

South Africa

Mineral and Petroleum Resources Royalty Act, 2008

Act 28 of 2008

Legislation as at 19 January 2017

FRBR URI: /akn/za/act/2008/28/eng@2017-01-19

There may have been updates since this file was created.

PDF created on 30 April 2024 at 16:58.

[Check for updates](#)



About this collection

The legislation in this collection has been reproduced as it was originally printed in the Government Gazette, with improved formatting and with minor typographical errors corrected. All amendments have been applied directly to the text and annotated. A scan of the original gazette of each piece of legislation (including amendments) is available for reference.

This is a free download from LawLibrary and is presented in collaboration with the African Legal Information Institute, the Judicial Institute for Africa and the Laws.Africa Legislation Commons, a collection of African legislation that is digitised by Laws.Africa and made available for free.

www.lawlibrary.org.za | info@lawlibrary.org.za

www.laws.africa | info@laws.africa

There is no copyright on the legislative content of this document.

This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0). Share widely and freely.

Mineral and Petroleum Resources Royalty Act, 2008

Contents

1. Definitions	1
2. Imposition of royalty	2
3. Determination of royalty	2
4. Royalty formulae	2
5. Earnings before interest and taxes	3
6. Gross sales	5
6A. Application of Schedule 2	6
7. Small business exemption	7
8. Exemption for sampling	7
8A. Rollover relief for transfers between extractors	7
9. Rollover relief for disposals involving going concerns	8
10. Transfer involving body of unincorporated persons	8
11. Arm's length transactions	9
12. General anti-avoidance rule	9
13. Conclusion of fiscal stability agreements	10
14. Terms and conditions of fiscal stability agreements	11
15. Foreign currency	11
16. Transitional credits	11
17. Act binding on State and application of other laws	11
18. Short title and commencement	11
Schedule 2	14

South Africa

Mineral and Petroleum Resources Royalty Act, 2008

Act 28 of 2008

Published in Government Gazette 31635 on 24 November 2008

Assented to on 17 November 2008

Commenced on 1 May 2009

[This is the version of this document from 19 January 2017.]

[Amended by [Taxation Laws Amendment Act, 2009 \(Act 17 of 2009\)](#) on 1 November 2009]

[Amended by [Taxation Laws Amendment Act, 2009 \(Act 17 of 2009\)](#) on 1 March 2010]

[Amended by [Taxation Laws Amendment Act, 2010 \(Act 7 of 2010\)](#) on 1 March 2010]

[Amended by [Taxation Laws Amendment Act, 2011 \(Act 24 of 2011\)](#) on 1 March 2010]

[Amended by [Tax Administration Laws Amendment Act, 2013 \(Act 39 of 2013\)](#) on 16 January 2014]

[Amended by [Taxation Laws Amendment Act, 2013 \(Act 31 of 2013\)](#) on 1 March 2014]

[Amended by [Taxation Laws Amendment Act, 2016 \(Act 15 of 2016\)](#) on 19 January 2017]

1. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

“transfer” means—

- (a) the disposal of a mineral resource; or
[paragraph (a) amended by section 130(1)(a) of [Act 7 of 2010](#)]
- (b) *[paragraph (b) deleted by section 130(1)(b) of [Act 7 of 2010](#)]*
- (c) the consumption, theft, destruction or loss of a mineral resource, other than by way of flaring or other liberation into the atmosphere during exploration or production,

if that mineral resource has not previously been disposed of, consumed, stolen, destroyed or lost;

[definition of “transfer” amended by section 130(1)(c) of [Act 7 of 2010](#)]

“unrefined mineral resource” means a mineral resource—

- (a) listed solely in Schedule 2; or
 - (b) listed in Schedule 1 and Schedule 2 that has not been refined to or beyond the condition specified in Schedule 1 for that mineral resource;
- (2) Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Administration Act bears that meaning for purposes of this Act.

2. Imposition of royalty

A person must pay a royalty for the benefit of the National Revenue Fund in respect of the transfer of a mineral resource extracted from within the Republic.

[section 2 substituted by section 131(1) of [Act 7 of 2010](#)]

3. Determination of royalty

- (1) The royalty mentioned in section 2 in respect of the transfer of a refined mineral resource is determined by multiplying the gross sales of the extractor in respect of that mineral resource during the year of assessment by the percentage determined in accordance with the formula in section [4\(1\)](#).
- (2) The royalty mentioned in section 2 in respect of the transfer of an unrefined mineral resource is determined by multiplying the gross sales of the extractor in respect of that mineral resource during the year of assessment—
 - (a) by the percentage determined in accordance with the formula in section [4\(2\)](#); or
 - (b) by the percentage determined in accordance with the formula as the Minister may announce in the national annual budget contemplated in section [27\(1\)](#) of the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)) with effect from a date mentioned in that announcement.

[subsection (2) substituted by section 92(a) of [Act 15 of 2016](#)]

- (3) If the Minister makes an announcement contemplated in subsection (2)(b), that percentage determined in accordance with the formula comes into effect on the date determined by the Minister in that announcement and continues to apply for a period of 12 months from that date subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.

[subsection (3) added by section 92(b) of [Act 15 of 2016](#)]

4. Royalty formulae

- (1) The percentage mentioned in section [3\(1\)](#) is—

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

- (2) The percentage mentioned in section [3\(2\)](#) is—

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

- (3) (a) The percentage determined in terms of subsection [\(1\)](#) must not exceed 5 per cent.
 (b) The percentage determined in terms of subsection [\(2\)](#) must not exceed 7 per cent.

5. Earnings before interest and taxes

- (1) For purposes of the formula in section [4\(1\)](#), “earnings before interest and taxes” in respect of a year of assessment means the aggregate of—

- (a) the gross sales of the extractor during that year in respect of refined mineral resources; and
 (b) so much of the amount allowed to be deducted from income in terms of the Income Tax Act (whether in that year or a previous year of assessment) in respect of the use of assets, or expenditure incurred, in respect of mineral resources transferred on or after 1 March 2010 to win, recover and develop those mineral resources to the condition specified in Schedule 1, as is included in the income of the extractor during that year of assessment—
 (i) as a recoupment in terms of any provision of that Act; or
 (ii) in terms of paragraph (j) of the definition of ‘gross income’ in section 1 of that Act,

[paragraph (b) substituted by section 98(1)(a) of [Act 17 of 2009](#)]

less any amount which in terms of that Act—

- (i) is deductible from the income of the extractor during any year of assessment in respect of assets used or expenditure incurred to win, recover and develop those refined mineral resources to the condition specified in Schedule 1 for those mineral resources; or
 (ii) would have been deductible from the income of the extractor during any year of assessment in respect of assets used or expenditure incurred to win, recover and develop those refined mineral resources had those mineral resources been developed to the condition specified in Schedule 1 for those mineral resources.

[subsection (1) amended by section 98(1)(b) of [Act 17 of 2009](#) and by section 132(1)(a) of [Act 7 of 2010](#)]

- (2) For purposes of the formula in section [4\(2\)](#), “earnings before interest and taxes” in respect of a year of assessment means the aggregate of—

- (a) the gross sales of the extractor during that year in respect of unrefined mineral resources; and
 (b) so much of the amount allowed to be deducted from income in terms of the Income Tax Act (whether in that year or a previous year of assessment) in respect of the use of assets, or expenditure incurred, in respect of mineral resources transferred on or after 1 March 2010 to win, recover and develop those mineral resources to the condition specified in Schedule 2, as is included in the income of the extractor during that year of assessment—
 (i) as a recoupment in terms of any provision of that Act; or
 (ii) in terms of paragraph (j) of the definition of ‘gross income’ in section 1 of that Act,

[paragraph (b) substituted by section 98(1)(c) of [Act 17 of 2009](#)]

less any amount which in terms of that Act—

- (i) is deductible from the income of the extractor during any year of assessment in respect of assets used or expenditure incurred to win, recover and develop those unrefined mineral resources to the condition specified in Schedule 2 for those mineral resources; or
- (ii) would have been deductible from the income of the extractor during any year of assessment in respect of assets used or expenditure incurred to win, recover and develop those unrefined mineral resources had those mineral resources been developed to the condition specified in Schedule 2 for those mineral resources.

[subsection (2) amended by section 98(1)(d) of [Act 17 of 2009](#) and by section 132(1)(b) of [Act 7 of 2010](#)]

- (3) For purposes of subsections (1) and (2), “earnings before interest and taxes” is determined without regard to—
 - (a) any deduction in respect of a financial instrument as defined in section 1 of the Income Tax Act (other than an instrument that is an option contract, forward contract or other instrument the value of which is derived directly or indirectly with reference to mineral resources);
 - (b) any deduction allowed in terms of section 11(a) of the Income Tax Act in respect of the royalty;
 - (c)
 - (i) in the case of mineral resources refined to the condition specified in Schedule 1 for those mineral resources, any deduction for expenditure incurred in respect of transport, insurance and handling of those refined mineral resources after those mineral resources were refined to that condition or any expenditure incurred in respect of transport, insurance and handling to effect the disposal of that mineral resource; or
 - (ii) in the case of mineral resources brought to the condition specified in Schedule 2 for those mineral resources, any deduction for expenditure incurred in respect of transport, insurance and handling of those unrefined mineral resources after those mineral resources were brought to that condition or any expenditure incurred in respect of transport, insurance and handling to effect the disposal of that mineral resource;

[paragraph (c) substituted by section 98(1)(e) of [Act 17 of 2009](#)]

- (d) any balance of assessed loss mentioned in section 20(1)(a) of the Income Tax Act, unless the balance of assessed loss arises in respect of capital expenditure taken into account for purposes of paragraph 5(1) of the Tenth Schedule of the Income Tax Act;
- (e) any deduction allowed in terms of section 241 of the Income Tax Act other than a deduction in respect of the adjustment referred to in section 6(5); or

[paragraph (e) substituted by section 132(1)(c) of [Act 7 of 2010](#) and amended by section 184(1)(a) of [Act 31 of 2013](#)]

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

[paragraph (f) amended by section 184(1)(b) of [Act 31 of 2013](#)]

- (g) *[paragraph (g) deleted by section 184(1)(c) of [Act 31 of 2013](#)]*

- (4)
 - (a) For purposes of determining “earnings before interest and taxes” in the case of a composite of refined mineral resources and unrefined mineral resources, the refined and unrefined proportions of the composite mineral resource must be determined in accordance with a method of reasonable apportionment that is consistently applied.
 - (b) For purposes of determining “earnings before interest and taxes”, if the value of the refined proportion of a composite mineral resource does not exceed 10 per cent of the total value of

that composite mineral resource, that composite mineral resource may be treated solely as an unrefined mineral resource, and if the value of the unrefined proportion of a composite mineral resource does not exceed 10 per cent of the total value of that composite mineral resource, that composite mineral resource may be treated solely as a refined mineral resource.

[paragraph (b) substituted by section 98(1)(f) of [Act 17 of 2009](#)]

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

6. Gross sales

- (1) Gross sales in respect of a refined mineral resource transferred—
- (a) as mentioned in paragraph (a) of the definition of “transfer” in section 1 in the condition specified for that mineral resource in Schedule 1 is the amount received or accrued during the year of assessment in respect of the transfer of that mineral resource;
 - (b) as mentioned in paragraph (a) of the definition of “transfer” in section 1 in a condition other than that specified for that mineral resource in Schedule 1 is the amount that would have been received or accrued during the year of assessment in respect of the transfer of that mineral resource had that mineral resource been transferred in the condition specified in Schedule 1 for that mineral resource in terms of a transaction entered into at arm’s length; and
 - (c) as mentioned in paragraph (b) or (c) of the definition of “transfer” in section 1 is the amount that would have been received or accrued during the year of assessment in respect of the transfer of that mineral resource had that mineral resource been transferred in the condition specified in Schedule 1 for that mineral resource in terms of a transaction entered into at arm’s length.
- (2) Gross sales in respect of an unrefined mineral resource transferred—
- (a) as mentioned in paragraph (a) of the definition of “transfer” in section 1 in the condition specified in Schedule 2 for that mineral resource is the amount received or accrued during the year of assessment in respect of the transfer of that mineral resource;
 - (b) as mentioned in paragraph (a) of the definition of “transfer” in section 1 in a condition other than that specified for that mineral resource in Schedule 2 is the amount that would have been received or accrued during the year of assessment in respect of the transfer of that mineral resource had that mineral resource been transferred in the condition specified in Schedule 2 for that mineral resource in terms of a transaction entered into at arm’s length; and
 - (c) as mentioned in paragraph (b) or (c) of the definition of “transfer” in section 1 is the amount that would have been received or accrued during the year of assessment in respect of the transfer of that mineral resource had that mineral resource been transferred in the condition specified in Schedule 2 for that mineral resource in terms of a transaction entered into at arm’s length.
- (3) (a) For purposes of subsection (1), gross sales is determined without regard to any expenditure incurred in respect of transport, insurance and handling of a refined mineral resource after that mineral resource was refined to the condition specified in Schedule 1 for that mineral resource or any expenditure incurred in respect of transport, insurance and handling to effect the disposal of that mineral resource.
- (b) For purposes of subsection (2), gross sales is determined without regard to any expenditure incurred in respect of transport, insurance and handling of an unrefined mineral resource after that mineral resource was brought to the condition specified in Schedule 2 for that

mineral resource or any expenditure incurred in respect of transport, insurance and handling to effect the disposal of that mineral resource.

[subsection (3) substituted by section 99(1) of [Act 17 of 2009](#)]

- (4) (a) If no amount can be quantified in respect of a refined mineral resource transferred as mentioned in subsection (1)(a), gross sales in respect of that transfer is the amount that would have been received or accrued during the year of assessment in respect of that transfer had that mineral resource been transferred in the condition specified in Schedule 1 for that mineral resource in terms of a transaction entered into at arm's length.
- (b) If no amount can be quantified in respect of an unrefined mineral resource transferred as mentioned in subsection (2)(a), gross sales in respect of that transfer is the amount that would have been received or accrued during the year of assessment in respect of that transfer had that mineral resource been transferred in the condition specified in Schedule 2 for that mineral resource in terms of a transaction entered into at arm's length.
- (5) The amount of gross sales in respect of the transfer of any mineral resource must be adjusted if the total amount received is—
 - (a) more than the amount accrued, by including the difference between those amounts in the gross sales; or
 - (b) less than the amount accrued, by subtracting the difference between those amounts when determining the gross sales.

[subsection (5) added by section 133(1) of [Act 7 of 2010](#)]

6A. Application of Schedule 2

- (1) If any unrefined mineral resource—
 - (a) is transferred below the condition specified in Schedule 2 for that mineral resource, the mineral resource must be treated as having been brought to the condition specified for that mineral resource; or
 - (b) is transferred at a condition beyond the condition specified in Schedule 2 for that mineral resource, the mineral resource must be treated as having been transferred at the higher of the condition specified for that mineral resource or the condition in which that mineral resource was extracted.

[paragraph (b) substituted by section 185(1)(a) of [Act 31 of 2013](#)]

- (1A) If any unrefined mineral resource with a range is transferred—
 - (a) at a condition below the minimum of the range of conditions specified in Schedule 2 for that mineral resource, the mineral resource must be treated as having been brought to the minimum of the range of conditions specified for that mineral resource;
 - (b) at or within the range of conditions specified in Schedule 2, the mineral resource must be treated as having been transferred at that condition; or
 - (c) at a condition above the maximum range of conditions specified in Schedule 2, the mineral resource must be treated as having been transferred at the maximum of the range of conditions specified for that mineral resource.

[subsection (1A) inserted by section 185(1)(b) of [Act 31 of 2013](#)]

- (2) If—
 - (a) a concentrate mainly consists of a mineral resource listed in Schedule 2; and

- (b) the price of the concentrate at disposal thereof is determined solely with reference to the mineral resource listed in Schedule 2, the specified condition for the other minerals in the concentrate must not be taken into account for the purposes of the application of that Schedule.

[section 6A inserted by section 134(1) of [Act 7 of 2010](#)]

7. Small business exemption

- (1) An extractor is exempt from the royalty in respect of a year of assessment if—
 - (a) gross sales of that extractor in respect of all mineral resources transferred does not exceed R10 million during that year;
 - (b) the royalty in respect of all mineral resources transferred that would be imposed on the extractor for that year does not exceed R100 000; and

[paragraph (b) amended by section 186(1)(a) of [Act 31 of 2013](#)]
 - (c) the extractor is a resident as defined in section 1 of the Income Tax Act throughout that year.

[paragraph (c) amended by section 186(1)(b) of [Act 31 of 2013](#)]
 - (d) *[paragraph (d) deleted by section 186(1)(c) of [Act 31 of 2013](#)]*
- (2) An extractor is not exempt from the royalty as mentioned in subsection (1) if—
 - (a) the extractor at any time during that year holds the right to participate (directly or indirectly) in more than 50 per cent of the share capital, share premium, current or accumulated profits or reserves of, or is entitled to exercise more than 50 per cent of the voting rights in, any other extractor;
 - (b) any other extractor at any time during that year holds the right to participate (directly or indirectly) in more than 50 per cent of the current or accumulated profits of the extractor;
 - (c) any other person at any time during that year holds the right to participate (directly or indirectly) in more than 50 per cent of the profits of the extractor and more than 50 per cent of the current or accumulated profits of any other extractor; or
 - (d) the extractor is a registered person mentioned in section 4 of the Administration Act.

8. Exemption for sampling

An extractor is exempt from the royalty imposed in respect of mineral resources won or recovered by the extractor for purposes of testing, identification, analysis and sampling mentioned in section 20 of the Mineral and Petroleum Resources Development Act pursuant to a prospecting right or an exploration right as defined in section 1 of that Act if the gross sales in respect of those mineral resources does not exceed R100 000 during a year of assessment.

8A. Rollover relief for transfers between extractors

[heading substituted by section 150(1) of [Act 24 of 2011](#)]

- (1) An extractor that transfers a mineral resource to another extractor is exempt from the royalty in respect of the transfer of that mineral resource if—
 - (a) the mineral resource is transferred between extractors that are registered in terms of the Administration Act; and
 - (b) both extractors agree in writing that this section applies to that transfer.

- (2) An extractor to whom a mineral resource is transferred under subsection (1) must be treated as the person that wins or recovers the mineral resource.
- (3) This section does not apply to a transfer of a mineral resource from an extractor that is registered in terms of section 2(1)(c) of the Administration Act.

[section 8A inserted by section 135(1) of [Act 7 of 2010](#)]

9. Rollover relief for disposals involving going concerns

- (1) For purposes of this Act a disposal of a mineral resource by an extractor that forms part of the disposal of a going concern, or of a part of a going concern which is capable of separate operation, by that extractor to any other extractor is deemed not to be a disposal.
- (1A) For purposes of this Act a disposal of a mineral resource by an extractor to any other extractor is deemed not to be a disposal, if—
 - (a) the mineral resource is disposed of to another extractor in terms of—
 - (i) an asset-for-share transaction mentioned in section 42 of the Income Tax Act;
 - (ii) an amalgamation transaction mentioned in section 44 of the Income Tax Act;
 - (iii) an intra-group transaction mentioned in section 45 of the Income Tax Act;
 - (iv) a liquidation distribution mentioned in section 47 of the Income Tax Act; or
 - (v) any transaction which would have constituted a transaction or distribution mentioned in subparagraphs (i) to (iv) regardless of whether that extractor acquired that mineral resource as a capital asset or as trading stock; and
 - (b) the extractor to whom the mineral resource is disposed of, immediately after a transaction contemplated in paragraph (a)(i), (ii), (iii), (iv) or (v), qualifies for registration in terms of section 2(1)(a) of the Administration Act.

[subsection (1A) inserted by section 100(1) of [Act 17 of 2009](#)]

- (2) For purposes of this Act an extractor that acquires a mineral resource in terms of a disposal mentioned in subsection (1) is deemed to be the extractor that won or recovered the mineral resource.

10. Transfer involving body of unincorporated persons

- (1) Notwithstanding any other provision in this Act, an unincorporated body of which the members made an election in terms of section 4(1) of the Administration Act—
 - (a) is deemed to be a person while that election remains in effect; and

[paragraph (a) substituted by section 151(1) of [Act 24 of 2011](#)]

- (b) is subject to the royalty as if that body were an extractor separate from its members, in respect of mineral resources won, recovered or transferred by that unincorporated body after taking into account any earnings before interest and taxes associated with those minerals as well as the application of any other provision of this Act bearing on the royalty determination in respect of those mineral resources.

[subsection (1) amended by section 101(1) of [Act 17 of 2009](#)]

- (2) Notwithstanding any other provision in this Act, to the extent that any member of an unincorporated body mentioned in subsection (1) is acting in a capacity other than as a member of that body, that member is subject to the royalty as if that member were an extractor separate from that body in respect of mineral resources won, recovered or transferred by that unincorporated body after taking into account any earnings before interest and taxes associated with those minerals as

well as the application of any other provision of this Act bearing on the royalty determination in respect of those mineral resources.

- (3) On the date of the election made in terms of section 4(1) of the Administration Act, the members of an unincorporated body mentioned in that section are deemed to have transferred the mineral resources to be disposed of by that body, which had been won or recovered by those members.
- (4) On the date on which an unincorporated body terminates the election in terms of section 4(6) of the Administration Act, the unincorporated body is deemed to have transferred the mineral resources won or recovered by the unincorporated body to the members of that unincorporated body.

11. Arm's length transactions

- (1) To the extent that the earnings before interest and taxes determined in terms of section 5 differ from the earnings that an extractor would have taken into account if those earnings had been derived from transactions entered into at arm's length, the Commissioner may adjust the earnings to reflect the earnings that would have been taken into account.
- (2) To the extent that the gross sales determined in terms of section 6(1)(a) or section 6(2)(a) differ from the gross sales that an extractor would have taken into account if the gross sales had been derived from transactions entered into at arm's length, the Commissioner may adjust the gross sales to reflect the gross sales that would have been taken into account.

12. General anti-avoidance rule

- (1) Notwithstanding anything to the contrary in this Act, if the Commissioner is satisfied that a disposal, transfer, operation, scheme or understanding (whether entered into or carried out before or after the commencement of this Act)—
 - (a) has been entered into or carried out, which has the effect of avoiding or postponing liability for the royalty, or of reducing the amount thereof;
 - (b) having regard to the circumstances under which the disposal, transfer, operation, scheme or understanding was entered into or carried out—
 - (i) was entered into or earned out—
 - (aa) in the case of a disposal, transfer, operation, scheme or understanding in the context of business, in a manner which would not normally be employed for *bona fide* business purposes, other than the obtaining of a royalty benefit; and
 - (bb) in the case of any other disposal, transfer, operation, scheme or understanding not falling within the provisions of item (aa), by means or in a manner which would not normally be employed in the entering into or carrying out of a disposal, transfer, operation, scheme or understanding of the nature of the disposal, transfer, operation, scheme or understanding in question; or
 - (ii) has created rights or obligations which would not normally be created between persons dealing at arm's length under a disposal, transfer, operation, scheme or understanding of the nature of the disposal, transfer, operation, scheme or understanding in question; and
 - (c) was entered into or carried out solely or mainly for the purposes of obtaining a royalty benefit,

the Commissioner must determine the liability for the royalty, and the amount thereof, as if the disposal, transfer, operation, scheme, or understanding had not been entered into or carried out, or in such manner as the Commissioner in the circumstances deems appropriate for the prevention or diminution of avoidance, postponement or reduction.

- (2) A decision of the Commissioner under subsection (1) is subject to objection and appeal in accordance with Chapter 9 of the Tax Administration Act, 2011 ([Act No. 28 of 2011](#)), and whenever

in proceedings relating thereto it is proved that the disposal, transfer, operation, scheme or understanding in question would result in the avoidance or postponement of liability for the royalty, or in the reduction of the amount thereof, it is presumed, until the contrary is proved, in the case of any such disposal, transfer, operation, scheme or understanding, that it was entered into or carried out solely or mainly for the purposes of the avoidance or the postponement of such liability, or the reduction of the amount of such liability.

[subsection (2) substituted by section 27 of [Act 39 of 2013](#)]

- (3) For purposes of this section, “royalty benefit” includes any avoidance, postponement or reduction of the liability for payment of the royalty mentioned in section [2](#).

13. Conclusion of fiscal stability agreements

- (1) The Minister of Finance may conclude a binding agreement with an extractor—
- (a) in respect of the extractor's mineral resource right; or
 - (b) in anticipation of the extractor acquiring a mineral resource right,
- that guarantees that the terms and conditions contemplated in section [14](#) apply in respect of the right for as long as the extractor holds the right (and for all participating interests subsequently held by the extractor in respect of the right).
- (2) A binding agreement relating to the anticipated acquisition of a mineral resource right contemplated in subsection [\(1\)\(b\)](#) has no force and effect unless the mineral resource right is granted within one year after the date on which the Minister of Finance concludes the binding agreement.
- (3) If an extractor disposes of a prospecting right or an exploration right granted under the Mineral and Petroleum Resources Development Act to another person, and the right is subject to a binding agreement mentioned in subsection [\(1\)](#) on the date of the disposal, the extractor may assign all the rights held by the extractor under the agreement to the other person.
- (4) If an extractor disposes of a mining right or a production right granted under the Mineral and Petroleum Resources Development Act to another person, and the right is subject to a binding agreement mentioned in subsection [\(1\)](#) on the date of the disposal, the extractor may assign all the rights held by the extractor under the agreement to the other person, if both the extractor and the other person form part of the same group of companies (as defined in section [1](#) of the Income Tax Act) on the date of the disposal.
- (5) An extractor that concludes a binding agreement mentioned in subsection [\(1\)](#) may unilaterally terminate the agreement at any time with effect from the day after the last day of the year of assessment during which the extractor terminated the agreement.
- (6) For purposes of this section—
- (a) a prospecting right, a renewal of the prospecting right and an initial mining right converted from a prospecting right or renewal thereof held by an extractor; and
 - (b) an exploration right, a renewal of the exploration right and an initial production right converted from an exploration right or renewal thereof held by an extractor,
- are, to the extent that those rights relate to the same geographical area, all deemed to be one and the same mineral resource right in the hands of the extractor.
- (7) The powers conferred and the duties imposed upon the Minister of Finance by the provisions of this section may be exercised or performed by the Minister personally or delegated by the Minister to the Director-General of the National Treasury and the Director-General may in turn delegate the powers and duties so delegated to him or her to any officer or person under his or her control, direction or supervision.

- (8) For purposes of this section “mineral resource right” means a prospecting right, exploration right, mining right or production right granted pursuant to the Mineral and Petroleum Resources Development Act, and includes any lease or sublease mentioned in section 11 of that Act in respect of such right.

14. Terms and conditions of fiscal stability agreements

- (1) An amendment of section 4 has no force and effect in respect of an extractor that is party to an agreement contemplated in section 13(1) if the amendment has the effect that the extractor becomes subject to a royalty which is greater than the royalty to which the extractor would otherwise have been subject.
- (2) If the State fails to comply with the terms of an agreement contemplated in section 13(1) and the failure has a material adverse economic impact on the determination of the royalty payable by the extractor that is party to that agreement, the extractor is entitled to compensation in respect of the increase in the royalty caused by the failure (and interest at the prescribed rate calculated on the compensation from the date of the failure) or to an alternative remedy that eliminates the full impact of the failure.

15. Foreign currency

Any amount received by or accrued to, or expenditure or loss incurred by—

- (a) an oil and gas company as defined in paragraph 1 of the Tenth Schedule to the Income Tax Act in any currency other than the currency of the Republic must be translated to the currency of the Republic by applying the average exchange rate for the year in which that amount was so received or accrued or expenditure or loss was so incurred;
- (b) an extractor in any currency other than the currency of the Republic must be translated to the currency of the Republic by applying the spot rate, as defined in section 1 of the Income Tax Act, on the date on which that amount was so received or accrued or expenditure or loss was so incurred.

[section 15 substituted by section 152(1) of [Act 24 of 2011](#)]

16. Transitional credits

- (1) There must be deducted from the royalty payable in respect of a mineral resource the amount of any lease, royalty or similar payment to the State in respect of that mineral resource in terms of any conditions imposed pursuant to the laws applicable in respect of an old order right or OP26 right mentioned in Schedule II of the Mineral and Petroleum Resources Development Act, as consideration for the removal or disposal of a mineral or petroleum.
- (2) No deduction is allowed in terms of subsection (1) in respect of any lease mentioned in item 9(7) of Schedule II to the Mineral and Petroleum Resources Development Act.
- (3) The amount to be deducted in terms of subsection (1) must not exceed the royalty mentioned in that subsection.

17. Act binding on State and application of other laws

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

18. Short title and commencement

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

- (2) This Act comes into operation—
- (a) in respect of section 1, on 1 November 2009;
 - (b) in respect of sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16 and 17, and Schedules 1 and 2, on 1 March 2010 and applies in respect of a mineral resource transferred on or after that date; and
 - (c) in respect of sections 13 and 14, on 1 November 2009 and applies in respect of a mineral resource transferred on or after 1 March 2010.

[subsection (2) substituted by section 102(1) of [Act 17 of 2009](#)]

Schedule 1

Refined condition of mineral resources

[Schedule 1 amended by section 136(1) of [Act 7 of 2010](#) and by section 187(1) (a), (b), (c) and (d) of [Act 31 of 2013](#)]

Mineral resource name	Refined condition
Cobalt	Cobalt is refined once processed into cobalt metal or cobalt sulphate, 99.5% refined
Copper	Copper is refined once processed into copper metal slabs, blister copper or cathode copper of 99.0% purity.
<i>[item amended by section 187(1)(a) of Act 31 of 2013]</i>	
Germanium	99.99% refined product
Gold	Refined and smelted to a 99.5% purity
Lead	Lead is refined once processed into bars and billets containing 99.0% pure lead.
<i>[item amended by section 187(1)(b) of Act 31 of 2013]</i>	
Lithium	99.5% LiCO ₃ in concentrate (lithium carbonate)
Mercury	99.9% purity
Nickel (Base metal)	Nickel is refined once processed into a metal, or other form (e.g. ferro nickel, nickel metal or nickel sulphate), 99.5% purity
Platinum Group Metals (iridium, palladium, platinum, rhodium, ruthenium and osmium)	Refined and smelted to a 99.9% purity
Molybdenum	99.99% refined product
Silicon	98.5% Si
Silver	Silver is refined once processed to silver metal or silver nitrate, 99.5% refined
Talc	98.5% and minus 325 µm mesh

Vanadium	Vanadium as chemically extracted and refined to a purity of 10% V ₂ O ₅ equivalent and above
<i>[item inserted by section 136(1)(a) and (b) of Act 7 of 2010 and amended by section 187(1)(c) of Act 31 of 2013]</i>	
Zinc	Zinc is refined once processed into zinc metal, plates or slabs containing 98.5% pure zinc.
<i>[item amended by section 187(1)(d) of Act 31 of 2013]</i>	
<u>Oil and Gas</u>	
Oil	At inlet of refinery
Gas	At inlet of refinery

Schedule 2

Unrefined condition of mineral resources

[Schedule 2 amended by section 103 of [Act 17 of 2009](#), by section 137(1) of [Act 7 of 2010](#) and by section 188(1) (a), (b), (c), (d), (e), (f), (g) and (h) of [Act 31 of 2013](#)]

Mineral resource name	Unrefined condition
Aggregates	Bulk
Antimony	65% Sb content in the concentrate
Barite	Concentrates with 97% BaSO ₄
Beryllium	70% beryl concentrate
Chrome ore in lump, chips and fines	(i) 37% to 46% Cr ₂ O ₃ in concentrate (ii) 4% to 10% SiO ₂ and a (iii) Cr/Fe ratio of 1.25 to 1.45 (chip and lump) or (iv) 0.8% to 6% SiO ₂ and (v) Cr/Fe ratio of 1.3 to 1.6 (fine < 1mm)
Clay used for bricks Kaolinite clay used by paper and ceramic sectors	Bulk
Coal	Calorific value of 19.0MJ/kg to 27MJ/kg
<i>[item amended by section 137(1)(a) of Act 7 of 2010 and by section 188(1)(a) of Act 31 of 2013]</i>	
Cobalt	7% Co in a polymineralic matte
Copper	20% to 30% Cu
Diamond	Rough Diamonds
<u>Dimension stone:</u> Granite, Sandstone, Slate, Shale, Gneiss, Marble	Bulk
Fluorspar	80% concentrate
Graphite	86% carbon content

Iron ore	Plant feed of 61.5% Fe content
<i>[item amended by section 137(1)(b) of Act 7 of 2010 and by section 188(1)(b) of Act 31 of 2013]</i>	
Lead	Concentrate of 50% Pb
<i>[item amended by section 188(1)(c) of Act 31 of 2013]</i>	
Limestone	Concentrate of 54% CaCO ₃
<i>[item amended by section 188(1)(d) of Act 31 of 2013]</i>	
Manganese	Manganese ore: Mn 37% to Mn 48% and Si + Al less than 11%
Mica	48% concentrate
<i>[Mineral Sand (Titanium) deleted by section 137(1)(c) of Act 7 of 2010]</i>	
Ilmenite	80% FeTiO ₃
<i>[item amended by section 137(1)(d) of Act 7 of 2010 and by section 188(1)(e) of Act 31 of 2013]</i>	
Rutile	70% TiO ₂ concentrate
<i>[item amended by section 137(1)(e) of Act 7 of 2010 and by section 188(1)(f) of Act 31 of 2013]</i>	
Zircon	90% ZrO ₂ + SiO ₂ + HfO ₂
<i>[item amended by section 137(1)(f) of Act 7 of 2010 and by section 188(1)(g) of Act 31 of 2013]</i>	
Nickel	1.4% Ni content
Niobium	45% Ni ₂ O ₅ in concentrate
Platinum Group Metals (iridium, palladium, platinum, rhodium, ruthenium and osmium)	150 ppm in concentrate together with all other metals and minerals contained in the concentrate
<i>[item amended by section 103(1)(a) of Act 17 of 2009]</i>	

Sand	Bulk
Silver	800g/t Ag in polyminerale base metal
Tantalum	In concentrate 30% Ta ₂ O ₅ , Max 0.5% U ₃ O ₈ and ThO ₂ combined
Tin	80% cassiterite concentration
Tungsten (CaWO ₄) and Wolfram	65% WO ₃ in concentrate
<i>[item amended by section 188(1)(h) of Act 31 of 2013]</i>	
Uranium	80% Uranium Oxide in the uranium concentrate sold
<i>[item amended by section 103(1)(b) of Act 17 of 2009]</i>	
Vanadium	Concentrate < 10% V ₂ O ₅ equivalent and less than 2% calcium and silica bearing gangue minerals (SiO ₂ + CaO)
<i>[item amended by section 153(1) of Act 24 of 2011]</i>	
Zinc (Base metal)	27% Zn in concentrate
Other Minerals not listed elsewhere	Concentrate or where the specific mineral is not rendered into a concentrate, bulk. e.g. Phosphate Rock, Gypsum, Vermiculite, Semi-precious gemstones (like rose quartz, tiger's eye, corundum; etc). Precious gemstones (like sugilite), Feldspar, Garnet, Peat, Perlite, Rare Earth Elements, Silica, Soda Ash, Wollastonite, Zeolite, etc.
<i>[item amended by section 103(1)(c) of Act 17 of 2009]</i>	