



## Tax and Legal News



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**A recent judgment in the Supreme Court of Appeal of South Africa (“SCA”) now provides certainty on the treatment of transport, insurance and handling expenditure for the purposes of determining “gross sales” in the calculation of the mineral royalty payable by an extractor in terms of the Mineral and Petroleum Resources Royalty Act No. 28 of 2008 (“the Royalty Act”).**

On 25 March 2020, the SCA handed down judgment in the matter between United Manganese of Kalahari (Pty) Ltd (“UMK” or “the Respondent”) and the Commissioner for the South African Revenue Service (“CSARS” or “the Appellant”).

The CSARS interpreted section 6(3) of the Royalty Act to mean that, where minerals are sold without a separate specification of transport, insurance and handling cost (“TIH cost”) as a component of the price, the TIH cost should not be deducted in the determination of gross sales.

UMK contended that it was irrelevant whether the TIH costs were specified separately in the determination of the price. What mattered was that the cost had in fact been incurred.

Wallis JA dismissed the appeal of SARS with cost. In addition, it is stated in the judgment that there was difficulty with the wording of the High Court and found it necessary to alter the wording to reflect the court’s finding. The order of the high court was altered to read as follows:

“The applicant is entitled to calculate its gross sales (in terms of subsections 6(2) and 6(3) of the Mineral and Petroleum Resources Royalty Act 28 of 2008 (the Royalty Act)) in respect of manganese transferred by it in the 2010 and 2011 years of assessment, by deducting:

- 1.1 any expenditure incurred by it in respect of transport, insurance and handling of the manganese after the manganese had been brought to the condition specified in Schedule 2 of the Royalty Act; as well as
  - 1.2 any expenditure incurred by it in respect of transport, insurance and handling to effect the disposal of the manganese;
- irrespective of whether, in the price charged by it to purchasers of manganese, any amount was separately specified for expenditure incurred by it in respect of transport, insurance and handling under either of paragraphs 1.1 or 1.2.”

We welcome this judgment which confirms our view.

The Royalty Act has been amended with effect from years of assessment commencing on or after 1 January 2019 by deletion of the words “without regard to” and replacing these words with “after deducting any expenditure actually incurred”. The SCA judgment now provide certainty in respect of the tax treatment with regards to the years of assessment prior to 1 January 2019.

**If you have any queries, require assistance or need more information, please contact us:**

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Regards

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