375.797	-18.3%
1983	11 951	94 350	12.7%	422.471	12.4%
1984	12 985	110 584	11.7%	360.361	-14.7%
1985	16 717	127 598	13.1%	317.179	-12.0%
1986	20 127	149 395	13.5%	367.68	15.9%
1987	19 127	174 647	11.0%	446.521	21.4%
1988	21 441	209 613	10.2%	437.148	-2.1%
1989	22 891	251 676	9.1%	381.276	-12.8%
1990	24 107	289 816	8.3%	383.506	0.6%

Source: SARB

N/B Data for commodity index price from 1982

Year	Mining and quarrying	GDP at market prices	Mining as % of GDP	Gold Price (US $/troy ounce)	Gold Price (y/y%)	Commodity Price Index, 2005 = 100	Commodity Price index y/y%
1991	25 542	331 980	7.7%	362.183	-5.6%		
1992	26 575	372 225	7.1%	343.698	-5.1%	54.7	
1993	30 052	426 133	7.1%	359.526	4.6%	52.4	-4.3%
1994	32 111	482 120	6.7%	384.12	6.8%	54.6	4.2%
1995	34 830	548 100	6.4%	384.161	0.0%	59.1	8.1%
1996	38 768	617 954	6.3%	387.819	1.0%	62.0	5.0%
1997	40 524	685 730	5.9%	330.995	-14.7%	59.4	-4.2%
1998	45 879	742 424	6.2%	294.139	-11.1%	47.6	-19.8%
1999	52 173	813 683	6.4%	278.873	-5.2%	49.8	4.6%
2000	63 391	922 148	6.9%	279.171	0.1%	63.1	26.5%
2001	77 214	1 020 007	7.6%	271.051	-2.9%	58.4	-7.5%
2002	92 730	1 171 086	7.9%	310.035	14.4%	58.2	-0.3%
2003	85 770	1 272 537	6.7%	363.509	17.2%	65.0	11.7%
2004	91 198	1 415 273	6.4%	409.212	12.6%	80.3	23.6%
2005	105 992	1 571 082	6.7%	444.843	8.7%	100.0	24.5%
2006	132 301	1 767 422	7.5%	604.336	35.9%	120.8	20.8%
2007	156 970	2 016 185	7.8%	696.72	15.3%	134.9	11.7%
2008	196 526	2 256 485	8.7%	871.707	25.1%	172.4	27.7%
2009	196 521	2 408 075	8.2%	972.966	11.6%	120.7	-30.0%
2010	228 230	2 673 772	8.5%	1224.66	25.9%	152.3	26.2%
2011	274 530	2 932 730	9.4%	1569.21	28.1%	192.4	26.3%
2012	270 096	3 138 980	8.6%	1669.52	6.4%	186.3	-3.2%
2013	279 691	3 385 369	8.3%	1411.46	-15.5%	183.3	-1.6%

Table 7

Table 1: Mining sector (R million) – Trade balance, 2012/13 to 2014/15

MINING SECTOR - Y-o-Y VARIANCES IN TRADE BALANCE						
R million	2012/2013	2012/2013*	2013/2014	2013/2014*	2014/2015	2014/2015*
	Trade Balance					
Total	**318 356.9**	**313 754.0**	**367 794.3**	**363 658.8**	**331 575.8**	**325 388.5**
Gold and uranium	69 718.3	69 701.7	60 102.2	60 098.2	51 663.2	51 660.1
Platinum	67 943.8	67 943.8	81 160.7	81 160.7	68 829.6	68 829.6
Diamond	12 168.6	9 391.0	16 479.0	13 651.8	18 055.4	14 966.3
Chrome	27 435.2	27 290.2	39 328.0	39 199.5	42 127.6	41 986.9
Coal	51 044.9	51 095.0	54 473.6	54 462.2	54 361.6	54 494.1
Iron Ore	66 985.6	66 985.4	81 771.6	81 773.3	65 766.7	65 765.9
Other	23 060.6	21 346.9	34 479.2	33 313.2	30 771.8	27 685.5
	Growth					
Total	**-26 720.0**	**-30 057.9**	**49 437.4**	**49 904.8**	**-36 218.5**	**-38 270.4**
Gold and uranium	-9 740.2	-9 744.8	-9 616.1	-9 603.6	-8 439.0	-8 438.0
Platinum	-5 887.9	-5 887.9	13 216.9	13 216.9	-12 331.1	-12 331.1
Diamond	509.7	-2 309.7	4 310.4	4 260.8	1 576.4	1 314.5
Chrome	-3 709.0	-3 750.2	11 892.7	11 909.3	2 799.6	2 787.4
Coal	-6 971.1	-6 917.7	3 428.7	3 367.2	-111.9	31.9
Iron Ore	-540.7	-540.8	14 786.1	14 787.9	-16 005.0	-16 007.4
Other	-380.7	-906.8	11 418.6	11 966.3	-3 707.4	-5 627.7
	% Growth					
Total	**-7.7%**	**-8.7%**	**15.5%**	**15.9%**	**-9.8%**	**-10.5%**
Gold and uranium	-12.3%	-12.3%	-13.8%	-13.8%	-14.0%	-14.0%
Platinum	-8.0%	-8.0%	19.5%	19.5%	-15.2%	-15.2%
Diamond	4.4%	-19.7%	35.4%	45.4%	9.6%	9.6%
Chrome	-11.9%	-12.1%	43.3%	43.6%	7.1%	7.1%
Coal	-12.0%	-11.9%	6.7%	6.6%	-0.2%	0.1%
Iron Ore	-0.8%	-0.8%	22.1%	22.1%	-19.6%	-19.6%
Other	-1.6%	-4.1%	49.5%	56.1%	-10.8%	-16.9%

***** - Denotes EXCLUDING BLNS Trade Figures*

Source: SARS data

Table 8

Mining sector (R million) – Exports, 2012/13 to 2014/15

MINING SECTOR - Y-o-Y VARIANCES IN EXPORTS						
R million	2012/2013	2012/2013*	2013/2014	2013/2014*	2014/2015	2014/2015*
	Exports					
Total	**336 048.0**	**329 283.2**	**389 298.0**	**380 684.0**	**354 081.7**	**344 717.4**
Gold and uranium	69 856.1	69 839.4	60 210.3	60 206.1	51 767.8	51 764.7
Platinum	68 301.0	68 301.0	81 537.4	81 537.4	71 106.5	71 106.5
Diamond	17 384.5	13 080.0	23 567.8	17 505.5	24 150.8	18 161.1
Chrome	28 609.2	28 464.2	40 758.6	40 630.2	43 730.0	43 589.4
Coal	52 793.7	52 652.5	57 527.6	57 264.3	57 262.6	57 138.2
Iron Ore	67 660.5	67 660.2	82 425.7	82 425.2	66 475.8	66 475.0
Other	31 442.9	29 285.8	43 270.6	41 115.3	39 588.2	36 482.6
	Growth					
Total	**-25 751.4**	**-30 662.8**	**53 250.0**	**51 400.8**	**-35 216.3**	**-35 966.6**
Gold and uranium	-9 722.6	-9 727.3	-9 645.8	-9 633.3	-8 442.5	-8 441.5
Platinum	-6 069.3	-6 069.2	13 236.3	13 236.3	-10 430.9	-10 430.9
Diamond	338.1	-3 903.7	6 183.3	4 425.5	583.0	655.6
Chrome	-3 293.0	-3 334.2	12 149.4	12 166.0	2 971.4	2 959.2
Coal	-6 670.4	-6 695.7	4 733.9	4 611.8	-265.0	-126.1
Iron Ore	-486.1	-486.2	14 765.2	14 765.0	-15 950.0	-15 950.3
Other	152.0	-446.6	11 827.6	11 829.5	-3 682.3	-4 632.7
	% Growth					
Total	**-7.1%**	**-8.5%**	**15.8%**	**15.6%**	**-9.0%**	**-9.4%**
Gold and uranium	-12.2%	-12.2%	-13.8%	-13.8%	-14.0%	-14.0%
Platinum	-8.2%	-8.2%	19.4%	19.4%	-12.8%	-12.8%
Diamond	2.0%	-23.0%	35.6%	33.8%	2.5%	3.7%
Chrome	-10.3%	-10.5%	42.5%	42.7%	7.3%	7.3%
Coal	-11.2%	-11.3%	9.0%	8.8%	-0.5%	-0.2%
Iron Ore	-0.7%	-0.7%	21.8%	21.8%	-19.4%	-19.4%
Other	0.5%	-1.5%	37.6%	40.4%	-8.5%	-11.3%

***** - Denotes EXCLUDING BLNS Trade Figures*

Source: SARS data

Table 9

Mining sector (R million) – Imports, 2012/13 to 2014/15[374]

MINING SECTOR - Y-o-Y VARIANCES IN IMPORTS						
R million	**2012/2013**	**2012/2013***	**2013/2014**	**2013/2014***	**2014/2015**	**2014/2015***
			Imports			
Total	**17 691.0**	**15 529.1**	**21 503.7**	**17 025.2**	**22 505.8**	**19 329.0**
Gold and uranium	137.8	137.7	108.1	107.9	104.7	104.5
Platinum	357.2	357.2	376.7	376.7	2 276.9	2 276.9
Diamond	5 215.9	3 688.9	7 088.8	3 853.7	6 095.4	3 194.9
Chrome	1 174.0	1 173.9	1 430.7	1 430.6	1 602.4	1 602.4
Coal	1 748.8	1 557.5	3 054.0	2 802.2	2 900.9	2 644.1
Iron Ore	675.0	674.8	654.1	651.9	709.1	709.0
Other	8 382.3	7 938.9	8 791.3	7 802.2	8 816.4	8 797.2
			Growth			
Total	**968.6**	**-604.9**	**3 812.6**	**1 496.1**	**1 002.2**	**2 303.8**
Gold and uranium	17.5	17.5	-29.7	-29.8	-3.4	-3.4
Platinum	-181.3	-181.3	19.4	19.4	1 900.2	1 900.2
Diamond	-171.7	-1 594.0	1 872.9	164.8	-993.4	-658.9
Chrome	416.0	416.0	256.7	256.7	171.8	171.8
Coal	300.7	222.0	1 305.2	1 244.6	-153.1	-158.1
Iron Ore	54.6	54.6	-20.9	-22.9	55.0	57.1
Other	532.7	460.3	409.0	-136.8	25.1	995.0
			% Growth			
Total	**5.8%**	**-3.7%**	**21.6%**	**9.6%**	**4.7%**	**13.5%**
Gold and uranium	14.6%	14.6%	-21.5%	-21.6%	-3.2%	-3.2%
Platinum	-33.7%	-33.7%	5.4%	5.4%	504.5%	504.5%
Diamond	-3.2%	-30.2%	35.9%	4.5%	-14.0%	-17.1%
Chrome	54.9%	54.9%	21.9%	21.9%	12.0%	12.0%
Coal	20.8%	16.6%	74.6%	79.9%	-5.0%	-5.6%
Iron Ore	8.8%	8.8%	-3.1%	-3.4%	8.4%	8.8%
Other	6.8%	6.2%	4.9%	-1.7%	0.3%	12.8%

**** - Denotes EXCLUDING BLNS Trade Figures***

Source: SARS data

Table 10

Mining sector (R million) – Imports by countries, 2014/15

MINING SECTOR - IMPORTS - COUNTRIES				
R million	2013/2014		2014/2015	
Diamond	**7 088.8**	**100.0%**	**6 095.4**	**100.0%**
Botswana	1 961.7	27.7%	1 781.8	29.2%
India	672.4	9.5%	651.3	10.7%
Namibia	458.1	6.5%	430.3	7.1%
United Arab Emirates	301.8	4.3%	286.7	4.7%
Belgium	294.8	4.2%	305.7	5.0%
Other	3 400.0	48.0%	2 639.6	43.3%
Coal	**3 054.0**	**100.0%**	**2 900.9**	**100.0%**
Australia	1 524.1	49.9%	1 348.0	46.5%
Mozambique	465.1	15.2%	484.5	16.7%
United States	304.4	10.0%	436.9	15.1%
Swaziland	234.2	7.7%	204.8	7.1%
Russian Federation	184.2	6.0%	9.1	0.3%
Other	342.0	11.2%	417.7	14.4%
Coal	**1 430.6**	**100.0%**	**1 602.4**	**100.0%**
Colombia	339.5	23.7%	351.1	21.9%
New Caledonia	315.1	22.0%	447.8	27.9%
Brazil	209.9	14.7%	164.1	10.2%
Zambia	77.0	5.4%	166.8	10.4%
Spain	59.1	4.1%	47.5	3.0%
Other	430.0	30.1%	425.1	26.5%

Source: SARS data

Table 11

Prime Lending Rate - (Annual Average)										
1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	Average
15.33%	19.83%	21.00%	20.31%	18.83%	16.17%	15.58%	17.90%	19.52%	20.00%	18.45%
1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Average
21.79%	18.00%	14.50%	13.77%	15.75%	14.96%	11.29%	10.63%	11.17%	13.17%	14.50%
2008	2009	2010	2011	2012	2013	2014				Average
15.13%	11.71%	9.83%	9.00%	8.75%	8.50%	9.13%				10.29%

Average 1988 – 2014		
14.87%		

Table 12

Top 15 countries' reserve position (US$bn)[375]

	Total	Bauxite	Copper	Gold	Iron Ore	Nickel	Zinc	PGM	Potash	Other
Sth Africa	2494	0	0	151	37	49	0	2258	0	-1
Russia	1636	6	71	125	794	87		222	324	7
Australia	1588	186	85	146	737	344	20			70
Canada	1000	0	28	25	62	54	14	11	792	14
Brazil	726	57		50	505	60			54	0
China	717	23	106	48	408	15	58	0	36	23
Chile	661		564	50					2	45
USA	613	1	123	75	119		25	32	16	222
Ukraine	516				510				5	1
Peru	328		222	35			34			37
India	296	23			255		18			0
Kazakhstan	292	11	63		187		30			1
Mexico	240		134	35	23		25			23
Indonesia	227		109	75		42				1
Guinea	222	222								0
Total		529	1505	815	3637	651	224	2523	1229	443

Source: Citi Investment Research and Analysis

375 Supra note 61, table obtained from page 47.

Table 13

Countries' reserve position (%)[376]

	Bauxite	Copper	Gold	Iron Ore	Nickel	Zinc	PGM	Potash	Other
Sth Africa			6%	1%	2%		91%		
Australia	12%	5%	9%	46%	22%	1%			4%
Russia		4%	8%	49%	5%		14%	20%	
Canada		3%	3%	6%	5%	1%	1%	79%	1%
Brazil	8%	0%	7%	70%	8%			7%	
China	3%	15%	7%	57%	2%	8%		5%	3%
Chile		85%	8%						7%
USA		20%	12%	19%		4%	5%	3%	36%
Ukraine		0%	0%	99%				1%	
Peru		68%	11%			10%			11%
India	8%	0%		86%		6%			0%
Kazakhstan	4%	22%		64%		10%			0%
Mexico		56%	15%	10%		10%			10%
Indonesia		48%	33%		19%				
Guinea	100%								
Total	5%	13%	7%	31%	6%	2%	22%	11%	4%

Source: Citi Investment Research and Analysis

[376] Supra note 61, table obtained from page 48.

Table 14

Revenue collections by sector for select tax products, 2013/14[377]

Sector (R'million)	CIT provisional	STC/DT	PAYE	VAT payments	Import VAT	VAT refunds	Diesel refunds	Net Tax	Contribution %
AGENCIES AND OTHER SERVICES	5 018	390	60 256	21 830	7 552	-9 377	0	85 669	11.3%
AGRICULTURE, FORESTRY AND FISHING	2 884	216	8 239	11 148	2 464	-10 232	-1 103	13 617	1.8%
BRICKS, CERAMICS, GLASS, CEMENT AND SIMILAR PRODUCTS	398	33	1 018	801	512	-157	0	2 604	0.3%
CATERING AND ACCOMMODATION	1 485	138	1 781	3 979	77	-530	0	6 929	0.9%
CHEMICALS AND CHEMICAL, RUBBER AND PLASTIC PRODUCTS	3 386	217	3 043	4 934	8 680	-4 319	0	15 942	2.1%
CLOTHING AND FOOTWEAR	1 171	31	1 093	803	1 311	-216	0	4 193	0.6%
COAL AND PETROLEUM PRODUCTS	8 602	18	973	5 953	2 000	-7 225	0	10 322	1.4%
CONSTRUCTION	3 993	493	11 263	17 092	3 243	-4 663	-14	31 407	4.1%
EDUCATIONAL SERVICES	439	74	8 609	646	70	-201	0	9 637	1.3%
ELECTRICITY, GAS AND WATER	1 782	28	5 612	4 668	978	-4 744	-3 265	5 059	0.7%
FINANCING, INSURANCE, REAL ESTATE AND BUSINESS SERVICES	54 114	7 928	108 095	85 895	17 227	-22 631	-5	250 623	33.0%
FOOD, DRINK AND TOBACCO	9 947	252	2 770	10 416	4 198	-3 890	-3	23 690	3.1%
INVESTMENTS	4	0	0	0	-	0	0	4	0.0%
LEATHER, LEATHER GOODS AND FUR (EXCLUDING FOOTWEAR AND CLOTHING)	87	5	63	106	173	-163	0	272	0.0%
LONG TERM INSURERS	7 129	312	0	0	-	0	0	7 441	1.0%
MACHINERY AND RELATED ITEMS	4 532	347	4 856	7 417	9 914	-3 671	0	23 394	3.1%
MEDICAL, DENTAL AND OTHER HEALTH AND VETERINARY SERVICES	3 446	294	4 271	7 483	337	-356	-1	15 474	2.0%
METAL	2 579	72	2 010	1 721	3 141	-6 366	0	3 157	0.4%
METAL PRODUCTS (EXCEPT MACHINERY AND EQUIPMENT)	1 073	89	2 384	3 188	1 617	-1 345	0	7 006	0.9%
MINING AND QUARRYING	17 105	183	16 748	10 431	3 130	-34 140	-1 489	11 969	1.6%
OTHER MANUFACTURING INDUSTRIES	3 355	177	1 056	1 565	1 834	-1 912	0	6 076	0.8%
PAPER, PRINTING AND PUBLISHING	2 122	69	2 209	3 010	1 893	-611	0	8 692	1.1%
PERSONAL AND HOUSEHOLD SERVICES	270	23	502	777	48	-50	0	1 570	0.2%
PUBLIC ADMINISTRATION	0	0	40 916	1 168	1	-5 049	0	37 035	4.9%
RECREATIONAL AND CULTURAL SERVICES	1 781	27	1 782	2 901	335	-502	0	6 324	0.8%
RESEARCH AND SCIENTIFIC INSTITUTES	222	34	392	747	59	-579	0	875	0.1%
RETAIL TRADE	10 644	457	7 575	16 245	7 820	-5 373	-1	37 368	4.9%
SCIENTIFIC, OPTICAL AND SIMILAR EQUIPMENT	464	33	326	490	774	-153	0	1 934	0.3%
SOCIAL AND RELATED COMMUNITY SERVICES (Exempt Institution(s)/ Organisation(s)	22	0	2 149	566	25	-443	0	2 319	0.3%
SPECIALISED REPAIR SERVICES	289	36	1 491	2 183	1 029	-460	0	4 569	0.6%
TEXTILES	244	17	369	879	1 431	-361	0	2 579	0.3%
TRANSPORT EQUIPMENT(EXCEPT VEHICLES, PARTS AND ACCESSORIES)	346	14	0	0	142	0	0	502	0.1%
TRANSPORT, STORAGE AND COMMUNICATION	14 315	308	12 651	14 976	4 240	-5 713	-287	40 491	5.3%
VEHICLES, PARTS AND ACCESSORIES	7 600	394	3 088	4 408	21 635	-11 406	0	25 719	3.4%
WHOLESALE TRADE	6 293	307	8 983	12 461	18 138	-8 663	-1	37 517	4.9%
WOOD, WOOD PRODUCTS AND FURNITURE	355	28	677	832	259	-186	0	1 965	0.3%
OTHER	9	1	2 911	177	4 152	-3	0	7 246	1.0%
Unallocated	1 805	4 264	167	1 561	645	-1 192	529	7 780	1.0%
Total	**179 161**	**17 309**	**330 328**	**263 461**	**131 085**	**-156 879**	**-5 641**	**758 824**	**100.0%**

377 In terms of the detailed tax payment/refund data by commodity, allocations are based on selected mining companies. The percentage contribution of these companies is applied to the total payments/refunds, to obtain a pro-rated amount by commodity. The tables on the Mining sector, particularly with reference to PAYE and VAT, exclude data in respect of labour brokers when mines make use of labour brokers. Labour brokers are not classified as part of the mining sector.

Table 15

Mining sector as a % of total tax revenue (R million), 2006/07 to 2014/15

MINING SECTOR AS A PERCENTAGE OF TOTAL TAX REVENUE									
Fiscal Year (R million)	Mining CIT	STC/DT [1]	PAYE	VAT payments	Import VAT[2]	VAT refunds	Total Mining	Total Tax Revenue	Total mining as a % of Total Tax Revenue
2006/07	13 222	1 937	6 015	5 045		-13 070	13 149	495 515	2.7%
2007/08	13 220	3 121	7 180	6 863		-18 934	11 450	572 871	2.0%
2008/09	22 370	2 301	9 421	8 199		-21 836	20 454	625 809	3.3%
2009/10	10 658	700	9 917	5 792		-24 538	2 529	599 339	0.4%
2010/11	17 706	2 208	12 144	6 888		-22 857	16 090	675 043	2.4%
2011/12	21 030	3 197	14 735	7 108		-32 056	14 013	742 730	1.9%
2012/13	14 754	330	15 459	7 713	3 856	-32 826	9 286	813 837	1.1%
2013/14	21 524	183	16 748	10 090	3 791	-34 705	17 632	900 015	2.0%
2014/15	18 047	166	17 669	9 393	2 524	-33 168	14 631	986 283	1.5%
Y/y growth									
2007/08	-2	1 183	1 165	1 819	-	-5 864	-1 699	77 355	
2008/09	9 150	-820	2 241	1 335	-	-2 902	9 004	52 938	
2009/10	-11 712	-1 601	496	-2 407	-	-2 702	-17 925	-26 470	
2010/11	7 048	1 508	2 227	1 097	-	1 681	13 561	75 705	
2011/12	3 324	989	2 591	219	-	-9 199	-2 076	67 686	
2012/13	-6 276	-2 867	724	606	-	-769	-4 727	71 107	
2013/14	6 770	-147	1 290	2 377	-64	-1 879	8 346	86 178	
2014/15	-3 477	-18	921	-698	-1 267	1 537	-3 001	86 268	
Y/y % growth									
2007/08	0.0%	61.1%	19.4%	36.1%	-	44.9%	-12.9%	15.6%	
2008/09	69.2%	-26.3%	31.2%	19.5%	-	15.3%	78.6%	9.2%	
2009/10	-52.4%	-69.6%	5.3%	-29.4%	-	12.4%	-87.6%	-4.2%	
2010/11	66.1%	215.5%	22.5%	18.9%	-	-6.8%	536.2%	12.6%	
2011/12	18.8%	44.8%	21.3%	3.2%	-	40.2%	-12.9%	10.0%	
2012/13	-29.8%	-89.7%	4.9%	8.5%	-	2.4%	-33.7%	9.6%	
2013/14	45.9%	-44.5%	8.3%	30.8%	-0	5.7%	89.9%	10.6%	
2014/15	-16.2%	-9.7%	5.5%	-6.9%	-33.4%	-4.4%	-17.0%	9.6%	

1. The 2012/13 to 2014/15 STC/DT contributions reduced since the introduction of the dividends tax in 01 April 2012. Allocations per sectors are skewed towards payments received from regulated intermediaries, which are mainly classified5under the finance sector. The taxes for the mining sector as a % of total tax revenue should therefore be higher.

2. As a result of a customs systems migration, detailed transactional data on Import VAT collections is accurately available for only 2012/13 to 2014/15.

Source: SARS

Table 16

Revenue collections by sector for select tax products, 2013/15[378]

Sector (R'million)	CIT provisional	STC/DT	PAYE	VAT payments	Import VAT	VAT refunds	Diesel refunds	Net Tax	% contr
Agriculture, forestry and fishing	3 727	292	9 174	11 570	2 546	11 351	836	15 123	1.81%
Community, social and personal services	6 439	542	66 606	14 836	745	8 003	0	81 165	9.73%
Construction	4 820	537	12 035	17 975	1 892	4 801	8	32 450	3.89%
Electricity, gas and water	1 324	34	6 201	6 013	1 489	3 455	3 436	8 171	0.98%
Financial intermediation, insurance, real-estate and busine	74 513	10 721	194 820	120 988	28 098	34 697	6	394 438	47.26%
Manufacturing	40 189	1 785	26 474	46 412	39 999	31 688	3	123 169	14.76%
Mining and quarrying	12 239	166	17 669	9 393	2 524	33 168	1 798	7 025	0.84%
Transport, storage and communications	14 402	344	14 678	16 366	4 143	7 004	389	42 540	5.10%
Wholesale and retail trade, catering and accommodatior	25 375	1 421	24 019	43 085	51 434	26 765	2	118 567	14.21%
OTHER	2 479	5 290	2 179	241	3 283	1	0	13 471	1.61%
Unallocated	-545	115	506	2		1 207	422	-1 550	-0.19%
Total	**184 963**	**21 247**	**374 363**	**286 880**	**136 153**	**162 138**	**6 900**	**834 569**	**100.00%**

Source: SARS

378 CIT in Table 16 includes **only** CIT provisional payments whilst Tables 15, 17 and 18 also comprise CIT assessment payments, interest on overdue taxes less CIT refunds. This will result in different % figures for contribution to total taxes.

Table 17

Revenue collections (R million) - mining sector, 1992/93 to 2014/15

Fiscal year	Tax revenue	CIT (excl interest)	Mining CIT	Mining as a % of CIT (excluding interest)	CIT as % of Tax Revenue	Mining CIT as % of Tax Revenue
1992/93	83 729	13 123	997	7.6%	15.7%	1.2%
1993/94	97 488	11 490	1 131	9.8%	11.8%	1.2%
1994/95	113 775	13 591	1 630	12.0%	11.9%	1.4%
1995/96	127 278	15 667	1 609	10.3%	12.3%	1.3%
1996/97	147 332	18 834	1 849	9.8%	12.8%	1.3%
1997/98	165 327	21 378	1 682	7.9%	12.9%	1.0%
1998/99	184 845	22 523	2 135	9.5%	12.2%	1.2%
1999/00	201 386	20 972	n/a	n/a	10.4%	n/a
2000/01	220 334	29 492	3 933	13.3%	13.4%	1.8%
2001/02	252 298	42 354	7 188	17.0%	16.8%	2.8%
2002/03	282 181	55 745	9 402	16.9%	19.8%	3.3%
2003/04	302 508	60 881	5 842	9.6%	20.1%	1.9%
2004/05	354 980	70 782	3 471	4.9%	19.9%	1.0%
2005/06	417 334	86 161	5 562	6.5%	20.6%	1.3%
2006/07	495 515	118 999	13 222	11.1%	24.0%	2.7%
2007/08	572 871	140 120	13 220	9.4%	24.5%	2.3%
2008/09	625 809	165 539	22 370	13.5%	26.5%	3.6%
2009/10	599 339	134 883	10 658	7.9%	22.5%	1.8%
2010/11	675 043	132 902	17 706	13.3%	19.7%	2.6%
2011/12	742 730	151 627	21 030	13.9%	20.4%	2.8%
2012/13	813 837	159 259	14 754	9.3%	19.6%	1.8%
2013/14	899 849	177 417	21 524	12.1%	19.7%	2.4%
2014/15	986 400	186 851	18 047	9.7%	18.9%	1.8%

Source : SARS

*** CIT payment data for 1999/00 is not available and was not (manually) extracted previously. The data was not captured as there was a change to the New Income Tax System (NITS).**

Table 18

Mining sector (R million) – CIT Mining Payments by commodity, 2006/07 to 2014/15

MINING SECTOR - CIT PAYMENTS									
R million	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15*
	CIT Payments								
Total	**13 222**	**13 220**	**22 370**	**10 658**	**17 706**	**21 030**	**14 754**	**21 524**	**18 047**
Gold and uranium	597	578	384	832	656	1 079	1 225	800	1 007
Platinum	5 448	5 619	4 611	979	2 338	2 692	996	1 777	1 401
Diamond	593	486	368	159	471	868	637	397	255
Chrome	409	768	2 782	944	1 567	1 871	1 940	4 029	2 793
Coal	2 221	2 174	4 948	2 031	2 300	3 542	1 996	1 707	1 913
Iron Ore	1 117	794	3 086	2 120	6 508	6 556	4 823	8 851	7 119
Other	2 838	2 800	6 192	3 592	3 866	4 422	3 136	3 963	3 558
	Growth								
Total		**-2**	**9 150**	**-11 712**	**7 048**	**3 324**	**-6 276**	**6 770**	**-3 477**
Gold and uranium		-19	-195	448	-175	422	147	-426	207
Platinum		171	-1 008	-3 631	1 359	354	-1 696	780	-376
Diamond		-107	-119	-208	312	397	-231	-239	-142
Chrome		359	2 014	-1 838	623	304	69	2 089	-1 236
Coal		-46	2 774	-2 917	268	1 242	-1 546	-289	206
Iron Ore		-323	2 292	-966	4 388	48	-1 733	4 028	-1 732
Other		-38	3 392	-2 600	274	556	-1 286	827	-405
	% Growth								
Total		**0.0%**	**69.2%**	**-52.4%**	**66.1%**	**18.8%**	**-29.8%**	**45.9%**	**-16.2%**
Gold and uranium		-3.1%	-33.7%	116.8%	-21.1%	64.3%	13.6%	-34.8%	25.9%
Platinum		3.1%	-17.9%	-78.8%	138.7%	15.2%	-63.0%	78.3%	-21.1%
Diamond		-18.0%	-24.4%	-56.7%	195.6%	84.2%	-26.6%	-37.6%	-35.8%
Chrome		88.0%	262.3%	-66.1%	66.0%	19.4%	3.7%	107.6%	-30.7%
Coal		-2.1%	127.6%	-58.9%	13.2%	54.0%	-43.6%	-14.5%	12.1%
Iron Ore		-28.9%	288.7%	-31.3%	207.0%	0.7%	-26.4%	83.5%	-19.6%
Other		-1.3%	121.1%	-42.0%	7.6%	14.4%	-29.1%	26.4%	-10.2%

* Preliminary numbers

Source: SARS data

Table 19

Mining sector (R million) – STC Payments, 2006/07 to 2011/12

MINING SECTOR - STC PAYMENTS						
R million	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
	STC / DT Payments					
Total	**1 937**	**3 121**	**2 301**	**700**	**2 208**	**3 197**
Gold and uranium	2	12	3	1	10	29
Platinum	763	1 571	623	123	230	494
Diamond	78	73	128	30	234	87
Chrome	37	37	412	144	131	202
Coal	210	750	289	145	203	173
Iron Ore	131	259	413	178	1 177	1 867
Other	717	419	433	80	222	345
	Growth					
Total		**1 183**	**-820**	**-1 601**	**1 508**	**989**
Gold and uranium		10	-9	-3	10	19
Platinum		808	-948	-501	108	264
Diamond		-5	55	-98	205	-147
Chrome		-0	375	-268	-12	70
Coal		540	-461	-144	58	-30
Iron Ore		128	154	-235	999	690
Other		-297	14	-352	141	123
	% Growth					
Total		**61.1%**	**-26.3%**	**-69.6%**	**215.5%**	**44.8%**
Gold and uranium		560.3%	-72.1%	-75.4%	1139.9%	177.9%
Platinum		105.9%	-60.3%	-80.3%	87.7%	114.8%
Diamond		-6.6%	74.8%	-76.8%	690.1%	-62.9%
Chrome		-0.2%	1027.5%	-65.1%	-8.4%	53.6%
Coal		256.9%	-61.5%	-49.8%	40.1%	-14.7%
Iron Ore		98.2%	59.6%	-56.9%	561.2%	58.7%
Other		-41.5%	3.3%	-81.4%	176.1%	55.5%

Source: SARS data

Table 20

Mining sector (R million) – PAYE Payments by commodity, 2006/07 to 2014/15

MINING SECTOR - PAYE PAYMENTS									
R million	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15
	PAYE payments								
Total	**6 015**	**7 180**	**9 421**	**9 917**	**12 144**	**14 735**	**15 459**	**16 748**	**17 669**
Gold and uranium	885	1 077	1 365	1 405	1 824	1 966	2 180	2 229	2 161
Platinum	1 182	1 417	1 927	2 208	2 533	2 946	3 193	3 849	4 414
Diamond	392	375	368	332	383	440	509	609	645
Chrome	325	522	728	726	938	1 075	1 394	1 484	1 626
Coal	667	718	1 037	1 177	1 692	1 933	2 088	2 327	2 774
Iron Ore	124	172	271	302	413	1 685	950	1 028	1 187
Other	2 439	2 898	3 725	3 765	4 361	4 689	5 144	5 223	4 862
	Growth								
Total		**1 165**	**2 241**	**496**	**2 227**	**2 591**	**724**	**1 290**	**921**
Gold and uranium		191	288	40	419	142	214	49	-68
Platinum		235	509	281	325	413	247	656	566
Diamond		-17	-7	-36	51	57	69	100	36
Chrome		196	206	-2	211	138	319	90	142
Coal		51	318	141	514	242	155	238	448
Iron Ore		48	100	31	111	1 272	-735	78	159
Other		460	826	41	596	328	455	79	-361
	% Growth								
Total		**19.4%**	**31.2%**	**5.3%**	**22.5%**	**21.3%**	**4.9%**	**8.3%**	**5.5%**
Gold and uranium		21.6%	26.8%	2.9%	29.8%	7.8%	10.9%	2.3%	-3.1%
Platinum		19.9%	35.9%	14.6%	14.7%	16.3%	8.4%	20.5%	14.7%
Diamond		-4.3%	-1.9%	-9.7%	15.3%	14.8%	15.6%	19.7%	5.9%
Chrome		60.4%	39.5%	-0.2%	29.1%	14.7%	29.6%	6.4%	9.6%
Coal		7.6%	44.3%	13.6%	43.7%	14.3%	8.0%	11.4%	19.2%
Iron Ore		39.0%	58.0%	11.4%	36.7%	308.0%	-43.6%	8.2%	15.5%
Other		18.8%	28.5%	1.1%	15.8%	7.5%	9.7%	1.5%	-6.9%

Source: SARS data

Table 21

MPRR collections by commodity–mining sector

R million	2011/12	% of total	2012/13	% of total	2013/14	% of total	Year-on-year growth
Coal	297	5.3%	436	8.7%	390	6.1%	-10.5%
Copper	79	1.4%	48	1.0%	37	0.6%	-24.2%
Diamonds	290	5.2%	175	3.5%	107	1.7%	-38.7%
Gold and/ or uranium	817	14.6%	1129	22.5%	838	13.0%	-25.8%
Industrial minerals [1]	299	5.3%	186	3.7%	278	4.3%	50.0%
Iron ore[2]	2503	44.6%	1921	38.3%	3333	51.9%	73.6%
Manganese	149	2.7%	199	4.0%	235	3.7%	18.3%
Platinum	853	15.2%	461	9.2%	567	8.8%	23.1%
Zinc	143	2.5%	101	2.0%	48	0.7%	-52.8%
Other[3]	181	3.2%	361	7.2%	586	9.1%	62.6%
Total	**5612**	**100.0%**	**5015**	**100.0%**	**6420**	**100.0%**	**28.0%**

1. Industrial minerals are geological materials which are mined for their commercial value, which are not mineral fuels and are not sources of metallic minerals. They are used in their natural state or after beneficiation either as raw materials or as additives in a wide range of applications (i.e. industrial minerals are all those minerals other than gold, PGMs, coal, iron ore, chrome, manganese, diamonds, etc.)
2. High MPRR collections of iron ore are due to differentiated rates between refined and unrefined mineral resources.
3. The commodities grouped under "Other" are: Chrome, Fluorspar, Nickel, Oil and Gas, Phosphates, Vanadium and Unspecified.

Source: SARS data

Table 22

Mining sector (%) - Effective Tax Rates (ETR[379]) by commodity, 2008 to 2011[380]

Industry Classification	2008	2009	2010[381]	2011
Coal	18.7%	15.3%	7.3%	11.6%
Copper[382]	36.8%	54.1%	40.8%	29.7%
Diamonds	18.3%	19.4%	12.4%	19.8%
Ferro Chrome & Manganese	23.5%	22.1%	4.2%	21.4%
Gold[383]	14%	17.1%	2%	8.9%
Iron Ore[384]	18.9%	15.8%	17.5%	15.8%
Platinum[385]	7.1%	11.4%	6.3%	12.4%

Source: SARS data

379 An ETR is a basic ratio that divides the tax liability by the net pre-tax accounting profit (based on Income Tax-IT14 return data extractions). This rate therefore indicates the deviation from the statutory tax rate to the actual effective tax rate, based on the tax liability after accounting for the impact of tax allowances and / or deductions claimed. The difference between pre-tax accounting profit and taxable income results from the specific tax deductions and allowances that are claimed in terms of the taxing statute that differ from the accounting standards. The impacts of BEPS and Transfer Pricing activities are generally not measured by ETRs. These activities normally impact on the amount of turnover and expenses and not the difference between pre-tax accounting profit and taxable income. A taxpayer is not assumed to be non-compliant merely because of a low or declining ETR. ETRs could be legitimately low because of, for example, high qualifying (accelerated) capital expenditure (see paragraph on tax incentives). Findings from the analysis of ETRs are dependent on the quality of data extracted from the SARS core systems. An analysis of income tax return data for the largest 40 mining taxpayers, as summarised in Table 22.

380 Findings from this analysis are dependent on the quality of data extracted from the SARS core systems. Care has been taken to scrutinise data for anomalies due to probable capturing errors. Underlying detail return data have also been available to analyse drivers for ETRs. Industry classifications have been determined based on knowledge of the taxpayers included. Constraints due to data availability from core systems and amendments to the Income Tax Return form (IT14 to ITR14) currently prevent the publication of ETRs post 2011.

381 The general lower trend of mining's ETRs in 2010 can be attributed to the aftermath of the financial crisis when committed capital expenditure programmes through this period resulted in high capital allowances being deducted for tax purposes but capitalised for accounting purposes.

382 The copper sector's relatively high ETRs can be attributed to timing differences between earlier accelerated capital expenditure allowances claimed for tax purposes and depreciation expensed as well as adjustments for the period 2008 -2011.

383 The ETRs in the platinum and gold sectors have been the lowest in the mining industry over the period. The use of tax incentives as per the fields completed on the IT14 for "other deductible items" is disproportionately higher than for the other sectors (see paragraph on tax incentives).

384 By contrast, the ETR for the iron ore sector has remained fairly stable over the period. The proportion of deductions and allowances versus net profits earned remained relatively stable.

385 Supra note 383.

Table 23

Mining output - Multipliers[386]

Multipliers	Output	Labour Income	Factor Income - labour and capital income	Household Income	Enterprise Income
Coal mining	**3.04**	**0.55**	**1.47**	**1.05**	**0.64**
Other mining	**2.56**	**0.51**	**1.19**	**0.88**	**0.48**
of which					
Gold	0.51	0.21	0.24	0.36	0.03
Platinum	0.90	0.13	0.42	0.22	0.20
Metal ore	0.69	0.09	0.33	0.15	0.16
Other mining and quarrying	0.46	0.08	0.20	0.14	0.09

Source: Stats SA, SARS own calculations

386 The mining sector in South Africa has a relatively significant multiplier impact on the economy especially in terms of total output, factor income (labour and capital) as well as household income. For instance, for every one unit of output by the coal mining sector, total output in the economy will increase by 3.04 units. The mining sector main commodity demand linkages in the South African economy are, firstly, transport followed by financial services, other chemicals, metal and electricity. Various machinery and equipment goods locally produced are also consumed by the mining sector. In terms of multipliers of the other mining sector, the platinum sector has the highest output multiplier impact of 0.9 compared to that of gold at only 0.51. The platinum sector also has relatively high multipliers in enterprise income and factor income (labour and capital income). The gold sector has the highest multiplier in terms of labour income.

Table 24

The Table below reflects this estimated mineral wealth of South Africa as conveyed by Minister Shabangu in answer to parliamentary questions on 22 November 2012 and as reported by the Parliamentary Monitoring Group.

Reply received: November 2012

QUESTION NUMBER 2768
DATE OF PUBLICATION IN INTERNAL QUESTION PAPER: 12 OCTOBER 2012
(INTERNAL QUESTION PAPER NUMBER 32)
2768. Adv. H C Schmidt (DA) to ask the Minister of Mineral Resources:

What is the (a) current total estimated value of the mineral wealth in South Africa and (b) breakdown in value of each specific mineral? NW3417E

REPLY (received: 22 November 2012)
a)Current value of SA major minerals is estimated at R29.6 trillion (US$3.5 trillion) - the estimate is based on major minerals.

b) Find the attached spreadsheet with estimate of the value

COMMODITY	**Value (R)**
Antimony, Metal Bulletin Free Market	R 2 177 949 862
Coal-Steam: Local FOR	R 6 642 462 120 000
Copper: Grade A, LME Cash	R 680 962 220 800
Golden, London Price	R 2 837 152 826 880
Lead, LME Cash	R 4 699 033 440
Manganese Ore: 48-50% Metalurgical*[sic]	R 6 388 337 455
Nickel, LME Cash	R478 545 438 836
Titanium Minerals (Rutile Concentrate 95% TiO2	R 1 634 997 768 500
Uranium Oxide, NUEXCO spot	R 54 602 771 570
Vanadium Pentoxide*	R 75 633 617 708
Zinc, Special High Grade	R 209 808 249 891
Zirco: Foundry Grade, Bulk, FOB	R 302 865 500 000
Platinum	R 13 284 780 745 421
Palladium	R 3 298 800 268 431
Vermiculite	R 98 322 560 000

Table 25

Eskom's average tariff adjustment for the last 15 years[387]

Year	Average price adjustment	CPI price adjustment
01-Jan-00	5,50%	5,37%
01-Jan-01	5,20%	5,70%
01-Jan-02	6,20%	9,20%
01-Jan-03	8,43%	5,80%
01-Jan-04	2,50%	1,40%
01-Jan-05	4,10%	3,42%
1 April 2006/7	5,10%	4,70%
1 April 2007/8	5,90%	7,10%
1 April 2008/9	27,50%	10,30%
1 April 2009/10	31,30%	6,16%
1 April 2010/11	24,80%	5,40%
1 April 2011/12	25,80%	4,50%
1 April 2012/13	16,00%	5,7%
1 April 2013/14	8,00%	6%
1 April 2014/15	8,00%	6% (forecast)

Source: Eskom, Tariff & Charges booklet, appendix E, page 57. Retrieved from http://www.eskom.co.za/CustomerCare/TariffsAndCharges/Documents/TariffBrochureV9.pdf

[387] Eskom's tariffs are adjusted on an annual basis – previously on 1 January, but due to the change in Eskom's financial year price adjustments now take place on 1 April every year. The average tariff adjustments for the last 15 years are indicated in the table below. Each tariff, due to structural changes, may have experienced a higher or lower impact than the average tariff adjustment.

Table 26

Registration of Venture Capital Companies

Year	Number of VCC's registered
2010	1
2011	0
2012	1
2013	1
2014	2
2015	8
2016	22[388]
Total	**35**

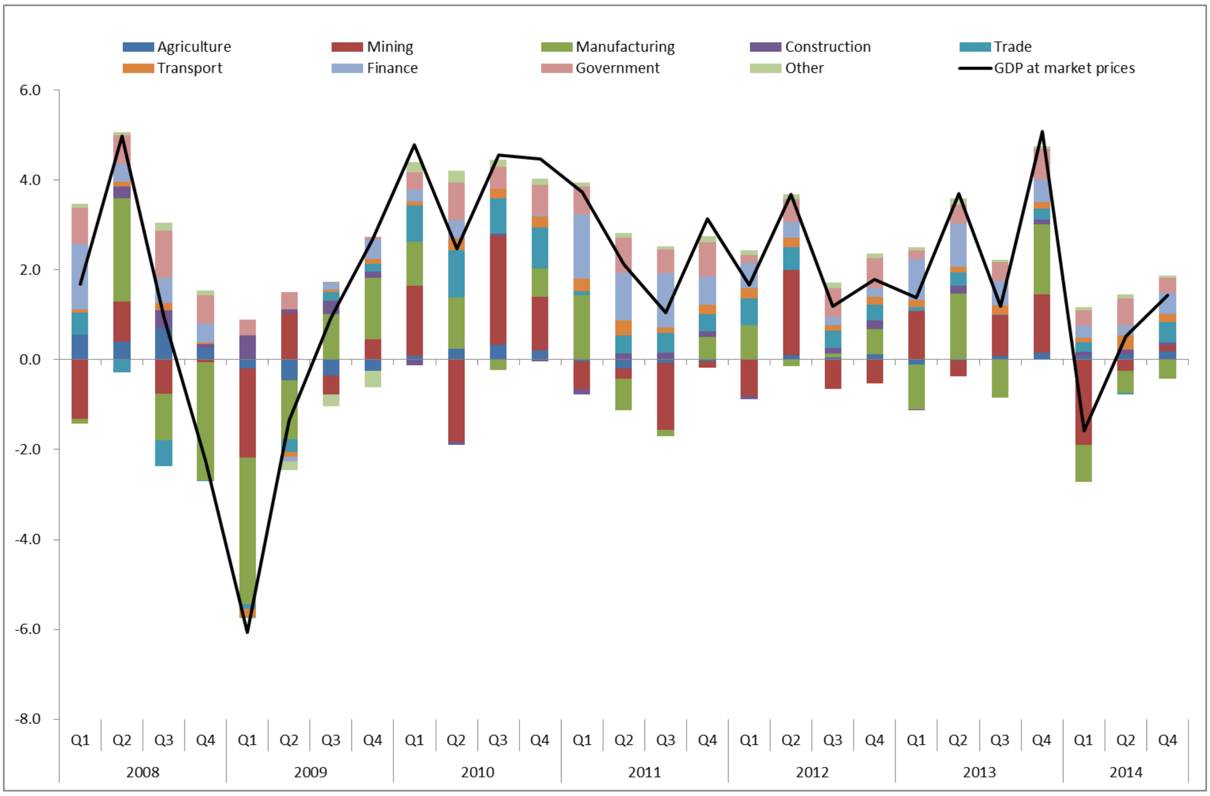
Source: SARS 2016

[388] It is expected that more VCC's will register by the end of 2016.

4. **Annexure D** (Figures)

Figure 1

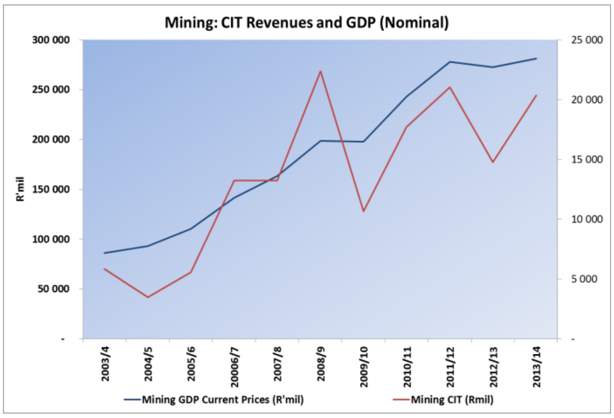
Sector GDP contribution, 2008 to 2014

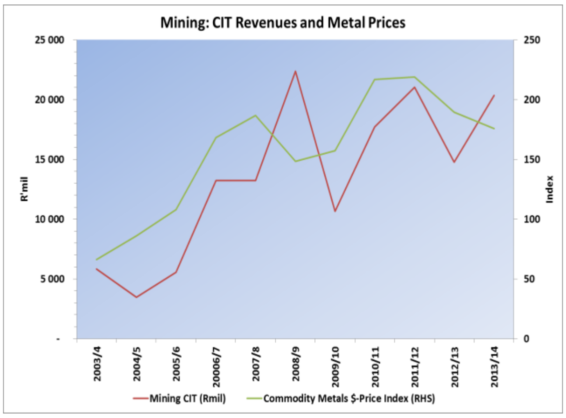


Source: Stats SA

Figure 2

Mining CIT revenue & GDP, 2003/04 to 2013/14 and Mining CIT revenue & Metal prices, 2003/04 to 2013/14

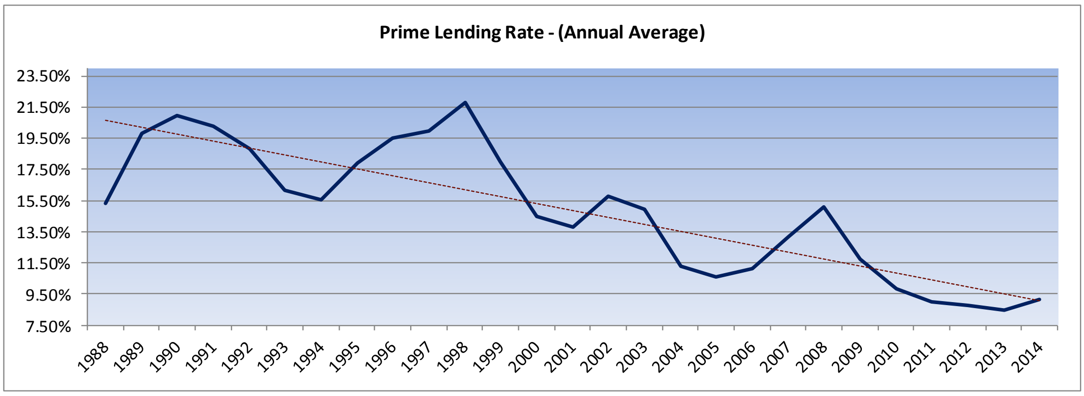




Source: SARS (CIT Data), Stats SA (Mining GDP Current Prices), SARB (Commodity Metals)

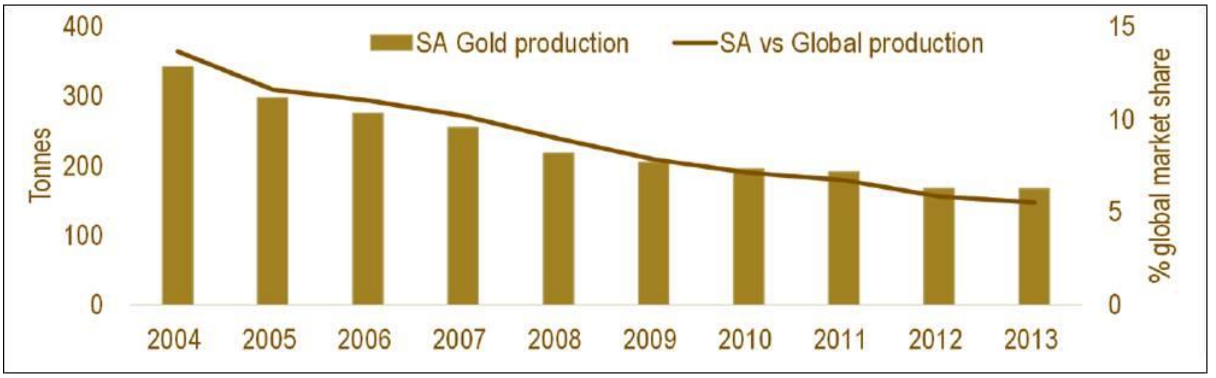
Commodity Metals Price Index, 2005 = 100, includes Copper, Aluminium, Iron Ore, Tin, Nickel, Zinc, Lead, and Uranium Price.

Figure 3



Source: SARB information

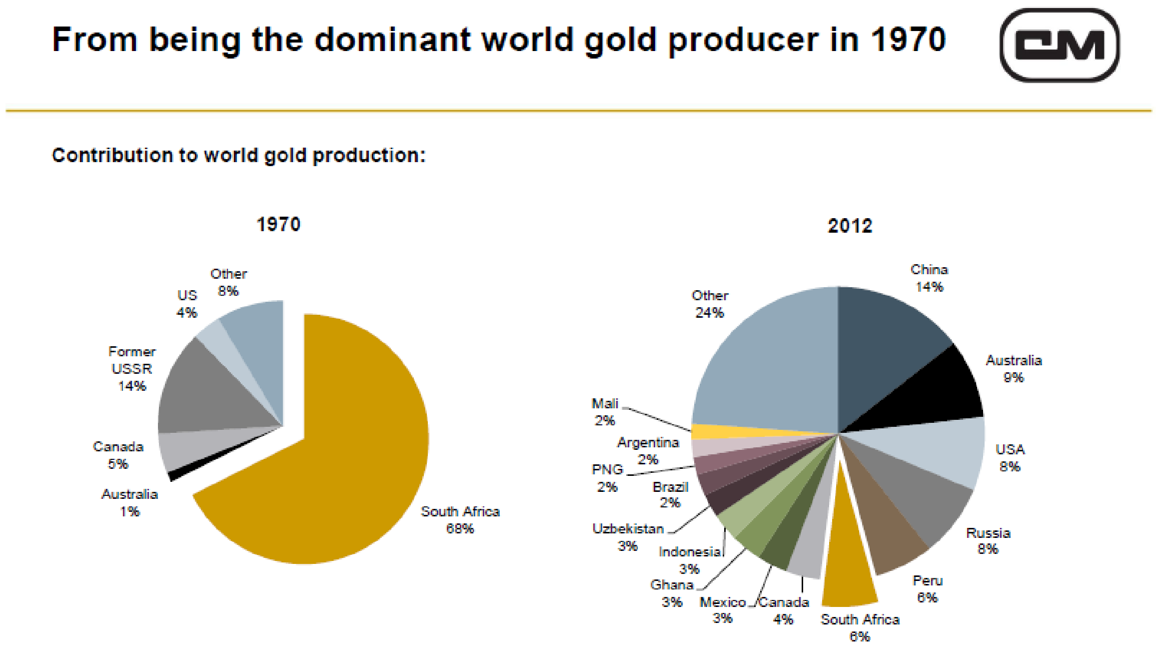
Figure 4[389]



Source: SA Chamber of Mines, StatsSA, SARB, DMR

[389]South Africa's contribution to global production declined from 13% in 2004 to 5.3% in 2013.

Figure 5

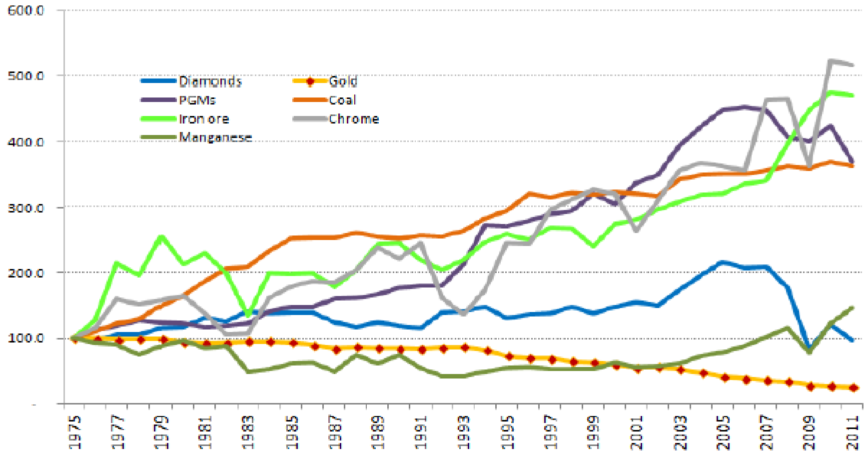


Source: COMSA

Figure 6

While other commodities have grown …

- Gold production has declined by 83%
- Over the last decade, an average decline of 8.2% per annum



Source: StatsSA, CoM EAU

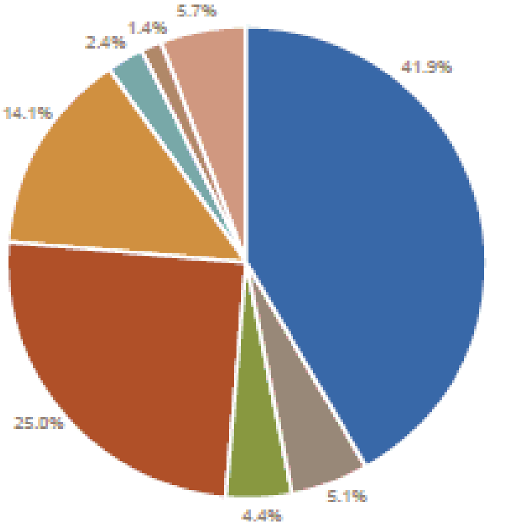
Figure 7

Benchmarking

Distribution is currently preparing for a new benchmarking cycle, comparing technical and operational performance with international utilities.

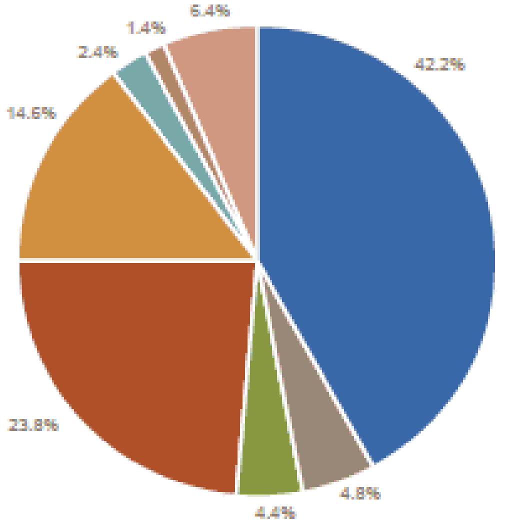
For previous year's benchmarking information relating to Eskom's distribution network please refer to www.eskom.co.za/IR2014/11.html

Direct electricity sales for 2013/14 by customer type



Actual (GWh)			
Municipality	91 262	Residential	11 017
Commercial	9 605	Industrial	54 658
Mining	30 667	Agriculture	5 191
Rail	3 125	International	12 378
Total	**217 903**		

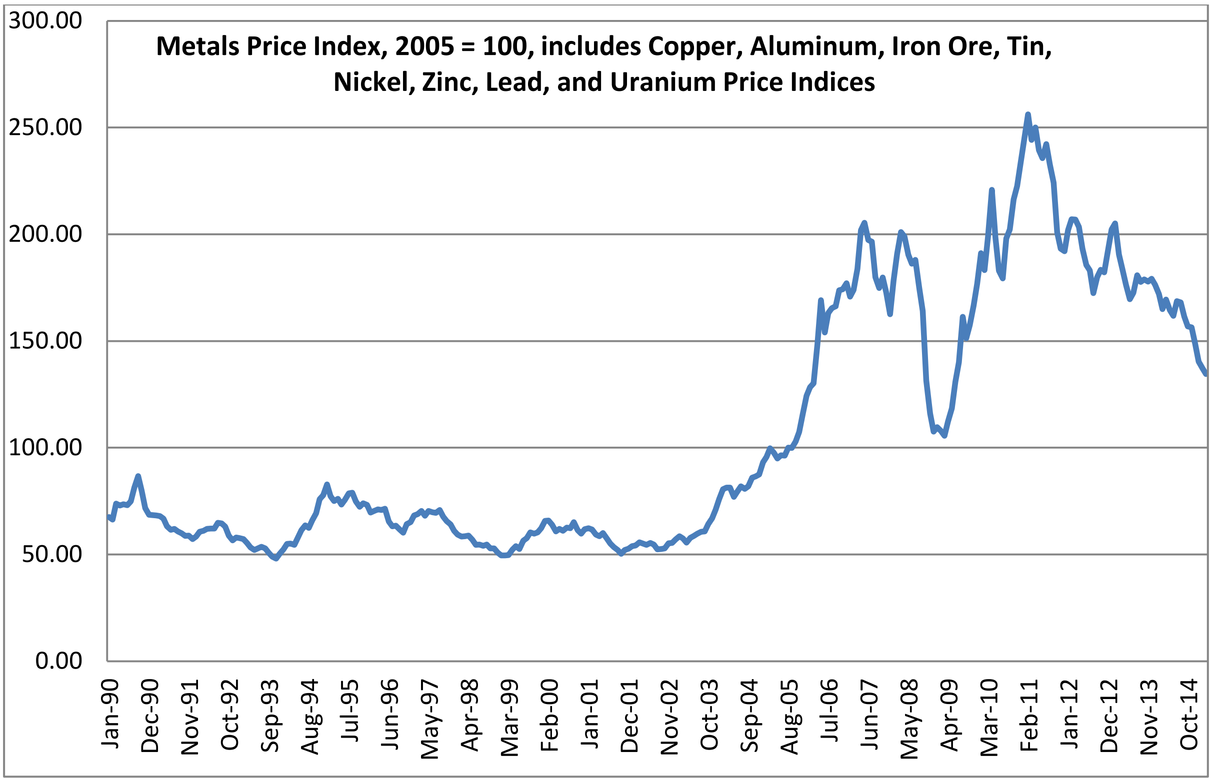
Direct electricity sales for 2012/13 by customer type



Actual (GWh)			
Municipality	91 386	Residential	10 390
Commercial	9 519	Industrial	51 675
Mining	31 611	Agriculture	5 193
Rail	2 996	International	13 791
Total	**218 681**		

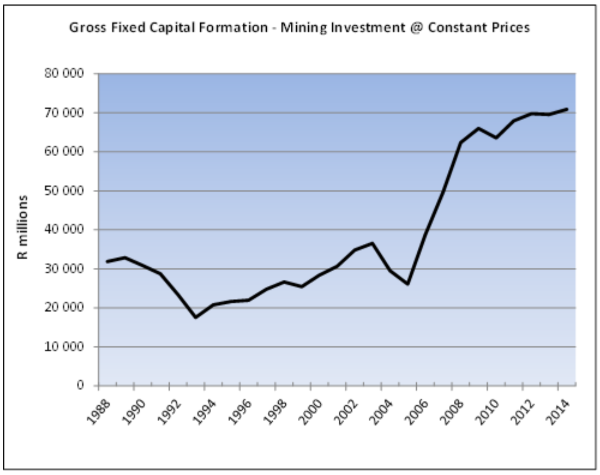
Source: Eskom integrated annual report (2014) at page 95

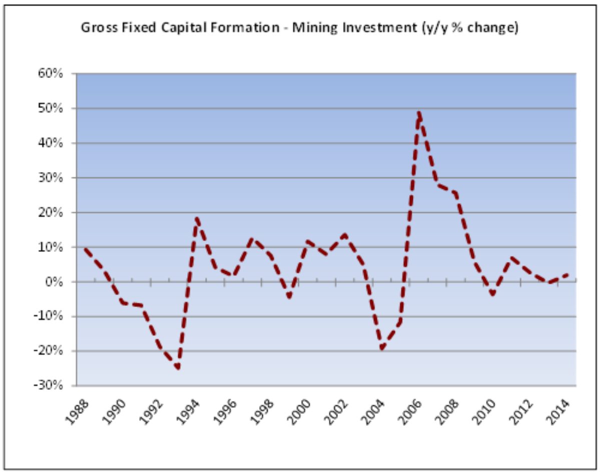
Figure 8



Source: IMF Primary Commodity Price Data retrieved from http://www.imf.org/external/np/res/commod/index.aspx

Figure 9





Source: SARB

Annexure "**E**" (International Comparison)

Taxation of mining in other countries in comparison to mining taxation in South Africa

Countries	Corporate tax	Remittance tax	Specific mining tax	Fiscal stability regimes and fiscal incentives	Tax loss carried forward	Governmental mining royalties
Argentina	35% (worldwide income regime)	0% on dividends 15.05% on interest 21% and 28% on technical assistance		The Mining Investment Law provides benefits for those who are registered in the Mining Investments Registry kept by the Department of Mining of Argentina. Law 24,196 sets down a special mining regime for Argentina. Mining projects within the purview of that law have the following rights; (i) double deduction of exploration expenses; (ii) accelerated depreciation of assets; (iii) exemption from import duties; (iv) a limit of 3% on mining royalties; (v) forecast for environmental conservation deductible from income tax; (viii) fiscal stability for a period of 30 years. This	5 years	There is a provincial royalty. The rate varies depending on the province where the mine is located.

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				latter means that a mining investor will not experience any increase in their total tax burden determined on the date the corresponding feasibility study is presented, for the period of 30 years.		
Australia	30% (worldwide income regime)	0% on franked dividends 30% on unfranked dividends (essentially if the dividend is franked the company paying the dividend has paid the tax over on the shareholder's behalf) 10% on interest 30% for royalties	Effective 1 July 2012, is the new federal Minerals Resource Rent Tax ("MRRT"). The MRRT applies to iron ore and coal (bulk commodity) projects in Australia (excluding "small miners" who earn less than AUD 50m of MRRT assessable profits per year). MRRT applies at a headline tax rate of 30%, but projects are entitled to an "extraction allowance" of 25%; therefore an effective	Fiscal Stability Regime: Not applicable Fiscal Incentives: Specific concessions apply to the mining industry (for example, an immediate tax deduction is allowable for exploration expenditure and assets first used in exploration).	No time limitations, however utilisation of carried forward losses is subject to meeting specific requirements. There is no carry-back of losses.	State royalties apply. A mining royalty is payable to the Australian state government in which certain minerals are mined. Generally, the applicable mining royalty will be either a set amount or a percentage of the volume of mineral mined or the realised value of the minerals mined.

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			MRRT rate of 22.5%. Any MRRT paid is deductible for income tax purposes. However, earlier this year the Australian Government has delivered on its election commitment to repeal the failed Minerals Resource Rent Tax (mining tax), with the Bill receiving Royal Assent on Friday, 5 September 2014. The Government announced that it will be recommending to the Governor-General, His Excellency General the Honourable Sir Peter Cosgrove AK MC (Retd.), that he affix by way of proclamation, 30 September 2014 as the commencement date for Schedules 1 to 5 to the Minerals Resource Rent Tax Repeal and Other Measures Act 2014. As a			

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			result the Schedules will have the following dates of effect for most taxpayers. Schedule 1 - Abolition of the mining tax from 1 October 2014 (with taxpayers final MRRT year (even if it is a part year) ending on 30 September 2014); Schedule 2 - Abolition of the company loss carry-back from 1 July 2013; Schedule 3 - Reduction of the instant asset write-off from 1 January 2014; Schedule 4 - Abolition of accelerated depreciation for motor vehicles from 1 January 2014; and Schedule 5 - Abolition of geothermal energy concessions from 1 July 2014.			

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Botswana	22% Corporate rate (taxed on a source basis).	Withholding tax rate: 15% on commercial royalties and management fees payable to non-residents. 15% on interest payable to both resident and non-residents; 15% on dividends payable to both residents and non-residents 10% on entertainment fees payable to non-residents	Mining companies are taxed using a variable income tax rate (for all minerals except diamonds) using the formula: Annual Tax Rate = 70-1500/x, where x = taxable income/gross income Minimum rate is the standard corporate rate of 22% of the profit	Manufacturing and the International Financial Services Centre at a reduced rate of 15% (compared to the current corporate tax rate of 22%). Promotions for companies are covered under Development Approval Order. Under this order, depending on the scale and the magnitude of the project companies can apply for tax holidays. Normally these are granted to companies, which are carrying out big projects. The tax holidays are restricted to five or ten years depending on the scale and the magnitude of the project. 100% write off of capex	Assessed losses from business can be carried forward for no more than five years, except for farming, mining and prospecting losses, which can be carried forward indefinitely	Royalties payable are the following percentage of gross market value for the minerals payable monthly to the Botswana Government through the Director of Mines: •Precious stones (diamonds) 10% •Precious metals 5% •Other minerals or mining products 3%

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Brazil	22% rate for residents	0% on dividends. 15% on royalties and technical services 25%	The rate varies according to the type of mineral, from 0.2% to 3%. 3% is levied on aluminium, manganese, halite and potassium; 2% is levied on iron, fertilizers, coal and other mineral substances; 1% is levied on gold and 0.2% is levied on precious stones, coloured cuttable stones, carbonates and noble metals.	Fiscal Stability Regime: not applicable Depreciation: the general rule is on a straight line basis. Specific depreciation rules for mining exploration activities. Equipment used in exploration activities can be depreciated under two regimes: i) straight-line depreciation based on the term of the concession or exploration agreement; or ii) depreciation based on volume of production in comparison with the mine production	Utilisation of assessed losses is subject to a limitation of a maximum of 30% of the tax base in subsequent fiscal years. In other words the subsequent year's' taxable income may only be reduced by 30% (set off of assessed loss) to the extent that the quantum of loss is available for set off.	
Canada	Federal Tax is 15%. Provincial Tax: between 10%–16% Potential maximum rate of 31%.	No withholding tax on loans from unrelated parties. 25% on dividends, interest paid to related parties, rent, royalties, and management fees rendered in Canada unless	Each province imposes its own mining tax under systems that vary significantly. Applicable tax rates vary between 10% and 16%. Mining tax base is typically revenue less most expenses	Fiscal Stability Regime: not applicable Fiscal Incentives: Investment Tax Credits, accelerated depreciation for pre-production mining assets, some mining tax	Operating Losses: 20 years Capital Losses: Indefinite carry-forward, however, no loss carryovers for mining tax purposes.	Not applicable.

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		reduced by tax treaties in force.	except financing and property acquisition costs.	holidays.		
Ghana	Corporate is 25%	8% withholding on dividends. 8% interest withholding tax; 10% final withholding tax on royalty payments to foreigners	Effective from 1 March 2012 ring-fencing provisions, similar to those contained in the South African legislation were introduced. However, whilst taxable income from different mines is ring-fenced no ring-fencing applies to "non-mining income". A separate "windfall tax of 10% on mining profits" is currently being considered by government and public comments have been invited.		A company's right to deduct losses carried forward is restricted to the business from which the loss was actually incurred. Accordingly, a company with several businesses cannot deduct the losses of one business brought forward against the profits of another business.	Mineral royalties tax is imposed on persons for the extraction of natural resources on or under the surface of the earth. The rate is 5%.

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South Africa	28% (worldwide income system)	15% on dividends 15% on royalties, 7.5% provisional payment on the disposal of immovable property by non-resident companies 15% on payments to non-resident entertainers and sportspersons	Gold mining companies are subjected to a special Gold Mining Formula rate of tax. Previously a higher or lower rate (formula) of tax applied, depending on whether an election to pay STC was made or not.	Mining companies are eligible for an immediate deduction of capital expenditure. The deduction can be utilised to reduce the mining income to zero, but it cannot create or increase a loss. The determination of mining taxable income from different mines is ring-fenced. Non mining income is further ring-fenced from mining income. Therefore capex can only be redeemed against mining income in relation to a specific mine and not against non-mining taxable income. Exploration expenditure can be claimed in full against mining income to the extent that it is incurred	Assessed losses may be carried forward indefinitely provided the company carries on a trade.	Royalty regime can be described as a hybrid system. It operates on the concept of a floating rate which may differ from one six-month period to the other. Royalties are payable on the transfer of minerals classified as either refined or unrefined condition as specified. The payments are calculated in terms of a formula for the respective mineral conditions (unrefined/refined) and is payable on a company's earnings before interest and tax. Earnings before interest and tax are in effect the calculated "Royalty taxable income".

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				within South Africa. If no income, then capitalised into the capital expenditure regime. Specific legislation pertaining to rehabilitation entities. To extent that legislative requirements are met, all payments actually made in cash to such entities qualify for deduction against taxable income in the hands of the person making payment. Gross proceeds on disposal of capital expenditure are subject to recoupment and not limited to original cost. Land and mining rights are not qualifying capital expenditure, therefore their disposal is subject to Capital Gains Tax.		

Source: PWC World Tax Summaries – Corporate Taxes – 2013/14