

REPUBLIC OF SOUTH AFRICA

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

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*(As introduced in the National Assembly (proposed section 75)); explanatory memorandum of Bill  
published in Government Gazette No ? of ?November 2007  
(The English text is the official text of the Bill)*

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(Minister of Finance)

06 December 2007

[B ?—2007]

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# **BILL**

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

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

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

***Part I***

***Interpretation***

**Definitions**

1. (1) In this Act, unless the context indicates otherwise—  
“**assessment period**” means an assessment period as described in section 4;  
“**Commissioner**” means the Commissioner for the South African Revenue Service;  
“**notice of assessment**” means a notice of assessment described in section 8;  
“**registered person**” means a person liable for registration under this Act pursuant to section 2;  
“**return**” means a return described in section 4; and  
“**Royalty Act**” means the Mineral and Petroleum Resources Royalty Act, 2007 (Act No. ? of 2007).  
(2) Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Royalty Act bears the meaning so assigned for purposes of this Act.

***Part II***

***Registration, Returns and Payments***

**Registration**

2. (1) A person qualifies for registration in terms of this Act if the person is a mineral resource extractor.  
(2) A person that qualifies for registration on the promulgation date of this Act must apply to register with the Commissioner within sixty days of the promulgation date of this Act.  
(3) A person that qualifies for registration after the promulgation date of this Act must apply to register with the Commissioner within sixty days of qualifying for registration.  
(4) The Commissioner must register a person that qualifies for registration and the registration takes effect from the beginning of the assessment period during which the person qualifies for registration.

**Cancellation of registration**

3. (1) A registered person that does not qualify for registration or anticipates not qualifying for registration from a specified date may apply to the Commissioner for cancellation of registration.

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(2) Upon receipt of an application described in subsection (1), the Commissioner may cancel a registered person's registration with effect from the day after the ending date of the assessment period in which the registered person does not qualify for registration.

(3) The obligations and liabilities under this Act and the Royalty Act of a person in respect of anything done, or omitted to be done, by the person while the person is a registered person shall not be affected by the fact that the Commissioner has cancelled the person's registration.

**Returns and assessment periods**

4. (1) A registered person must submit a return within thirty days of the ending date of each assessment period described in subsection (2).

(2) For purposes of this Act, a registered person's assessment period—

(a) in the case of a natural person—

(i) begins on 1 March and ends on 31 August; and

(ii) begins on 1 September and ends on the last day of February; and

(b) in the case of any other person—

(i) begins on the first day of the financial year for which financial accounts are prepared and ends six calendar months after that day; and

(ii) begins on the following day immediately after the period described in subparagraph (i) and ends on the last day of that financial year, and if any financial year begins on any day other than the first day of a calendar month, the financial year will be deemed to begin on the first day of that month.

(3) The Commissioner may make rules in respect of circumstances when an assessment period may be shorter or longer than six months.

**Payment of royalty**

5. (1) A registered person must submit payment of the royalty payable in respect of a return to which the payment relates on the date the return must be submitted as described in section 4(1).

**Form, manner, and place determined by Commissioner**

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

**Maintenance of records**

7. (1) A registered person must retain records necessary to observe the requirements of this Act and the Royalty Act, including—
- (a) details of earnings before interest, taxes, depreciation, and amortisation with sufficient detail to identify mineral resources won or recovered attributable to the earnings;
  - (b) details of aggregate gross sales with sufficient detail to identify the mineral resources transferred and the persons acquiring the mineral resources;
  - (c) details of allowable deductions with sufficient detail to describe the expenditures incurred;
  - (d) a ledger, cash book, journal, check book, bank statement, deposit slip, paid cheque, invoice, other book of account, or financial statement; and
  - (e) any information required by the Commissioner.
- (2) A registered person's records must be retained (either in their original form or in any other form permitted by the Commissioner) for five years after the date of the submission of the return to which the records relate.
- (3) Notwithstanding subsection (2), a registered person that notes an objection or appeal against a notice of assessment must retain all records relevant to that objection or appeal until that notice of assessment becomes final.

***Part III***

***Assessments***

**Assessments to re-determine, recalculate and estimate amounts**

8. (1) The Commissioner may issue to a person a notice of assessment of the royalty payable for the assessment period concerned, notwithstanding the provisions of section 81(5), 83(18) and 83A(12) of the Income Tax Act, if—
- (a) the registered person fails to furnish a return;
  - (b) the Commissioner is not satisfied with a return furnished by the registered person; or
  - (c) the Commissioner has reason to believe that the registered person has failed to pay the royalty for which the registered person is liable.
- (2) If a registered person defaults in furnishing a return or information in respect of a return or the Commissioner is not satisfied with a return or information, the Commissioner may estimate the amount upon which the royalty is payable.

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

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

**Reduced assessments**

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

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

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

(2) The Commissioner will not reduce a notice of assessment described under subsection (1)—

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

**Withdrawal of assessments**

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

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

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

**Time limit for assessments**

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

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

***Part IV***

***Refunds and Interest***

**Refunds**

12. (1) A registered person may claim a refund of any amount paid in respect of an assessment period to the extent that amount exceeds—

(a) in the case where that amount was paid in respect of a notice of assessment, the amount so assessed; or

(b) in any other case, the amount properly chargeable under the Royalty Act.

(2) The Commissioner may not authorise a refund under subsection (1)(b) if—

(a) that amount was paid in accordance with the practice generally prevailing at the date of the payment; or

(b) the refund is claimed by that person after a period of five years from the date of the official receipt acknowledging the payment or, if more than one payment was made, the date of the official receipt acknowledging the latest of these payments.

(3) The Commissioner may refuse to authorise a refund under subsection (1) if the registered person has failed to furnish—

(a) a return for an assessment period as required by this Act until that registered person has furnished the return as required; or

(b) the Commissioner in writing with particulars of that registered person's banking account or account with a similar institution to enable the Commissioner to transfer a refund, if any, to that account until that registered person has furnished the particulars as required.

(4) If a refund contemplated in subsection (1) is due to a registered person that has failed to pay any amount of tax, additional tax, duty, charge, royalty, interest or penalty levied or imposed under this Act or any other Act administered by the Commissioner, within the period prescribed for payment of the amount, the Commissioner may set off against the amount which that registered person has failed to pay, any amount which has become refundable to that registered person under this section.

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(5) If the amount that would be refunded under subsection (1) is determined to be less than R100 or less than such other amount as the Commissioner may determine by Notice in the *Gazette*, the amount so determined will not be refunded in respect of that assessment period but will be carried forward to the immediately succeeding assessment period and the amount will be deemed to be a refund amount owing in that assessment period.

**Interest**

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

- (a) exceeds the amount assessed or properly chargeable under the Royalty Act for the assessment period, as the case may be; and
- (b) is not refunded within thirty days after receipt of a refund claim in respect of the excess.

(2) A registered person must pay interest calculated on a monthly basis in respect of an amount due in respect of an assessment period that is not paid within thirty days after the ending date of the assessment period.

(3) Interest required under this section must be calculated at the rate described in paragraph (b) of the definition of prescribed rate in section 1 of the Income Tax Act.

**Part V**

**Miscellaneous**

**Administration of Act**

14. (1) The Commissioner is responsible for administering this Act and the Royalty Act.

(2) For purposes of this section, “administering this Act and the Royalty Act”

means—

- (a) determining the correctness of a return, financial statement, document, declaration of facts, or notice of assessment relevant to this Act or the Royalty Act;
- (b) determining and collecting any amounts due under this Act or the State Royalty Act;
- (c) determining whether an offence has been committed under this Act or the Royalty Act; and
- (d) performing any other administrative function necessary for carrying out this Act or the Royalty Act.

**Applicability of Income Tax Act**

15. (1) The provisions of the Income Tax Act relating to—

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- (a) the exercise of powers and performance of duties;
  - (b) preservation of secrecy;
  - (c) the production of information, documents or things, enquiries, searches and seizures and evidence on oath;
  - (d) objections and appeals;
  - (e) settlement of disputes;
  - (f) the payment and recovery of tax, interest and penalties;
  - (g) offences;
  - (h) reporting of unprofessional conduct; and
  - (i) jurisdiction of courts as contained in section 105, apply, with changes required by the context, to the Royalty in terms of this Act and the Royalty Act.
- (2) Any person that is not satisfied with any decision given in writing by the Commissioner—
- (a) under section 2 notifying the person of the Commissioner's refusal to register the person in terms of this Act;
  - (b) under section 3 notifying the person of the Commissioner's decision to cancel any registration of the person in terms of this Act or the Commissioner's refusal to cancel such registration;
  - (c) in terms of section 8 in respect of an assessment made upon that person; or
  - (d) in terms of section 12 of the Commissioner's refusal to make a refund, may note an objection thereto with the Commissioner.

**Rules**

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

**Act binding on State and application of other laws**

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

**Short title and commencement**

18. This Act will be titled the Mineral and Petroleum Resources Royalty (Administration) Act, 2007, and will come into operation for all mineral resources transferred on or after 1 May 2009.