

## SUMMARY

The United Manganese of Kalahari (Pty) Ltd (“**UMK**”) (the “**Respondent**”) conducted mining operations to produce manganese. The Respondent interpreted section 6(3)(b) of the Royalty Act (the “**Act**”) to permit the deduction of transport, insurance and handling costs (the “**TIH costs**”) when calculating gross sales. These were the costs which were incurred in the process of supplying unrefined mineral resources from the mines to its clients abroad. However, The Commissioner for the South African Revenue Service (“**CSARS**”) (the “**Appellant**”) contended that the TIH costs should not be taken into account when determining gross sales. Further, the Appellant was of the belief that UMK was only allowed to deduct TIH costs which were included and separate in UMK’s rates.

### High Court

UMK sought declaratory relief to obtain clarity in relation to the correct interpretation of section 6(3)(b) of the Royalty Act. The court ordered that UMK was entitled to calculate its gross sales by deducting any expenditure in respect of transport, insurance and handling costs to affect the disposal of the manganese. Such expenditure could be deducted irrespective of whether expenditure was consciously considered in the determination of UMK’s gross sales, and irrespective of whether such transport, insurance and handling costs were of a capital nature. Further, dissatisfied with the outcome, CSARS approached the Supreme Court of Appeal.

### Supreme Court of Appeal

UMK was liable for the payment of a royalty in terms of the Act for the transfer of unrefined mineral resources, based on its calculation of gross sales in terms of section 6(3)(b).  
*Section 6(3)(b) of the Royalty Act, stipulates that: -*

*(b) For purpose of subsection (2), gross sales is determined **without regard to any amount received or accrued for the 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 amount received or accrued to effect the disposal of that mineral resource.*

The SCA had to determine the correct interpretation of section 6(3)(b) with specific reference to the wording ‘without regard to expenditure incurred in respect of transport, insurance and handling’ in order to determine the taxpayer’s ‘gross sales’ for mining royalty purposes. The phrase “any expenditure” incurred should be disregarded by the taxpayer. The Act did not stipulate that the taxpayer should specify the separate amount to be charged for transport, insurance and handling of the minerals when determining the price to be paid by its clients.

Further, the court looked at the purpose of the Act and section 6(3)(b) respectively, and found that 'the extractor would not be burdened by paying royalties on amounts expended on transport, insurance and handling of minerals costs and recovered as part of the price paid for the minerals.' Judge Wallis found that SARS had failed to take cognisance of the statutory history, and should have taken into account the explanatory memorandum that accompanied the Mineral and Petroleum Resources Royalty Bill. The memorandum inadvertently provided that the intention of the amendment of section 6(3)(b) of the Act, specified that gross sales should exclude the actual costs incurred by the taxpayer on the transportation, insurance and handling of minerals, as this would 'unintentionally increase gross sales leading to a higher royalty tax payable.'

## HELD

The appeal was accordingly dismissed.

The Court held that statutory provisions must be interpreted in accordance with the established principles of interpretation, read in context, and having regard to the purpose of the provision and the background to preparation and production of the document.

The Court held that the meaning of the term 'received or accrued' was well established in tax law, and that the payment of a mineral resource was an analogous concept. 'Receipt' indicated receipt for one's own benefit and 'accrued' indicated an unconditional entitlement.

The case highlights the likeliness of dispute between taxpayers and SARS, which commonly occurs, not by reason of disagreement concerning facts, but the interpretation of applicable statutory provisions.

Where the facts are common cause, it is permissible for the taxpayer to seek to resolve an impasse by way of a declaratory order, and that the taxpayer need not wait for an issue of an assessment by SARS before being able to commence proceedings for relief.

This case is an example of the context-based approach to the interpretation of statutory provisions.

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