

Court confirms deductibility of TIH costs in calculating gross sales for mining companies

In a judgment delivered on 3 October 2017, the High Court of South Africa, Gauteng Division, Pretoria sought to clarify the correct interpretation of section 6(3)(b) of the Mineral and Petroleum Resources Royalty Act 28 of 2008 (Royalty Act). Our courts have not yet had the opportunity to ventilate the Royalty Act as much as they have done with related and more established legislation.

The core issues for determination in this matter was firstly whether transport, insurance and handling costs (TIH costs), which are incurred in the process of supplying an unrefined mineral resource such as manganese from mines to customers, is deductible in calculating gross sales. Secondly, whether TIH costs is included in the royalty payable to the Commissioner for the South African Revenue Service (SARS) if regard is given to section 3(2) of the Royalty Act.

Section 6(3)(b) of the Royalty Act provides in relevant part as follows: “. . . gross sales is determined without regard to any expenditure incurred in respect of transport, insurance and handling of an unrefined mineral resource. . .”.

The applicant in this matter, United Manganese of Kalahari (Pty) Ltd (UMK), conducts mining operations to produce manganese. UMK averred that a proper interpretation of section 6(3)(b) permits the deduction of TIH costs when calculating gross sales. In opposition hereto, SARS contended that in the event that TIH costs are not taken into account when computing gross sales, UMK is prohibited from having regard to TIH costs. More specifically, UMK is only allowed to deduct TIH costs which were included and specified in UMK's rates.

The court considered various case authorities and principles of interpretation to establish the ordinary grammatical and contextual meaning of section 6(3)(b). To this end, the court relied on the intention of the legislature to infer that section 6(3)(b) makes plain that expenses relating to TIH costs by a seller of an unrefined mineral resource should be excluded. It is therefore implausible to interpret this provision, as SARS would have it, to provide that UMK must indicate that expenses incurred in respect of TIH costs emerged in circumstances where such expenses were taken into account in calculating UMK's gross price.

The judgment provides welcome tax relief to mining companies in finding that TIH costs are now deductible when determining gross sales for the purposes of calculating the royalty payable to SARS.

Read the full judgment here: [United Manganese of Kalahari \(Proprietary\) Limited v Commissioner for the South African Revenue Service \(74158/2016\) \[2017\] ZAGPPHC 628](#)