13

PROVISIONS, CONTINGENCIES AND OTHER COMMITMENTS

13.1 ACCOUNTING POLICIES RELATING TO PROVISIONS, CONTINGENCIES AND OTHER COMMITMENTS

Provisions are recognised when a present legal or constructive obligation exists as a result of past events, for which it is probable that an outflow of economic benefits will be required to settle the obligation, and a reliable estimate can be made of the amount of the obligation. Where the effect of discounting to present value is material, provisions are adjusted to reflect the time value of money, and where appropriate, the risk specific to the liability.

Decommissioning and environmental rehabilitation

Provision is made for environmental rehabilitation (including possible affected water treatment) and decommissioning costs where either a legal or constructive obligation exists as a result of past events. Estimates are based on costs that are regularly reviewed and adjusted as appropriate for new circumstances. Where a provision is made for dismantling and site restoration costs, an asset of similar initial value is raised and amortised in accordance with the group's accounting policy for property, plant and equipment.

Contributions are made to the group's environmental rehabilitation funds, created in accordance with statutory requirements, to provide for funding of the estimated cost of pollution control and rehabilitation during, and at the end of the life of mines. The environmental rehabilitation funds are consolidated.

Expenditure on plant and equipment for pollution control is capitalised and depreciated over the useful lives of the assets while the cost of the ongoing current programme to prevent and control pollution and to rehabilitate the environment is charged against profit or loss as incurred.

13.2 PROVISIONS

At 31 December	Notes	Environmental rehabilitation Rm	Decommis-sioning Rm	Other site closure cost Rm	Litigation Rm	Total Rm
Group						
2015						
At beginning of year		1 828	427	201	17	2 473
Charge to operating expenses		(65)	(29)	2	2	(90)
– Additional provision		513	32	15	2	562
– Unused amounts reversed		(578)	(61)	(13)		(652)
Unwinding of discount rate on rehabilitation cost	12.1.2	158	52	10		220
Provisions capitalised to property, plant and equipment	11.1.2		(73)			(73)
Utilised during year		(26)		(114)		(140)
Exchange differences		1			1	2
Acquisition of subsidiaries		830	48			878
Total provisions at end of year		2 726	425	99	20	3 270
Current portion included in current liabilities		(83)		(55)	(20)	(158)
Total non-current provisions		2 643	425	44		3 112
2014						
At beginning of year		1 480	353	47		1 880
Charge to operating expenses		250	(1)	152	17	418
– Additional provision		437	27	152	17	633
– Unused amounts reversed		(187)	(28)			(215)
Unwinding of discount rate on rehabilitation cost	12.1.2	139	34	10		183
Provisions capitalised to property, plant and equipment	11.1.2		43			43
Utilised during year		(8)		(8)		(16)
Reclassification to non-current liabilities held-for-sale		(13)	(2)			(15)
Disposal of subsidiary		(20)				(20)
Total provisions at end of year		1 828	427	201	17	2 473
Current portion included in current liabilities		(78)		(159)	(17)	(254)
Total non-current provisions		1 750	427	42		2 219

13.2 PROVISIONS (CONTINUED)

At 31 December	Notes	Environmental rehabilitation Rm	Other site closure cost Rm	Total Rm
Company				
2015				
At beginning of year		30	11	41
Charge to operating expenses		(6)		(6)
– Unused amounts reversed		(6)		(6)
Unwinding of discount rate on rehabilitation cost	12.1.2	2		2
Total provisions at end of year		26	11	37
Current portion included in current liabilities			(11)	(11)
Total non-current provisions		26		26
2014				
At beginning of year		28		28
Charge to operating expenses			11	11
– Additional provision			11	11
Unwinding of discount rate on rehabilitation cost	12.1.2	2		2
Total provisions at end of year		30	11	41
Current portion included in current liabilities			(11)	(11)
Total non-current provisions		30		30

Funding of environmental and decommissioning rehabilitation

Contributions towards the cost of mine closure are made to the environmental rehabilitation funds and the balance of the funds amount to R1 335 million on 31 December 2015 (2014: R904 million). Of this amount R1 329 million (2014: R899 million) is included in financial assets and R6 million (2014: R5 million) in trade and other receivables of the group. Cash flows will take place when the mines are rehabilitated.

Other site closure cost

The liability includes accruals for plant and facility closures, including the dismantling costs thereof, and employee termination costs in terms of the announced restructuring plans. Provision is made on a piecemeal basis only for those restructuring obligations supported by a formally approved plan.

The liability includes social and labour cost for mines closing in the near future in terms of approved social and labour plans for these sites.

Litigation

The liability in 2015 includes ongoing litigation claims against Exxaro that may result in an outflow of economic benefits in future.

13.3 CONTINGENT LIABILITIES

At 31 December	Group 2015 Rm	Group 2014 Rm
Total contingent liabilities	7 378	2 609
– DMC Iron Congo S.A.	6	
– Pending litigation claims[1]	1 233	445
– Operational guarantees[2]	3 559	1 263
– Share of contingent liabilities of equity-accounted investments	2 580	901

[1] *Pending litigation and other claims consist of legal cases as well as tax disputes with Exxaro as defendant. The outcome of these claims is uncertain and the amount of possible legal obligations that may be incurred can only be estimated at this stage.*

[2] *Operational guarantees include guarantees to banks and other institutions in the normal course of business from which it is anticipated that no material liabilities will arise. The increase is mainly due to the acquisition of ECC.*

The timing and occurrence of any possible outflows of the contingent liabilities above are uncertain.

Exxaro's share of contingent liabilities from equity-accounted investments relates mainly to:

- Operational guarantees (guarantees to banks and other institutions) amounting to R1 394 million (2014: R901 million)
- Municipality rates and taxes levied but under objection of R87 million (2014: nil)
- Tax assessments under process of objection for R1,1 billion, which includes R739 million of interest and penalties.

SIOC has received a tax assessment from SARS in relation to the tax years 2006 to 2010, for the amount of R5,5 billion. This includes interest and penalties of R3,7 billion.

SIOC has considered these matters in consultation with specialist external tax and legal advisors and disagree with SARS' audit findings. SIOC is therefore in the process of preparing an objection to the assessment, together with an application to the Commissioner of SARS for a suspension of payment until the matter is resolved. Further more, during 2015 SARS notified SIOC of its intention to conduct a field audit covering the 2011 to 2013 years of assessment, which is in progress.

Mayoko

At 31 December 2015 DMC, a subsidiary of Exxaro, is exposed to possible customs import duties as a result of a review by the RoC customs department on assets imported by DMC into the RoC in 2012 under a temporary arrangement, pending the ratification of the mining convention. To date, the mining convention has not been ratified which increases the potential risk. The penalties are deemed reasonably possible, but the level of probability for the outflow of economic resources is considered not probable.

To date, no notification has been issued by the RoC customs department. Exxaro believes that these matters have been appropriately treated by disclosing a contingent liability. The group will be defending any claims for penalties by following due process in the RoC.

SARS

On 18 January 2016, Exxaro received a letter of intent from SARS following an international income tax audit for the years of assessment 2009 to 2013. According to the letter, SARS proposes that certain international Exxaro companies will be subject to South African Income Tax. No assessment has been issued at this stage and Exxaro is following due processes to respond to SARS.

As at the date of this report, Exxaro has responded to the letter of intent, disputing the basis for the proposed adjustments. The group is awaiting SARS's response. These matters have been considered in consultation with external tax and legal advisors, who support the group's position set out in its dispute.

Exxaro believes that these matters have been appropriately treated by disclosing a contingent liability.

13.4 CONTINGENT ASSETS

	Group	
At 31 December	2015 Rm	2014 Rm
Total contingent assets	86	256
– Guarantee on sale of NCC[1]		170
– Share of contingent assets of equity-accounted investments[2]	86	86

[1] *Exxaro received a guarantee from Universal as part of the sales transaction of NCC. This transaction was concluded in 2015.*

[2] *Bank guarantee issued in favour of SIOC related to environmental rehabilitation.*

Timing and occurrence of any possible inflows of the contingent assets are uncertain.

13.5 OTHER COMMITMENTS

	Group		Company	
At 31 December	2015 Rm	2014 Rm	2015 Rm	2014 Rm
Operating lease commitments				
The future minimum lease payments under non-cancellable operating leases are as follows:				
– Less than one year	74	70	33	35
– More than one year and less than five years	78	65	44	29
Total operating lease commitments	152	135	77	64
Operating sublease receivable				
Non-cancellable operating lease rentals are receivable as follows:				
– More than one year and less than five years	1	1	1	1
Total operating sublease receivables	1	1	1	1

Exxaro entered into numerous operating lease arrangements. All major lease arrangements are renewable if there is mutual agreement between the parties to the arrangements with some contracts specifying extension periods. Arrangements containing escalation clauses are usually based on CPI or PPI. None of the lease arrangements contain restrictive clauses that are unusual considered to the particular type of lease.