1. **Introduction**

1.1 Aggregates is an integral component of cement used in the building and construction industry. For purposes of this document, aggregates are defined as material such as sand, rock or gravel used with cement and water to make concrete, mortar, or plaster.

1.2 The companies involved in the manufacture of cement either purchase aggregates from other companies or operate their own quarries where these aggregates are removed from the earth.

1.3 The question then arises as to whether the extraction of these aggregates constitute a mining process as defined in the Income Tax Act, No 58 of 1962 ("the Act") as the Act contains certain provisions which are exclusively aimed at mining operations.

2. **Relevant legislation and guidance**

2.1 The terms ‘mining operations’ and ‘mining’ are defined in section 1 of the Act as including every method or process by which any mineral is won from the soil or from any substance or constituent thereof.

2.2 From this definition, it is clear that the word ‘mineral’ plays an important role in determining whether a process constitutes ‘mining’ or not. The word ‘mineral’ is not defined in the Act.

2.3 The Mineral and Petroleum Resources Development Act, 28 of 2002 defines mineral to mean any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth or in or under water, which was formed by or subjected to a geological
process and includes sand, stone, rock, gravel, clay, soil and any mineral occurring in residue stockpiles and in residue deposits but excludes:

a) water, other than water taken from land or sea for the extraction of any mineral from such water,
b) petroleum, or
c) peat.

2.4 SARS’ External reference guide – Diesel / Biodiesel (AS-VAT-DR-03) (“SARS’ diesel rebate guide”), defines minerals as “minerals in any form, whether solid, liquid or gaseous, occurring naturally in or on the earth, in or under water or in the tailings whether organic or inorganic and having been formed by or subject to a geological process. Excludes water, but includes sand, stone, rock, soil (other than topsoil), clay, gravel and limestone”.

3. Discussion:

3.1 It would appear that the companies in the cement industry have differing views as to whether the quarries from which aggregates are extracted constitute mining operations.

3.2 The definition of mining and mining operation is a very wide one and by its reference to ‘every method or process’ makes it clear that it is not confined to underground working but also to surface excavations, i.e. quarries.

3.3 The key element in the definition of mining or of mining process is whether any mineral is won from the soil or from any substance or constituent thereof – refer Commissioner of Taxes v Nyasaland Quarries and Mining Co Ltd (24 SATC 579).

3.4 The meaning of the word ‘mineral’ is therefore key in deciding whether a process constitutes mining or not.

3.5 Conflicting case law also adds to the problem. In the cases of Blom and Glencairn Lime, limestone was held to be a mineral. However, in other court cases limestone was held not to be a mineral (source: Mining Tax in South Africa, Van Blerck, M.C, Second Edition, page 7.6 to 7.7). To add to the confusion, SARS’ Income Tax Practice Manual at page A-560 states that the production of lime and salt is included in the definition of mining operations for the purposes of sections 36 and 37 of the Act.

3.6 It was held in the Nyasaland Quarries case that gneiss which was quarried and thereafter crushed and screened to render it suitable for purposes such as road making, the making of garden paths, the mixing of concrete and other building purposes was a mineral and that the quarrying operation concerned constituted a mining operation.

3.7 In this case, reference was made to Fletcher-Mouton LJ’s definition of mineral in the case of Great Western Railway v Carpalla United China Clay Ltd:

“If I were rash enough to venture a definition of ‘mineral’ I should say that it is any substance that can be got from within the surface of the earth which possesses a value in use, apart from its mere possession of the bulk and weight which makes it occupy so much of the earth’s crust... To dig out ballast and crush stone and earth for the
purpose of making embankments, where the material goes from one position in the earth’s crust to another without modification or being submitted to any process of manufacture, does not seem to me to be making use of minerals... Such minerals have not a value in use apart from their bulk and weight.”

3.8 Binding Private Ruling BPR 068 held that the quarrying of clay is nor regarded as mining operations for income tax purposes. Yet when one considers the definition of mineral in the Mineral and Petroleum Resources Development Act, clay is specifically included in the definition of mineral.

3.9 While it is accepted that definitions in other Acts does not have authority in the Income Tax sphere, it is submitted that the definition of mineral in the Mineral and Petroleum Resources Development Act is influential at the very least. This definition has been accepted in SARS’ diesel rebate guide.

3.10 David Clegg, the author of Income Tax in South Africa in paragraph 2.6 comments as follows:

“Words of which no definitions are given in the Income Tax Act or in the Interpretation Act must be given their ordinary dictionary meaning, unless a contrary intention appears\(^1\). In general, evidence is not admissible to show that a word is used in a special sense other than its ordinary dictionary meaning.”

3.11 He goes on to say that the definition of a word in one statute is not of great use in interpreting the same word in another statute, unless such statutes are in pari materia. It is submitted that since the Mineral and Petroleum Resources Development Act deals specifically with minerals, there is no reason why the word “mineral” as used in the Act should have a different meaning to the word “mineral” as used in the Mineral and Petroleum Resources Development Act.

3.12 The aggregates used in the cement industry typically consist of stone, rock and sand obtained from amphibolites, quartzite, granite and dolomite. Based on the definition of mineral in the Mineral and Petroleum Resources Development Act, all these aggregates will be minerals and the process to extract them will therefore constitute a mining operation.

4. **Recommendation:**

4.1 The determination of whether or not a taxpayer is engaged in mining or mining operations has material tax implications.

4.2 Given that the term “mineral” is of such importance in the definition of mining and mining operation, we hereby respectfully request that National Treasury introduce a definition for “mineral” in the Act.

4.3 We further urge you not to deviate from the definition of “mineral” as contained in the Mineral and Petroleum Resources Development Act.

\[^1\] Mincer Motors Ltd v Commissioner of Customs and Excise 1958 (1) SA 652 (T)

\[^2\] Brick & Potteries Co Ltd v City Council of Johannesburg 1945 TPD 194 at 204
Kindly contact me should you want to further discuss.

Yours faithfully

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