

# Miners in the dark on tax

## ● Proposal on hold to exclude contract miners from the accelerated capital expenditure deduction

**Evan Pickworth**  
BD Law & Tax Editor

**S**A's mining industry was dealt a cruel blow last year when an amendment to the Income Tax Act proposed to exclude contract miners from qualifying for the accelerated capital expenditure deduction.

As things stood, this provision would have kicked in in January, placing many companies, not just contract miners, in a dire position. But lobbying by industry has led to a postponement, placing the proposal on the back-burner for the time being.

Head of tax in the Johannesburg office of ENSafrica, Andries Myburgh does not expect to see this change being implemented in the legislation immediately after the February budget as further consultation between the industry and Treasury has not yet happened. However, he admits the industry is concerned if it is "pushed through" amid the broader drive for tax revenue.

"Hopefully, that will not happen and that all we see in the budget is an update and mention of details regarding the much-needed consultation with industry," he says.

Myburgh acted and assisted the Minerals Council SA in its consultation with the Treasury and during the submissions at the parliamentary standing committee on finance last year, which painted a picture of why this change in its proposed form would not be workable.

"The reality is that these miners take on significant upfront risks and would be placed in a parlous position if they cannot qualify for the deduction.

"There are many instances where you legally don't require a mining right, like the pooling and sharing of resources, or where BEE companies participate directly but are not the holders of the mining right itself.

"Contract mining also comes into play significantly on the cleaning up of tailings on mines, for instance. Their specialist skills are also increasingly being used to assist mining rights holders on excavation and other work," explains Myburgh.

### **THE KEY IS TO ENSURE TAX LEGISLATION PROVIDES CERTAINTY AND PREDICTABILITY FOR INVESTORS**

An important legal precedent at the Supreme Court of Appeal (SCA) has served as a precursor to the proposed amendment.

In *Benhaus Mining v CSARS* (165/2018) [2019] ZASCA 17 on March 22 2019 the SCA made it clear that a company that excavates ground and digs up mineral-bearing ore for a fee on delivery to another entity that processes the ore undertakes mining operations within the

meaning of ss 1 and 15(a) of the Income Tax Act 58 of 1968. It is thus entitled to claim deductions of the full amount of capital expenditure on mining equipment in the tax year in which it is incurred, in terms of s 36(7C) of the act.

An additional remark by one judge, however, was that a change in legislation should rather be looked at if the intention is for a contract miner not to benefit from the deductions.

Myburgh points out that the Davis tax committee had also looked at contract mining amid an overarching recommendation for mining laws to be updated. It recognised the landscape since the turn of century has changed, with there now being a lot of use of contract miners, especially in small-scale and junior mining.

He says the key is to ensure tax legislation provides certainty and predictability for investors and enables the industry to grow.

"Contract miners typically buy yellow equipment like trucks, excavators and other movable mining equipment.

"There is no risk of a double deduction as the party incurring the capital expenditure on the mine equipment, whether the mining company or the contract miner, would claim the deduction.

"Any future changes to the tax legislation applicable to the mining industry therefore needs to be carefully determined and requires further and substantial technical input from industry," he says.