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# TAX & EXCHANGE CONTROL ALERT

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### Losing ground – proposed amendments to reserve special mining deductions for mining rights holders

Following the Supreme Court of Appeal's (SCA) decision in *Benhaus Mining (Pty) Ltd v Commissioner for the South African Revenue Service* (165/2018) [2019] ZASCA 1, contract miners have been able to access an accelerated capital deduction regime regarding their mining activities. In the Draft Taxation Laws Amendment Bill, 2020 (TLAB) it is proposed that this accelerated capital deduction regime ought to only be available to mining rights holders, in respect of that mining under such right.

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## Losing ground – proposed amendments to reserve special mining deductions for mining rights holders

The effect of section 15(a) of the Act, read with section 36(7C) and the definitions of ‘mining operations’ and ‘mining’ in section 1 of the Act (Redemption Allowance), is that a taxpayer engaged in mining operations on a producing mine will be entitled to fully deduct related capital expenditure in the year of assessment it was incurred.

Following the Supreme Court of Appeal’s (SCA) decision in *Benhaus Mining (Pty) Ltd v Commissioner for the South African Revenue Service* (165/2018) [2019] ZASCA 1, contract miners have been able to access an accelerated capital deduction regime regarding their mining activities. In the Draft Taxation Laws Amendment Bill, 2020 (TLAB) it is proposed that this accelerated capital deduction regime ought to only be available to mining rights holders, in respect of that mining under such right.

Starting a mine requires high initial capital outlay, with a significant lead time until the mine is operational and generating revenue. Recognising this, section 15(a), section 36(7C) and the definition of mining activities were introduced into the Income Tax Act 58 of 1962 (Act), providing an accelerated deduction regime for capital expenditure incurred by taxpayers engaged in ‘mining operations’ or ‘mining’ – defined as “every method or process by which any mineral is won from the soil or from any substance or constituent thereof”.

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in section 1 of the Act (Redemption Allowance), is that a taxpayer engaged in mining operations on a producing mine will be entitled to fully deduct related capital expenditure in the year of assessment it was incurred. This is a departure from the standard deductions relating to capital expenditure, which require amortisation of the expenditure over the useful life of the asset.

### The *Benhaus* judgment

The SCA’s decision in the *Benhaus* case held that the Redemption Allowance was available to contract miners – companies which are contracted by a mining right holder to carry out the extractive activity for a fee (Contract Miners).

The *Benhaus* case turned on an interpretation of the provisions comprising the Redemption Allowance, in light of significant jurisprudence on the point. In sum, Lewis ADP held that Contract Miners in fact won the minerals from the soil. Further, that prior judgments requiring specific commercial risk – i.e. trade in minerals on the open market versus a set contract fee for services rendered – to qualify, were too strict an interpretation of the Redemption Allowance. Therefore, as Contract Miners indeed take significant

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## Losing ground – proposed amendments to reserve special mining deductions for mining rights holders...*continued*

While Contract Miners do not fit neatly into the policy rationale underlying the Redemption Allowance – being to encourage the establishment of new mines – they do in fact bear the capital expenses related to the extraction of minerals and engage in what *prima facie* are mining activities.

commercial risk and extract the minerals from the ground, their income earning activities ought to be subject to the Redemption Allowance.

For a full discussion of this case, and the tax court judgments which preceded it, see our [Tax & Exchange Control Alert](#) of 12 April 2019 (Tax Alert - A ground breaking victory for contract miners, won from the soil).

### The Proposed Amendment

The explanatory memorandum to the TLAB indicates that the Redemption Allowance ought not to be available to Contract Miners as they are “*independent contractors with the required plant and machinery [that] excavate minerals from the soil on behalf of the mineral rights holder for a fee*”. The explanatory memorandum further states that the current provisions of the Act do not adequately address the tax treatment of capital expenditure incurred by taxpayers carrying on contract mining activities.

Therefore, it has been proposed that section 15 of the Act be amended by the introduction of the following phrase, to the words preceding paragraph (a): “*if that*

*taxpayer holds a mining right as defined in section 1 of the Mineral and Petroleum Resources Development Act in respect of the mine where those mining operations are carried on—*”.

It is proposed that these amendments take effect from 1 January 2021, and applies in respect of expenditure incurred on or after that date.

### Comment

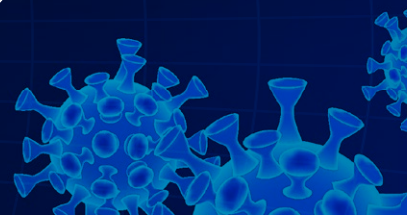
The proposed amendment, if adopted in current form, will have significant effects on the operations of Contract Miners. As Lewis ADP noted in the *Benhaus* case, while Contract Miners do not fit neatly into the policy rationale underlying the Redemption Allowance – being to encourage the establishment of new mines – they do in fact bear the capital expenses related to the extraction of minerals and engage in what *prima facie* are mining activities.

The proposals contained in the TLAB are open for public comment until 31 August 2020.

*Tsanga Mukumba and Louis Botha*

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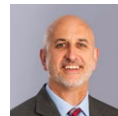
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