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 2020 and 2019, the corporate tax rates for taxable mining and non-mining income, to which the Companies in the Group is subject, were 34% and 28%, respectively. The formula for determining the South African gold mining tax rate for fiscal years ended 2020 and 2019 is: 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 mining income derived, expressed as a percentage.

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 discussion is a summary of the U.S. federal income tax considerations to U.S. holders of the ownership and disposition of ordinary shares or ADRs. It deals only with U.S. holders who hold ordinary shares or ADRs as capital assets for U.S. federal income tax purposes. This discussion is based upon the provisions of the Internal Revenue Code of 1986, as amended, or the Code, published rulings, judicial decisions and the Treasury regulations, all as currently in effect and all of which are subject to change, possibly on a retroactive basis. This discussion has no binding effect or official status of any kind; we cannot assure holders that the conclusions reached below would be sustained by a court if challenged by the Internal Revenue Service.

This discussion does not address all aspects of U.S. federal income taxation that may be applicable to holders in light of their particular circumstances and does not address special classes of U.S. holders subject to special treatment (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). This discussion addresses only U.S. federal income tax considerations and does not address the effect of any state, local, or foreign tax laws that may apply, the alternative minimum tax, the Medicare tax or the application of the federal estate or gift tax.

For purposes of this discussion, a “U.S. holder” is a beneficial owner of ordinary shares or ADRs who or 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 or any political subdivision thereof;
- an estate, the income of which is subject to U.S. federal income tax without regard to its source; or
- a trust, 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 if the trust has made a valid election to be treated as a U.S. person.

If a partnership (or an entity treated as a partnership for U.S. federal income tax purposes) holds any ordinary shares or ADRs, the tax treatment of a partner will generally depend on the status of the partner and on the activities of the partnership. Partners in partnerships holding any ordinary shares or ADRs are urged to consult their tax advisors.

Because individual circumstances may differ, U.S. holders of ordinary shares or ADRs are urged to consult their tax advisors concerning the U.S. federal income tax considerations applicable to their particular situations as well as any considerations to them arising under the tax laws of any foreign, state or local taxing jurisdiction.

Ownership of Ordinary Shares or ADRs

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

Subject to the discussion below under the heading “Passive Foreign Investment Company”, distributions with respect to the ordinary shares or ADRs, other than distributions in liquidation and distributions in redemption of stock that are treated as exchanges, will be taxed to U.S. holders as ordinary dividend income to the extent that the distributions do not exceed our current and accumulated earnings and profits. For U.S. federal income tax purposes, the amount of any distribution received by a U.S. holder will equal the dollar value of the sum of the South African rand payments made (including the amount of South African income taxes, if any, withheld with respect to such payments), 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 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 dollars will be treated as ordinary income or loss. Distributions, if any, in excess of our current and accumulated earnings and profits will constitute a non-taxable return of capital and will be applied against and reduce the holder's basis in the ordinary shares or ADRs.

To the extent that these 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 with respect to our ordinary shares or ADRs will constitute dividend income.

“Qualified dividend income” received by individual U.S. holders (as well as certain trusts and estates) generally will be taxed at a maximum U.S. federal income tax rate applicable to capital gains. This reduced rate generally would apply to dividends paid by us if, at the time such dividends are paid, either (i) we are eligible for benefits under a qualifying income tax treaty with the United States or (ii) our ordinary shares or ADRs with respect to which such dividends were paid are readily tradable on an established securities market in the United States. However, this reduced rate is subject to certain important requirements and exceptions, including, without limitation, certain holding period requirements and an exception applicable if we are treated as a passive foreign investment company as discussed under the heading “Passive Foreign Investment Company”. U.S. holders are urged to 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 purposes of this discussion, the “spot rate” generally means a rate that reflects a fair market rate of exchange available to the public for currency under a “spot contract” in a free market and involving representative amounts. A “spot contract” is a contract to buy or sell a currency on or before two business days following the date of the execution of the contract. If such a spot rate cannot be demonstrated, the U.S. Internal Revenue Service has the authority to determine the spot rate.

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 under Section 243 of the Code. Dividend income will be treated as foreign source income for foreign tax credit and other purposes. In computing the separate foreign tax credit limitations, dividend income should generally constitute “passive category income,” or in the case of certain U.S. holders, “general category income.”

Passive Foreign Investment Company

A special and adverse set of U.S. federal income tax rules apply to a U.S. holder that holds stock in a passive foreign investment company, or PFIC. We would be a PFIC for U.S. federal income tax purposes if for any taxable year either (i) 75% or more of our gross income, 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, were passive income or (ii) 50% or more of our average total assets (by value), 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, were assets that produced or were held for the production of passive income. If we were a PFIC, U.S. holders of the ordinary shares or ADRs would be subject to special rules with respect to (i) any gain recognized upon the disposition of the ordinary shares or ADRs and (ii) any receipt of an excess distribution (generally, any distributions to a U.S. holder during a single 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;
- the amount allocated to the taxable year in which a U.S. holder realizes the gain or excess distribution will be taxed as ordinary income;
- the amount allocated to each prior year (other than a pre-PFIC year), with certain exceptions, will be taxed at the highest tax rate in effect for that year; and
- the interest charge generally applicable to underpayments of tax will be imposed in respect of the tax attributable to each such year (other than 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 satisfy the requirements for PFIC classification, 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 Internal Revenue Service containing such information as the U.S. Secretary of Treasury may require.

A U.S. holder of the ordinary shares or ADRs that are treated as “marketable stock” under the PFIC rules 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 as of the close of the taxable year between 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 mark-to-market election with respect to ordinary shares or ADRs is in effect on the date of a U.S. holder's death, the tax basis of the ordinary shares or ADRs in the hands of a U.S. holder who acquired them from a decedent will be the lesser of the decedent's tax basis or the fair market value of the ordinary shares or ADRs. U.S. holders desiring to make the mark-to-market election are urged to consult their tax advisors with respect to the application and effect of making the election for the 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 supply U.S. holders with the information needed to report income and gain pursuant to a “qualified electing fund” election in the event that we are classified as a PFIC.

We believe that we were not a PFIC for our fiscal year ended June 30, 2020. However, under the PFIC rules income and assets are require to be measured and classified in accordance with U.S. federal income tax principles. Our analysis is based on our financial statements as prepared in accordance with IFRS, which may substantially differ from U.S. federal income tax principles. Therefore, no assurance can be given that we were not a PFIC. Furthermore, the tests for determining whether we would be a PFIC for any taxable year are applied annually and it is difficult to make accurate predictions of future income and assets, which are relevant to this determination. In addition, certain factors in the PFIC determination, such as reductions in the market value of our capital stock, are not within our control and can cause us to become a PFIC. Accordingly, there can be no assurance that we will not become a PFIC.

The rules relating to PFICs are very complex. U.S. holders are urged to consult their tax advisors regarding the application of the PFIC rules to their investments in our ordinary shares or ADRs.

Disposition of Ordinary Shares or ADRs

Subject to the discussion above under the heading “Passive Foreign Investment Company”, upon a sale, exchange, or other taxable disposition of ordinary shares or ADRs, a U.S. holder will recognize gain or loss in an amount equal to the difference between the U.S. dollar value of the amount realized on the sale or exchange and such holder's adjusted tax basis in the ordinary shares or ADRs. Subject to the application of the “passive foreign investment company” rules discussed above, such gain or loss generally will be capital gain or loss and will be long-term capital gain or loss if the U.S. holder has held the ordinary shares or ADRs for more than one year. The deductibility of capital losses is subject to limitations. Gain or loss recognized by a U.S. holder on the taxable disposition of ordinary shares or ADRs generally will be treated as U.S.-source gain or loss for U.S. foreign tax credit purposes.