

## Redemption Allowance to be reviewed

Mining by its nature requires large initial capital outlays and in recognition of this the Income Tax Act provides for an accelerated deduction of such capital expenditure by miners. In *Benhaus Mining (Pty) Ltd v Commissioner for the South African Revenue Service (165/2018) [2019] ZASCA 1 (Benhaus Case)*, it was held that this special regime extended to contract miners who engage in mining operations, under a contract with the holder of a mining right, and who earn a determinable fee under such agreement.



Section 15(a) of the Income Tax Act, read with section 36(7C), provide the mechanism and requirements the deduction of capital expenditure incurred in respect of a mining operation (Redemption Allowance). One of the requirements is that the taxpayer must be conducting ‘mining operations’ or ‘mining’, as defined. ‘Mining operations’ and ‘mining’ are defined in section 1 of the Income Tax Act to ‘include every method process by which any mineral is won from the soil or from any substance or constituent thereof’. Section 1 of the Income Tax Act provides that a deduction shall be allowed as per section 36, in lieu of an ordinary deduction under section 11. Section 36 in turn provides for a deduction of any capital expenditure to be allowed from income derived from the working of any producing mine.

The effect of these provisions is that a taxpayer engaged in mining operations on a producing mine will be entitled to fully deduct capital expenditure in the year of assessment in which it was incurred. This is a departure from the standard deductions in the Income Tax Act relating to allowances that may be claimed capital assets acquired.

The Budget states that the Redemption Allowance would now be available to both a contract miner and the holder of the mining right, which suggests a review of the definition of the rules relating to the allowance in the Income Tax Act.