

Revised royalty bill is a step in the right direction

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Graphic: KAREN MOOLMAN

THE long awaited revised Mineral and Petroleum Resources Royalty Bill at last saw the light of day on October 11 this year.

The royalty bill, according to the media statement which accompanied it, “attempts to reconcile the objectives of the Mineral and Petroleum Resources Royalty Bill with the broader economic objectives of the mining sector, including the need to stimulate investment in this sector, and the need for certainty for potential investors”.

The mining industry, having been shaken by the March 2003 version of the royalty bill, will no doubt find a measure of relief in the revised bill. The revised bill in most cases, but not all, reduces the proposed state royalty rate. There are significant reductions in the rate applicable to miners of gold and platinum group metals where they refine the metal to at least 99.5% purity.

In practice, this reduction will be enjoyed by most of the major miners of such metals which either refine

their product to the required level of purity or which transfer the concentrate to a domestic company which undertakes the refining and which under section 15 of the royalty bill could be substituted as the entity liable to pay the state royalty.

The royalty bill also makes provision for the transfer of the liability to pay the state royalty to another domestic company which forms part of the same consolidated financial group of which the mining company is part.

The revised bill also provides a new basis for affording relief to marginal mines in respect of the rate of state royalty payable by them. In any assessment period the state royalty may not exceed the net cash turnover of that mining company (effectively the net operating income) provided, however, that no matter how marginal or unprofitable, the mining company will always be required to pay at least 25% of the state royalty which would be otherwise applicable. If one brings capital expenditure into account,

loss-making mining companies, particularly large producers, could still find themselves paying very substantial state royalties.

It is perhaps the retention of the basis of calculating the state royalty, namely, on gross sales value that provides the greatest disappointment to the mining industry, which had lobbied for a profit-based royalty.

The reduced royalties will, for the most part, provide some degree of relief to the industry in relation to the Treasury’s reluctance to move away from a revenue based royalty.

This will be cold consolation for those companies which had expended considerable sums on the acquisition of valuable proprietary mineral rights only to find that as a result of the Mineral and Petroleum Resources Development Act, 2002, these so called old order rights were effectively nationalised and the converted right, in those cases where conversion was possible, now carries with it an obligation to pay a state royalty.

It is to be expected that the mining industry will again avail itself of the opportunity to raise comment on the revised royalty bill, which they will be able to do, until January 31 next year. The royalty bill, if passed into law, will come into operation on May 1 2009.

Pat Cronin
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Acts, Bills, Draft Bills & Commencement Dates

(for Sept 23-Oct 27 2006)

Bills

- Banks Amendment Bill (Draft) of 2006
- National Environmental Management Amendment Bill (Draft) of 2006
- Revenue Laws Amendment Bill (Draft) of 2006
- Corporate Laws Amendment Bill B6D of 2006
- Diamond Export Levy Bill (Draft) of 2006
- Mineral and Petroleum Royalty Bill (Draft) of 2006
- South African Institute for Drug Free Sport Amendment Bill B7B of 2006
- Merchant Shipping Amendment Bill (Draft) in GG 29277, Notice No 1438 of Oct 13 2006
- Foodstuffs, Cosmetics and Disinfectants Amendment Bill B35C and B35D of 2006
- Further Education and Training Bill B23B of 2006
- Postal Services Amendment Bill B22A and B22B of 2006
- Public Service Amendment Bill B31 of 2006
- Transnet Pension Fund Amendment Bill B30 of 2006

With Effect From Dates

- Second Revenue Laws Amendment Act 34 of 2004, s 12(1), see Proc 43 in GG 29263 of Sep 29 2006

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