10E. TAXATION

Material South African Income Tax Consequences

The following is a summary of material income tax considerations under South African income tax law. No representation with respect to the consequences to any particular purchaser of our securities is made hereby. Prospective purchasers are urged to consult their tax advisers with respect to their particular circumstances and the effect of South African or other tax laws to which they may be subject.

South Africa imposes tax on worldwide income of South African residents. Generally, individuals not resident in South Africa do not pay tax in South Africa except in the following circumstances:

Income Tax and Withholding Tax on Dividends

Non-residents will pay income tax on any amounts received by or accrued to them from a source within (or deemed to be within) South Africa. Interest earned by a non-resident on a debt instrument issued by a South African company will be regarded as being derived from a South African source but will be regarded as exempt from taxation in terms of Section 10(1)(i) of the South African Income Tax Act, 1962 (as amended), or the Income Tax Act. This exemption applies to so much of any interest and dividends (which are not otherwise exempt) received from a South African source not exceeding (a) R34,500 if the taxpayer is 65 years of age or older or (b) R23,800 if the taxpayer is younger than 65 years of age at the end of the relevant tax year.

No withholding tax is deductible in respect of interest payments made to non-resident investors.

Section 64F of the amendments to the Income Tax Act as set out in Part VIII in Chapter II of the Income Tax Act sets out beneficial owners who are exempt from the dividend tax which includes resident companies receiving a dividend after the effective date, being April 1, 2012. The Convention between the United States of America and the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, or the Tax Treaty, would limit the rate of this tax with respect to dividends paid on ordinary shares or ADRs to a U.S. resident (within the meaning of the Tax Treaty) to 5% of the gross amount of the dividends if such U.S. resident is a company which holds directly at least 10% of our voting stock and 20% of the gross amount of the dividends in all other cases.

The above provisions shall not apply if the beneficial owner of the dividends is resident in the United States, carries on business in South Africa through a permanent establishment situated in South Africa, or performs in South Africa independent personal services from a fixed base situated in South Africa, and the dividends are attributable to such permanent establishment or fixed base.

In fiscal years 2023 and 2022, the tax rates for taxable mining income for Ergo was 14.4% and 5% respectively and for FWGR was 29% and 31% respectively. The gold mining tax formula for determining the South African gold mining tax rate for fiscal 2023 was Y = 33 - 165/X (fiscal year 2022: Y = 34 - 170/X) where Y is the percentage rate of tax payable and X is the ratio of taxable income, net of any qualifying capital expenditure that bears to gold mining income derived, expressed as a percentage. The tax rate for non-mining taxable income was 27% and 28% for fiscal years 2023 and 2022 respectively.

On February 23, 2022, the Minister of Finance announced that the corporate income tax ("**CIT**") rate will be lowered from 28% to 27% for companies with years of assessment commencing on or after April 1, 2022. The mining operations of the Group accounts for income tax using the gold mining tax formula as opposed to the CIT rate. The gold mining tax formula was changed to Y = 33 - 165/X for years of assessment commencing on or after April 1, 2022. It was further announced that the lowering of the CIT rate will be implemented alongside additional amendments to broaden the CIT base by limiting interest deductions and assessed losses. Section 23M which limits the deduction of interest payable to certain parties who are not subject to tax was significantly widened. A maximum of R1 million or 80% of assessed losses (whichever is greater) is permitted to be set-off against taxable income.

With effect from April 1, 2014, Section 8F of the Income Tax Act results in any amount of interest which is incurred in respect of a "*hybrid debt instrument*" is deemed to be a dividend *in specie* declared by the payor and received by the recipient which is exempt from income tax, as opposed to interest which is taxable. The terms of some of our intercompany loans cause the affected loans to be deemed as "*hybrid debt instruments*" and the interest thereof to be deemed to be an exempt dividend *in specie*. This characterization of the affected loans as a "*hybrid debt instrument*" was not impacted by subsequent amendments to Section 8F of the Income Tax Act that became effective in fiscal year 2017.

U.S. Federal Income Tax Considerations

The following is a summary of the U.S. federal income tax considerations generally applicable to the U.S. Holder ownership and disposition of ordinary shares or ADRs. Unless otherwise indicated, this discussion addresses only U.S. Holders who hold ordinary shares or ADRs as capital assets (generally, property held for investment) for U.S. federal income tax purposes. This discussion is based upon the provisions of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), U.S. Treasury regulations promulgated thereunder, judicial decisions, published rulings of the Internal Revenue Service (the "IRS"), administrative pronouncements and other relevant authorities, as well as on the income tax treaty between the United States and South Africa (the "**Treaty**"), all as in effect on the date hereof and all of which are subject to differing interpretations and change, possibly on a retroactive basis. There can be no assurance that the IRS would not assert, or that a court would not sustain, a position contrary to any of the considerations discussed herein.

This summary does not address U.S. federal estate, gift or other non-income tax considerations, the alternative minimum tax, the Medicare tax on certain net investment income, or any state, local or non-U.S. tax considerations, relating to the ownership or disposition of ordinary shares or ADRs, nor does it address all aspects of U.S. federal income taxation that may be relevant to U.S. Holders in light of their particular circumstances or that may be relevant to certain types of U.S. Holders subject to special treatment under U.S. federal income tax law (such as dealers in securities or currencies, partnerships or other pass-through entities, banks and other financial institutions, traders in securities that elect mark-to-market treatment, insurance companies, tax-exempt organizations (including private foundations), certain expatriates or former long-term residents of the United States, persons holding ordinary shares or ADRs as part of a "hedge," "conversion transaction," "synthetic security," "straddle," "constructive sale" or other integrated investment, persons who acquired the ordinary shares or ADRs upon the exercise of employee stock options or otherwise as compensation, persons whose functional currency is not the U.S. dollar, or persons that actually or constructively own ten percent or more of the voting power or value of our shares).

For purposes of this discussion, a "U.S. Holder" is a beneficial owner of ordinary shares or ADRs that is, for U.S. federal income tax purposes:

- a citizen or individual resident of the United States;
- a corporation (or any entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is subject to U.S. federal income tax without regard to its source; or
- a trust (i) if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust, or (ii) if the trust has made a valid election to be treated as a U.S. person.

If a partnership (or other entity or arrangement treated as a partnership for U.S. federal income tax purposes) owns any ordinary shares or ADRs, the U.S. federal income tax treatment of a partner in the partnership will generally depend on the status of the partner and the activities of the partnership. Partnerships (or other entities or arrangements treated as partnerships for U.S. federal income tax purposes) holding any ordinary shares or ADRs and their partners should consult their tax advisors regarding an investment in ordinary shares or ADRs.

U.S. Holders of ordinary shares or ADRs should consult their tax advisors regarding the U.S. federal income tax considerations applicable to the ownership and disposition of ordinary shares or ADRs in light of their particular circumstances as well as any considerations to them arising under the tax laws of any foreign, state or local taxing jurisdiction.

U.S. Holders of ADRs

For U.S. federal income tax purposes, a U.S. Holder of ADRs will be treated as the owner of the ordinary shares represented by such ADRs. Exchanges of ordinary shares for ADRs and ADRs for ordinary shares will generally not be subject to U.S. federal income tax.

Distributions

Subject to the discussion below under the heading "Passive Foreign Investment Company", the gross amount of any distributions received by a U.S. Holder on ordinary shares or ADRs (including any amounts withheld in respect of South African withholding taxes) will generally be subject to tax to the extent paid out of our current or accumulated earnings and profits, as determined under U.S. federal income tax principles, and will be includible in the gross income of a U.S. Holder on the day actually or constructively received. For U.S. federal income tax purposes, the gross amount of any distributions received by a U.S. Holder will generally equal the U.S. dollar value of the sum of the South African rand payments made (including any amounts withheld in respect of South African withholding taxes), determined at the "spot rate" on the date the dividend distribution is includable in such U.S. Holder's income, regardless of whether the payment is in fact converted into U.S. dollars. Generally, any gain or loss resulting from currency exchange fluctuations during the period from the date a U.S. Holder includes the dividend payment in income to the date such holder converts the payment into U.S. dollars will be treated as ordinary income or loss.

Distributions, if any, in excess of our current or accumulated earnings and profits will constitute a non-taxable return of capital and will be applied against and reduce the U.S. Holder's basis in the ordinary shares or ADRs. To the extent that distributions exceed the U.S. Holder's tax basis in the ordinary shares or ADRs, as applicable, the excess generally will be treated as capital gain, subject to the discussion below under the heading "Passive Foreign Investment Company". We do not intend to calculate our earnings or profits for U.S. federal income tax purposes. U.S. Holders should therefore assume that any distributions on our ordinary shares or ADRs will constitute dividend income.

An individual or other non-corporate U.S. Holder may be subject to tax on any such dividends at the lower capital gain tax rate applicable to "qualified dividend income," provided that certain conditions are satisfied, including that (1) the ordinary shares or ADRs are readily tradable on an established securities market in the United States, or we are eligible for the benefits of a qualifying income tax treaty, (2) we are neither a PFIC nor treated as such with respect to a U.S. Holder (as discussed below) for the taxable year in which the dividend is paid and the preceding taxable year, and (3) certain holding period requirements are met. Dividend income derived with respect to the ordinary shares or ADRs will not be eligible for the dividends received deduction generally allowed to a U.S. corporation. U.S. Holders should consult their tax advisors regarding the U.S. federal income tax rate that will be applicable to their receipt of any dividends paid with respect to the ordinary shares and ADRs.

For U.S. foreign tax credit purposes, dividends received on ordinary shares or ADRs common shares will generally be treated as income from foreign sources and will generally constitute passive category income. Subject to certain conditions and limitations, a U.S. Holder eligible for the benefits of an applicable income tax treaty may be eligible to claim a foreign tax credit in respect of any South African income taxes paid or withheld with respect to dividends on ordinary shares or ADRs to the extent such taxes are nonrefundable under the Treaty. The rules governing foreign tax credits are complex, and recently issued final U.S. Treasury regulations ("Final FTC Regulations") have imposed additional requirements that must be met for a foreign tax to be creditable for U.S. Holders that do not elect to apply, or do not qualify for, the benefits of the Treaty. A recent notice from the IRS indicates that the U.S. Treasury and the IRS are considering proposing amendments to such regulations and allows taxpayers, subject to certain conditions, to defer the application of many aspects of such regulations for taxable years ending on or before December 31, 2023 (the notice also indicates that the U.S. Treasury and the IRS are considering whether, and under what conditions, to provide additional temporary relief for later taxable years). Alternatively, a U.S. Holder may elect to deduct such taxes in computing its taxable income for U.S. federal income tax purposes. A U.S. Holder's election to deduct foreign taxes instead of claiming foreign tax credits applies to all creditable foreign income taxes paid or accrued in the relevant taxable year. The rules regarding foreign tax credits and the deductibility of foreign taxes are complex. All U.S. Holders should consult their tax advisors regarding the availability of foreign tax credits and the deductibility of foreign taxes in light of their particular circumstances.

Passive Foreign Investment Company

A non-U.S. corporation, such as our company, will be classified as a passive foreign investment company ("PFIC") for U.S. federal income tax purposes for any taxable year if either (i) 75% or more of our gross income for such year, including our pro rata share of the gross income of any company in which we are considered to own 25% or more of the shares by value, consists of certain types of "passive income" or (ii) 50% or more of the value of our assets (determined on the basis of a quarterly average) during such year, including our pro rata share of the assets of any company in which we are considered to own 25% or more of the shares by value, is attributable to assets that produce or are held for the production of passive income. Passive income generally includes dividends, interest, royalties, rents, annuities, net gains from the sale or exchange of property producing such income and net foreign currency gains. Passive assets are those which give rise to passive income and include assets held for investment, as well as cash, assets readily convertible into cash, and (subject to certain exceptions) working capital.

If we are a PFIC for any taxable year during which a U.S. Holder holds ordinary shares or ADRs, the U.S. Holder would be subject to special rules with respect to any (i) gain recognized upon the disposition of the ordinary shares or ADRs and (ii) receipt of an excess distribution (generally, any distributions to a U.S. Holder during a taxable year that is greater than 125% of the average amount of distributions received by such U.S. Holder during the three preceding taxable years in respect of the ordinary shares or ADRs or, if shorter, such U.S. Holder's holding period for the ordinary shares or ADRs). Under these rules:

- the gain or excess distribution will be allocated ratably over a U.S. Holder's holding period for the ordinary shares or ADRs, as applicable;
- amounts allocated to the taxable year of the excess distribution or of the sale or other disposition and to any taxable years in the U.S. Holder's holding period prior to the first taxable year in which we are classified as a PFIC (each, a "pre-PFIC year"), will be taxed as ordinary income;
- amounts allocated to each prior year (other than the current taxable year or a pre-PFIC year) will be taxed at the highest tax rate in effect applicable to the U.S. Holder for that year; and
- such amounts will be increased by an additional tax equal to interest on the resulting tax deemed deferred with respect to such years (other than the current taxable year or a pre-PFIC year).

Although we generally will be treated as a PFIC as to any U.S. Holder if we are a PFIC for any year during a U.S. Holder's holding period, if we cease to be a PFIC, the U.S. Holder may avoid PFIC classification for subsequent years if such holder elects to recognize gain based on the unrealized appreciation in the ordinary shares or ADRs through the close of the tax year in which we cease to be a PFIC.

A U.S. Holder of a PFIC is required to file an annual report with the IRS containing such information as the U.S. Secretary of Treasury may require.

A U.S. Holder of ordinary shares or ADRs that are treated as "marketable stock" may be able to avoid the imposition of the special tax and interest charge described above by making a mark-to-market election. Pursuant to this election, the U.S. Holder would include in ordinary income or loss for each taxable year an amount equal to the difference between, as of the close of the taxable year, the fair market value of the ordinary shares or ADRs and the U.S. Holder's adjusted tax basis in such ordinary shares or ADRs. Losses would be allowed only to the extent of net mark-to-market gain previously included by the U.S. Holder under the election for prior taxable years. If a U.S. Holder makes a mark-to-market election, then, in any taxable year for which we are classified as a PFIC, tax rules that apply to distributions by corporations that are not PFICs would apply to distributions by us (except that the lower applicable capital gains rate for qualified dividend income would not apply). If a U.S. Holder makes a valid mark-to-market election and we subsequently cease to be classified as a PFIC, the U.S. Holder will not be required to take into account the mark-to-market income or loss described above during any period that we are not classified as a PFIC. In addition, because, as a technical matter, a mark-to-market election cannot be made for any lower-tier PFICs that we may own, a U.S. Holder may continue to be subject to the PFIC rules with respect to such U.S. Holder's indirect interest in any investments held by us that are treated as an equity interest in a PFIC for U.S. federal income tax purposes. U.S. Holders should consult their tax advisors with respect to the application and effect of making the mark-to-market election for their ordinary shares or ADRs.

In the case of a U.S. Holder who holds ordinary shares or ADRs and who does not make a mark-to-market election, the special tax and interest charge described above will not apply if such holder makes an election to treat us as a "qualified electing fund" in the first taxable year in which such holder owns the ordinary shares or ADRs and if we comply with certain reporting requirements. However, we do not intend to provide the information necessary for U.S. Holders to make qualified electing fund elections.

We believe that we were not a PFIC for our taxable year ended June 30, 2023. There can be no assurance regarding our PFIC status for the current taxable year or foreseeable future taxable years, however, because our PFIC status is a factual determination made annually that will depend, in part, upon the composition of our income and assets. The value of our assets for purposes of the asset test, including the value of our goodwill and unbooked intangibles, may be determined in part by reference to the market price of our ordinary shares or ADRs from time to time (which may be volatile). Because we will generally take into account our current market capitalization in estimating the value of our goodwill and other unbooked intangibles, our PFIC status for the current taxable year and foreseeable future taxable years may be affected by our market capitalization.