

## Appendix A1

### Sample Royalty Provisions Extracted From National Laws and Regulations

**Note:** Governments frequently amend laws pertaining to tax matters. The material provided in this appendix is intended to demonstrate the royalty approaches that a cross-section of governments use now or have used in the past. Changes may have occurred and readers are encouraged to verify whether the information reported remains accurate. The statutory extracts may have different formatting than appears in the original legislation. For the sake of brevity, articles in some extracts have been selectively deleted. When available, source Web sites are given. Information is reported by region and in the following order:

#### A1.1 AFRICA

- Angola
- Botswana
- Ghana
- Mozambique
- Namibia
- Nigeria
- South Africa
- Tanzania
- Zambia
- Zimbabwe

#### A1.2 ASIA/ AND PACIFIC

- China
- India
- Indonesia
- Mongolia
- Myanmar
- Papua New Guinea
- Philippines

#### A1.3 AUSTRALIA

- New South Wales
- Northern Territory
- Queensland
- Western Australia

**A1.4 EUROPE**

- Finland
- Russia

**A1.5 LATIN AMERICA**

- Argentina
- Bolivia
- Brazil
- Chile
- Cuba
- Dominican Republic
- Mexico
- Peru
- Venezuela

**A1.6 NORTH AMERICA**

- Arizona
- British Columbia
- Michigan
- Nevada
- Northwest Territories
- Ontario
- Saskatchewan

## A1.1 AFRICA

### Angola

#### 1. Summary

Diamond and oil rich Angola has experienced decades of civil unrest but has stabilized recently. Perhaps reflecting the reality of this unrest it has in the past and continues today to implement a negotiated fiscal regime on a mine by mine basis. The relevant provision is found in Article 15 of the **Mining Law No. 1/92**.

In terms of Article 15, both the base and rate of mineral royalties are negotiable. Guidelines for interpreting Article 15 have been provided and documented<sup>1</sup> by the Ministry of Geology and Mines, which can be summarised as:

- royalties are payable on either run-of-concentrate or run-of-mine value (depending on the situation and the outcome of negotiations) and;
- guideline royalty rates for negotiation purposes are precious metals (5 percent), semi-precious stones (4 percent), metallic minerals (3 percent) and other minerals (2 percent).

#### 2. Extracts from source legislation

##### **Mining Law, Law No. 1/92 of 17 January 1992**

Article 15. Fiscal Regime

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2. An applicable fiscal regime will be established, with precision, for each Mining Title, which will include:
  - (a) A tax on the value of run-of-mine mineral resources, where there is no processing, where there is processing, which will be the result of using a perceptual tax on the annual production value, to be established in accordance with the unit value of each mineral resource to be extracted.

This tax, also referred to as "royalty", may be paid in kind, when this is convenient to the Angolan State. In any case, it is considered as an operating cost and will be paid monthly.

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<sup>1</sup> Mines (2000). Southern African Development Community – European Union Mining Investment Forum. Lusaka, Zambia, 10th – 13th October 2000 and; SADC Policy Profile (2001). Australia in Sub-Saharan Africa Mining Conference, 26 – 27 July 2001. pp. 19 – 23.

## Botswana

### 1. Summary

Mineral royalties are governed by the **Mines and Minerals Act No. 17 of 1999** and the comprehensive Model Mineral Agreement<sup>2</sup>. All minerals are owned by the government of Botswana. The Ministry of Mineral Resources and Water Affairs governs mineral rights administration through firstly, the Department of Geological Survey, who deliver services at exploration stage, secondly, the Department of Mines, who deliver services at development stage, and thirdly, the Mineral Policy Committee, which gives policy guidance to the administration. Mineral royalties for each type of mineral are stated in the Mines and Minerals Act<sup>3</sup> and are levied as a percentage of the arm's-length gross market value “*at the mine gate*”, i.e., sales value less transport, insurance and other costs allowed by the Minister. The rates are:

- Precious stones, petroleum and natural gas: 10%
- Semi-precious stones, precious metals, coal and radioactive minerals: 5%
- Building materials, industrial minerals, oil shales and others: 3%

There are two important lessons to note from the Botswana royalty regime. The first is some flexibility to allow ‘*other costs*’ to be deducted for the purpose of calculating the royalty amount and the second lesson is provision for remittance of all or part of the royalty in terms of Section 67. These provisions have afforded government and investors some flexibility to reduce the impact of royalties, especially for minerals that could be benefited locally. It is acknowledged that Botswana has established a track record of negotiating fair agreements with investors that benefit both parties.

### 2. Extracts from selected legislation

**Republic of Botswana Mines and Minerals Act No. 17 of 1999**, Assented to 01 September 1999, promulgated by Gazette dated 17 September 1999

Part X – Financial

66. Royalties

- (1) Subject to the provisions of this Part, the holder of a mineral concession shall be liable to pay royalties to the Government on any mineral obtained by him in the course of the exercise of his rights thereunder at the rates and in the manner prescribed under this section.
- (2) The royalties payable shall be the following percentages of gross market value as defined under subsection (3) below –

<u>Mineral Type</u>	<u>Percentage</u>
Precious Stones	10%
Precious Metals	5%

<sup>2</sup> Model Mineral Agreement (1995). Model Mining Agreement prepared by the Economic and Legal Advisory Services Division, Commonwealth Secretaria, London and printed by the Government Printer Republic of Botswana.

<sup>3</sup> Mines and Minerals Act 17 of 1999. Government Gazette dated 17 September 1999, Assented to 01 September 1999. See Appendix 1 for text.

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Other minerals or mineral products 3%

- (3) The term “gross market value” shall for the purposes of calculation of royalties be defined as the sale value receivable at the mine gate in an arms length transaction without discounts, commissions or deductions for the mineral or mineral product on disposal.
- (4) Royalty shall be paid on a mineral or mineral product on receipt of each payment or other consideration for such mineral or mineral product, and each royalty payment shall be accompanied by full particulars of the mineral or mineral product sold or disposed of and the terms of payment therefor:  
Provided that any disposal for other than monetary consideration or consideration deferred for a period beyond industry practice shall be referred to the Minister for determination of royalty in terms of subsection (5) below.
- (5) Where it appears to the Minister that minerals have been disposed of otherwise than in an arms length transaction, the Minister shall determine the royalty payable on the basis of prices ruling in the industry, and the royalty so determined shall be payable on demand;  
Provided that the royalty so determined and paid may be varied by court review or arbitration and the sum of any such variation shall thereupon become payable or repayable as the case may be.
- (6) For the purposes of this section, the expression “arms length transaction” shall mean a transaction between a willing buyer and willing seller in the open market where the purchase price for the sale is not influenced by any special relationship or other arrangement between the parties to the transaction and is not affected by any non-commercial considerations and specifically excludes any barter, swap, exchange, or transfer price arrangement, restricted or distress transaction which is associated with special financial, commercial or other considerations.

### 67. Remission of royalties

- (1) The Minister may, in the public interest, remit all or part of any royalty payable on any mineral or mineral product for such period as he may determine.
- (2) The Minister may exempt from liability to royalty samples of minerals required for the purpose of assay, analysis or other examination.

### 68. Deferred payment of royalty

The Minister may, on application being made to him by the holder of a mineral concession, defer payment of any royalty due from such holder for such period and subject to such conditions as he may determine.

### 69. Prohibition on disposal of minerals

- (1) If the holder of a mineral concession fails to pay any royalty due in respect of that concession on or before the due date or any extension thereof, or if the Minister has reason to believe that minerals have been produced from any area and royalties have not been paid in respect thereof, the Minister may, by order served on the holder of the mineral concession concerned, prohibit the disposal of any mineral from such area, or from any other area held by such holder under a mineral concession until all outstanding royalties have been paid or until an arrangement has been made, acceptable to the Minister, for the payment of such royalties.
- (2) Any holder of a mineral concession who contravenes or fails to comply with the provisions of an order given under subsection (1) and any person who, knowing of such an order and contrary thereto, receives any mineral from the area concerned, shall be guilty of an offence.

### 72. Interest on overdue payments

All overdue payments under this Act shall bear interest at the commercial bank prime lending rate ruling from time to time plus a premium of five percentage points.

## Ghana

### 1. Summary

Legislation affecting mining and exploration include the **Mining and Minerals Law (PNDCL) of 1986, Minerals and Mining (Amendment) Act 475 of 1994, the Minerals Commission Law (PNDCL 154) of 1986, Small Scale Gold Mining Law (PNDCL 218) of 1989** and the **Mineral (Royalties) Regulations (LI 13490) of 1987**. In terms of the Minerals and Mining Law of 1986, the state is the owner of all minerals found in Ghana. The Ministry of Mines oversees all aspects of mineral development in Ghana and is the grantor of mineral exploration and mining leases. The Minerals Commission has the authority to regulate and manage the utilisation of minerals.

The Mining and Minerals Law of 1986 provides for the holder of a mining lease to pay royalties at a rate between 3 and 12 per cent of '*total revenue*'. The final rate is established on recommendation of the Minerals Commission.

The Mineral (Royalties) Regulations of 1986 provide for a sliding-scale type of royalty that starts at three per cent for low grade ore with a maximum of twelve per cent for high-grade ore. These percentages are based on the gross value of the minerals. The final royalty rate is subject to negotiation with the government and is determined by a mining company's Operating Ratio (OR). This ratio is based on the quotient obtained by dividing the operating margin (i.e., working profit) by the total value of minerals extracted during the relevant fiscal period. The principles of the royalty determination are set out in the Minerals (Royalties) Regulations of 1987, LI 1349. It works as follows<sup>4</sup>:

<u>Operating ratio (%)</u>	<u>Rate / remarks</u>
0–30	3% (minimum)
31–70	3 + 0,225(OR), maximum = 12%
71–100	12% (maximum)

It is important to note that the decision on the statutory royalty rate is not influenced by either mineral type or mine size, but rather determined by mine profitability. This method typically results in a 3 per cent royalty rate for gold.

The Mining and Minerals Law of 1986 provides for partial or whole deferment of royalties, which was interpreted by Sawyerr<sup>5</sup> as the negotiation of special conditions in order to "*...work out a package suited to the specific investment situation...*". These negotiations are with the Minerals Commission of Ghana, which is the government body responsible for regulating all aspects of mining. Negotiable aspects include royalty rates, deferment of royalty payments, work programmes, the threshold rate of additional profit tax and retention amounts.

A Minerals Development Fund was created to return part of government income from mining to the communities who are affected by such activities.

<sup>4</sup> Otto, J. et al (1997). Global Mining Taxation Comparative Study. Institute for Global Resources Policy and Management, Colorado School of Mines, Golden, Colorado, USA, September 1997.

<sup>5</sup> Sawyerr, A. (1987). The Minerals Commission, the Mining and Mineral Law and the Development of the Mining Sector. Minerals Commission, Ghana, December 1987.

Twenty per cent of collected mineral royalties are paid into the fund that is shared between the local government authority, the land-owning authority and other communities which are affected adversely by the mining activity.

It is possible in Ghana to step outside the royalty system established in the mining law and to negotiate (with multiple ministries) a mining agreement that is passed as an agreement law by parliament. In 2003/2004 the Newmont mining company (of the USA) negotiated an agreement for gold with royalties for the Ahafo operation set at 3 per cent and the Akyem operation at 3.6 per cent ad valorem.

## **2. Extracts from selected legislation**

### **Mining and Minerals Law of 1986 (PNDCL 153),**

Part IV - Taxes, Incentives and Benefits

22. (1) A holder of a mining lease shall be liable to pay to the Republic royalty in respect of minerals obtained by him from his mining operations.
- (2) The Secretary shall on the advice of the Minerals Commission determine the rate of royalty payable under this section by the holder of a mining lease, provided that the rate of royalty payable shall not be more than 12 per cent or less than 3 per cent of the total revenue of minerals obtained by the holder from his mining operations.
- (3) Notwithstanding the provisions in subsections (1) and (2), the Secretary may in consultation with the Secretary for Finance and Economic Planning and on the advice of the Minerals Commission defer wholly or in part the royalty payable on any mineral for such period as he may determine where he is satisfied that it is in the national interest and in the interest of the production of such mineral so to do.
- (4) Samples of minerals required for assay, analysis or other examination may be exempted from liability for royalties at the discretion of the Secretary.

**Source:** <http://www.mincomgh.org>, accessed on January 17, 2005.

### **MINERALS (ROYALTIES) REGULATIONS L.I. 1349 OF 1987**

In exercise of the powers conferred on the Secretary responsible for Lands and Natural Resources by sections 22 and 83 of the Minerals and Mining Law, 1986 (P.N.D.C.L. 153) these Regulations are made this 29<sup>th</sup> day of July, 1987.

[Gazetted 28 August 1987, effective 4 July 1986]

#### **Payment of royalty**

1. Every holder of a mining lease shall be liable to pay royalty to the Republic in respect of his mining operations at the rate specified in the Schedule to these Regulations.

#### **Variation of rate of royalty**

2. (1) The rate of royalty payable under these Regulations shall be based on the profitability of the mining operations.
- (2) Such profitability shall be determined by the application of the operating ratio, being the ratio as expressed in terms of percentage which the operating margin bears to the value of the minerals won from the mining operations during the yearly period.
- (3) For the purpose of determining the operating margin of any mining operation, the operational cost shall be deducted from the total value of minerals won from such mining operations.

#### **Royalty payments to be made quarterly**

3. Every holder of a mining lease shall within thirty days after the expiration of every quarterly period pay to the Republic on account, royalties at the rate of three *per centum* of the gross value of minerals won in that quarter.

#### **Yearly returns of mineral production**

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4. (1) Every person engaged in mining operations shall within thirty days after the expiration of every yearly period, submit to the Commissioner returns stating in detail the total value of minerals won by him from his mining operations during such yearly period.
- (2) Such returns shall contain a signed declaration that the particulars contained in the returns are true and complete.
- (3) The Commissioner may give notice in writing to any person engaged in mining operations to furnish him within the period specified in such notice fuller or further information as to any matter furnished in an earlier return or as to any other matter which the Commissioner may consider necessary for the purposes of these Regulations.

### **End of year reconciliation**

5. Every holder of a mining lease shall, within sixty days after the expiration of each yearly period compute the royalties payable for the year based on the formula prescribed in the Schedule to these Regulations and shall pay to the Republic the difference, if any, between the computation based on the formula prescribed in the Schedule and the sum of all royalties paid by the holder in respect of that yearly period.

### **Carry forward of operational cost**

6. Where in any yearly period the operational ratio is less than thirty *per centum* then the difference between the actual operational cost and the operational cost that would make the operating ratio exactly equal to thirty *per centum* shall be added to the operational cost of the following yearly period for the purpose of calculating that period's operating ratio; provided that the difference to be carried forward shall not exceed the permissible capital allowance for the year of account.

### **Administration of Regulations**

7. These Regulations shall be administered by the Commissioner of Internal Revenue who shall be responsible for the assessment, collection, recovery of royalties, receipt of returns, and issues relating to objections, and may for those purposes apply with such modifications as may be necessary such provisions of the Income Tax Decree, 1975 (S.M.C.D.5) or any other law generally applicable to the assessment, collection, returns and recovery of income tax.

### **Payment into Consolidation Fund**

8. The Commissioner shall pay all royalties collected by him in the Consolidated Fund.

### **Offences**

9. (1) Any person who –
  - a) fails or refuses to pay any royalty payable by him under these Regulations;
  - b) contravenes any of the provisions of these Regulations, commits an offence and shall be liable to the same punishment for which a person might be liable for failure or refusal to pay income tax or for the contravention of such similar provision under the Income Tax Decree, 1975 (S.M.C.D.5) or any other law generally applicable to the assessment, collection, returns or recovery of income tax.
- (2) Notwithstanding sub-paragraph (1) of this paragraph where a person is found guilty of an offence under these Regulations the Secretary may in addition to any punishment which a Court may impose cancel or suspend the mining lease of such person.

### **Interpretation**

10. In these Regulations unless the context otherwise requires – “Commissioner” means the Commissioner of Internal Revenue;  
“Court” includes a tribunal or other adjudicating body having jurisdiction in tax matters;  
“Mining Lease” has the same meaning as in section 84 (1) of the Minerals and Mining Law, 1986 (P.N.D.C.L.153);  
“Operational Cost: in relation to any period means –
  - a) the current expenditure wholly and exclusively incurred by the holder of the mining lease during that period for the purpose of mining, transporting, processing or sale of minerals won; provided that such current expenditure shall not include -
    - i. any royalty payable under these Regulations;
    - ii. any income tax or other tax on profit whether imposed in Ghana or elsewhere;
    - iii. any payment under any agreement between the Republic and any person on the value of, or receipts from, minerals won;



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- iv. in the case of a company any expenditure incurred in respect of the management and control of the company which in the opinion of the Commissioner are not directly related to the operations of mining, transporting, processing or sale of the minerals won;

- b) capital allowances for the period deductible under the provisions of section 26 of the Minerals and Mining Law, 1986 (P.N.D.C.153);

“processing” means the process by which the raw product of the mining operations are subject to any treatment designed to prepare them for use as such raw products;

“quarterly period” means in relation to any mining operation the period of three months immediately following from the commencement of these Regulations and thereafter each of the successive periods of three months or where a person commences mining operations after the commencement of these Regulations the first period of three months starting from the commencement of such mining operations and thereafter each of the successive periods of three months;

“Secretary” means the P.N.D.C. Secretary responsible for Lands and Natural Resources;

“value of minerals won” means the gross price at which such minerals are sold at the time of the sale;

“yearly period” means in relation to any mining operation the period of twelve months immediately following from the commencement of these Regulations and thereafter each of the successive periods of twelve months or where a person commences mining operations after the commencement of these Regulations, the first period of twelve months starting from the commencement of such mining operations and thereafter each of the successive periods of twelve months.

11. The Minerals (Royalties) Regulations, 1986 (L.I.1340) are hereby revoked.

12. These Regulations shall be deemed to have come into force on the 4<sup>th</sup> day of July 1986.

<i>Operating Ratio</i>		<i>Rate of Royalty</i>
(i)	where the operating ratio is 30% or less	3%
(ii)	where the operating ratio is more than 30% but less than 70%	3% plus 0.225 of every 1% by which the operating ratio exceeds 30%
(iii)	where the operating ratio is 70% or more	12%

## Mozambique

### 1. Summary

Mining activities are regulated by the Mining Law No. 14 of 2002, which Act governs general use of mineral resources in Mozambique. It is supported by Mining law Regulations Decree No. 28 of 2003<sup>6</sup>. A mineral royalty, called a production tax in terms of Article 28 of Mining Law 14 of 2002, is determined by the Council of Ministers and payable on gross income at the following rates:

- Diamonds 10–12 %;
- Other mineral products 3–8 %.

The above rates specify the limits for negotiation of mineral royalties in Mozambique, which provide some flexibility when deciding on the final rates.

Article 28(1) of the Mining Law makes provision for an unspecified percentage of royalties to be paid over to lower levels of government while small-scale producers holding mining certificates passes are exempt from paying the production tax in terms of Article 29.

### 2. Extracts from source legislation

#### Mining Code, Law No. 14/2002 of 26 June 2002

##### Unofficial translation

###### Article 28 PRODUCTION TAX

1. The production tax is based upon the value of mining products resulting from mining activities undertaken on national territory, of which a percentage shall be destined to local services where the undertaking will be carried out under the terms to be defined, with the aim of influencing local development.
2. The production tax is also based upon the value of mining products:
  - a. Sold or destined for commercialization;
  - b. Utilised for any commercial or industrial purpose other than construction under the terms of number 2 of Article 40, in an are subject to a mining title
3. For the purpose of this Article, the expression commercialization includes transfers, commercialization, exportation, consignment, guarantees and any form of free or onerous transfer.
4. The cabinet shall determine production tax fees of 10% to 12% for diamonds, and of 3% to 8% for the rest of the mineral products.
5. The title-holders of prospecting and surveying licences and mining concessions have the obligation of effectuating the payment of the production tax, even in the cases where the titles and permissions that have been conceded for the realization of tests, trials or analysis of mineral products or samplings obtained within the title or permit area, as long as they are destined for future sale.
6. In cases where the mining title is held in common by various people, all those interested on the title shall be jointly responsible for the payment of the production tax related to the mining title.

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<sup>6</sup> Mining Law Regulations Decree No. 28 of 2003, Assented to 17 June 2003.

## Namibia

### 1. Summary

The fundamental principles governing the use of mineral resources in Namibia are consolidated in the **Minerals (Prospecting and Mining) Act No. 33 of 1992 (Minerals Act)**. The recently completed Mineral Policy<sup>7</sup> has not been fully implemented yet. A Model Mineral Agreement provides for minimum work requirements (with a schedule of target dates) and minimum expenditure provisions. Part II of the Minerals Act supports the Constitution by confirming that any right in relation to the searching for, winning and disposal of minerals is vested in the state, which must authorise and administer all activities in this regard. The Ministry of Mines and Energy is responsible for making and enforcing policies relating to minerals and energy. Within the Ministry are the Diamond Board, the Mining Advisory Board, and the National Energy Council, all of whom have government and private sector representation. An Ancillary Rights Commission handles disputes, which is in line with the independent judiciary system<sup>8</sup> that oversees the Minerals Act. The Mining Directorate administers mineral lease applications, safety and health issues, and the collection and analysis of industry information.

Part XVI of the Minerals Act deals with financial matters such as mineral royalties. Royalties are payable on an arm's-length basis to the Mining Commissioner for the benefit of the State Revenue Fund at the following rates:

- Uncut precious stones            10% of market value;
- Dimension stone                    5% of market value;
- Other minerals                      Maximum 5% of market value;
- Petroleum products                5% of market value.

Market value is explained in Section 114(3) as either the stipulated definition in the licence agreement or alternatively the arm's length sales amount less other (market-related) costs allowed by the Minister.

Section 116 allows for whole or partial remittance, deferment and more peculiarly, refunding of royalties. This is possible on ministerial discretion after consultation with the Minister of Finance.

### 2. Extracts from source legislation

#### **Minerals Act (Signed by the President on 16 December 1992)**

Part XVI Financial matters

114. Royalties payable on minerals.

(1) The holder of a mining claim or a mining licence who has won or mined in the course of any prospecting or mining operations carried on by him or her, and the holder of any non-exclusive prospecting licence, exclusive prospecting licence or mineral deposit retention licence who has found or incidentally won in the course of any prospecting operations carded on by him or her,

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<sup>7</sup> Minerals Policy (2003). Minerals Policy of Namibia. Minerals of Mines and Energy, Windhoek, Republic of Namibia.

<sup>8</sup> Coakley, J. 2001. The Mineral Industry of Namibia, 1997. United States Geological Survey. <http://www.minerals.usgs.gov>.

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any mineral or group of minerals, shall be liable to pay to the Commissioner for the benefit of the State Revenue Fund a royalty -

- (a) in the case of any such holder in respect of any rough and uncut mineral of the precious stone group won or mined by such holder in the course of any prospecting operations or mining operations carried on by such holder in terms of such licence or on such mining claim, as the case may be, and sold or otherwise disposed of by such holder, at a rate of 10 per cent;
  - (b) in the case of any such holder in respect of any rough or unprocessed mineral of the dimension stone group won or mined by such holder in the course of any prospecting operations or mining operations carried on by such holder in terms of such licence or on such mining claim, as the case may be, and sold or otherwise disposed of by such holder, at a rate of five per cent;
  - (c) in the case of any such holder in respect of any other mineral or group of minerals so won or mined by such holder, levied by the Minister by notice in writing addressed and delivered to such holder in accordance with the provisions of subsection (2), at such rate, not exceeding five per cent, as may be determined by the Minister from time to time by notice in the Gazette, of the market value, determined as provided in subsection (3), of such mineral or group of minerals, on a date -
    - (i) in the case of a holder referred to in paragraph (a), not later than the date on which the sale or disposal of such mineral or group of minerals takes place;
    - (ii) in the case of a holder referred to in paragraph (b), not later than 30 days after the end of each period of six months or part of such period as from the date on which such licence is issued or such claim is registered, as the case may be;
    - (iii) in the case of a holder referred to in paragraph (c), determined by the Minister and specified in the notice so referred to in relation to any mineral or group of minerals sold or disposed of during a period so determined.
- (2) (a) Subject to the provisions of paragraph (b), the Minister may, for purposes of the provisions of subsection (1)(c), levy, with due regard to any return submitted in terms of section 24, 45, 76, 89 or 101 by any holder of a licence or claim referred to in the said subsection and to any representations, if any, made by such holder in terms of paragraph (b), by notice in writing addressed and delivered to any such holder, upon such holder a royalty in respect of any mineral or group of minerals referred to in subsection (1)(c) won or mined by such holder in the course of any prospecting operations or mining operations carried on by such holder during such period as may be determined in writing by the Minister, if the Minister is of the opinion -
- (i) that, in the case of any mineral or group of minerals which has been or is about to be exported, any such mineral or group of minerals is of such a nature that it is capable of being increased in value by way of a practical and economical process which is available in Namibia;
  - (ii) that the amount received by, or accrued to, or received in favour of, such holder in respect of the sale or disposal of such mineral or group of minerals in a sale at arm's length was not in conformity with prices which were in the opinion of the Minister paid at the time in international markets; or
  - (iii) that the amounts deducted from the amount at which such mineral or group of minerals has been sold or disposed of in respect of fees, charges or levies were not in conformity with rates which were in the opinion of the Minister charged at the time in international markets.
- (b) The Minister shall not issue a notice referred to in paragraph (a), unless the Minister -
- (i) has by notice in writing addressed and delivered to the holder concerned, informed such holder of his or her intention to levy a royalty upon such holder in respect of any mineral or group of minerals won or mined by such holder and provided the grounds on which such intention is based;
  - (ii) has afforded such holder an opportunity within such reasonable period as may be specified in such notice to make representations and, if such holder so desires, proposals in relation to any matter relating to such intention; and
  - (iii) has taken into account such representations and proposals.

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(3) For purpose of subsection (1), the market value of any mineral or group of minerals shall be -

- (a) determined in accordance with any term and condition, if any, of the licence of the holder concerned; or
- (b) if no such term and condition exists, determined in writing by the Minister, having regard to the value agreed between the holder in question and the person to whom such mineral or group of minerals was sold or disposed of in an at arm's length sale and prices which were in the opinion of the Minister at the time paid on international markets for such mineral or group of minerals, less any amounts deducted in respect of fees, charges or levies which are in the opinion of the Minister charged on international markets.

115. Penalties for late payments.

(1) When any person has failed to pay an amount on or before the date determined by or under the provisions of section 114, an additional amount, calculated at the rate of one-third of one per cent per day, shall be payable on such amount or any part thereof as from the date on which such amount was payable until such time as such amount is paid.

(2) The provisions of paragraph (a) of section 116(1) shall apply mutatis mutandis in relation to an amount payable in terms of subsection (1).

116. Remission and deferment of royalties or penalties.

(1) Notwithstanding the provisions of the State Finance Act, 1991 (Act 31 of 1991), the Minister may, with the concurrence of the Minister of Finance, on application made to him or her by the holder of a licence or mining claim referred to in section 114 -

- (a) by notice in writing addressed and delivered to such holder -
  - (i) remit wholly or partly any royalty or penalty payable in terms of section 114 or 115;
  - (ii) deter payment of any such royalty or penalty;
- (b) refund wholly or partly any royalty or penalty paid in terms of section 114 or 115, on such conditions as may be determined by the Minister and specified in such notice, or may refuse to so remit or refund such royalty or penalty or defer such payment.

(2) The Minister shall on or before 30 June in each year lay upon the Table of the National Assembly a report consisting of the full names of such holders in respect of whom royalties or penalties were remitted or refunded or of which payment of royalties or penalties were deferred during the financial year which ended in that year and the amounts involved and the reasons for such remission, refund or deferment.

117. Powers of Minister in case of failure by holders of licences or mining claims to pay royalties.

(1) If the holder of a licence or mining claim referred to in section 114 fails to pay any royalty payable in terms of that section by such holder on or before the date referred to in that section or such date to which the payment of such royalty has been remitted or deferred in terms of section 116, the Minister may by notice addressed and delivered to such holder prohibit -

- (a) the removal of any mineral or group of minerals from the prospecting area, mining area, retention area, claim area or other area to which the licence in question relates;
- (b) any dealings in connection with any mineral or group of minerals won or mined from such prospecting area, mining area, retention area, claim area or other area, until such time as such royalty has been paid, or the payment of such royalty has been remitted or deferred in terms of section 116.

(2) Any holder of a licence or mining claim referred to in this section who contravenes or fails to comply with a notice issued under subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

118. Security for payment of royalties.

(1) The Minister may, when he or she deems it necessary to secure the payment of a royalty, by notice in writing addressed and delivered to any holder of a licence or mining claim referred to in section 114 require such holder to provide the Minister with a guarantee given by a person approved by the Minister.

(2) Any holder referred to in subsection (1) who contravenes or fails to comply with a notice issued under that subsection shall be guilty of an offence and on conviction be liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding two years or to both such fine

and such imprisonment.

119. Powers of Minister relating to pricing of minerals.

(1) Subject to the provisions of subsection (2), the Minister may, if he or she has reason to suspect that any mineral or group of minerals won or mined in the course of any prospecting operations or mining operations by a holder referred to in section 114 has been sold or disposed of by such holder -

- (a) at an amount which was intentionally fixed or agreed upon at an amount which is less than the price which was, in the opinion of the Minister, paid at the time on international markets;
  - (b) at an amount from which was deducted an amount in respect of fees, charges or levies which was intentionally fixed or agreed upon which is more than the rates which were, in the opinion of the Minister, charged at the time on international markets, direct such holder to pay to the benefit of the State Revenue Fund an amount equal to the difference between an amount referred to in paragraph (a) or (b) and an amount which in the opinion of the Minister is in conformity with an amount determined in accordance with the prices and rates paid and charged on international markets at the time of the sale or disposal of the mineral or group of minerals in question.
- (2) The Minister shall not give a direction under subsection (1), unless he or she -
- (c) has by notice in writing addressed and delivered to the holder concerned, informed such holder of his or her intention to give such direction and provided the grounds on which such intention is based;
  - (d) has afforded such holder an opportunity within such reasonable period as may be specified in such notice to make representations and, if such holder so desires, proposals in relation to any matter relating to such intention; and
  - (e) has taken into account such representations and proposals.

120. Proof of amounts payable in terms of this part.

In any proceedings to recover in a competent court any amount payable under any provision of this Part, a certificate purporting to be a certificate under the hand of the Minister certifying that an amount of money specified in such certificate is payable in terms of the provisions of this Part by any holder referred to in section 114 named in such certificate, shall be prima facie evidence of the facts stated in such certificate.

***Source: [http://www.mme.gov.na/mines/acts/act\\_minerals\\_XVI.html](http://www.mme.gov.na/mines/acts/act_minerals_XVI.html), accessed on January 15, 2005.***

## **Nigeria**

### **1. Summary**

Nigeria is currently in the process of revising its mining law and fiscal regime. The current law allows a great deal of discretion with regard to the structuring of royalty rates. This type of approach was common in colonial times but has become increasingly rare as nations move to limit discretionary powers.

### **2. Extracts from source legislation**

#### **Mineral and Mining Decree, 1999 No. 34**

- 15.-(1) Any mineral obtained in the course of prospecting or mining operations shall be liable to such royalty as may be prescribed by the Minister and published in the Gazette.
- (2). The Minister may reduce or waive royalty on any mineral which the Minister is satisfied is being exported solely for the purpose of analysis or experiment or as a scientific specimen, not being in greater quantity than in his opinion is necessary for that purpose.
- (3) The Minister may defer payment of royalty on any mineral for a specific period as in his discretion becomes necessary, by publication in the Gazette.

## South Africa

### 1. Summary

The **Mineral and Petroleum Resources Development Act (MPRDA) No. 28 of 2002** governs mineral development in South Africa. The MPRDA makes provision for secondary legislation, which laws and regulations will assist in successful implementation of the new regime. These are the Regulations to the MPRDA, which give specifics on the administration of rights, the Mining Charter, aimed at addressing past inequities by giving Historically Disadvantaged South Africans (HDSAs) access to mineral resources, the Scorecard that measures the progress made in terms of the Charter, and the Mining Titles Registration Act for registering mineral rights and interests for security of tenure purposes. Two more Acts still need to be finalised, namely those covering Mineral and Petroleum Royalties, and possibly an Act dealing with the beneficiation of South African mineral production.

Property rights in South Africa are derived from Roman-Dutch law, which means that historically the original landowner (that could include the State) also owned the rights to all minerals in the ground. Mineral and surface rights were separable, which resulted in South Africa having developed a complex mix of state- and privately owned mineral rights over time. Rights to different minerals on one property were often fragmented by multiple inheritances, separate sale, etc. The intent of the Mineral Policy<sup>9</sup> is to change this system to a regime where all mineral rights are state-owned. The MPRDA allows for a regulatory system where the transfer of ownership will take place over the five years following the implementation of the MPRDA. In terms of the Constitution<sup>10</sup>, all laws and matters regarding minerals and energy will be administered by the Department of Minerals and Energy.

Compensation in respect of the depletion of the state's mineral resources is an area that was not previously set by law. This resulted in a system where all mineral royalties were negotiated by mineral developers with the DME on an *ad hoc* basis. The final product is a regime of variable royalty bases and rates, with little consistency in regard to commodity, orebody type or profitability. The Mineral Policy (1998) makes provision for standardised fees and royalties and a Draft Royalty Bill was released in 2003. All recent indications are that the second draft will be very different from the first. Therefore, the discussion here deals with the currently operating system, where royalties can be based on a percentage of gross revenue (usually between 1.0 and 5.0 per cent), an amount per unit, a percentage of taxable profits (usually 10 per cent) or a sliding-scale formula (usually sliding between 0 and 15 per cent depending on profitability). Whatever method of royalty is applicable, a minimum royalty of 10 per cent of the expected annual royalty is currently payable annually in advance, which may be deducted upon reconciliation at the end of the year.

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<sup>9</sup> Mineral Policy (1998). White Paper on a Minerals and Mining Policy for South Africa, 23 September 1998, Government Gazette No 19344, (Cabinet approval on 20 October 1998).

<sup>10</sup> Constitution (1996). The Constitution of the Republic of South Africa, Act No. 108 of 1996.



Where mine development does not follow exploration directly for economic reasons, a mineral lease agreement is deemed, upon DME authorization, to be in a retention phase. During such a retention phase the mining company is required to pay an escalating retention fee for the temporary right to sterilise the state's mineral resource.

In respect of small-scale mining concerns for mining state-owned minerals like sand, clay, stone, gravel (and some diamond operations), in terms of section 31(1)(c) and (3) of the Exchequer and Audit Act of 1975 the Minister of Minerals and Energy may, after consultation with Treasury, determine a standardised lease payment, a royalty, a state's share of profits or any other consideration payable to the state. The 2000 rates were as follows:

- Sand, clay, stone and gravel: 78 cents per cubic metre of mineral sold.
- Precious stones: 5% of the gross income from the sale thereof.

Mineral developers can obtain a reduction up to a maximum of 75 per cent of the royalty payable, upon submitting proof of substantial local beneficiation to the mineral mined<sup>11</sup>. When the surface of state-owned land is needed to accommodate mine infrastructure, surface rental fees correspond with the local market rental value for the area under application (within reason) and must be approved by the Department of Land Affairs. In the case of privately owned land, the surface rental fees and the conditions for land use must be negotiated with the surface owner and not the state.

All minerals in the sea are owned by the state and applications are treated the same as state land. No surface rent is payable at sea but an annual concession fee of R2 100 is payable to the State.

A second Draft Royalty Bill is about to be released as of the date of this study by the National Treasury. Once enacted and promulgated, it will replace the current discretionary *ad hoc* system.

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<sup>11</sup> SADC Policy Profile (2001). Australia in Sub-Saharan Africa Mining Conference, 26 – 27 July 2001. pp. 19 – 23.

## Tanzania

### 1. Summary

In support of the Mineral Policy, a revised **Mineral Act 15 of 1998** was assented to on **01/071998**<sup>12</sup>. Mineral ownership is vested in the state, except for certain building and industrial minerals, which are owned by the landowner. The administration of the mining sector is the responsibility of the Ministry of Energy and Minerals, as well as the Commissioner of Mineral Resources.

Mineral royalties are payable on gross revenue, less transport and sales costs (called the netback value). The rates are:

- Diamonds 5%
- All others 3%
- Cut and polished gemstones 0%
- Building materials 0%, for benefit of land owner

Netback value is defined in Section 86(3) of the Mining Act 15 of 1998 as FOB at the point of export from Tanzania. When delivery is domestic, it is the delivery value minus costs for transport, insurance, handling, smelting, refining and processing. Section 3 also makes provision for adjustment of this value when, in the opinion of the Minister, such value does not meet the arm's-length standard.

The Act also makes provision for reduction, remission or deferment of mineral royalties when the cash operating margin<sup>13</sup> falls below zero (Section 87). Annual charges in respect of development rights are referred to in Section 92 of the Act, which rates are prescribed by regulation.

### 2. Extracts from source legislation

#### Mining Act 15 of 1998, Assented to 01 July 1998

##### PART VI FINANCIAL PROVISIONS

###### Royalties

86.(1) Every authorised miner shall pay to the Government of the United Republic a royalty on the net back value of minerals produced under his licence at the rate

- (a) in the case of diamonds, of five per centum; and
- (b) in the case of any other mineral, of three per centum.

(2) Notwithstanding the provisions of subsection (1) an authorised miner of raw gold or gemstones who elects to sell his production to a licensed dealer or licensed broker the royalties of such minerals shall be paid by the licensed dealer in accordance to the provisions of section 88.

(3) In this section -

"net back value" means the market value of minerals FOB at the point of export from Tanzania or, in the case of consumption within Tanzania, at the point of delivery within Tanzania, less -

- (a) the cost of transport, including insurance and handling charges, from the mining area to the point of export or delivery; and
- (b) the cost of smelting and refining or other processing costs unless such other processing costs relate to processing normally carried out in Tanzania in the mining area,

<sup>12</sup> The Mining Act of 1998 is available from <http://www.newafrica.com/mining/laws/tanzania.pdf>. See also SADC, (2001). SADC Policy Profile. Australia in Sub-Saharan Africa Mining Conference, 26 – 27 July 2001.

<sup>13</sup> Revenue from gross sales value minus operating costs.

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

"market value" means the realized price adjusted if necessary for a sale FOB at point of export from Tanzania or point Of delivery within Tanzania:

(4) The Minister where he considers that the realised price does not correspond to the price which would have been paid for, the minerals if they had been sold on similar terms in a transaction at arms length between a seller and a buyer, may give notice to that' effect to the licence holder.

(5) Where such notice has been given under subsection (4) the amount of the market value shall be settled by agreement been paid for between the Minister and the licence holder or, if no agreement , reached, the matter shall be referred for determination by an independent expert appointed in a manner prescribed by the Regulation

(6) Subject to this section, samples of minerals acquired for the Purposes of assay, analysis or other technical examination shall be exempt from royalty payment.

### **Remission and deferment of royalties**

87(1) The Minister shall, on application by an authorised miner who is liable to pay royalty under subsection (1) of section 86, defer payment of royalty due if, during any period for which a payment of royalty is due (in this section referred to as "the royalty payment period"), the cash operating margin of the authorised miner in respect of mining operations in the mining area falls below zero. In any such case, the amount payable on account of royalty in respect of that period shall be reduced to such an extent as is necessary to increase the cash operating margin to zero, and payment of the difference between the royalty due in respect of that period and the reduced amount shall be deferred.

(2) Where the payment of any royalty is deferred under subsection (1) -

- (a) it shall be accumulated with any other deferred payment of royalty which is outstanding;
- (b) the amount outstanding shall become payable when royalty is due in respect of the next following royalty payment period or periods in which, after the deduction of the royalty then due, the cash operating margin is positive;
- (c) the sum payable on any particular occasion under paragraph (b), shall not exceed that which would reduce the cash operating margin for the relevant royalty payment period below zero.

(3) In this section, the "cash operating margin" means the amount derived by deducting operating costs from revenue, where -

"operating costs" means cash expenditures incurred (a) in mining operations after the commencement of production from the mining area other than -

- (i) capital expenditure;
- (ii) provision for depreciation;
- (iii) financing charges, including interest on lo and fees and related charges in res thereof,
- (iv) agency fees or any other fees or charges directly or necessarily related to production and disposal of minerals from mining area; and

"revenue" means the gross value of all sales other disposals of minerals.

### **Payment in lieu of royalties**

88(1) Every Person who is a licensed dealer shall in accordance with the terms and conditions of his licence, this Act, - and the Regulations make to the Government of the United Republic a payment in lieu of royalty on the net back value of any raw gold or gemstones which is -

- (a) exported by him; or
- (b) in the case of gold, sold to a gold refinery in Tanzania; or
- (c) in the case of gemstones, sold to a duly authorised lapidary.

(2) This section shall not apply where the licensed dealer is an authorised miner who has paid royalty on those minerals in accordance with the provisions of subsection (1) of section 86.

(3) For the purposes of subsection (1), "net back value" has the meaning attributed to those words in subsection (3) of section 86 and that provision shall apply, with the necessary variations, to the export or a sale of minerals by a licensed dealer as they apply under section 86 to the payment of royalty by an authorised miner.

### **Provisional assessment of royalties**

89(1) The Minister may where for any reason, it is impractical to assess the amount of any royalty, or payment in lieu of royalty, assess, and the authorised miner, or as the case may be, the

licensed dealer, shall be liable to pay, a provisional royalty, or make a provisional payment in lieu of royalty.

(2) When, in any such case, the amount of the royalty or payment in lieu of royalty is ascertained, the authorised miner, or the licensed dealer, shall be liable for any balance or, as the case may be, shall be repaid any excess sum paid by him on such provisional assessment.

**Sorting fees**

90 The Minister shall by notice published in the Gazette prescribe the fees to be payable for purposes of sorting and valuation of gemstones produced or acquired by an authorised miner who opts to sell the gemstone produced or acquired by him to the company which is in the control of such authorised miner whose names shall be published in the *Gazette*.

**Prohibition on disposal of minerals**

91(1) If an authorised miner or a licensed dealer fails to (pay a) royalty or provisional royalty, or make any payment or provisional payment in lieu of royalty on or before the due date, or any extension of minerals allowed by the Minister, the Minister may-

- (a) in the case Of any such authorised miner, by order served on him, prohibit the disposal of any mineral from the mining area concerned, or from any other mining area held by that person; or
- (b) in the case of a licensed dealer, may prohibit the disposal of any mineral by that dealer until all outstanding royalties or Payments in lieu of royalties have been paid or until an arrangement has been made acceptable to the Minister for the payment thereof.

(2) Any authorised miner, or licensed dealer, who contravenes or fails to Comply with an order given under subsection (1), and any person who, knowing of such order and receives any mineral the disposal of which has been prohibited, commits an offence and is liable on conviction-

- (a) in the case of an individual, to a fine not exceeding one million shillings or to imprisonment for a period not exceeding two years, or to both;
- (b) in the case of a body Corporate, to a fine not exceeding five million shillings;
- (c) in the case of a person receiving minerals knowing their disposal to have been prohibited to forfeiture of the minerals or where the Court is satisfied that the minerals so obtained by the defendant are no longer in his possession or under his control to a penalty payable to the United Republic in an amount equal to the estimated market value of the minerals for which the defendant and the authorised miner or dealer shall be jointly and severally liable.

**Charges in respect of mineral rights and licences**

92(1) In addition to any application fee there shall be Payable to the Government of the United Republic in respect of every Mineral Right, dealer's licence or broker's licence granted under this Act an annual charge payable on the grant of the Mineral Right or dealer's or broker's licence and thereafter annually on the anniversary of the grant so long as the Mineral Right subsists.

(2) The annual charges referred to in subsection (1) shall be of such amount as may be calculated and prescribed in the Regulations.

**Recovery of fees**

93. The Commissioner may demand, sue for, recover and receive all fees, charges, dues, rents royalties or Payments which May become due in respect Of any Mineral Right or any licence, or otherwise due under the Provisions Of this Act or the Regulations.

**Source:** <http://www.parliament.go.tz>, accessed January 20, 2005.

## Zambia

### 1. Summary

**The Mines and Minerals Act of 1995** aims to encourage foreign investment in exploration and large-scale mineral development, as well as to encourage private investment in medium-size mines, development of small-scale mines and regulation of the artisanal sector. Zambia is a former British Colony, which explains the English Common Law system in the country. Minerals in the ground are vested in the President on behalf of the public. The rights to explore and develop minerals are licensed by the Mines and Minerals Act.

The Minister of Mines and Mineral Development grants all rights pertaining to medium- and large-scale development, while rights for the small-scale and artisanal sectors are granted by the regional offices.

Section 66 states that royalties are payable on the net back value at a rate of 3 per cent for holders of large-scale licences. Net back value means FOB market value for export products and market value less costs for transport, insurance, handling (away from mining area), smelting, refining and processing. It closely resembles the international definition for net smelter return. The Minister of Finance, after consultation with the minister responsible for mining, may remit (in whole or part) royalty payments (Section 67). Deferment in terms of Section 67(3) is possible when the operating margin, i.e., revenue less operating costs, falls below zero. Royalties for holders of small-scale mining rights are included in the annual rent of 5 per cent on the value of mineral sales (Section 72).

All mineral royalties were reduced to 2 per cent in the 1998/9 budget of the Minister of Finance<sup>14</sup>. As an additional incentive for adding value to minerals, provision was made for waiving mineral royalties for local processing of production to an advanced beneficiation state.

### 2. Extracts from source legislation

**Laws of the Republic of Zambia (Volume 13 of 26) Act No. 31 of 1995.** Assented to 13 September 1995 and promulgated 1 November 1995 under Statutory Instrument 166 of 1995.

PART VIII ROYALTIES AND CHARGES  
(as amended by Act No. 8 of 1997)

Royalties

66. (1) The holder of a large-scale mining licence shall, in accordance with his licence, this Act and the terms of any relevant development agreement, pay to the Republic a royalty on the net back value of minerals produced under his licence at the rate of three per centum. *{note; all mineral royalties were reduced to two per cent in the 1998/9 budget of the Minister of Finance}*  
*Royalties on production of large-scale mining licence*

(2) In this section-

"net back value" means the market value of minerals free-on-board at the point of export from Zambia or, in the case of consumption within Zambia, at the point of delivery within Zambia, less-

<sup>14</sup>Deloitte & Touche (1998). Tax News Issue No. 3/98, Deloitte Touche Tohmatsu International, Cape Town, South Africa.

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

(a) the cost of transport, including insurance and handling charges, from the mining area to the point of export or delivery; and

(b) the cost of smelting and refining or other processing costs, except such other processing costs as relate to processing normally carried out in Zambia in the mining area;

"market value" means the realised price for a sale free-on-board at the point of export from Zambia or point of delivery within Zambia:

Provided that if the Minister considers that the realised price does not correspond to the price that would have been paid for the minerals if they had been sold on similar terms in a transaction at arms length between a willing seller and a willing buyer, he may give notice to that effect to the licensee; whereupon the amount of the market value shall be settled by agreement between the Minister and the licensee or, in default of agreement, by an independent expert appointed jointly by the Minister and the licensee.

*Commissioner-General to be responsible for royalties*

66A. The Zambia Revenue Authority established under the Zambia Revenue Authority Act, shall be responsible for carrying provisions of sections sixty-six to sixty-nine of this Act.

*Cap. 321 (As amended by Act No. 8 of 1997)*

*Returns and assessments*

66B. Sections forty-five, forty-seven to forty-nine, fifty-five to fifty-eight, sixty-three to seventy, seventy-eight, seventy-nine, eighty-seven, ninety-one, ninety-five and ninety-eight to one hundred and fifteen of the Income Tax Act shall, with the necessary modification, apply to the collection, assessment, penalisation, enforcement of, and right of appeal with respect to any royalty imposed under section sixty-six of this Act.

*Cap. 323 (As amended by Act No. 8 of 1997)*

*Remission and deferment of royalties*

67. (1) The Minister responsible for finance may after consultation with the Minister, remit in whole or part any royalty payable on any mineral, or on any mineral obtained from a particular deposit, for such period as he may determine, if he considers it expedient in the interests of the production of the mineral to do so.

(2) The Minister may exempt from liability to royalty samples of minerals acquired for purposes of assay, analysis or other examination.

(3) The Commissioner-General may, on application by the holder of a large-scale mining licence, defer payment of royalty due from such holder if, during any period for which a payment of royalty is due as prescribed under this Act (in this section referred to as "the royalty payment period"), the cash operating margin of the holder in respect of mining operations in the mining area falls below zero; and in any such case, the amount payable on account of royalty in respect of that period shall be reduced to such an extent as is necessary to increase the cash operating margin to zero, and payment of the difference between the royalty due in respect of that period and the reduced amount shall be deferred.

(4) Where the payment of any royalty is deferred-

(a) it shall be accumulated with any other deferred payment of royalty which is outstanding;

(b) the amount outstanding shall become payable when royalty is due in respect of the next following royalty payment period or periods in which, after the deduction of the royalty then due, the cash operating margin is positive; and

(c) the sum payable on any particular occasion under paragraph (b) shall not exceed that which would reduce the cash operating margin for the relevant royalty payment period below zero.

(5) In this section-

"cash operating margin" means the amount derived by deducting operating costs from revenue;

"operating costs" means cash expenditures incurred in mining operations after the commencement of production from the mining area, other than-

(i) capital expenditure or any expenditure of a capital nature;

(ii) provision for depreciation;

(iii) financing charges, including interest on loans and fees and related charges in respect thereof; or

(iv) agency fees or any other fees or charges not directly or necessarily related to the production and disposal of minerals from the mining area;

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

"revenue" means the gross value of all sales or other disposal of minerals.

...

*(As amended by Act No. 8 of 1997)*

### *Provisional assessment of royalty*

68. (1) Where, for any reason, it is impractical to assess the amount of any royalty due, the Commissioner-General may assess, and the holder of the licence shall be liable to pay, a provisional royalty.

(2) Where provisional royalty is assessed under this section, and the amount of the royalty is ascertained at the end of any period of adjustment prescribed under this Act, the holder of the licence shall be liable for any balance or, as the case may require, shall be repaid any excess sum paid by him on such provisional assessment.

*(As amended by Act No. 8 of 1997)*

### *Prohibition on disposal of minerals*

69. (1) If the holder of a large-scale mining licence fails to pay any royalty or provisional royalty payable by him on or before the due date of any extension thereof allowed by the Commissioner-General, the Commissioner-General may, by order served on the holder, prohibit the disposal of any mining from the mining area concerned, or from any other mining area held by that holder, until an arrangement has been made that is acceptable to the Commissioner-General for the payment of the royalties.

(2) Any holder of a large-scale mining licence who contravenes or fails to comply with an order given under subsection (1), and any person who, knowing of such order and contrary thereto, receives any mineral from the area concerned, shall be guilty of an offence and shall be liable on conviction-

(a) in the case of an individual, to a fine not exceeding twenty thousand penalty units or imprisonment for a term not exceeding two years, or to both; or

(b) in the case of a body corporate, to a fine not exceeding fifty thousand penalty units.

(3) For the purposes of this section and sections sixty-six A to sixty-eight, the "Commissioner-General" means the Commissioner-General of the Zambia Revenue Authority.

...

### *Rent for small-scale mining licences*

72. The amount of the annual rent for a small-scale mining licence shall be as follows:

(a) where the holder is mining building materials, rent calculated by reference to tonnages mined shall be paid as prescribed, or in the manner prescribed, by the Minister by statutory instrument;

(b) in any other case, rent shall be paid annually in an amount equal to five per centum of the realised proceeds of the minerals mined in the mining area and sold or otherwise disposed of by the holder:

Provided that if the Director has reasonable grounds to believe that the proceeds alleged to be realised by the holder do not represent the true market value of the minerals sold or otherwise disposed of he may, for the purpose of ascertaining the amount of rent due, require, by order under his hand, that the minerals be valued by such reasonable method as he may specify in that order.

73. (1) The amount of the annual rent and the deemed turnover for a gemstone licence shall be as set forth in the Second Schedule.

### *Rent and deemed turnover in respect of gemstone licence*

(2) The Minister may, by statutory instrument, from time to time amend or replace the Second Schedule.

### *Charge for artisan's mining right*

74. There shall be payable to the Republic by the holder of an artisan's mining right such charge as may be prescribed, or as may be calculated in the manner prescribed, by the Minister by statutory instrument, and such charge shall be payable on the grant of the right.

### *Recovery of fees*

85. The Attorney-General may demand, sue for, recover and receive all royalties, fees, dues, rents or payments which may become due in respect of any mining right or otherwise under the provisions of this Act.

**Source:** <http://www.parliament.gov.zm>, accessed January 20, 2005.

## Zimbabwe

### 1. Summary

Zimbabwe became independent on the 18<sup>th</sup> of April 1980 and its legal system is a mixture of Roman-Dutch and English Common Law. The Zimbabwe African National Union-Patriotic Front (ZANU-PF), headed by President Robert Mugabe, has been in power since 1980. According to Hollaway<sup>15</sup>, the determination of President Mugabe to cling to power has given rise to near anarchy. A few days before the 2000 election Mugabe introduced a programme to ‘Africanise’ Zimbabwe’s assets, which included the following statement “*After land, now we must look at the mining sector*”.

Independent Zimbabwe inherited an economy that was more industrialised than most countries in Africa, with a diversified productive base, well-developed infrastructure and a relatively sophisticated financial sector<sup>16</sup>. In spite of this legacy, Zimbabwe’s economy has struggled since 2000 when first reports indicated commercial farmland was to be seized by the government as part of a land reform initiative. The real GDP growth rate declined by 8 per cent in 2001<sup>17</sup>; the country was rated 145<sup>th</sup> on the Human Development Index in 2003; inflation reached 300 per cent in mid-2003; and shortages in basic goods such as fuel and bread are often reported<sup>18</sup>. The value of mined production in 2000 was the lowest for the past ten years and compounding the sector’s difficulties was government’s rigid exchange control policy. These conditions forced many of the smaller mines to close<sup>19</sup>.

Although Zimbabwe has no official mineral policy, its general mining policy is to sustain development of the country’s mineral resources and create employment opportunities. The Mines and Minerals Act of 1961, as amended in 1991 and 1994, regulates mineral development in Zimbabwe. All mineral rights are vested in the state through the President of Zimbabwe, and the Ministry of Mining, Environment, and Tourism is responsible for regulating the mining sector.

There are no royalty payments in Zimbabwe, making it relatively competitive to attract foreign direct investment. However, the government has stated that this is about to change and that Zimbabwe will introduce mineral royalties in the near future.

### 2. Extracts from source legislation

Zimbabwe does not presently have minerals royalty provisions.

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<sup>15</sup> Hollaway, J. (2001). Zimbabwe: Mining Annual Review compact disc, 2001. Mining Journal Limited.

<sup>16</sup> Mines (2000). Southern African Development Community – European Union Mining Investment Forum. Lusaka, Zambia, 10th – 13th October 2000.

<sup>17</sup> World Development Indicators (2003). 2003 World Development Indicators; World Bank, Washington, USA, April 2003.

<sup>18</sup> <http://www.mbendi.co.za/land/af/zi/p0005.htm>, 05/06/2004

<sup>19</sup> Coakley, G.J. (2001). The Mineral Industry of Zimbabwe.

<http://minerals.usgs.gov/minerals/pubs/country/2001/zimyborev.pdf>. Assessed on the 17th of June 2004.



## A1.2 ASIA/AND PACIFIC

### China

#### 1. Summary

Royalties in the People's Republic of China are levied in compliance with Article 5 of the **Mineral Resources Law of the People's Republic of China (as amended 29 August 1996)**. Two types of royalty apply:

- A unit-based resources royalty levied in accordance with the **“Resources Royalty Regulations (temporary) of the People's Republic of China”, N. 139, 1993** and
- An ad-valorem mineral compensation fee levied in accordance with the **“Regulations for the Collection and Administration of the Mineral Resources Compensation Fee” N.150. 1994**.

The first is collected by the Tax Office and remitted to the national Treasury, the second is collected by the appropriate level of County, Provincial or City Government with 50% of the amount collected remitted to the Central Government and 50% retained by the provinces/cities. In Autonomous Regions the split is 40% to the Central Government and 60% to the region.

#### 2. Extracts from source legislation

##### **Mineral Resources Law of the People's Republic of China (as amended 29 August 1996)**

Unofficial translation

Art.5

....

Anyone who mines mineral resources must pay resource tax and mineral resource compensation in compliance of relevant provisions of the State.

##### **Resources Royalty Regulations (Temporary) People's Republic of China**

Decree [1993] No.139 of the State Council December 25

*Unofficial translation*

**Article 1.** All units and individuals engaged in the exploitation of mineral products as prescribed in these Regulations or production of salt within the territory of the People's Republic of China (hereinafter referred to as "exploiting or producing taxable products") are taxpayers of Resource Tax (hereinafter referred to as "taxpayers") and shall pay Resource Tax in accordance with these Regulations.

**Article 2.** The taxable items and tax amounts of Resource Tax shall be determined in accordance with the "Table on the Range of the Tax Items and Tax Amount on Resource Tax" attached to these Regulations as well as the relevant stipulations of the Ministry of Finance. Any adjustments to the taxable items and tax amount range shall be determined by the State Council.

**Article 3.** The specific tax amount applicable to taxpayers shall be determined, within a prescribed tax amount range, by the Ministry of Finance in consultation with the relevant departments of the State Council in accordance with the resource situation of the taxable products exploited or produced by taxpayers.

**Article 4.** For taxpayers exploiting or producing taxable products under different taxable items, the assessable volume of the taxable products under different taxable items shall be accounted for separately. If the assessable volume of the taxable products under different taxable items has not been accounted for separately or cannot be accurately provided, the higher tax amount shall apply.

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

**Article 5.** The tax payable for Resource Tax shall be computed in accordance with the assessable volume of the taxable products and the prescribed unit tax amount. The formula for computing the tax payable is as follows:

tax payable = assessable volume \* unit tax

**Article 6.** The assessable volume of Resource Tax is as follows:

- (1) For taxpayers exploiting or producing taxable products for sale, the sales volume shall be the assessable volume.
- (2) For taxpayers exploiting or producing taxable products for own use, the self-used volume shall be the assessable volume.

**Article 7.** Resource Tax shall be reduced or exempt under any one of the following circumstances:

- (1) Crude oil used for heating or repairing wells in the course of exploiting crude oil shall be exempt.
- (2) For taxpayers sustaining huge losses due to such reasons as accidents or natural disasters in the course of exploiting or producing taxable products, tax reduction or exemption shall be determined at the discretion of the people's governments of the provinces, autonomous regions or municipalities directly under the Central Government.
- (3) Other tax reduction or exemption items as stipulated by the State Council.

**Article 8.** The assessable volume of the tax reduced or exempt items of the taxpayer shall be accounted for separately. If the assessable volume has not been accounted for separately or cannot be accurately provided, no reduction or exemption shall be granted.

**Article 9.** For taxpayers selling taxable products, the time at which the tax liability arises shall be the day on which the sales sum is received or documented evidence of right to collect the sales sum is obtained. For self-produced taxable products for own use, the time at which the tax liability arises shall be the day on which the products are removed for use.

**Article 10.** Resource Tax shall be collected by the tax authorities.

**Article 11.** The units purchasing untaxed mineral products shall be the Resource Tax withholding agents.

**Article 12.** The Resource Tax payable by taxpayers shall be paid to the local competent tax authorities where the taxable products are exploited or produced. For taxpayers exploiting or producing taxable products within the boundaries of their own provinces, autonomous regions and municipalities directly under the Central Government, any adjustments in the tax payment location shall be determined by the tax authorities of the provinces, autonomous regions and municipalities directly under the Central Government.

**Article 13.** The assessable period for taxpayers shall be one day, three days, five days, ten days, fifteen days or one month to be determined by the competent tax authorities according to the actual circumstances; tax that cannot be assessed in regular periods may be assessed on a transaction-by-transaction basis.

Taxpayers that adopt one month as an assessable period shall report and pay tax within ten days following the end of the period. If an assessable period of one day, three days, five days, ten days or fifteen days is adopted, the tax shall be prepaid within five days following the end of the period and a monthly return shall be filed with any balance of tax due settled within ten days from the first day of the following month.

The tax payment deadlines for withholding agents shall be determined with reference to the stipulations of the above two paragraphs.

**Article 14.** The collection and administration of Resource Tax shall be conducted in accordance with the relevant provisions of the Law of the People's Republic of China on Administration of Tax Collection and relevant provisions of these Regulations.

**Article 15.** The Ministry of Finance shall be responsible for the interpretation of these Regulations and for the formulation of the rules for the implementation of these Regulations.

**Article 16.** These Regulations shall enter into force as of January 1, 1994. The Regulations (Draft) of the People's Republic of China on Resource Tax and the Regulations (Draft) of the People's Republic of China on Salt Tax promulgated by the State Council on September 18, 1984 shall be repealed simultaneously.

Attachment:

### **Resource Tax Taxable Items and Tax Amount Range Table**

Taxable Items Tax

Amount Range

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

1. Crude oil 8-30 yuan/ton
2. Natural gas 2-15 yuan/1,000 m<sup>3</sup>
3. Coal 0.3-5 yuan/ton
4. Other non-metal ores 0.5-20 yuan/ton or ml
5. Ferrous metal ores 2-30 yuan/ton
6. Non-ferrous metal ores 0.4-30 yuan/ton
7. Salt

Solid salt 10-60 yuan/ton

Liquid salt 2-10 yuan/ton

Promulgated by The State Council on 1993-12-25

### **Regulations for the Collection and Administration of Mineral Resources Compensation Fee**

Released by the State Council on 27 February 1994 - Document number 150

*Unofficial translation*

#### **Article 1**

For purposes of ensuring and promoting the exploration, protection and rational development of mineral resources and safeguarding the State's property rights and interests to mineral resources, and in accordance with the relevant provisions of the Mineral Resources Law of the People's Republic of China, these Provisions are formulated.

#### **Article 2**

The mining of mineral resources in the territory of the People's Republic of China and within other sea areas under its jurisdiction shall be subject to the mineral resources compensation in accordance with these Provisions. Where laws and administrative regulations provide otherwise, these provisions shall apply.

#### **Article 3**

The mineral resources compensation shall be computed and collected at a certain ratio of the sales revenue of mineral products. The mineral resources compensation paid by enterprises shall be included in the administration fees.

In the case where a concessioner holding the mining license processes mineral products by itself, its sales revenue shall be computed in accordance with the prices fixed by the State; if the State does not fix the prices, its sales revenue shall be computed in accordance with the average price of mineral products on the local market at the time of collection.

In the case where a concessioner sells mineral products out of the territory, its sales revenue shall be computed in accordance with the prevailing sales price on the international market.

The expression "mineral products" as employed in these Provisions means products which are no longer in their natural state after being extracted or mined and separated from mineral resources.

#### **Article 4**

Concessioners shall pay the mineral resources compensation.

The mineral resources compensation shall be settled in the currency used in selling mineral products or, if the mineral products are processed by concessioners themselves, shall be settled in the currency used in selling end products.

#### **Article 5**

The mineral resources compensation shall be computed in accordance with the following formulas:

The amount of mineral resources compensation to be collected = sales revenue of mineral products × compensation rate × coefficient of mining recovery rate

where,

the coefficient of mining recovery rate =

approved mining recovery rate

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actual mining recovery rate

The approved mining recovery rate shall be the rate prescribed in the mine design that has been

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

approved in accordance with the relevant regulations of the State. In the case where a mining enterprise, in accordance with the relevant regulations of the State, is not required to prescribe the mine design in addition to the mining plan, the mining recovery rate shall be approved by the administrative department in charge of geology and mineral resources of the local people's government at or above the county level together with other relevant departments at the same level.

In the case of those minerals whose mineral resources compensation cannot be computed in the formulas provided for in paragraphs 1 and 2 of this Article, the competent department of geology and mineral resources of the State Council shall provide other formulas together with the department of finance of the State Council.

### **Article 6**

The mineral resources compensation shall be collected at the rates prescribed in the appendix of these Provisions.

Any adjustment of the mineral resources compensation rates shall be decided jointly by the State Council's departments in charge of finance, geology and mineral resources and planning, and submitted it to the State Council for approval before implementation.

### **Article 7**

Competent departments of geology and mineral resources shall, together with departments of finance, collect the mineral resources compensation.

In the case where a mining district is within a county-level administrative region, the administrative department of geology and mineral resources of the people's government at the county level in the place where the mining district locates shall be responsible for collecting the mineral resources compensation.

In the case where a mining district extends across more than one administrative region at or above the county level, the administrative department of geology and mineral resources of the people's government at the next higher level of all the administrative regions involved shall be responsible for collecting the mineral resources compensation.

In the case where a mining district extends across more than one provincial administrative region, or is within the territorial seas of the People's Republic of China or other sea areas under its jurisdiction, the competent department of geology and mineral resources of the people's government at the provincial level, authorized by the competent department of geology and mineral resources of the State Council, shall be responsible for collecting the mineral resources compensation.

### **Article 8**

A concessioner shall pay the mineral resources compensation for the first half of each year on or before July 31 of the year and for the second half of the year on or before January 31 of the following year.

A concessioner desiring to suspend or terminate the mining activities shall settle and pay the mineral resources compensation.

### **Article 9**

At the time of paying the mineral resources compensation, a concessioner shall submit such materials as the mineral, output, sales volume, sales price, actual mining recovery rate and others of mineral products he mined.

### **Article 10**

The mineral resources compensation collected shall be timely and fully turned in to the respective treasuries in accordance with the distribution ratio between the Central Government and provinces, autonomous regions or municipalities directly under the Central Government set forth in the following paragraph, and shall not be settled again at the end of the year.

The distribution ratio of the mineral resources compensation between the Central Government and provinces or municipalities directly under the Central Government shall be 5:5; and that between the Central Government and autonomous regions shall be 4:6.

### **Article 11**

The mineral resources compensation shall be included in the State's budget, specially managed and mainly used for mineral resources exploration.

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

The State Council's departments in charge of finance, geology and mineral resources and planning shall jointly formulate the concrete measures for the use and management of the mineral resources compensation received by the Central Government.

The people's government of the province, autonomous region or municipality directly under the Central Government shall formulate the concrete measures for the use and management of the mineral resources compensation it received.

### **Article 12**

With approval of departments in charge of geology and mineral resources and finance of the people's government at the provincial level, a concessioner may be exempted from the mineral resources compensation under one of the following circumstances:

1. recovering mineral products from barren rock (waste rock);
2. with approval, mining non-security left-over ore bodies of closed mines in accordance with the relevant regulations of the State; or
3. other circumstances prescribed by the competent department of geology and mineral resources of the State Council together with the department of finance of the State Council.

### **Article 13**

With approval of departments in charge of geology and mineral resources and finance of the people's government at the provincial level, the mineral resources compensation may be reduced under one of the following circumstances:

1. recovering the mineral products from tailings;
2. mining the low grade mineral resources that are below the industrial grade or whose reserves have not been calculated;
3. mining according to law the mineral resources under waters, buildings, or vital communication lines;
4. having policy loss as a result of carrying out the State-fixed prices; or
5. other circumstances prescribed by the competent department of geology and mineral resources of the State Council together with the department of finance of the State Council.

Where the mineral resources compensation to be reduced for a concessioner exceeds 50% of the amount of the mineral resources compensation payable, approval of the people's government at the provincial level shall be obtained.

Approval relating to reduction of the mineral resources compensation shall be reported both to the competent department of geology and mineral resources of the State Council and the department of finance of the State Council for the record.

### **Article 14**

In the case where a concessioner fails to pay the mineral resources compensation in full within the period of time specified, the collection authority shall order him to make payment within a given limit of time and impose thereon an overdue fine of 0.2% per day on the amount in arrears, counting from the day on which the payment becomes overdue.

If the concessioner fails to respond in accordance with the provisions of the preceding paragraph, the collection authority shall impose thereon a fine not exceeding three times the amount of the compensation payable. If the circumstances are serious, the original issuing authority shall revoke his mining license.

### **Article 15**

In the case where a concessioner fails to pay or underpays the mineral resources compensation by means of misrepresenting the minerals, concealing the output, sales volume, or misrepresenting the selling prices or actual mining recovery rate, the collection authority shall pursue the payment of the compensation payable and impose thereon a fine not exceeding five times the amount of the compensation payable; if the circumstances are serious, the original issuing authority shall revoke his mining license.

### **Article 16**

In the case where a concessioner fails to submit the relevant materials in accordance with Article 9 of these Provisions, the collection authority shall order him to submit within a given limit of time; if the concessioner fails to respond within the given limit of time, the collection authority shall impose thereon a fine not exceeding 5,000 yuan; and in case the concessioner still fails to submit, the original issuing authority may revoke his mining license.

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

**Article 17**

The fines and overdue fines paid by concessioners in accordance with these Provisions shall be turned in to the State Treasury.

**Article 18**

A party concerned disagreeing with the decision on administrative penalty may, within 15 days following the date of receipt of the notification on the penalty, apply for reconsideration to the authority at the next higher level than that which made the decision; or the party may, within 15 days following the date of receipt of the notification on the penalty, bring directly an action before a people's court.

In the event of the party concerned failing both to apply for reconsideration or to bring an action before a people's court and to comply with the penalty decision within the specified period of time, the authority which made the decision on the penalty may apply to the people's court for enforcement.

**Article 19**

Where the contents of any local regulations or local people's governments' rules or administrative documents, existed before the promulgation of these Provisions, are in conflict with these Provisions, the latter shall prevail.

**Article 20**

People's governments of provinces, autonomous regions and municipalities directly under the Central Government may, in accordance with these Provisions, formulate measures for the implementation thereof.

**Article 21**

The Ministry of Geology and Mineral Resources shall be responsible for the interpretation of these Provisions.

**Article 22**

These Provisions shall enter into force on April 1, 1994.

**Appendix:**

Table for Mineral Resources Compensation Rates

<b>Mineral</b>	<b>Rate ( % )</b>
petroleum	1
natural gas	1
coal, coal-related gas	1
uranium, thorium	3
stone coal, oil sand	1
natural bitumen	2
geothermal resources	3
oil shale	2
iron, manganese, chromium, vanadium, titanium	2
copper, lead, zinc bauxite, nickel, cobalt tungsten, tin, bismuth molybdenum, mercury antimony, magnesium	2
gold, silver, platinum, palladium, ruthenium, osmium, iridium, rhodium	4
niobium, tantalum, beryllium, lithium, zirconium, strontium, rubidium, cesium	3
lanthanum, cerium, praseodymium, neodymium, samarium, europium, yttrium, gadolinium, terbium dysprosium, holmium, erbium, thulium, ytterbium, lutetium	3
ion-type rare earths	4
scandium, germanium, gallium, indium, thallium, hafnium, rhenium, cadmium, selenium, tellurium,	3
gemstone, jade, gem diamond	4

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

graphite, phosphorus, natural sulphur, pyrite, sylvite, boron, crystal (piezoelectric crystal, smelting crystal, optical crystal, craft crystal), corundum, kyanite, sillimanite, andalusite, tabular spar, nitratite, talc, asbestos, crocidolite, tabular spar, nitratite, talc, asbestos, crocidolite, mica, feldspar, garnet, pyrophyllite, diopside, tremolite, vermiculite, zeolite, alumstone, mirabilite (including glauberite) diamond, gypsum, anhydrite, barite, witherite, natural alkali, calcite, Iceland spar, magnesite, fluorite (including common fluorite and optical fluorite), topaz, tourmaline, agate, mineral pigments (ochre, pigment loess), limestone (for use in calcium carbide, manufactured soda, fertilizers, flux, glass, cement, construction stone, mortar, and facing), marl, chalk, rock containing potassium, dolomite (for use in metallurgy, fertilizers, glass, and construction), quartz (for use in metallurgy, glass, and fertilizers), sandstone (for use in metallurgy, glass, or as cement ingredient, or for use in brick, fertilizers, casting molds, and ceramics), natural quartz sand (for use in glass, casting molds, construction, or as cement ingredient or standard sand in cement, or for use in bricks), vein quartz (for use in metallurgy and glass), powdered quartz, natural oilstone, potassium-bearing shale, diatomite, shale (including ceramsite shale, shale used for bricks, and shale used as cement ingredient), kaolin, ceramic clay, refractory clay, clay for convexo-concave rod, sepiolite clay, illite clay, rectorite clay, bentonite, iron alum, miscellaneous clays (including clay for use in casting molds, brick, and ceramsite, clay used as cement ingredient, red clay used as cement ingredient, yellow clay used as cement ingredient, mudstone used as cement ingredient, and insulating clays), peridotite (for use in fertilizers and construction), serpentine (for use in fertilizers, flux, and facings), basalt (for use in stone casting and asbestos), diabase (for use in cement, stone casting, facings, and construction), andesite (including andesite for use in facings, andesite for use in construction, and andesite porphyrite for use in cement mixers), diorite (for use in cement mixers and construction), granite (for use in construction and facings), medical stone, perlite, obsidian, pitch stone, pumice stone, trachyte (for use in cement and stone casting), nepheline syenite, tuff (for use in glass, cement, and construction), volcanic ash, volcanic slag, marble (for use as facing, and construction, cement, and glass), slate (for use as facing and cement ingredient), gneiss, amphibole, peat, magnesium salt, iodine, bromium, arsenium	2
lake salt, rock salt, natural brine	0.5
carbon dioxide, hydrogen sulphide, helium, radon,	3
mineral spring water	4
groundwater ---The rate and measures for collection administration shall be formulated separately by the State Council	

## India

### 1. Summary

Mineral products are exempted from excise duty under the provision of the Central Excise and Salt Act 1994 and of the Excise Tariff Act 1985. However, royalties are levied under **Section 9 (1) of the Mines and Minerals (Regulation and Development) Act N.67 of 1957 as amended**. The **Second Schedule** of this Act contains the rates of royalty in respect of minerals applicable to all states and union territories except for the State of West Bengal where the royalty rates remain the same as specified in revision GSR 458 (E) dated 5 May 1987. A large variety of royalty rates for different minerals are levied on either an ad-valorem or on a unit basis.

Section 9 (3) of the Act empowers the Central Government to enhance or reduce the royalty rates in respect of any mineral by notification in the Official Gazette. The Act prevents the Central Government from enhancing the rate of royalty in respect of any mineral (except for coal) more than once during any period of 3 years. The latest amendment was **GSR N. 677 (E) dated 14 October 2004**.

The Act is supported by “**Guidelines for computing royalty on minerals on ad-valorem basis**” issued by the Department of Mines.

Coal royalties, by contrast, were set in 1971 for the period 1971-2002 and underwent their last revision on 15 March 2001 (for lignite only) and for other coals on 16 August 2002 (GSR 572 (E)). These revisions did not apply to the State of West Bengal, which still retains rates set in 1981 because royalties are levied in addition to state coal cesses, which are not applied in other states.

### 2. Extracts from source legislation

#### **MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT, 1957 (No. 67 of 1957) (As amended up to 20th December, 1999) Sections 9 (1) to (3), 9 1A (10) to (2), 25 (1) to (2) and 26 (1) to (3)**

##### **Royalties in respect of mining lease**

9. (1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.
- (2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.
- (2A) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workman does not exceed one-third of a tonne per month.
- (3) The Central Government may, by notification in the Official Gazette amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be



payable in respect of any mineral with effect from such date as may be specified in the notification:

Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years.

**Dead rent to be paid by the lessee**

9A (1) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall notwithstanding anything contained in the instrument of lease or in any other law for the time being in force, pay to the State Government, every year, dead rent at such rate as may be specified, for the time being, in the Third Schedule, for all the areas included in the instrument of lease:

Provided that where the holder of such mining lease becomes liable, under section 9, to pay royalty for any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area, he shall be liable to pay either such royalty, or the dead rent in respect of that area, whichever is greater. ...

**MISCELLANEOUS**

**Recovery of certain sums as arrears of land revenue.**

25 (1) Any rent, royalty, tax, fee or other sum due to the Government under this Act or the rules made thereunder or under the terms and conditions of any [reconnaissance permit, prospecting licence or mining lease] may, on a certificate of such officer as may be specified by the State Government in this behalf by general or special order, be recovered in the same manner as an arrear of land revenue.

(2) Any rent, royalty, tax, fee or other sum due to the Government either under this Act or any rule made thereunder or under the terms and conditions of any [reconnaissance permit, prospecting licence or mining lease] may, on a certificate of such officer as may be specified by the State Government in this behalf by general or special order, be recovered in the same manner as if it were an arrear of land revenue and every such sum which becomes due to the Government after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, together with the interest due thereon shall be a first charge on the assets of the holder of the [reconnaissance permit, prospecting licence or mining lease], as the case may be.

**GSR N. 677 (E) – Dated 14 October 2004 – AMENDMENTS TO THE SECOND SCHEDULE OF MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT, 1957 (No. 67 of 1957)**

G.S.R..677(E).- In exercise of the powers conferred by sub-section (3) of section 9 of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), the Central Government hereby makes with immediate effect, the following further amendments to the Second Schedule to the said Act, namely :-

In the Mines and Minerals (Development and Regulation) Act, 1957, for the Second Schedule, the following Schedule shall be substituted, namely :-

**"THE SECOND SCHEDULE**

(See section 9)

**RATES OF ROYALTY IN RESPECT OF MINERALS AT ITEM 1 TO 10 , 12 TO 38 AND 40 TO 51 APPLICABLE IN ALL STATES AND UNION TERRITORIES EXCEPT THE STATE OF WEST BENGAL.**

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

1. Agate	Ten percent of sale price on <i>ad valorem</i> basis.
2. Apatite and Rock Phosphate (i) Apatite (ii) Rock Phosphate (a) above 25 per cent P <sub>2</sub> O <sub>5</sub> (b) up to 25 per cent P <sub>2</sub> O <sub>5</sub>	Five percent of sale price on <i>ad valorem</i> basis. Eleven per cent of sale price on <i>ad valorem</i> basis. Five per cent of sale price on <i>ad valorem</i> basis.
3. Asbestos (a) Chrysotile (b) Amphibole	Eight hundred rupees per tonne. Forty five rupees per tonne.
4. Barytes	Five and half per cent of sale price on <i>ad valorem</i> basis.
5. Bauxite and Laterite	(a) Zero point four zero percent of London Metal Exchange Aluminium metal price chargeable on the contained aluminium metal in ore produced for those despatched for use in alumina and aluminium metal extraction. (b) Twenty percent of sale price on <i>ad valorem</i> basis for those despatched for use other than alumina and aluminium metal extraction and for export
6. Brown Ilmenite (Leucoxene), Ilmenite, Rutile and Zircon	Two per cent of sale price on <i>ad valorem</i> basis.
7. Cadmium	Ten per cent of sale price on <i>ad valorem</i> basis.
8. Calcite	Fifteen per cent of sale price on <i>ad valorem</i> basis.
9. China clay/Kaolin : (including ball clay, white shale and white clay) (a) Crude (b) Processed (including washed)	Twenty three rupees per tonne. Eighty five rupees per tonne.
10. Chromite	Seven and half per cent of sale price on <i>ad valorem</i> basis.
11. Coal (including Lignite)	*
12. Copper	Three point two per cent of London Metal Exchange Copper metal price chargeable on the contained copper metal in ore produced.
13. Corundum	Ten per cent of sale price on <i>ad valorem</i> basis.
14. Diamond	Ten per cent of sale price on <i>ad valorem</i> basis.
15. Dolomite	Forty five rupees per tonne.
16. Felspar	Ten per cent of sale price on <i>ad valorem</i> basis.

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

17. Fire Clay Including plastic, pipe, lithomargic and natural pozzolanic clay)	Twelve per cent of sale price on <i>ad valorem</i> basis.
18. Fluorspar (also called fluorite)	Five per cent of sale price on <i>ad valorem</i> basis.
19. Garnet : (a) Abrasive (b) Gem	Three per cent of sale price on <i>ad valorem</i> basis. Ten per cent of sale price on <i>ad valorem</i> basis.
20. Gold : (a) Primary  (b) By-product gold	One and half per cent of London Bullion Market Association Price (commonly referred to as "London Price") chargeable on the contained gold metal in ore produced. Two and a half per cent of London Bullion Market Association Price (commonly referred to as "London Price") chargeable on the by product gold metal actually produced.
21. Graphite (a) with 80 per cent or more fixed carbon (b) with 40 per cent or more fixed carbon but less than 80 percent fixed carbon (c) with less than 40 percent fixed carbon	Two hundred and twenty five rupees per tonne  One hundred and thirty rupees per tonne  Fifty rupees per tonne.
22. Gypsum	Twenty per cent of sale price on <i>ad valorem</i> basis.
23. Iron ore: (i) Lumps: (a) with 65 percent Fe content or more (b) with 62 percent Fe content or more but less than 65 per cent Fe content (c) with less than 62 per cent Fe content (ii) Fines: (a) With 65 per cent Fe content or more (b) With 62 per cent Fe content or more but less than 65 per cent Fe content (c) with less than 62 per cent Fe content (iii) Concentrates prepared by beneficiation and/or concentration of low grade ore containing 40 per cent Fe or less	Twenty seven rupees per tonne.  Sixteen rupees per tonne.  Eleven rupees per tonne.  Nineteen rupees per tonne.  Eleven rupees per tonne.  Eight rupees per tonne.  Four rupees per tonne.
24. Kyanite	Ten per cent of sale price on <i>ad valorem</i> basis.

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

25. Lead	Five per cent of London Metal Exchange lead metal price chargeable on the contained lead metal in ore produced
26. Limestone (a) L.D. Grade (less than one and half per cent silica content) (b) Others	Fifty five rupees per tonne.  Forty five rupees per tonne.
27. Lime Kankar	Forty five rupees per tonne.
28. Limeshell	Forty five rupees per tonne.
29. Magnesite	Three per cent of sale price on <i>ad valorem</i> basis.
30. Manganese Ore (a) Ore of all grades (b) Concentrates	Three per cent of sale price on <i>ad valorem</i> basis. One per cent of sale price on <i>ad valorem</i> basis.
31. Crude Mica, Waste Mica and Scrap Mica	Four per cent of sale price on <i>ad valorem</i> basis.
32. Monazite	One hundred and twenty five rupees per tonne.
33. Nickel	Zero point one two percent of London Metal Exchange nickel metal price chargeable on contained nickel metal in ore produced.
34. Ochre	Fifteen rupees per tonne.
35. Pyrites	Two per cent of sale price on <i>ad valorem</i> basis.
36. Pyrophyllite	Fifteen per cent of sale price on <i>ad valorem</i> basis
37. Quartz, Silica sand, Moulding sand and Quartzite	Twenty rupees per tonne.
38. Ruby	Ten per cent of sale price on <i>ad valorem</i> basis.
39. Sand for stowing	**
40. Selenite	Ten per cent of sale price on <i>ad valorem</i> basis.
41. Sillimanite	Two and half per cent of sale price on <i>ad valorem</i> basis.
42. Silver : (a) By -product (b) Primary silver	Five per cent of London Metal Exchange Price chargeable on by product silver metal actually produced. Five per cent of London Metal Exchange silver metal price chargeable on the contained silver metal in ore produced.
43. Slate	Forty five rupees per tonne.
44. Talc, Steatite and Soapstone	Fifteen per cent of sale price on <i>ad valorem</i> basis.

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

45. Tin	Five per cent of London Metal Exchange tin metal price chargeable on the contained tin metal in ore produced.
46. Tungsten	Twenty rupees per unit per cent of contained WO <sub>3</sub> per tonne of ore and on pro rata basis.
47. Uranium	Five rupees (for dry ore with U <sub>3</sub> O <sub>8</sub> content of zero point zero five per cent with pro rata increase/ decrease at the rate of one rupee and fifty paise per metric tonne of ore for zero point zero one per cent increase/decrease ).
48. Vermiculite	Three per cent of sale price on <i>ad valorem</i> basis.
49. Wollastonite	Ten per cent of sale price on <i>ad valorem</i> basis.
50. Zinc	Six point six per cent of London Metal Exchange zinc metal price on <i>ad valorem</i> basis chargeable on contained zinc metal in ore produced.
51. All other minerals not here-in-before specified [Clay (Others), Chalk, Diaspore, Dunite, Felsite, Fuschite, Quartzite, Jasper, Perlite, Rock Salt, Shale, Pyroxenite, etc.]	Ten per cent of sale price on <i>ad valorem</i> basis.

\*. Rates of royalty in respect of item No. 11 relating to Coal including Lignite as revised vide notification number G.S.R. 572 (E), dated the 16th August, 2002, of the Government of India in the Department of Coal shall remain in force until revised through a separate notification by the Department of Coal.

\*\* . Rates of royalty in respect of item No. 39 relating to Sand For Stowing as revised vide notification number G.S.R. 214(E), dated the 11th April, 1997, will remain in force until revised through a separate notification by the Department of Coal.

**Note :** The rates of royalty for the State of West Bengal in respect of the minerals except the mineral specified against item No. 11 shall remain the same as specified in the notification of the Government of India in the Ministry of Steel and Mines (Department of Mines) number G.S.R. 458 (E), dated the 5th May, 1987.”

**GSR n. 572 (E) dated 16 August 2002 - ROYALTY RATES ON COAL AND LIGNITE (As issued by the Minister for Coal)**

**LEGAL PROVISIONS ON ROYALTY**

Royalty is an amount payable by a lessee to the lessor for removing or consuming a mineral. Section 9 (1) of the Mines and Minerals (Development & Regulation) Act requires the holder of a mining lease or his agent, manager, employee, contractor or sub-lessee to pay royalty in respect of any mineral removed or consumed from the leased area at the rate specified in the Second Schedule of the Act. Section 9(3) of the MMRD Act empowers the Central Government to enhance or reduce the royalty rates in respect of any mineral by notification in the Official Gazette with effect from such date as may be specified in the notification. This revision is done by amending the particular entry of the royalty rate for the respective mineral in the Second Schedule of the Act. The proviso to Section 9(3) of the Act prevents the Central Government from enhancing the rate of royalty in respect of any mineral more than once during any period of three years. The Act also does not mandate that royalty on coal should be revised after every three years.

**COAL ROYALTY RATES DURING 1971-2002**

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

The coal royalty rates fixed in 1971 ranged from Rs. 1.50 per tonne for low quality coal to Rs. 2 per tonne for high quality coal. The royalty rates on coal were subsequently revised in July, 1975, February, 1981, August, 1991, October, 1994 and August, 2002. A comparative statement of coal royalty rates fixed on 13.2.81, 1.8.91, 11.10.94 and the existing royalty rates fixed on 16.08.02 is given below:-

(Rs. per tonne)

Coal Group	Coal Royalty Rates w.e.f. 13.2.81	Coal Royalty Rates w.e.f. 1.8.91	Coal Royalty rates w.e.f. 11.10.94	Coal Royalty rates w.e.f. 16.8.2002
Group-I Coking Coal SG-I, II WG-I	7.00	150.00	195.00	250.00
Group-II Coking Coal WG-II, III Non-coking A, B Semi-coking Gr.-I Semi-coking Gr.-II	6.50	120.00	135.00	165.00
Group-III Coking Coal WG-IV, Non-coking-C	5.50	75.00	95.00	115.00
Group-IV Non-coking D, E	4.50	45.00	70.00	85.00
Group-V Non-coking F, G	2.50	25.00	50.00	65.00
Group-VI Coal produced in Andhra Pradesh	5.00	70.00	75.00	90.00

(\* The 1981 coal royalty rates are still continuing for the State of West Bengal on the ground that the Government of West Bengal is continuing to levy cesses on coal which have been withdrawn by other State Governments.)

Royalty rate on lignite was revised from Rs.2.50 per tonne to Rs.50/- per tonne w.e.f. 15-3-2001.

### **GUIDELINES FOR COMPUTING ROYALTY ON MINERALS ON AD-VALOREM BASIS**

**(Issued by the Department of Mines in accordance with the Mines and Minerals (Development and Regulation) Act 1957 No. 67)**

1. In the earlier system, ad-valorem basis for computing royalty was applicable to diamond, precious and semi-precious stones and a group of unspecified minerals and in all the cases it was linked to sale price at the pit's mouth. In case of diamond and precious and semi-precious stones, the price is realised in India on the basis of auction at the mine site and so the computation of the royalty on this basis was simple. In case of the group of unspecified minerals also, no complication seems to have arisen.
2. This time, however, the scope of ad-valorem basis of royalty has been extended to a total of 17 minerals besides the group of unspecified minerals. Moreover, presently, the ad-valorem royalty rate has been linked, by and large, to the actual sale price realisation as submitted by the mine-owners in their sale tax returns and the same is to be computed on a quarterly basis. But there are some special cases also. Since all these concepts are new in India, definite guidelines for computing royalty on this basis are necessary.
3. The Central Sales Tax Act, 1956, defines "Sale Price" as the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

the practice prevailing in this trade, but inclusive of any sum charged for anything done by the dealer in spite of the goods at the time of or before the delivery thereof other than the cost of the freight or delivery or the cost of installation in cases where such cost is separately charged. Thus, it is obvious that the sale price realised by any mine-owner should exclude the cost of freight and delivery. In the pro-forma of return under Central Sales Tax Rules, 1957, there is provision of reporting the gross turnover of sales and the costs of freight and delivery separately. So, for computation of royalty wherever the domestic sale price is to be based on this figure of net sale price (i.e., the gross sale price less cost of freight and delivery) should be considered.

4. In all, there will be five cases and for each of these cases definite guidelines will be necessary.

The casewise guidelines are given as follows :

Case 1 : For minerals sold in the domestic market by the mine owners

The sale price actually realised less the cost of freight and delivery as submitted by the mine owners in their sales tax returns under Central Sales Tax Act should be considered for computing ad-valorem royalty. The periodicity of computation of royalty may vary from State to State from a minimum of one month to a maximum of one year according to the periodicity of submission of sales tax returns as stipulated in the Sales Tax Acts in force in different States, and such computations of royalty should be made on completion of the period covered by sales tax returns. It should be ensured by the royalty collecting agency of the State Governments and the mine owners that the grades of the minerals recorded by the mine owners in their sales tax returns are exactly the same as those listed in the Second Schedule of the MMRD Act and currently in force.

Case 2 : For minerals exported by the mine owner directly.

In case of direct export by the mine owners, the sale value for the purpose of royalty shall be the FOB price realised less transportation charges from the mine to the port (inclusive of loading and unloading of ore and minerals) as well as port charges, insurance and other incidental charges involved, if any. For this purpose, mine owners should prepare invoices/bills indicating the FOB price and each of the other charges separately. In this case the royalty should be computed on a quarterly basis, and all the invoices/bills for the previous quarter should be considered. Further, both the royalty collecting agency of the State Governments and the mine owners should ensure that the grades of minerals recorded in the invoices/bills are the same as given in the Second Schedule of the MMRD Act and currently in force.

Case-3 : For gold and silver.

Gold and silver are not traded in ore form and instead are traded only in metal form. However, in India, these metals are recovered within the same State where ore is mined. Moreover, these metals in India are sold in domestic market only. So the guidelines for computation of ad-valorem royalty linked to the metal sale price will be same as given in Case-1.

Case-4 : For copper, lead and zinc.

These are exceptional in the sense that all the mines of these ores are captive and hence ore is not tradeable whereas at the same time the tradeable products namely the metals of copper, lead and zinc may not be recovered within the same States where the ores are produced. On the other hand, however, the concentrates are produced within the same States where the ores are mined. The ad valorem royalty has, therefore, been linked to both the quantities of concentrates produced and the LME metal price. In this case royalty will be charged on the quantities of concentrate produced during the quarter and linked to the average LME price for the metal during the same quarter. For the average quarterly LME prices data, either of the following two sources should be referred to :

(i) Non ferrous report : Minerals and Metals Review, 28/30, Anantwadi, Post Box 2749, Bombay-400 002.

(ii) Metal Bulletin, 16, Lower Marsh, London, SE-17 RJ

Case-5: For minerals produced in captive mines (other than copper, lead, zinc, gold and silver) and those not actually sold.

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

In India, the minerals included in this group, are produced from captive as well as from non-captive mines. Besides, there may be some cases of stock transfer on commission basis. For computation of ad valorem royalty for the minerals produced from captive mines, the average sale price realised from the same grade of mineral by the non captive mines during the same quarter, in the same district in which the mine is situated, failing which, in the entire State failing which on all India basis should be considered for royalty purposes. As long as non captive mines of the same minerals exist within the same district or State, the royalty collecting agency of the State Governments should calculate the weighted average values of the realised net sale prices of the products of the non captive mines based on the same Sales Tax returns as considered for Case-1. Presently, there is no mineral, for the captive mine of which it will be required to consider the all India average. In the event of such a case arising, however, the exercise should be carried out by Indian Bureau of Mines and communicated to the State Governments and the concerned mine owners. The exercise should be carried out immediately on completion of the period for which royalty is to be computed. The same methodology can be adopted for computation of ad valorem royalty in all other cases where the minerals are not actually sold.

5. To facilitate computation and collection of royalty, the mine owners should send a copy of their sales tax returns, invoices/bills, etc. pertaining to sale of minerals or mineral based products, to the royalty-collecting agency of the concerned State Governments.
6. The period to be covered for computation of royalty in the cases 1,3 and 5 should be decided by the State Governments according to the periodicity of submission of sales tax returns as stipulated in their Sales Tax Acts. However, the State Governments may, if necessary, introduce system of advance payments for this purpose. The State Governments may also invoke any additional condition in accordance with the Mineral Concession Rules in force.



## Indonesia

### 1. Summary

The Indonesian mining law (**The Law on the Basic Provisions of Mining and its Implementing Regulations - N. 11/1967**) envisages the use of two forms of tenure:

- For Indonesian nationals and Indonesian companies only, except for Java where foreigners can also apply: the Kuasa Pertambangan (KP)
- For Indonesian companies at least partly owned by foreigners, with tenements in any part of Indonesia except Java:
  - For all mineral except coal, the Contract of Work (CoW) and
  - For coal, the Coal Contract of Work (CCoW).

A CoW covers all fiscal aspects including royalties arising from the contract area. There have been successive generations of CoWs. Being a *lex specialis*, i.e., senior to other legislation, a CoW guarantees stability of the fiscal regime applying to a project for the duration of the contract.

In the case of the current (7<sup>th</sup> generation) CoW the requirements for paying royalties and the mode of payment are set in **Section 2 of Article 13 (Taxes and Other Financial Obligations of the Company). Annex “F” – Royalty on Mineral Production (Mines and Energy Ministerial Decree N. 1166k/844/MPE/1992)** provides the royalty rates applicable to various minerals. Specific unit-based royalty rates are levied for different minerals. **Annex “G” – Implementing of Annex “F” (Based on Directorate General of Mines Decree N. 514K/844/DDJP/1992)** assists with interpretation and provides an example of how to calculate the royalty amount.

CCoWs are set under **Presidential Decree N. 75/1996** (regarding the main provisions of the work agreement on a coal mining undertaking). The relevant rate of ad-valorem royalty for coal of 13.5% of sale revenue and mode of payment are set by the **Decree of the Minister for Mines and Energy N. 680K/29/MPE/1997**.

In recent years the Indonesian government has embarked on a significant program of reform with the introduction of a number of laws designed to increase administrative decentralisation. Among these are:

- Law N. 22/199 (Regional administrations) whereby companies will no longer deal with the Central Government for a number of matters relating to royalty administration, but with the relevant Provincial Government (of which there are 26) and, more to the point, with several Regencies relevant to the project area out of a total of some 243 and some 86 municipal/city authorities across Indonesia. There is evidence of a clear and urgent need for institutional strengthening of these administrative structures.
- Law N. 25/1999 (Financial equilibrium) designed to address, among other things, rising dissatisfaction on the side of people living in mining areas with the redistribution of benefits derived from mining to their areas compared to Jakarta, which they perceive as “unfair”. Law N. 25/1999 envisages that state

receipt from natural resources including mining shall be distributed in the ratio of 20% for the Central Government and 80% to the region. The latter is to be split into 64% to the Regencies and 16% to the Provincial Government. To the extent that only 8 out of 26 provinces are rich in minerals, it is pertinent to wonder how the Central Government is to ensure that this legislation will not in the long-run result in politically unacceptable wealth differentials among different parts of Indonesia.

In addition, the Indonesian Government has been working for a while on re-drafting of a new general Mining Law and of the 8<sup>th</sup> generation CoW, the release of which is said to be imminent. According to the Indonesian daily Kompas (15 May 2000) Presidential Decree N. 13/2000 provides for significant increases in some royalty rates to apply to the 8<sup>th</sup> generation CoW. At the time of this report the government is considering the new mining law and is not approving any new CoWs, and thus, it is unknown what royalty approach may be applied in the future.

## **2. Extracts from source legislation**

### **1 LAW NO. 11 YEAR 1967 - THE LAW ON THE BASIC PROVISIONS OF MINING AND ITS IMPLEMENTING REGULATIONS**

#### **CHAPTER IX STATE LEVIES**

##### **Article 28.**

1. The holder of Mining Authorization is due to pay to the State land rent, royalties for exploration and/or exploitation and/or other payments related to the Mining Authorization concerned.
2. The State levies as referred to in paragraph (1) of this article are further regulated by Government Regulation.
3. The Governments of the Regions of the First and the Second Rank are entitled to receive a portion of such State revenues, the provisions of which are regulated by Government Regulation.

### **7th GENERATION CONTRACT OF WORK (CoW)**

#### **Article 13**

##### **TAXES AND OTHER FINANCIAL OBLIGATIONS OF THE COMPANY**

Subject to the provisions in this Agreement, the Company shall pay to the Government and fulfill its tax liabilities including its obligation as a tax withholder as hereinafter provided:

- (i) ...;
- (ii) Royalties in respect of the Company's production of Minerals;
- (iii) Corporate Income Tax in respect of income received or accrued by the Company; ...

The Company shall not be subject to any other taxes, duties, levies, contributions, charges or fees now or hereafter levied or imposed or approved by the Government other than those provided for in this Article and elsewhere in this Agreement.

1. ...

2. Royalties in respect of the Company's production of Minerals

- (i) The Company shall pay royalties in respect of the products (as defined in Annex "F" and detailed in Annex "G") from the Mining Area, to the extent that such products are products for which value according to general practice is paid or payable to the Company by a buyer. Royalties shall be paid in Rupiah or such other currency as may be mutually agreed and shall be paid on or before the last day of the month following each calendar quarter. Each payment shall be accompanied by a statement

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

showing in reasonable detail the basis of computation of royalties due in respect of the production of the Company during the preceding calendar quarter.

Royalties will be computed in accordance with the rates specified in Annex "F" as follows:

- a) the tonnage or quantity by weight used in the computation shall be based on the final product produced by the Company. In the case of concentrates or dore bullion, the quantity by weight of each mineral, and or metal subject to royalty shall be properly determined by internationally accepted assay methods,
  - b) the Government shall (upon written request by the Company) specify the royalty tariff in column 5 of Annex "F" for those minerals for which no tariff reference is given.
- (ii) The Company undertakes that any mining, processing or treatment of ore prior to domestic sale or export shipment by the Company shall be conducted in accordance with such generally accepted-international standards as are economically and technically feasible, and in accordance with such standards the Company undertakes to use all reasonable efforts to optimize the mining recovery of products from the ore, provided it is economically and technically feasible to do so, and shall submit evidence to the Department of compliance with this undertaking. Royalty shall be payable at the rates specified in Annex "F" on any industrial minerals separately quarried from the Contract Area by the Enterprise except for those industrial minerals (C minerals category) used for regional development. Any waste materials moved to allow operations to proceed or extracted in the course of mining and used by the Enterprise are exempted from such royalty.
- (iii) If in the opinion of the Government, the Company is failing without good cause to recover products at the recovery rate indicated in the feasibility study, it may give notice in writing to the Company. Within three (3) months of the receipt of this notice the Company shall:
- a) commence work to improve its mining method, treatment and processing facilities to the reasonable satisfaction of the Government. provided that the Company shall in no event be obliged to conduct mining, processing or treatment activities otherwise than as provided in Article 13.2 (ii);
  - b) submit to the Government evidence in justification of its performance in accordance with sub-paragraph (ii) of this Article 13 paragraph 2. In the event that the Government remains unsatisfied with the Company's performance in mining ore from the proven reserve and recovering products from the ore, the Government shall have the right to commission independent technical studies to determine a fair average recovery rate taking into account the nature of the proven reserve and the ore and the economic and technical feasibility of achieving increased recovery by the Company in accordance with sub-paragraph (ii) of this Article 13 paragraph 2. Such studies shall be carried out by internationally recognized consultants appointed by the Government and agreed to by the Company. In the event that the Government and the Company fail to agree on the appointment of the consultant, each party shall appoint one consultant. The two consultants shall the jointly appoint a third consultant. The results shall be determined by the findings of the majority in this event. The Government and the Company shall have the right to prepare submissions to the consultants. If the said consultants find that the performance of the Company's operations is not satisfactory, then the cost shall be borne by the Company. If it is found that me performance of the Company's obligations is satisfactory, then the cost shall be borne by the Government. If following the completion of such studies, the Company fails within a reasonable period to achieve the recovery rate indicated by the majority of such studies, the Government shall have the right if the Company is not then observing its undertaking in sub-paragraph (ii) of this Article 13 paragraph 2 to increase the royalty applicable to such products in proportion to the extent that recovery of such products by the Company falls short of the fair average rate indicated by such studies. But at no time shall the payment of such increased royalty free the Company from the obligation to observe its undertaking in sub-paragraph (ii) of this Article 13 paragraph 2.

### **Annex "F" - ROYALTY ON MINERAL PRODUCTION**

based on Mine and Energy Ministerial Decree No 1166.K/844/M.PE/1992 date September 12, 1992

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

No.	Mineral	Total production per calendar year	Unit	Royalty Tariff (US\$)	Explanation
1	2	3	4	5	6
1	Nickel ore (Ganierite)	<1250 ≥1250	Tonne	70.00/tonne 78.00/tonne	Metal
2	Nickel ore (Linonite) •	<750 ≥750	Tonne	62.00/tonne 63.00/tonne	Metal
3	Cobalt	<500 ≥500	Tonne	140.00/tonne 156.00/tonne	Metal
4	Tin	<50000 ≥50000	Tonne	59.00/tonne 64.00/tonne	Metal
5	Copper	<80000 ≥80000	Tonne	45.00/tonne 55.00/tonne	Metal
6	Lead	<6000 ≥6000	Tonne	17.00/tonne 18.00/tonne	Metal
7	Zinc	<4000 ≥4000	Tonne	12.00/tonne 12.50/tonne	Metal
8	Iron	<100000 ≥100000	Tonne	2.70/tonne 2.90/tonne	Metal
9	Gold	<2000 ≥2000	Kg	225.00/Kg 235.00/Kg	Metal
10	Silver	<25000 ≥25000	Kg	1.90/Kg 2.00/Kg	Metal
11	Platinum	<100 ≥100	Kg	35.50/Kg 38.50/Kg	Metal
12	Mercury	<500000 ≥500000	Kg	0.16/Kg 0.17/Kg	Metal
13	Antimony "	<100000 ≥100000	Kg	0.55/Kg 0.60/Kg	Metal
14	Bismuth	<1000 ≥1000	Kg	45.00/Kg 50.00/Kg	Metal
15	Wolframite	<12.5 ≥12.5	Tonne	0.30/Tonne 0.40/Tonne	Metal
16	Vanadium	<12.5 ≥12.5	Tonne	0.10/Tonne 0.15/Tonne	Metal
17	Molybdenum	<500 ≥500	Tonne	612.00/Tonne 624.00/Tonne	Metal
18	Titanium	<20000 ≥20000	1 Tonne	41.00/Tonne 42.00/Tonne	Metal
19	Chromite	<15000 ≥15000	Tonne	0.35/Tonhe : 0.45/Tonne	Concentrate
20	Monazite	<10000 ≥10000	Tonne	60.00/Tonne 65.00/Tonne	Concentrate
21	Xenotim	<100000 ≥100000	Tonne	80-00/Tonne 85.00/Tonne	Concentrate

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

22	Ilmenite	<12.5 ≥12.5	Tonne	0.60/Tonne 0.90/Tonne	Concentrate
23	Zircon	<12.5 ≥12,5	Tonne	17.50/Tomie 18.50/Toime	Concentrate
24	Rutile	<12.5 ≥12.5	Tonne	4.75/Tonne 5.50/Tonne	Concentrate
25	Iron Sand	<100000 ≥100000	Tonne	0.60/Tonne 0.70/Tonne	Concentrate
26	Sulfur	<5000 ≥5000	Tonne	2.10/Tonne 2.20/Tonne	Concentrate
27	Bauxite	<200000 ≥200000	Tonne	0.40/Tonne 0.50/Tonne	Ore
28	Manganese	<10000 ≥10000	Tonne	0.25/Tonne 0.35/Tonne	Ore
29	Natural/Rock Asphalt	<200000 ≥200000	Tonne	0.17/Tonne 0.20/Tonne	
30	Barite	<10000 ≥10000	Tonne	0.15/Tonne 0.25/Tonne	
31	Iodine	<500 ≥500	Tonne	83.00/Tonne 88.00/Tonne	
32	Beach Sand	<100000 ≥100000	Tonne	0.29/Tonne 0.30/Tonne	
33	Crystal Quartz	<10000 ≥10000	Tonne	0.70/Tonne 0.75/Tonne	
34	Pyrite •	<10000 ≥10000	Tonne	0.15/Tonne 0.20/Tonne	
35	Diamond*)			:	
36	Nitrate	<500000 ≥500000	Tonne	0.88/Tonne 0.90/Tonne	
37	Phosphates	<500000 ≥500000	Tonne	1.05/Tonne 1.08/Tonne	
38	Salite	<500000 ≥500000	Tonne	0.88/Tonne 0.90/Tonne	
39	Asbestos	<500000 ≥500000	Tonne	1.05/Tonne 1.08/Tonne	
40	Talc	<500000 ≥500000	Tonne	1.05/Torme 1.08/Tonne	
41	Mica	<500000 ≥500000	Tonne	1.05/Tonne 1.08/Tonne	
42	Magnesite	<500000 ≥500000	Tonne	1.05/Tonne 1.08/Tonne	
43	Graphite	<500000 ≥500000	Tonne	1.05/Tonne 1.08/Tonne	
44	site	<500000 ≥500000	Tonne	1.05/Tonne 1.08/Tonne	
45	Alum	<500000 ≥500000	Tonne	0.88/Tonne 0.90/Tonne	

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

46	Lensite	<500000 ≥500000	Tonne	1.05/Tonne 1.08/Tonne	
47	Ocher	<500000 ≥500000	Tonne	.0.70/Tonne 0.72/Tonne	
48	Quartz Sand	<500000 ≥500000	Tonne	0.70/Tonne 0.72/Tonne	
49	Kaolin	<500000 ≥500000	Tonne	0.70/Tonne 0.72/Tonne	
50	Feldspar	<500000 ≥500000	Tonne	0.70/Tonne 0.72/Tonne	
51	' Gips	<500000 ≥500000	Tonne	0.70/Tonne 0.72/Tonne	
52	• Bentonite	<500000 ≥500000	Tonne	0.70/Tonne 0.72/Tonne	
53	Pumice	<500000 ≥500000	Tonne	0.70/Tonne 0.72/Tonne	
54	Trass	<500000 ≥500000	Tonne	0.14/Tonne 0.16/Tonne	
55	Obsidian	<500000 ≥500000	Tonne	0.41/Tonne 0.42/Tonne	
56	Perlite	<500000 ≥500000	Tonne	0.41/Tonne 0.42/Tonne	
57	Diatomite Earth	<500000 ≥500000	i	0.70/Tonne 0.72/Tonne	
58	Fuller's Earth	<500000 &500000	Tonne	0.70/Tonne 0.72/Tonne	
59	Marbles	<500000 ≥500000	Tonne	0.70/Tonne 0.72/Tonne	
60	Flint	<500000 ≥500000	Tonne	0.14/Tonne 0.16/Tonne	
61	Limestone	<500000 ≥500000	Tonne	0.14/Tonne 0.16/Tonne	
62	Dolomite	<500000 ≥500000	Tonne	0.26/Tonne 0.28/Tonne	
63	Calcite	<500000 ≥500000	Tonne	0.26/Tonne 0.28/Tonne	
64	Granite :				
	a. Break/ Crush	<500000 ≥500000	Tonne Tonne	0.24/Tonne 0.26/Tonne	
	b. Block	<500000 < SS500000	Tonne Tonne	1.03/Tonne 1.05/Tonne	
65	Granite, Andesite. Basalt, Trachite (Building Material)	<500000 ≥500000	Tonne Tonne	0.26/T 0.28/T	

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

66	Clay ;				
	a. Fire Clay/Ball clay	<500000 ≥500000	Tonne Tonne	0.47/Tonne 0.48/Tonne	'*'
	b Building Material	<500000 ≥500000	Tonne Tonne	0.235/Tonne 0.240/Tonne	
67	Sand	<500000 ≥500000	Tonne Tonne	0.14/Tonne 0.16/Tonne	
68	Quartz, Gravel	<500000 ≥500000	Tonne Tonne	0.25/Tonne 0.30/Tonne	
.69	Zeolite	<500000 ≥500000	Tonne Tonne	0.70/Tonne 0.72/Tonne	
70	Gemstone		*	10%	
71	Semi Precious Stone	•	-	10%	

\*) pursuant to Mine and Energy Ministerial Decree N. 2338.K/844/M.PE/1994 date December 12, 1994.

## ANNEX “G” – THE IMPLEMENTING OF ANNEX F

### Based on Directorate General of Mines Decree No. 514, K/844/DDJP/1992 Dated December 28, 1992

In interpreting and implementing the royalty on Mineral Production (Mines and Energy Ministerial Decree No 1166. K/844/M, PE/1992), the column heading in ANNEX “F” are defined as follows:

Column 1. No.

provides a reference number for each of the various products that may be subject to the Royalty on Mineral Production.

Column 2. Product

identifies the elemental mineral constituent in the final mined and/or process product that is destined for sale by the Company, be it ore, mill concentrates, smelter matte or refined metal.

Column 3. Production

refers to the measured yield of final production of each product for sale by the Company. Total production is for the period of one calendar year.

Column 4. Unit

refers to the unit of production for each product for royalty computation. All are in metric weight measures (i.e., metric tons, kilograms), except carat for diamond.

Column 5. Royalty Tariff

is the rate, in \$US per unit of production, applicable to those contained metals, concentrates or ores (as specified in column 6) for which value according to general practice is paid or payable to the Company by a buyer, but excluding deleterious or poorly recoverable by-products of relatively low value, as determined from the Company’s production, shipping and sales record.

Column 6 Explanation

indicates whether the Royalty Tariff specified in Column 5 is applied to the metal content of the product or to the total concentrate or ore weight of the product. Further directions regarding the implementing and control of the Royalty of Mineral Productions are set forth in Article 13.2 of the Contract of Work.

Example of royalty calculations:

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

For annual production of 300,000 metric tons (t) of concentrate containing 35% copper (Cu), 15.55 grams per metric ton (g/t) of gold (Au) and 108.86 g/t silver (Ag), the Royalty on Mineral Production would be:

Cu metal content :  $0.35 \times 300,000 = 105,000$  t Cu.  
Royalty :  $(80,000 \times \text{US\$ } 45) + [(105,000 - 80,000) \times \text{US\$ } 55]$   
= US\$ 3,600,00 + US\$ 1,375,000  
= US\$ 4,975,000  
Au metal content :  $15.55 \times 300,000/1000 = 4,665$  kilograms Au  
Royalty :  $(2,000 \times \text{US\$ } 225) + [(4665 - 2000) \times \text{US\$ } 235]$   
= US\$ 450,000 + US\$ 626,275 = US\$ 1,076,275  
Ag metal content :  $108.86 \times 300,000/1000 = 32,658$  kg Ag  
Royalty :  $(25,000 \times \text{US\$ } 1.90) + [(32,658 - 25,000) \times \text{US\$ } 2.001]$   
= US\$ 47,500 + US\$ 15,316 = US\$ 62,816  
Total Royalty on such concentrate (containing Cu + Au + Ag) above = US\$6,114,091

### **Decree of the Minister of Mines and Energy No.: 680.K/29/M.PE/1997** Regarding The Implementation of Presidential Decree No. 75 of 1996 Regarding the Main Provisions of Contracts of Work for Coal Mining Undertakings

#### Chapter III Contractor's Rights and Obligations

##### **Article 7**

The Contractor's rights and obligations according to a Contract of Work and also those based on Presidential Decree no. 49 of 1981 and Presidential Decree no. 21 of 1993 are to be renegotiated with the Negotiation Team based on Presidential Decree no. 75 of 1996.

#### Chapter IV

Procedure of the Transfer and Utilization of the Government's Share of Funds

##### **Article 8**

1. As of 1 April 1997 the Contractors are obliged to deposit the Government's share of the coal production in the State Treasury's account with Bank Indonesia in cash at the FOB or sale point price or some other value determined by the Government according to the stipulations of Article 3 sub-article (2) of Presidential Decree no. 75 of 1996.
2. If a Contractor is producing low-grade coal and/or is producing coal through underground mining, the Contractor may apply based on the results of a feasibility study to the Minister or the Director General for reconsideration of the amount of the Government's share referred to in sub-article (1).
3. The share of production referred to in sub-article (1) is deposited 30 workdays at the latest after the transaction concerned has taken place.

##### **Article 9**

The procedure for depositing the Value Added Tax and the determining of the exploration/exploitation contribution (royalty) should take place according to the prevailing legislative rules.

### **DECREE OF THE PRESIDENT OF THE REPUBLIC OF INDONESIA** **Number 75 of 1996** **Regarding the Main Provisions of the Work Agreement on a Coal Mining** **Undertaking**

#### **Article 3**

1. A Private Contractor company is obliged to deliver 13.50% (thirteen and one half percent) of its coal production yield to the Government in cash at Free on Board price or at Sale Point price.
2. If the mining undertaking is carried out underground and or the coal produced is obviously of low quality, the amount of the production yield to be delivered to the Government as referred



## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

to in sub-article (1) may be considered for review based on the result of an assessment submitted by the Private Contractor company concerned.

3. The production yield referred to in sub-article (1) or sub-article (2) will be utilized for:
  - a. financing coal development;
  - b. setting up an inventory of coal resources;
  - c. financing the control of mining environment and occupational safety management;
  - d. paying the Exploration Contribution and Exploitation Contribution (royalty) and Added Value Tax.
4. The data processing and procedure of utilizing the funds derived from the coal production yield referred to in sub-article (3) sub a, b and c are determined by the Minister of Finance based on the Minister of Mines and Energy's proposal and consideration, while the funds derived from the coal production yield referred to in sub-article (3) sub d is directly deposited in the State Treasury.

### **Article 12**

Further provisions required for the implementation of this Presidential Decree are arranged by:

- a. The Minister of Mines and Energy as far as concerning the mining technical implementation and the procedure of Private Contractor company applications;
- b. The Minister of Finance as far as concerning the fiscal technical implementation;
- c. The State Minister of Mobilization of Investment Funds/Chairman of the Capital Investment Board as far as concerning the capital investment technical implementation.

### **Considering:**

- a. that in order to accelerate the development process of coal mining within the context of both the national energy policy and non-oil export policy, it is deemed necessary to step up the development and utilization of coal resources;
- b. that due to the ever decreasing role of the Government in coal mining undertakings, it is deemed necessary to increase the involvement of private parties as contractors of the Government in coal mining undertakings;
- c. that in connection with the facts referred to above, it is deemed necessary to review the provisions in Presidential Decree no. 21 of 1993 regarding the Main Provisions of the Agreement on Cooperation in Coal Mining Undertaking between the Public Company (PERSERO) PT Tambang Batubara Bukit Asam and Contractor Companies, and to establish the Main Provisions of a Work Agreement in Coal Mining Undertaking by Presidential Decree;

**In view of: ...**

### **Has Decided To Establish:**

The Presidential Decree Regarding the Main Provisions of a Work Agreement on a Coal Mining Undertaking.

## **CHAPTER I GENERAL PROVISION**

### **Article 1**

In this Presidential Decree, Agreement refers to the Work Agreement between the Government and a Private Contractor company to carry out a coal mining undertaking.

...

### **Article 3**

1. A Private Contractor company is obliged to deliver 13.50% (thirteen and one half percent) of its coal production yield to the Government in cash at Free on Board price or at Sale Point price.
2. If the mining undertaking is carried out underground and or the coal produced is obviously of low quality, the amount of the production yield to be delivered to the Government as referred to in sub-article (1) may be considered for review based on the result of an assessment submitted by the Private Contractor company concerned.
3. The production yield referred to in sub-article (1) or sub-article (2) will be utilized for:
  - a. financing coal development;
  - b. setting up an inventory of coal resources;
  - c. financing the control of mining environment and occupational safety management;

- d. paying the Exploration Contribution and Exploitation Contribution (royalty) and Added Value Tax.
4. The data processing and procedure of utilizing the funds derived from the coal production yield referred to in sub-article (3) sub a, b and c are determined by the Minister of Finance based on the Minister of Mines and Energy's proposal and consideration, while the funds derived from the coal production yield referred to in sub-article (3) sub d is directly deposited in the State Treasury. ...

**CHAPTER III  
OTHER PROVISIONS**

**Article 8**

The Minister of Mines and Energy signs on behalf of the Government any Agreement conforming to this Presidential Decree and exercises control over the implementation of the Agreement concerned. ...

**Article 10**

The part of the coal production that has been delivered by the Private Contractor company to the Public Company (PERSERO) PT Tambang Batubara Bukit Asam, but not yet delivered to the Government, should be settled within one (1) year at the latest as of the date this Presidential Decree becomes effective.

**Article 11**

The Minister of Mines and Energy takes the necessary steps for the transfer of rights and obligations to take place as referred to in Article 9 sub-article (2) and for the settlement of the part of production not yet delivered by the Public Company (PERSERO) PT Tambang Batubara Bukit Asam as referred to in Article 10. ...

## Mongolia

### 1. Summary

Under Chapter 4, Article 38 of the **Minerals Law of Mongolia (June 5, 1997) as amended** an *ad valorem* royalty of 2.5% is levied on the market value of all minerals except placer gold which is assessed at 7.5%.

### 2. Extracts from source legislation

#### **Minerals Law of Mongolia (June 5, 1997) amended as noted**

##### Unofficial translation

##### **Chapter 4**

##### **Article 38. Royalties**

1. A mining license holder shall pay royalties to the treasuries of the central and local administrative bodies on the sales value of all products extracted from the mining claim that are sold, shipped for sale, or used. */This paragraph was amended by the Law of December 27, 2001/*
2. The sales value shall be determined as follows:
  - 1) for exported products, the sales value shall be the average monthly prices of the products, or similar products, based on regularly published international market prices or on recognized principles of international trade;
  - 2) for products sold or used on the domestic market, the sales value shall be based on the domestic market price for the particular or similar product;
  - 3) for products sold on international or domestic markets, where it is impossible to determine market prices, the sales value shall be based on the revenue derived from the sale of the product as declared by the license holder.
3. Royalties shall be equal to 2.5 per cent of the sales value of all products extracted from the mining claim that are sold, shipped for sale, or used. Royalties shall be equal to 7.5 per cent of the sales value of gold extracted from the plasser that are sold, shipped for sale, or used. */The second sentence of this paragraph was added by the Law of December 27, 2001/*
4. The license holder shall pay royalties with respect to all extracted products that are sold, shipped for sale or used during a calendar quarter before the end of the next quarter.
5. The mining license holder shall submit to the GMIA a quarterly report, in the form approved by the GMIA and verified by the license holder's signature, indicating the quantity of products extracted and sold, shipped for sale, or used during the relevant quarter, the total value of the sales, and the basis of evaluation.
6. The Government shall prepare, and periodically publish a list of commodity exchange prices and related information, which shall be used for the purpose of calculating the sales value of exported products.

## Myanmar

### 1. Summary

The 1994 mining law levies royalties on four categories of minerals: gemstones at 5 to 7.5%, precious metals and rare earths at 4 to 5%, base metals at 3 to 4%, and industrial minerals at 1 to 3%.

### 2. Extracts from source legislation

#### **The Myanmar Mines Law, 6 September, 1994**

Unofficial translation

18. The holder of mineral production permit shall pay royalty, on the value of the mineral sold when the sale is affected, on the mineral produced by him within the rates mentioned below as determined by the Ministry:--
  - (a) for gemstones at the rate of 5% to 7.5%;
  - (b) for gold, silver, platinum, iridium, osmium, palladium, ruthenium, rhodium, tantalum, columbium, niobium, uranium, thorium and other precious metallic minerals that the Ministry may, with the approval of the Government prescribe and publish by notification from time to time at the rate of 4% to 5%;
  - (c) for iron, zinc, copper, lead, tin, tungsten, nickel, antimony, aluminum, arsenic, bismuth, cadmium, chromium, cobalt, manganese and other metallic mineral that the Ministry may, with the approval of the Government prescribe and publish by notification from time to time at the rate of 3% to 4%;
  - (d) for industrial mineral or stone at the rate of 1% to 3%.
19. When calculating the value of mineral sold under section 18, the Department shall calculate in the prescribed manner based upon the prevailing international price of that mineral at the time of the sale.
20. The Ministry may:--
  - (a) prescribe by notification from time to time, royalty to be paid for the mineral obtained from mineral prospecting or mineral exploration;
  - (b) exempt in whole or in part, any royalty payable on any mineral by the holder of a permit for such period as may be determined with a view of promoting production of mineral; exempt payment of royalty, on mineral samples obtained by the government department concerned or government organizations for the purpose of assay analysis or other examinations;
  - (c) defer payment of royalty due for such period it may determine;
  - (d) assess provisional royalty during the period where for any reason it is impracticable to assess the exact amount of royalty due.

## Papua New Guinea

### 1. Summary

At the present time the royalty system in Papua New Guinea is unclear. Mines currently are reportedly paying a 2% royalty.

Royalties are levied under the provisions of **Part XI, Chapter 195, Sections 104 to 111 of the Mining Act 1977**. Although this Act was repealed its royalty provisions remain en force by virtue of the Saving and Transitional Provisions embodied in **Part X, Chapter 173, Section (5) of the current Mining Act 1992** which require every miner to pay to the State royalty at the rate of 1.25% of revenue and/or net smelter returns.

It is reported by an anonymous official that "from 1 January, 1992 to March 10, 1998, section 219D of the Income Tax Act 1959 as Amended, provided that a mining company earning assessable income from mining operations 'shall pay tax equal to 0.75% of net revenue comprised in that income'. The tax payable under this section is payable in the same manner and at the same time as royalty is paid under the Mining Act 1992. The 0.75% of revenue as income tax paid under the Income Tax Act and the 1.25% of the revenue under the Mining Act, effectively allowed mining companies to pay royalty at 2% of net revenue. As of 10th March 1998, when section 219D of the Income Tax Act was repealed (i.e., removal of 0.75%) the rate reverted back to 1.25%. It was intended that this action should have coincided with the promulgation of a proposed Mining (Royalty) Act 1992 incorporating a royalty rate of 2%". Such act, however, was never promulgated. Companies have nonetheless continued to pay at the 2% rate. This willingness of companies to pay at the higher rate has been attributed to problems that could arise with any reduction in amounts going to landowners. It is possible that companies may be due a refund from government and landowners. New legislation was reportedly being considered at the publication date of this study that would resolve this problem by changing the rate retroactively to 2%.

The Mining Act 1992 dictates that the State shall pay to the owners of private land an amount equal to 20% of the total amount of any royalty paid in respect of mining leases on the land. In practice the amount payable to landowners can exceed 20%, e.g. OK Tedi and Lihir at 50%. Mining companies pay the landowners directly and the balance to the State, which expedites and ensures payments, subject to the State checking and endorsing the landowners' share for correctness.

The PNG Department of Mining is responsible for the administration of these Acts. As this study goes to press, a new mining act is being prepared.

### 2. Extracts from source legislation

#### MINING ACT 1992

148. Royalties

Royalties for mine products shall be paid in accordance with the *Mining (Royalties) Act 1992*.

*Note: The PNG Department of Mining informs that references to a Mining Royalty Act 1992 are irrelevant as such act was never drafted.*

PART X. - SAVING AND TRANSITIONAL PROVISIONS.

**173. SAVINGS**

- (5) The provisions of the repealed Acts relating to royalties shall continue in force as if the repealed Acts had not been repealed until the coming into operation of the Mining (Royalties) Act 1992 excepting that the amount equal to 5% of the amount of royalties payable under Section 107(2) of the Mining Act (Chapter 195) (repealed), shall: —
- (a) be read as an amount equal to 20% of the amount of royalties; and
  - (b) be paid in respect of a special mining lease and mining lease under this Act.

**MINING ACT 1977**

Note: This Act has been repealed and substituted by the Mining Act 1992 but some of its provisions, including those relating royalties, remain in force by virtue of the amendments incorporated in Part X, Chapter 173, Section (5) of the Mining Act 1992 as shown above.

PART XI – PROVISIONS RELATING TO MINERAL RETURNS AND ROYALTY

Chapter No. 195

**104. Interpretation of Part XI.**

In this part unless the contrary intention appears –

“f.o.b. revenue” means –

- (a) in the case of a delivery of mine products made pursuant to sale by the miner, other than a sale to which paragraph (b) of this definition applies, the whole of the consideration receivable by the miner for the mine products less the costs, charges and expenses bona fide incurred or suffered by the miner in respect of them from the time when the mine products are loaded on board a ship or aircraft in the country until the mine products are delivered to and accepted by the purchaser including, without limiting the generality of the foregoing –
  - i. taxes, dues, duties, excise, tariffs and other levies imposed on the export of the mine products from the country, and
  - ii. trimming costs, and
  - iii. ocean freight, and
  - iv. marine insurance premiums, and
  - v. port and handling charges at the port of discharge, and
  - vi. delivery costs from the port of discharge to any place for the \*purpose of further processing, and
  - vii. weighting, sampling, assaying, inspection, representation and selling agency costs and charges, and
  - viii. shipping agency charges, and
  - ix. tax, dues duties, primage duties, tariffs and other levies imposed in country of port of discharge on the import of the mine products, and
- (b) in the case of any delivery of mine products made pursuant to a sale by the miner for a consideration that is not a consideration that would be receivable by a willing seller from a willing buyer or that is made pursuant to a disposition by the miner otherwise than by way of sale –
  - i. an amount equal to the whole of such consideration of the whole of the consideration receivable as would have been receivable by the miner if such a mine product had been sold at the weighted average by the miner less the costs, charges, and the expenses referred to in Paragraph (a) of this definition in respect of deliveries of mine products of substantially the same composition which were made during the period of 60 days immediately preceding the relevant delivery and to which Paragraph (a) applied or

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- ii. in the event of there being no such deliveries amounts as the Warden may determine to be the value of the mine products after the miner has presented to him evidence of its value;

“mine product” means any mineral, gold, ores containing minerals or gold or concentrated ores of minerals or gold that have been extracted from or produced by a mine;

“miner” means a person who is the owner of a mine lease;

“net smelter return” means –

- (a) in the case of a miner who is also a processor in the country the value of the products of his smelter or his smelter and refinery, as the case may be, less the costs, charges and expenses bona fide incurred or suffered by the miner in respect of those products from the time when the mine products are delivered to a smelter until the time when the smelter or refinery products are delivered to and accepted by the purchasers, including, without limiting the generality thereof –
  - i. smelting and refining costs that may include a reasonable profit element but that shall be no greater than amounts that are or would be charged to any other person for the smelting or smelting and refining, as the case may be, of similar mine products, and
  - ii. realisation costs, and
  - iii. the costs itemised in the definition of “f.o.b. revenue” to the extent they are payable by the miner in respect to the transporting of the smelter or refinery products to the point of delivery to the purchaser; and
- (b) in the case of a miner who has his mine products smelted or smelted and refined in the country by a person other than himself the value of the products of the smelter or of the smelter and the refinery, as the case may be, from mine products supplied by the miner less the costs, charges and expenses bona fide incurred or suffered in respect of the products, including, without limiting the generality thereof –
  1. smelting and refining charges payable by the miner to the processor which, if the processor is an associated person or a related corporation, shall be no greater than amounts that are or would be charged to any un-associated person or unrelated corporation; and
  2. realisation costs incurred by the processor or by the miner; and
  3. the costs itemised in the definition of “f.o.b. revenue” to the extent that they are payable by the processor by the miner in respect of the transporting of the smelter or refinery products to the point of delivery to the purchasers;

“processor” means a person who engages in the smelting or smelting and refining of mine products.

### **105. Royalty.**

Notwithstanding Section 202, every miner shall pay to the State royalty at the rate of 1.25% *[changed to 2% by National Executive Council decision]* of the value of –

- (a) the f.o.b. revenue applicable to deliveries of mine products by the miner pursuant to sales or other dispositions where the mine products are directly or indirectly for export from the country; and
- (b) the net smelter return applicable to deliveries of mine products where the mine products are smelted or smelted and refined in the country.

### **106 Returns of gold and other minerals won.**

1 - Every miner shall once in every month furnish to the Warden a return, in the prescribed form showing –

- (a) the amount of mine products extracted or produced by the miner during the month immediately preceding the month in which the return is made;
- (b) the estimated value, being as appropriate the f.o.b. revenue or the net smelter returns, of the mine products.

2 – A miner who furnishes a return under this section shall at the same time pay to the State provisional royalty in accordance with Section 105 on the estimated value of the mine products included in the return.

3 – Within the prescribed time after the payment of provisional royalty is due under Sub-section

- (2), the miner shall produce to the Warden such evidence as is prescribed regarding the actual

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

price received for the mine products, and then the royalty payable on the mine products shall be finally determined and adjustments made in accordance with that determination.

- 4 – Notwithstanding anything in this section the Warden may –
  - (a) at any time finally determine the royalty payable on any mine products found in the country; and
  - (b) seize and retain the mine products until the royalty so determined has been paid.
- 5 – In proceedings against a person for failure to comply with any of the provisions of this section, the burden of proof that the provisions have been complied with is with that person.
- 6 – The Minister may, by written notice, appoint an officer to exercise the powers and the function of a Warden under this Part in a locality as specified in the notice.
- 7 – An appointment under Sub-section (6) shall not prevent the exercise of any power or function by the Warden.

### **107. Percentage of royalty to owner.**

- 1 – In this section “private land” means –
  - (a) customary land or
  - (b) land the subject of conversion order under the pre-independence *Land (Tenure Conversion) Act 1963* (Adopted) to which the limitation referred to in Section 26 (b) of that Act applies.
- 2 – The State shall pay to the owner of private land an amount equal to 5% of the total amount of any royalty paid under this Act in respect of mining leases on the land.
- 3 – Where the land comprised in the mining lease includes two or more parcels of private land but does not include any land other than private land, Sub-section (2) requires the State to pay to the owner or owners of a parcel of private land so included, in respect to the parcel, an amount that bears to an amount equal to 5% of the total amount of any royalties paid in respect of the mining lease the same proportion as the area of the parcel bear to the area of the land comprised in the mining lease.
- 4 – Where the land comprised in the mining lease includes private land and land other than private land, Sub-section (2) requires the State to pay –
  - (a) if there is only one parcel of private land included in the mining lease – to the owner or owners of that parcel the total amount payable in respect of the private land included in the mining lease ascertained in accordance with Sub-section (5); or
  - (b) if there are two or more parcels of private land included in the mining lease – to the owner or owners of a parcel of private land so included, in respect of that parcel, an amount that bears to the total amount payable in respect of the private land included in the mining lease ascertained in accordance with Sub-section (5) the same proportion as the area of the parcel bears to the total area of private land included in the mining lease.
- 5 – For the purpose of Sub-section (4), the total amount payable in respect of the private land included in the mining lease is the amount that bears to an amount equal to 5% of the total amount of any royalties paid in respect of the mining lease the same proportion as the area of private land included in the mining lease bears to the area of land comprised in the mining lease.
- 6 – Where an amount is payable under this section to the owners of a parcel of private land, each owner of that parcel is entitled to such part of that amount as is proportionate to his interest in the parcel.

### **108. Officers may examine books etc.**

An officer appointed for the purpose by the Minister shall, at any time, have access to and may, for the purpose of assessing the value of, or determining the royalty payable on, the mine products extracted or produced, examine the books and accounts of any person required to make the return mentioned in Section 106.

### **109. Enforcement of payment of royalty.**

If the royalty payable in respect of any mine products referred to in a return furnished under Section 106 is not paid within 15 days –

- (a) after its value has been appropriately ascertained; or
- (b) the royalty finally determined,

an officer appointed for the purpose by the Minister may seize and appropriate any mine products found in the possession of the person who is liable for the unpaid royalty.



**110. Refund of royalties in certain cases.**

1 – In this section –

“person” includes a partnership but does not include a corporation.

“half-year” means the period of six months ending on the last day of June and December in any year.

2 – Where the total royalty as determined finally by the Warden under Section 106 does not amount to K 50.00 and was paid directly or indirectly during any half-year by a person who satisfies the Warden that –

- (a) his principal occupation is mining or prospecting or both; or
- (b) he has been personally engaged in obtaining the mine products on which he has paid the royalty,

the Minister shall refund to that person the whole of the royalty.

**111. Penalty.**

A person who –

- (a) is required, under this Part, to furnish a return or to produce prescribed evidence and who
  - i. neglects or refuses to furnish the return or to produce the evidence; or
  - ii. makes a false statement in the return or as to evidence produced; or
- (b) impedes or obstructs any officer appointed by the Minister to perform any duties under this Part,

is guilty of an offence.

Penalty: A fine not exceeding K 2000.00 or imprisonment for a term not exceeding six month or both.

**Two Examples of apportionment of royalties:**

**Memorandum of Agreement Between the TEDI Landowners, the State of Papua New Guinea and the Western Provincial Government**

4.1 Subject to Clause 5.1 and 5.2 herein, upon receipt of mine royalties for the mine products from the OTML, the National Government will distribute such royalties effective as of execution of this Agreement in the following proportions:

- (a) 50% to WPG,
- (b) 50% of OK Tedi Landowners

4.2 50 of the Royalty paid to OK Tedi Landowners will be paid in the following manner.

- (a) 25% will be paid in cash to the four SML villages of Bullem, Finalbin, Atemkit and Kavorabip; and
- (b) 5% of the Royalty will be paid to villages of Wangbin and Migalsim in recognition of the land used for the Tabubil township and OK Mengo power supply and the Dablin Creek and Yuk Creek water supply.
- (c) 19.5% will be paid to OK Tedi Landowners Royalty Trust to be managed and controlled by OTML in accordance with the Trust Instrument established by the Minister for Treasury
- (d) 0.5% of the Royalty will be retained by the OK Tedi Mining Limited for and on behalf of the landowners for the administration of this Agreement and any allowance paid from this fund will be based on established Government rates.

**Memorandum of Agreement between the Lihir Landowners and the State of Papua New Guinea**

5.1 The National Government shall ensure that all royalties from mine products from the Project shall be distributed in the following manner:

- (a) 20% directly to the Special Mining Lease Landowners in cash;
- (b) 30% directly to the Nimamar Development Authority for community development: projects in the Lihir District; and
- (c) 50% to the Provincial Government.

## Philippines

### 1. Summary

Two percent ad-valorem royalty (excise tax) is levied on the gross value of mineral production under the provisions of **Republic Act N. 7942 (also known as the “Philippine Mining Act of 1995”** (an Act instituting a new system of mineral resources exploration, development, utilisation and conservation)). The Mining Act 1995 is complemented by **“Guidelines establishing the fiscal regime of Financial or Technical Assistance Agreements, DAO 99-56”** issued in 1999 under Section 81 of the Act by the Department of Environment and Natural Resources of the Philippines (DENR).

Section 80 (Government share of mineral production sharing agreements) and 84 (Excise tax on mineral products) of Chapter XIV of the above Act work in conjunction with Section 151 of the **“National Internal Revenue Code”** as amended by **Republic Act N. 8424, (Tax Reform Act of 1997)**.

A higher rate of royalty (5%) is levied if minerals are extracted from land under mineral reservation.

Provisions for special royalties apply to indigenous or “ancestral” land owners under Chapter 1, Sections 3 (a), Chapter III, Sections 16 and 17 of Republic Act N. 7942 (the Philippine Mining Act) in conjunction with **Republic Act N. 8371 (Indigenous People Rights Act, 1997)**. The level of royalty is subject to agreement and to a minimum of 1%.

The interests of small-scale miners are catered for under **Republic Act N. 7076 (Small-scale Mining Act of 1997)**

### 2. Extracts from source legislation

#### **REPUBLIC ACT NO. 7942**

**(An Act instituting a new system of mineral resources exploration, development, utilisation, and conservation)**

##### **Section 16 - Opening of Ancestral Lands for Mining Operations**

No ancestral land shall be opened for mining-operations without prior consent of the indigenous cultural community concerned.

##### **Section 17 - Royalty Payments for Indigenous Cultural Communities**

In the event of an agreement with an indigenous cultural community pursuant to the preceding section, the royalty payment, upon utilization of the minerals shall be agreed upon by the parties. The said royalty shall form part of a trust fund for the socioeconomic well-being of the indigenous cultural community.

...

##### **Section 80 - Government Share in Mineral Production Sharing Agreement**

The total government share in a mineral production sharing agreement shall be the excise tax on mineral products as provided in Republic Act No. 7729, amending Section 151(a) of the National Internal Revenue Code, as amended.

##### **Section 81 - Government Share in Other Mineral Agreements**

The share of the Government in co-production and joint-venture agreements shall be negotiated by the Government and the contractor taking into consideration the:

- a. capital investment of the project;
- b. risks involved;

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- c. contribution of the project to the economy; and
- d. other factors that will provide for a fair and equitable sharing between the Government and the contractor.

The Government shall also be entitled to compensations for its other contributions which shall be agreed upon by the parties, and shall consist, among other things, the contractor's income tax, excise tax, special allowance, withholding tax due from the contractor's foreign stockholders arising from dividend or interest payments to the said foreign stockholders, in case of a foreign national, and all such other taxes, duties and fees as provided for under existing laws.

The Government share in financial or technical assistance agreement shall consist of, among other things, the contractor's corporate income tax, excise tax, special allowance, withholding tax due from the contractor's foreign stockholders arising from dividend or interest payments to the said foreign stockholder in case of a foreign national and all such other taxes, duties and fees as provided for under existing laws.

The collection of Government share in financial or technical assistance agreement shall commence after the financial or technical assistance agreement contractor has fully recovered its pre-operating expenses, exploration, and development expenditures, inclusive.

### **Section 82 - Allocation of Government Share**

The Government share as referred to in the preceding sections shall be shared and allocated in accordance with Sections 290 and 292 of Republic Act No. 7160 otherwise known as the Local Government Code of 1991. In case the development and utilization of mineral resources is undertaken by a government-owned or -controlled corporation, the sharing and allocation shall be in accordance with Sections 291 and 292 of the said Code.

...

### **Section 84 - Excise Tax on Mineral Products**

The contractor shall be liable to pay the excise tax on mineral products as provided for under Section 151 of the National Internal Revenue Code: Provided, however, That with respect to a mineral production sharing agreement, the excise tax on mineral products shall be the government share under said agreement.

## **DAO 99-56 GUIDELINES ESTABLISHING THE FISCAL REGIME OF FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENTS**

Pursuant to Section 81 and other pertinent provisions of Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995 (the "Mining Act"), the following guidelines establishing the fiscal regime of Financial or Technical Assistance Agreements (FTAA) are hereby promulgated.

**a. Payment of Government Taxes and Fees.** The Contractor shall promptly pay all the taxes and fees required by the Government in carrying out the activities covered in the FTAA and in such amount, venue, procedure and time as stipulated by the particular law and implementing rules and regulations governing such taxes and fees subject to all rights of objection or review as provided for in relevant laws, rules and regulations. In case of non-collection as covered by Clause 3-g-1 of this Section, the Contractor shall follow the prevailing procedures for availment of such non-collection in accordance with pertinent laws, rules and regulations. Where prevailing orders, rules and regulations do not fully recognize and implement the provisions covered by Clause 3-g-1 of this Section, the Government shall exert its best efforts to ensure that all such orders, rules and regulations are revised or modified accordingly.

...

### **b. Government Share.**

1. Basic Government Share. The following taxes, fees and other such charges shall constitute the Basic Government Share:

- a) **Excise tax on minerals;**
- b) Contractor's income tax;
- c) Customs duties and fees on imported capital equipment;
- d) Value added tax on the purchase of imported equipment, goods and services;
- e) Withholding tax on interest payments on foreign loans;
- f) Withholding tax on dividends to foreign stockholders;
- g) **Royalties due the Government on Mineral Reservations;**

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- h) Documentary stamps taxes;
- i) Capital gains tax;
- j) Local business tax;
- k) Real property tax;
- l) Community tax;
- m) Occupation fees;
- n) All other local Government taxes, fees and imposts as of the effective date of the FTAA;
- o) Special Allowance, as defined in the Mining Act; and
- p) **Royalty payments to any Indigenous People(s)/Indigenous Cultural Community(ies).** From the Effective Date, the foregoing taxes, fees and other such charges constituting the Basic Government Share, if applicable, shall be paid by the Contractor: Provided, That above items (a) to (g) shall not be collected from the Contractor upon the date of approval of the Mining Project Feasibility Study up to the end of the Recovery Period. Any taxes, fees, royalties, allowances or other imposts, which should not be collected by the Government, but nevertheless paid by the Contractor and are not refunded by the Government before the end of the next taxable year, shall be included in the Government Share in the next taxable year. Any Value-Added Tax refunded or credited shall not form part of Government Share. ...

**c. Sales and Exportation** - The Contractor shall endeavor to dispose of the minerals and by-products produced in the Contract Area at the highest commercially achievable market price and lowest commercially achievable commissions and related fees in the circumstances then prevailing and to negotiate for sales terms and conditions compatible with world market conditions. The Contractor may enter into long term sales and marketing contracts or foreign exchange and commodity hedging contracts which the Government acknowledges to be acceptable notwithstanding that the sale price of minerals may from time to time be lower, or that the terms and conditions of sales are less favorable, than those available elsewhere.

The Government shall be informed by the Contractor when it enters into a marketing agreement with both foreign and local buyers. The Contractor shall provide the Government a copy of the final marketing agreement entered into with buyers subject to the confidentiality clause of the FTAA.

The Government shall be entitled to check and inspect all sales and exportation of minerals and/or mineral products including the terms and conditions of all sales commitments.

Sales commitments with affiliates, if any, shall be made only at prices based on or equivalent to arm's length sales and in accordance with such terms and conditions at which such agreement would be made if the parties had not been affiliated, with due allowance for normal selling discounts or commissions. Such discounts or commissions allowed the affiliates must be no greater than the prevailing rate so that such discounts or commissions will not reduce the net proceeds of sales to the Contractor below those which it would have received if the parties had not been affiliated. The Contractor shall, subject to confidentiality clause of the FTAA, submit to the Government evidence of the correctness of the figures used in computing the prices, discounts and commissions, and a copy of the sales contract.

The Contractor undertakes that any mining, processing or treatment of Ore by the Contractor shall be conducted in accordance with such generally accepted international standards as are economically and technically feasible, and in accordance with such standards the Contractor undertakes to use all reasonable efforts to optimize the mining recovery of Ore from proven reserves and metallurgical recovery of minerals from the Ore: Provided, That it is economically and technically feasible to do so.

For purposes of this Clause 3-h, an affiliate of an affiliated company means:

- a) any company in which the Contractor holds fifty percent (50%) or more of the shares;
- b) any company which holds fifty percent (50%) or more of the Contractor's shares;
- c) any company affiliated by the same definition in (a) or (b) to an affiliated company of the Contractor is itself considered an affiliated company for purposes of the FTAA;
- d) any company which, directly or indirectly, is controlled by or controls, or is under common control by the Contractor;
- e) any shareholder or group of shareholders of the Contractor or of an affiliated company; or
- f) any individual or group of individuals in the employment of the Contractor or of any affiliated company.

Control means the power exercisable, directly or indirectly, to direct or cause the direction of the management and policies of a company exercised by any other company and shall include the right to exercise control or power to acquire control directly or indirectly, over the company's affairs and the power to acquire not less than fifty percent (50%) of the share capital or voting power of the Contractor. For this purpose, a creditor who lends, directly or indirectly, to the Contractor, unless he has lent money to the Contractor in the ordinary course of money-lending business, may be deemed to be a Person with power to acquire not less than fifty percent (50%) of the share capital or voting power of the Contractor if the amount of the total of its loan is not less than fifty percent (50%) of the total loan capital of the company.

If a person ("x") would not be an affiliate of an affiliated company ("y") on the basis of the above definition but would be an affiliate if each reference in that definition to "fifty percent (50%)" was read as a reference to "forty percent (40%)" and the Government has reasonable grounds for believing that "x" otherwise controls "y" or "x" is otherwise controlled by "y", then, upon the Contractor being notified in writing by the Government of that belief and the grounds therefore, "x" and "y" shall be deemed to be affiliates unless the Contractor is able to produce reasonable evidence to the contrary.

I. Price or Cost Transfers. The Contractor commits itself not to engage in transactions involving price or cost transfers in the sale of minerals or mineral products and in the purchase of input goods and services resulting either in the illegitimate loss or reduction of Government Share or illegitimate increase in Contractor's share. If the Contractor engages affiliates or an affiliated company in the sale of its mineral products or in providing goods, services, loans or other forms of financing hereunder, it shall do so on terms no less than would be the case with unrelated persons in arms-length transactions.

## **THE NATIONAL INTERNAL REVENUE CODE OF THE PHILIPPINES**

**[Tax Reform Act of 1997] Republic Act No. 8424**

### **CHAPTER VII**

#### **EXCISE TAX ON MINERAL PRODUCTS**

##### **SEC. 151. Mineral Products. -**

**(A) Rates of Tax. -** There shall be levied, assessed and collected on minerals, mineral products and quarry resources, excise tax as follows:

- (1) On coal and coke, a tax of Ten pesos (P10.00) per metric ton;
- (2) On all nonmetallic minerals and quarry resources, a tax of two percent (2%) based on the actual market value of the gross output thereof at the time of removal, in the case of those locally extracted or produced; or the value used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, in the case of importation.

Notwithstanding the provision of paragraph (4) of Subsection (A) of Section 151, locally extracted natural gas and liquefied natural gas shall be taxed at the rate of two percent (2%);

- (3) On all metallic minerals, a tax based on the actual market value of the gross output thereof at the time of removal, in the case of those locally extracted or produced; or the value used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, in the case of importation, in accordance with the following schedule:

(a) Copper and other metallic minerals;

(i) On the first three (3) years upon the effectivity of Republic Act No. 7729, one percent (1%);

(ii) On the fourth and the fifth years, one and a half percent (1 ½%); and

(iii) On the sixth year and thereafter, two percent (2%);

(b) Gold and chromite, two percent (2%).

- (4) On indigenous petroleum, a tax of three percent (3%) of the fair international market price thereof, on the first taxable sale, barter, exchange or such similar transaction, such tax to be paid by the buyer or purchaser before removal from the place of production. The phrase "*first taxable sale, barter, exchange or similar transaction*" means the transfer of indigenous petroleum in its original state to a first taxable transferee. The fair

international market price shall be determined in consultation with an appropriate government agency.

For the purpose of this Subsection, "*indigenous petroleum*" shall include locally-extracted mineral oil, hydrocarbon gas, bitumen, crude asphalt, mineral gas and all other similar or naturally associated substances with the exception of coal, peat, bituminous shale and/or stratified mineral deposits.

**(B)** For Purposes of This Section, the Term:

- (1) "*Gross output*" shall be interpreted as the actual market value of minerals or mineral products or of bullion from each mine or mineral land operated as a separate entity, without any deduction from mining, milling, refining (including all expenses incurred to prepare the said minerals or mineral products in a marketable state), as well as transporting, handling, marketing or any other expenses: *Provided*, That if the minerals or mineral products are sold or consigned abroad by the lessee or owner of the mine under C.I.F. terms, the actual cost of ocean freight and insurance shall be deducted: *Provided, however*, That in the case of mineral concentrate, not traded in commodity exchanges in the Philippines or abroad, such as copper concentrate, the actual market value shall be the world price quotations of the refined mineral products content thereof prevailing in the said commodity exchanges, after deducting the smelting, refining and other charges incurred in the process of converting the mineral concentrates into refined metal traded in those commodity exchanges.
- (2) "*Minerals*" shall mean all naturally occurring inorganic substances (found in nature) whether in solid, liquid, gaseous or any intermediate state.
- (3) "*Mineral products*" shall mean things produced and prepared in a marketable state by simple treatment processes such as washing or drying, but without undergoing any chemical change or process or manufacturing by the lessee, concessionaire or owner of mineral lands.
- (4) "*Quarry resources*" shall mean any common stone or other common mineral substances as the Director of the Bureau of Mines and Geo-Sciences may declare to be quarry resources such as, but not restricted to, marl, marble, granite, volcanic cinders, basalt, tuff and rock phosphate: *Provided*, That they contain no metal or other valuable minerals in economically workable quantities.

## TITLE XI

### ALLOTMENT OF INTERNAL REVENUE

#### CHAPTER II

#### SPECIAL DISPOSITION OF CERTAIN NATIONAL INTERNAL REVENUE TAXES

**SEC. 287. Shares of Local Government Units in the Proceeds from the Development and Utilization of the National Wealth.** - Local Government units shall have an equitable share in the proceeds derived from the utilization and development of the national wealth, within their respective areas, including sharing the same with the inhabitants by way of direct benefits.

**(A) Amount of Share of Local Government Units.** - Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from excise taxes on mineral products, royalties, and such other taxes, fees or charges, including related surcharges, interests or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

**(B) Share of the Local Governments from Any Government Agency or Government-Owned or Controlled Corporation.** - Local Government Units shall have a share, based on the preceding fiscal year, from the proceeds derived by any government agency or government-owned or controlled corporation engaged in the utilization and development of the national wealth based on the following formula, whichever will produce a higher share for the local government unit:

- (1) One percent (1%) of the gross sales or receipts of the preceding calendar year, or

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

(2) Forty percent (40%) of the excise taxes on mineral products, royalties, and such other taxes, fees or charges, including related surcharges, interests or fines the government agency or government-owned or -controlled corporations would have paid if it were not otherwise exempt.

**(C) Allocation of Shares.** - The share in the preceding Section shall be distributed in the following manner:

(1) Where the natural resources are located in the province:

(a) Province - twenty percent (20%)

(b) Component city/municipality - forty-five percent (45%); and

(c) Barangay - thirty-five percent (35%)

*Provided, however,* That where the natural resources are located in two (2) or more cities, the allocation of shares shall be based on the formula on population and land area as specified in subsection (C)(1) hereof.

(2) Where the natural resources are located in a highly urbanized or independent component city:

(a) City - sixty - five percent (65%); and

(b) Barangay - thirty - five percent (35%)

*Provided, however,* That where the natural resources are located in two (2) or more cities, the allocation of shares shall be based on the formula on population and land area as specified in subsection (c)(1) hereof.

### **REPUBLIC ACT NO. 8371**

(An Act to recognize, protect and promote the rights of indigenous cultural communities/indigenous people, creating a National Commission of Indigenous People, establishing implementing mechanisms, appropriating funds therefore, and for other purposes) of 1997.

**Sec. 57. Natural Resources within Ancestral Domains.**- The ICCs/IPs shall have the priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years: *Provided,* That a formal and written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation: *Provided,* finally, That the all extractions shall be used to facilitate the development and improvement of the ancestral domains

### **REPUBLIC ACT NO. 7076**

(An Act creating a people's small-scale mining program and for other purposes)  
27 June 1991

**Section 1. Title.** — This Act shall be known as the "*People's Small-scale Mining Act of 1991.*"

**Sec. 2. Declaration of Policy.** — It is hereby declared of the State to promote, develop, protect and rationalize viable small-scale mining activities in order to generate more employment opportunities and provide an equitable sharing of the nation's wealth and natural resources, giving due regard to existing rights as herein provided.

...

**Sec. 4. People's Small-scale Mining Program.** — For the purpose of carrying out the declared policy provided in Section 2 hereof, there is hereby established a People's Small-scale Mining Program to be implemented by the Secretary of the Department of Environment and Natural Resources, hereinafter called the Department, in coordination with other concerned government agencies, designed to achieve an orderly, systematic and rational scheme for the small-scale development and utilization of mineral resources in certain mineral areas in order to address the social, economic, technical, and environmental connected with small-scale mining activities.

The People's Small-scale Mining Program shall include the following features:

(a) The identification, segregation and reservation of certain mineral lands as people's small-scale mining areas;

- (b) The recognition of prior existing rights and productivity;
- (c) The encouragement of the formation of cooperatives;
- (d) The extension of technical and financial assistance, and other social services;
- (e) The extension of assistance in processing and marketing;
- (f) The generation of ancillary livelihood activities;
- (g) The regulation of the small-scale mining industry with the view to encourage growth and productivity; and
- (h) The efficient collection of government revenue.

...

**Sec. 13. Terms and Conditions of the Contract.** — A contract shall have a term of two (2) years, renewable subject to verification by the Board for like periods as long as the contractor complies with the provisions set forth in this Act, and confers upon the contractor the right to mine within the contract area: Provided, That the holder of a small-scale mining contract shall have the following duties and obligations:

- (a) Undertake mining activities only in accordance with a mining plan duly approved by the Board;
- (b) Abide by the Mines and Geosciences Bureau and the small-scale Mining Safety Rules and Regulations;
- (c) Comply with his obligations to the holder of an existing mining right;
- (d) Pay all taxes, royalties or government production share as are now or may hereafter be provided by law;
- (e) Comply with pertinent rules and regulations on environmental protection and conservation, particularly those on tree-cutting mineral-processing and pollution control;
- (f) File under oath at the end of each month a detailed production and financial report to the Board; and
- (g) Assume responsibility for the safety of persons working in the mines.

**Sec. 14. Rights of Claimowners.** — In case a site declared and set aside as a people's-scale mining area is covered by an existing mining right, the claimowner and the small-scale miners therein are encouraged to enter into a voluntary and acceptable contractual agreement with respect to the small-scale utilization of the mineral values from the area under claim. In case of disagreement, the claimowner shall be entitled to the following rights and privileges:

- (a) Exemption from the performance of annual work obligations and payment of occupation fees, rental, and real property taxes
- (b) Subject to the approval of the Board, free access to the contract area to conduct metallurgical tests, explorations and other activities, provided such activities do not unduly interfere with the operations of the small-scale miners; and
- (c) Royalty equivalent to one and one half percent (1 1/2%) of the gross value of the metallic mineral output or one percent (1%) of the gross value of the nonmetallic mineral output to be paid to the claimowner: Provided, That such rights and privileges shall be available only if he is not delinquent and other performance of his annual work obligations and other requirements for the last two (2) years prior to the effectivity of this Act.

**Sec. 15. Rights of Private Landowners.** — The private landowner or lawful possessor shall be notified of any plan or petition to declare his land as a people's small-scale mining area. Said landowner may oppose such plan or petition in an appropriate proceeding and hearing conducted before the Board.

If a private land is declared as a people's small-scale mining area, the owner and the small-scale mining contractors are encouraged to enter into a voluntary and acceptable contractual agreement for the small-scale utilization of the mineral values from the private land: Provided, That the owner shall in all cases be entitled to the payment of actual damages which he may suffer as a result of such declaration: Provided, further, That royalties paid to the owner shall in no case exceed one percent (1%) of the gross value of the minerals recovered as royalty.

**Sec. 19. Government Share and Allotment.** — The revenue to be derived by the Government from the operation of the mining program herein established shall be subject to the sharing provided in the Local Government Code. ...



## **THE LOCAL GOVERNMENT CODE OF THE PHILIPPINES 1991**

### **Republic Act 7160 BOOK II**

#### **LOCAL TAXATION AND FISCAL MATTERS**

#### **TITLE ONE. - LOCAL GOVERNMENT TAXATION**

#### **CHAPTER 2 - SHARE OF LOCAL GOVERNMENT UNITS IN THE NATIONAL WEALTH**

**SEC. 289. Share in the Proceeds from the Development and Utilization of the National Wealth.** - Local government units shall have an equitable share in the proceeds derived from the utilization and development of the national wealth within their respective areas, including sharing the same with the inhabitants by way of direct benefits.

**SEC. 290. Amount of Share of Local Government Units.** - Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

**SEC. 291. Share of the Local Governments from any Government Agency or -Owned and -Controlled Corporation.** - Local government units shall have a share based on the preceding fiscal year from the proceeds derived by any government agency or government-owned or -controlled corporation engaged in the utilization and development of the national wealth based on the following formula whichever will produce a higher share for the local government unit:

- (a) One percent (1%) of the gross sales or receipts of the preceding calendar year; or
- (b) Forty percent (40%) of the mining taxes, royalties, forestry and fishery charges and such other taxes, fees or charges, including related surcharges, interests, or fines the government agency or government -owned or -controlled corporation would have paid if it were not otherwise exempt.

**SEC. 292. Allocation of Shares.** - The share in the preceding Section shall be distributed in the following manner:

- (a) Where the natural resources are located in the province
  - (1) province - Twenty percent (20%);
  - (2) Component city/municipality - Forty-five percent (45%); and
  - (3) barangay - Thirty-five percent (35%) Provided, however, That where the natural resources are located in two (2) or more provinces, or in two (2) or more component cities or municipalities or in two (2) or more barangays, their respective shares shall be computed on the basis of:
    - (1) Population - Seventy percent (70%); and
    - (2) Land area - Thirty percent (30%).
- (b) Where the natural resources are located in a highly urbanized or independent component city:
  - (1) city - Sixty-five percent (65%); and
  - (2) barangay - Thirty-five percent (35%) Provided, however, That where the natural resources are located in such two (2) or more cities, the allocation of shares shall be based on the formula on population and land area as specified in paragraph (a) of this Section.

**SEC. 293. Remittance of the Share of Local Government Units.** - The share of local government units from the utilization and development of national wealth shall be remitted in accordance with Section 286 of this Code: Provided, however, That in the case of any government agency or government-owned or -controlled corporation engaged in the utilization and development of the national wealth, such share shall be directly remitted to the provincial, city, municipal or barangay treasurer concerned within five (5) days after the end of each quarter.

**SEC. 294. Development and Livelihood Projects.** - The proceeds from the share of local government units pursuant to this chapter shall be appropriated by their respective sanggunian to finance local development and livelihood projects: Provided, however, That at least eighty percent

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

(80%) of the proceeds derived from the development and utilization of hydrothermal, geothermal, and other sources of energy shall be applied solely to lower the cost of electricity in the local government unit where such a source of energy is located.

## A1.3 AUSTRALIA

### New South Wales

#### 1. Summary

Royalties in New South Wales are levied under the provisions of the **Mining Act 1992 and related Mining Regulations 2003**. Three types of royalty are applied:

- Specific (quantum) royalty of \$0.35 to \$0.70 is applied to a variety of bulk, generally low-value, minerals.
- An ad-valorem royalty of 4% of the “ex-mine” value of minerals is applied to high-value minerals.
- From 1 July 2004 ad valorem royalties are applied to coal at the rate of 5% for deep underground mines, 6% for shallower underground mines and 7% for open cut mines based on the pre-transport price of coal. A royalty of 5% to a maximum of \$0.85/tonne applies to coal rejects used for energy production.
- A profit-based royalty applies to the Broken Hill “line lode”. The profit base to which the royalty is applied is significantly different from the usual financial accounting formulation of profit.

In the case of royalty collected on minerals not owned by the Crown a split of 7/8 to the owners and 1/8 to the State applies.

#### 2. Extracts from source legislation

*Source:*

<http://www.legislation.nsw.gov.au/summarize/inforce/s/1/?TITLE=%22Mining%20Act%201992%20No%2029%22&nohits=y>, accessed on February 15, 2005

#### **Mining Act 1992 No 29**

##### **282 Liability to pay royalty**

- (1) The holder of a mining lease is liable to pay royalty to the Minister on publicly owned minerals recovered under the lease.
- (2) Royalty that is payable to the Minister under a condition of a mining lease (being a condition of the kind referred to in section 70 (4)) is payable in addition to, and not instead of, royalty payable under this Division.

##### **283 Rate of royalty**

Royalty on a publicly owned mineral is payable under this Division:

at the base rate prescribed by the regulations in respect of that mineral, and  
if the regulations so provide—at the additional rate prescribed by the regulations in respect of that mineral.

Royalty under this Division is payable on a publicly owned mineral at the rate or rates applicable as at the time the material from which it is recovered is extracted from the land.

A rate of royalty prescribed for the purposes of this Division may be prescribed:

as a percentage of the value of minerals recovered from the land, or  
as an amount payable on the basis of any specified measurement of minerals recovered from the land, or

by reference to such other matters as the Minister determines.

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

The quantity of minerals recovered is to be calculated (whether by volume or by weight) in the manner prescribed by the regulations.

The value of minerals recovered is to be calculated (whether by volume or by weight) in the manner determined by the Minister.

### **284 Liability to pay royalty**

The holder of a mining lease is liable to pay royalty to the Minister on privately owned minerals recovered from the land as if those minerals were publicly owned minerals.

If royalty (including any interest on royalty) is paid to or recovered by the Minister in respect of a privately owned mineral, the Minister is to pay:

seven-eighths of the amount so paid or recovered to the owner of the mineral, and one-eighth of the amount so paid or recovered to the Treasurer for payment into the Consolidated Fund.

### **285 Rate of royalty**

Royalty is payable under this Division:

- (a) except as provided by paragraph (b)—at the base rate prescribed under section 283 (1) (a) in respect of the mineral concerned, or
- (b) in the case of a mineral other than coal—at such other rate as may be agreed on between the holder of the mineral claim or authority concerned and the owner of the mineral.

### **286 Royalty payable on petroleum recovered under mining lease for coal**

- (1) The holder of a mining lease for coal who recovers petroleum from a mining area by virtue of the fact that, under section 78, petroleum is included in the lease is liable to pay royalty to the Minister on the petroleum recovered.
- (2) The amount payable as royalty under this Division in respect of petroleum is the rate prescribed for the purposes of this Division by or under the *Petroleum (Onshore) Act 1991*.
- (3) Royalty under this Division is payable on petroleum at the rate or rates applicable as at the time the petroleum is recovered from the land.
- (4) This section does not apply to methane recovered in conjunction with coal mining operations.

### **286A Definition of coal reject**

In this Division:

*coal reject* means the by-product of the mining or processing of coal that contains a mixture of coal and other substances (such as shale) and has either an energy value (the maximum energy capable of being produced by it on combustion) of less than 16 gigajoules per tonne (dry weight) or contains more than 35 per cent ash (by dry weight).

### **286B Royalty on coal in coal reject**

Royalty is not payable on the coal in coal reject recovered under a mining lease until the coal reject is used or disposed of.

The holder of a mining lease is liable to pay royalty under this Division to the Minister on the coal in coal reject recovered under the lease if the holder uses the coal reject in producing energy or disposes of it for use in producing energy.

If royalty is payable under this Division on the coal in coal reject, Division 1 does not apply to that coal.

### **286C Rate of royalty**

1. Royalty on the coal in coal reject recovered under a mining lease is payable under this Division at the rate determined from time to time by the Minister, with the concurrence of the Treasurer, in respect of the lease or the class of leases concerned.
2. The rate of royalty on the coal in coal reject may be a zero rate or may be any other rate up to, but not exceeding, half the base rate of royalty prescribed from time to time in respect of coal under section 283 (1) (a).
3. In determining the rate of royalty the Minister is to have regard to:
  - a. the energy value of the coal reject, and
  - b. the costs associated with extracting, transporting or processing the coal reject for the purposes of use or disposal, and
  - c. such other matters as the Minister considers appropriate.
4. Royalty under this Division is payable on the coal in coal reject at the rate applicable:
  - a. at the time the coal reject is used by the holder of the relevant mining lease in producing energy, or

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- b. at the time the coal reject is disposed of by that holder for use in producing energy.
5. Royalty required to be calculated on the basis of the weight of coal is to be calculated by reference to dry weight.

### **286D Evidentiary matters**

1. The energy value and ash content of the by-product of the mining or processing of coal recovered under a particular mining lease is to be determined, in the manner directed by the Minister, on the basis of the average energy value and average ash content of that by-product.
2. The Minister may by determination in writing determine any of the following:
  - a. that the by-product, or any identifiable quantity of the by-product, of the mining or processing of coal recovered under a particular mining lease is coal reject,
  - b. the amount of coal in the coal reject recovered under a particular mining lease or the amount of coal in any identifiable quantity of that coal reject,
  - c. that the coal reject, or any identifiable quantity of the coal reject, recovered under a particular mining lease and used or disposed of by the holder of the lease has been used by the holder in producing energy or disposed of by the holder for use in producing energy.
3. The Minister's determination is evidence of the matter determined.
4. A determination under subsection (2) (a) or (b) is not open to dispute or challenge on the basis that the determination is not correct or accurate for any particular sample or quantity of the material concerned.

### **287 Exemption from royalty**

1. If the Minister, on application by the holder of a mining lease, is satisfied that the value of publicly owned minerals recovered as a result of mining operations carried on during a royalty period was less than the appropriate amount, no royalty is payable to the Minister under this Act in respect of those minerals.
2. In this section:

**appropriate amount**, in relation to a royalty period, means:

  - a. if the royalty period is 12 months—\$2,000, and
  - b. if the royalty period is less than 12 months—such amount as bears to \$2,000 the same proportion as the number of days in the royalty period bears to 365.

**mining operations** means mining operations carried on:

  - a. on a parcel of land subject to a mining lease held by a person who is not the holder of any other mining lease, or
  - b. on 2 or more parcels of land subject to 2 or more mining leases, if the holder of each parcel is the same person and if each parcel adjoins the other or another of those parcels.

**royalty period**, in relation to a mineral recovered by a person under a mining lease, means:

  - a. the period commencing on the day on which the person first became entitled, under the mining lease, to mine the mineral, and ending on the last day of the first period in respect of which the person is required by this Act to pay royalty in respect of the mineral, or
  - b. the period commencing on the day after the last day of any period in respect of which the person is required by this Act to pay royalty in respect of the mineral and ending on the last day of the next such period, or
  - c. if, during a period referred to in paragraph (b), the person ceases to be entitled to mine the mineral on the land the subject of the mining lease—the period commencing on the day after the last day of the previous royalty period and ending on the day on which the person ceases to be so entitled.

### **287A Waiver of payment of additional royalty for coal**

1. The Minister may, by order in writing made with the concurrence of the Treasurer, waive all or part of the payment by the holder of a mining lease of royalty at the additional rate prescribed in respect of coal under section 283 (1) (b).
2. The order may be made only if the Minister is satisfied that it is necessary for the financial viability of the mine, or mines, to which the mining lease relates, having regard to such matters as the Minister considers appropriate.
3. The power of the Minister to make an order under this section cannot be delegated, despite section 363.

### **288 Trust fund etc.**

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

The Minister may, by written notice served on the holder of a mining lease, require that person:

- a. to establish a trust fund, in the manner specified in the notice, and to pay into the trust fund (at the time or times so specified) a specified proportion of the money accruing from the sale of minerals (being a proportion that will, in the opinion of the Minister, be sufficient to meet the royalty payable to the Minister under this Act in respect of those minerals), or
- b. to lodge with the Director-General (within such time as is specified in the notice) security, in such amount and in such form as is so specified, for the performance of that person's obligations in respect of the payment of royalty,

and the holder of the mining lease must comply with any such requirement.

### **289 Returns**

- (1) The holder of a mining lease is to furnish to the Minister returns in such form, at such intervals, in respect of such periods and containing such information, as may be prescribed by the regulations.
- (2) The Minister may authorise the holder of a mining lease to furnish to the Minister returns in a different form, at different intervals or in respect of different periods from the form, intervals or periods so prescribed.
- (3) A person must not:
  - a. refuse or fail to comply with a requirement under this section to the extent to which the person is capable of complying with it, or
  - b. in purported compliance with such a requirement, furnish information that the person knows to be false or misleading in a material particular.

Maximum penalty: 100 penalty units.

### **290 Minister may require information to be furnished etc.**

- (1) The Minister may cause to be served on any person (being a person whom the Minister has reason to believe is capable of giving information or producing or making available books or documents relating to minerals recovered or the value of minerals recovered) written notice requiring the person:
  - a. to furnish to the Minister in writing, within the period and in the manner specified in the notice, any such information, or
  - b. to attend before the Minister, or before a person specified in the notice, at a time and place so specified, in order to answer questions relating to minerals recovered or the value of minerals recovered, or
  - c. to produce to a person specified in the notice, at a time and place so specified, books or documents in that person's custody or control relating to minerals recovered or the value of minerals recovered.
- (2) A person is not excused from furnishing information, answering a question or producing books or documents when required to do so merely because the information so furnished, the answer to the question or the production of the books or documents, might tend to incriminate the person.
- (3) However, the information, answer, books or documents are not admissible in evidence against the person in proceedings other than proceedings for an offence against this section.
- (4) A person to whom books or documents are produced pursuant to a requirement under this section may make copies of, or take extracts from, the books or documents.
- (5) A person must not:
  - a. refuse or fail to comply with a requirement under this section to the extent to which the person is capable of complying with it, or
  - b. in purported compliance with such a requirement, furnish information that the person knows to be false or misleading in a material particular.

Maximum penalty: 100 penalty units.

### **291 Payment of royalty**

- (1) Royalty payable to the Minister under this Act is payable:
  - a. except in so far as a determination under paragraph (b) has effect—at such times, and in respect of such periods, as may be specified in or determined in accordance with the regulations, or
  - b. on demand by the Minister in respect of such periods as the Minister determines.

- (2) If an amount of royalty payable to the Minister is not paid:
  - a. by the time that it becomes payable in accordance with the regulations, or
  - b. within 28 days of the demand for its payment,
    - i. interest is, if the Minister so directs, to be added to the amount due at such rate as the Minister determines.
- (3) The regulations may make provision for or with respect to the manner in which royalty payable to the Minister under this Act is to be paid and, in particular, may require that payment of any royalty referred to in the regulations is to accompany a return made under this Part.

#### **292 Recovery of royalty**

- (1) Royalty, and any interest on the royalty, payable to the Minister under this Act are debts due to the Crown and are recoverable in a court of competent jurisdiction.
- (2) A certificate that is signed by the Minister and that states that on a date, or during a period, specified in the certificate, an amount of royalty or interest so specified was payable to the Minister under this Act by a person so specified is admissible in evidence in all courts and is evidence of the fact or facts so certified.

### **MINING REGULATIONS 2003**

#### **44 Rates of royalty for minerals other than coal**

- (1) For the purposes of section 283 (1) (a) of the Act:
  - (a) the base rate of royalty payable in respect of a mineral specified in Schedule 7 is the rate per tonne so specified of the quantity of mineral recovered, and
  - (b) the base rate of royalty payable in respect of any other mineral (other than coal) is 4 per cent of the value of mineral recovered.
- (2) (Repealed)
- (3) For the purposes of section 283 (4) of the Act, the quantity of minerals (other than coal) recovered during any particular period is to be calculated in accordance with the following formula:
$$\mathbf{R = D + S_2 + S_1}$$
where:
  - $\mathbf{R}$  represents the quantity of minerals recovered by the holder of the mining lease during that period.
  - $\mathbf{D}$  represents the quantity of minerals disposed of by the holder of the mining lease during that period as determined by the Minister, having regard to any records kept by the holder of the mining lease.
  - $\mathbf{S_2}$  represents the quantity of minerals held (in the form in which they are disposed of) by the holder of the mining lease at the end of that period as determined by the Minister, having regard to any records kept by the holder of the mining lease.
  - $\mathbf{S_1}$  represents the quantity of minerals held (in the form in which they are disposed of) by the holder of the mining lease at the beginning of that period as determined by the Minister, having regard to any records kept by the holder of the mining lease.

(4), (5) (Repealed)

#### **44A Rates of royalty for coal**

- (1) For the purposes of section 283 (1) (a) of the Act, the base rate of royalty for coal is as follows:
  - (a) 7% of the value of coal recovered by open cut mining,
  - (b) 6% of the value of coal recovered by underground mining,
  - (c) 5% of the value of coal recovered by deep underground mining.
- (2) For the purposes of this clause, the quantity of coal taken to have been recovered during any particular period is the quantity of coal disposed of by the holder of the mining lease during the period, as determined by the Minister on the basis of the records kept by the holder of the mining lease.
- (3) For the purposes of this clause, if coal is recovered by the holder of a mining lease by more than one method of mining or if there is a dispute as to the method by which coal was recovered, the Minister may determine how it was recovered and may determine what value of coal was recovered by what method.

(4) In this clause:

**deep underground mining** means mining carried out at a mine in which coal situated at a depth of 400 metres or more is extracted by means other than open cut methods.

**open cut mining** means mining carried out at a mine in which coal is extracted by open cut methods.

**underground mining** means mining (other than deep underground mining) carried out at a mine in which coal is extracted other than by open cut methods.

#### **45 Returns**

(1) For the purposes of section 289 (1) of the Act:

(a) royalty returns must be in a form that shows:

(i) in the case of a mineral specified in Schedule 7—the quantity of the mineral recovered by the holder of the mining lease during the period to which the return relates, and

(ii) in the case of any other mineral—the value of the mineral recovered by the holder of the mining lease during the period to which the return relates, and

(iii) in the case of any mineral—any other matters required by the Director-General to be shown, and

(b) royalty returns must be furnished:

(i) at the time at which royalty is payable, in the case of minerals other than coal, and

(ii) monthly, and in any case not later than the 21st day of the following month, in the case of coal.

(2) The holder of a mining lease must keep records of all minerals recovered under the lease, including:

(a) records of the quantity of minerals recovered during each return period, and

(b) records of the quantity of minerals disposed of, whether by sale or otherwise, during each return period, and

(c) records of the quantity of minerals held (in the form in which they are disposed of) by the holder of the mining lease at the beginning and at the end of that period, and

(d) records of all royalty that became payable during each return period in connection with the disposal of minerals, and

(e) any other records relating to the minerals required by the Director-General to be kept.

Maximum penalty:

(a) 100 penalty units, in the case of an offence committed by a corporation, or

(b) 50 penalty units, in the case of an offence committed by an individual.

#### **46 Payment of Royalty**

(1) This clause prescribes the times at which, and the periods in respect of which, royalty is payable to the Minister under the Act, except to the extent that a determination under section 291 (1) (b) of the Act is in force.

(2) In the case of minerals other than coal, royalty is payable on or before 31 July in each year in respect of the period of 12 months ending on the last preceding 30 June, unless subclause (3) applies.

(3) In the case of a person by whom, in respect of the last preceding period of 12 months that ended on 30 June, an amount of royalty greater than \$50,000 was payable in respect of minerals (other than coal), royalty on minerals (other than coal) recovered during the succeeding period of 12 months is payable:

(a) on or before 31 October, in respect of the period of 3 months ending on 30 September, and

(b) on or before 31 January, in respect of the period of 3 months ending on 31 December, and

(d) on or before 30 April, in respect of the period of 3 months ending on 31 March, and

(e) on or before 31 July, in respect of the period of 3 months ending on 30 June.

(4) In the case of coal, royalty is payable within 21 days after the beginning of each month.

**Source:**

<http://www.legislation.nsw.gov.au/viewtop/inforce/subordleg+587+2003+FIRST+0+N/>

**Accessed on February 15, 2005**



**SCHEDULE OF MINERAL ROYALTY RATES**

Agate	4% ex-mine value (value less allowable deductions)
Agricultural lime	35 cents per tonne
Antimony	4% ex-mine value (value less allowable deductions)
Apatite	4% ex-mine value (value less allowable deductions)
Arsenic	4% ex-mine value (value less allowable deductions)
Asbestos	4% ex-mine value (value less allowable deductions)
Barite	70 cents per tonne
Bauxite	35 cents per tonne
Bentonite (including Fuller's Earth)	70 cents per tonne
Beryllium minerals	4% ex-mine value (value less allowable deductions)
Bismuth	4% ex-mine value (value less allowable deductions)
Borates	70 cents per tonne
Cadmium	4% ex-mine value (value less allowable deductions)
Caesium	4% ex-mine value (value less allowable deductions)
Calcite	40 cents per tonne
Chalcedony	4% ex-mine value (value less allowable deductions)
Chert	35 cents per tonne
Chlorite	70 cents per tonne
Chromite	4% ex-mine value (value less allowable deductions)
Clay/shale	35 cents per tonne
Coal	7% of value of open cut coal 6% of value of underground coal 5% of value of deep underground coal
Cobalt	4% ex-mine value (value less allowable deductions)
Columbium	4% ex-mine value (value less allowable deductions)
Copper	4% ex-mine value (value less allowable deductions)
Corundum	4% ex-mine value (value less allowable deductions)
Cryolite	4% ex-mine value (value less allowable deductions)
Diamond	4% ex-mine value (value less allowable deductions)
Diatomite	70 cents per tonne
Dimension stone	70 cents per tonne
Dolomite	40 cents per tonne
Emerald	4% ex-mine value (value less allowable deductions)
Emery	4% ex-mine value (value less allowable deductions)
Feldspathic materials	70 cents per tonne
Fluorite	70 cents per tonne
Galena	4% ex-mine value (value less allowable deductions)
Garnet	4% ex-mine value (value less allowable deductions)
Geothermal substances	4% ex-mine value (value less allowable deductions)
Germanium	4% ex-mine value (value less allowable deductions)
Gold	4% ex-mine value (value less allowable deductions)
Graphite	4% ex-mine value (value less allowable deductions)
Gypsum	35 cents per tonne
Halite (incl. solar salt)	40 cents per tonne
Ilmenite	4% ex-mine value (value less allowable deductions)
Indium	4% ex-mine value (value less allowable deductions)
Iron minerals	4% ex-mine value (value less allowable deductions)
Jade	4% ex-mine value (value less allowable deductions)

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

Kaolin	70 cents per tonne
Lead	4% ex-mine value (value less allowable deductions)
Leucoxene	4% ex-mine value (value less allowable deductions)
Limestone	40 cents per tonne
Lithium	4% ex-mine value (value less allowable deductions)
Magnesite	70 cents per tonne
Magnesium salts	40 cents per tonne
Manganese	4% ex-mine value (value less allowable deductions)
Marble	70 cents per tonne
Marine aggregate	4% ex-mine value (value less allowable deductions)
Mercury	4% ex-mine value (value less allowable deductions)
Mica	70 cents per tonne
Mineral pigments	70 cents per tonne
Molybdenite	4% ex-mine value (value less allowable deductions)
Monazite	4% ex-mine value (value less allowable deductions)
Nephrite	4% ex-mine value (value less allowable deductions)
Nickel	4% ex-mine value (value less allowable deductions)
Niobium	4% ex-mine value (value less allowable deductions)
Oil shale	4% ex-mine value (value less allowable deductions)
Olivine	70 cents per tonne
Opal	4% ex-mine value (value less allowable deductions)
Ores of silicon	4% ex-mine value (value less allowable deductions)
Peat	70 cents per tonne
Perlite	70 cents per tonne
Petroleum	nil first 5 years increasing to 10% at end of 10th year
Phosphates	70 cents per tonne
Platinum group	4% ex-mine value (value less allowable deductions)
Platinum	4% ex-mine value (value less allowable deductions)
Potassium minerals	70 cents per tonne
Potassium salts	40 cents per tonne
Pyrophyllite	70 cents per tonne
Quartz crystal	4% ex-mine value (value less allowable deductions)
Quartzite	70 cents per tonne
Rare earth minerals	4% ex-mine value (value less allowable deductions)
Reef quartz	70 cents per tonne
Rhodonite	4% ex-mine value (value less allowable deductions)
Rubidium	4% ex-mine value (value less allowable deductions)
Ruby	4% ex-mine value (value less allowable deductions)
Rutile	4% ex-mine value (value less allowable deductions)
Sapphire	4% ex-mine value (value less allowable deductions)
Scandium and its ores	4% ex-mine value (value less allowable deductions)
Selenium	4% ex-mine value (value less allowable deductions)
Serpentine	70 cents per tonne
Sillimanate-group minerals	70 cents per tonne
Silver	4% ex-mine value (value less allowable deductions)
Sodium salts	40 cents per tonne
Staurolite	70 cents per tonne
Strontium minerals	4% ex-mine value (value less allowable deductions)
Structural clay	35 cents per tonne
Sulphur	4% ex-mine value (value less allowable deductions)
Talc	70 cents per tonne
Tantalum	4% ex-mine value (value less allowable deductions)
Thorium	4% ex-mine value (value less allowable deductions)

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

Tin	4% ex-mine value (value less allowable deductions)
Topaz	4% ex-mine value (value less allowable deductions)
Tourmaline	4% ex-mine value (value less allowable deductions)
Tungsten and its ores	4% ex-mine value (value less allowable deductions)
Turquoise	4% ex-mine value (value less allowable deductions)
Vanadium	4% ex-mine value (value less allowable deductions)
Vermiculite	70 cents per tonne
Wollastonite	70 cents per tonne
Zeolites	70 cents per tonne
Zinc	4% ex-mine value (value less allowable deductions)
Zircon	4% ex-mine value (value less allowable deductions)
Zirconia	4% ex-mine value (value less allowable deductions)

*Source: <http://www.minerals.nsw.gov.au/invest/royalty/rates>*

## Northern Territory

### 1. Summary

Mineral royalties in the Northern Territory are levied in compliance with the Mineral Royalty Act 1982. Royalties are based on the net value of the production of a mine rather than sales value or tonnage. A flat rate of 18% is applied to all mines irrespective of the nature of the related land holding with the exception of uranium mines (on which the Australian Federal Government has ownership rights), mines developed under the terms of special agreements, and quarries. As the net value takes into account variations in both sales proceeds and costs, royalties impact more on efficient or low cost operations and less on marginal ones. Government's revenue is also exposed to the financial risk of the mining operations.

### 2. Extracts from source legislation

#### MINERAL ROYALTY ACT 1982, as amended to 1 July 2004

...

#### 4. Definitions

In this Act, unless the contrary intention appears –

"accounting basis", in relation to the accounts of a production unit for the purposes of this Act, means prepared under an historical cost assumption on either –

- (a) a cash basis, where only amounts actually paid and received are brought to account;
- or
- (b) an accrual basis, being accounts kept in accordance with generally accepted accounting principles on any approved basis (except a cash basis), including an incurred basis where amounts actually paid and received, together with pecuniary liabilities that have become due and revenues earned the amounts of which in either case are known or can be estimated with certainty, are brought to account,

and "specified accounting basis" means either a cash basis or an accrual basis, as elected by a royalty payer under section 11;

"active operation", in relation to a production unit or proposed production unit, means either –

- (a) the date on which a contract was first entered into in respect of the provision of an item referred to in the definition of "eligible capital assets expenditure"; or
- (b) the date on which an amount was first expended in respect of such an item, whichever is earlier;

"approved" means approved by the Secretary either specifically or by the promulgation of guidelines under section 4E;

"authorized person" means a person appointed under section 13 to be an authorized person;

"Board" means a Board of Review established under section 26;

"capital recognition deduction" has the meaning given in section 4C;

"eligible capital assets expenditure", in relation to a production unit, means an amount expended which was essential to the setting up and operation of the production unit, in respect of –

- (a) feasibility studies;
- (b) studies and investigations required by or under a law in force in the Territory to be carried out;
- (c) site clearing and overburden removal activities up to the date of the commencement of the active operation of the production unit;
- (d) mine design and shaft sinking and tunnelling;
- (e) design, acquisition, installation and construction of –
  - (i) mining plant;

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- (ii) treatment plant necessary for the production of a saleable mineral commodity;
  - (iii) storage facilities;
  - (iv) structures;
  - (v) electricity generation and reticulation;
  - (vi) water storage and reticulation;
  - (vii) communication facilities;
  - (viii) transport facilities;
  - (ix) town and accommodation facilities; and
  - (x) other facilities essential to the operation of the production unit; and
- (f) amounts expended after 1 July 1982 in acquiring by transfer any tenement comprising part of the production unit, to the extent that –
- (i) the amounts expended are verifiable by the transferor as being required by or under a law in force in the Territory and were represented by exploration expenditure certificates; and
  - (ii) have not been claimed in determining the net value upon which royalty is payable in respect of the production of another production unit,
- but, notwithstanding that the amounts may have been expended and recorded in the books of account of the production unit as a capital item, does not include amounts expended in respect of negotiations with landowners before the operation of the production unit for the sustained production of a commercial quantity of a mineral commodity, unless the amounts were required to be expended on such negotiations in accordance with a law in force in the Territory;
- "eligible exploration expenditure" means –
- (a) until 1 July 2010, in respect of work carried out in the Territory –
    - (i) if a production unit was, at the commencement of this Act, exempted under section 3(2) from the operation of this Act – an amount expended by the royalty payer or any other person after the date on which this Act first applied to or in relation to that production unit and before 1 July 2003; or
    - (ii) in the case of any other production unit – an amount expended by the royalty payer or any other person after the commencement of this Act and before 1 July 2003,in relation to the exploration for, or the determining of the existence, location, extent or quality of, a mineral occurrence in the Territory and in respect of which amount the Secretary has issued an exploration expenditure certificate under section 7 or, if the Secretary is considering an application for an exploration expenditure certificate, until the application is refused; and
  - (b) in respect of work carried out outside the Territory or work carried out in the Territory for which a royalty payer expended an amount on or after 1 July 2003 –
    - (i) if a production unit was, at the commencement of this Act, exempted under section 3(2) from the operation of this Act – an amount expended by the royalty payer after the date on which this Act first applied to or in relation to that production unit; or
    - (ii) in the case of any other production unit – an amount expended by the royalty payer after the commencement of this Act,in relation to a mineral occurrence on a mining tenement which forms part of the production unit, which amount was, in the opinion of the Secretary, reasonably expended by the royalty payer after the date referred to in subparagraph (i) or (ii) directly in respect of the exploration for, or the determining of the existence, location, extent or quality of, a mineral occurrence on the land comprised in the mining tenement or the exploration retention lease, within the meaning of the *Mining Act*, from which it was derived,
- or so much of those amounts the inclusion of which, in calculating the royalty payable in respect of a royalty year, does not –

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- (c) if the royalty is payable in respect of a royalty year commencing on or after 1 July 2003 and on or before 30 June 2004 – reduce the royalty payable by more than 30% of the amount of royalty that would be payable had eligible exploration expenditure not been taken into account, whichever is the lesser; or
- (d) if the royalty is payable in respect of a royalty year commencing on or after 1 July 2004 – reduce the royalty payable by more than 25% of the amount of royalty that would be payable had eligible exploration expenditure not been taken into account, whichever is the lesser;

"eligible research and development expenditure", in relation to a production unit in respect of a royalty year, means an amount which was reasonably expended by a royalty payer for research into methods designed to reduce the eligible capital assets expenditure and the operating costs of, or to improve the rate and amount of recovery of a saleable mineral commodity from the production unit;

"expended" means –

- (a) where the specified accounting basis of a production unit is a cash basis – amounts paid;
- (b) where the specified accounting basis of a production unit is an incurred basis – amounts incurred, being amounts paid and pecuniary liabilities that have become due the amounts of which are known or can be estimated with certainty; and
- (c) where the specified accounting basis of a production unit is an accrual basis (other than an incurred basis) – charges brought to account;

"grade", in relation to a mineral commodity, means –

- (a) the percentage contents of each element in the mineral commodity; and
- (b) any other characteristic of the mineral commodity, that adds to or detracts from its value, and shall be taken to be that agreed between a royalty payer and the Secretary or, failing agreement within a reasonable time, as determined by the Minister;

"gross realization" has the meaning given in section 4A;

"mineral" means –

- (a) a naturally occurring –
  - (i) inorganic element or compound, including an inorganic carbonate compound; or
  - (ii) organic carbonate compound, obtained or obtainable from land by mining, whether carried out under or on the surface of the land;
- (b) coal and lignite; or
- (c) a prescribed mineral, but does not include an extractive mineral, being –
- (d) soil; or
- (e) sand, gravel, clay or stone that is suitable for use in construction or building works, in respect of which an extractive mineral permit, an extractive mineral lease or an authorization to occupy an extractive mineral lease has been granted under the *Mining Act*;

"mineral commodity" means a mineral or substance derived from a mineral at any stage of treatment of that mineral;

"mining tenement" means a right, by whatever name known, to obtain minerals from land (including Special Mineral Lease 11 held by Gove Aluminium Limited and Swiss Aluminium Australia Limited and dated 30 May 1969), granted or continued in force by or under a law in force in the Territory, whether granted before or after the commencement of this Act, and includes the land to which the right relates, but does not include an exploration licence or an exploration retention licence within the meaning of the *Mining Act*;

"net value" has the meaning given in section 10;

"operating costs" has the meaning given in section 4B;

"person" includes a corporation, company, syndicate, trust, firm, partnership, co-owners, joint-venture or part, and its, or if the context so requires their, heirs, executors, administrators, successors, assigns or other legal representative;

"production unit" means –

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- (a) a mining tenement; or
  - (b) where 2 or more mining tenements are being operated as part of an integrated operation, those mining tenements, together with such facilities, if any, within the Territory and whether adjacent to the mining tenement or tenements or not as are essential for the production of a saleable mineral commodity from a mineral obtained from the mining tenement or tenements;
- "responsible person" means the person appointed or deemed to be appointed by the tenement holders of a production unit or proposed production unit under section 10A;
- "royalty" means the royalty in respect of minerals imposed under section 9 and includes interest on royalty under section 42 and penal royalty under section 42A;
- "royalty payer", in relation to a production unit, means the holder of a mining tenement that forms part of the production unit and includes the responsible person appointed in respect of that production unit;
- "royalty year", in relation to a production unit, means the fiscal period, not exceeding 12 months, for which the accounts of a royalty payer have been, or are, ordinarily made up by the royalty payer, or such other fiscal period that may be approved for the purposes of this Act, in either case being a fiscal period commencing on or after the date on which this Act first applied to or in relation to the production unit;
- "saleable mineral commodity", in relation to a production unit, means a mineral commodity, other than a mineral commodity treated or processed to a stage declared by the Minister, by notice in writing to the royalty payer, as the stage at or beyond which it ceases to be a saleable mineral commodity for the purposes of this Act;
- "Secretary" means the Chief Executive Officer of the Agency for the time being responsible under the Minister for the administration of this Act.

### **4A. Interpretation of "gross realization"**

- (1) In this Act, "gross realization", in relation to a production unit, means –
  - (a) the sum of –
    - (i) the gross values of saleable mineral commodities produced by the production unit in a royalty year that have been sold or removed without sale from that production unit;
    - (ii) any amount received by way of insurance, indemnity or guarantee for or in respect of the loss of a saleable mineral commodity from the production unit the value of which, if the loss had not occurred, would have been taken into account in calculating gross realizations;
    - (iii) where, pursuant to a law in force in the Territory, the sale or disposition of a saleable mineral commodity from a production unit is prohibited except to such persons or subject to such conditions as may be specified, any amount received as the price or compensation for the mineral commodity; and
    - (iv) any gain realized on the sale of assets of the production unit;
  - (b) less –
    - (i) any loss incurred on the sale of assets of the production unit; and
    - (ii) any negative net value under section 10 brought forward from previous royalty years that has been approved.
- (2) Where the sale price for saleable mineral commodities has been fully or partly paid more than 180 days before the purchaser takes physical delivery of the mineral commodities then, for the purposes of this section, the value of those mineral commodities shall be the sale price or part paid increased by such sum as would represent interest on the sale price or part paid at a rate equivalent to the arithmetic mean of the published daily yields on Australian Federal Securities most closely approximating 10 years to maturity plus 2% for the period commencing with the receipt of the sale price or part paid and ending with the delivery of the mineral commodity.
- (3) Where saleable mineral commodities are removed from a production unit without sale (whether on consignment or otherwise) then, for the purposes of this section, the mineral commodities shall be valued –
  - (a) where guidelines have been promulgated pursuant to section 4E – in accordance with those guidelines;

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- (b) where the Secretary has given an opinion pursuant to section 4F – in conformity with that opinion; or
- (c) in any other case –
  - (i) at an amount equivalent to the price which would be received for the mineral commodities on the open market; or
  - (ii) at such other amount as the royalty payer may establish and substantiate as being the value.
- (4) No interest earned which is referable to the operations of a production unit shall be taken into account in calculating gross realization.

### **4AA. Conversion of saleable mineral commodity before sale, etc.**

Where a saleable mineral commodity produced on a production unit is used on that production unit in the production of a mineral commodity that is not a saleable mineral commodity, the saleable mineral commodity so used shall be taken to have been sold immediately before the stage at or beyond which it ceased to be a saleable mineral commodity, and royalty shall be payable under this Act accordingly.

### **4B. Interpretation of "operating costs"**

- (1) In this Act "operating costs", in relation to a production unit in respect of a royalty year for the purposes of a deduction under section 10(2), means –
  - (a) expenditure which was reasonable in amount and which is directly attributable to, the production, or maintenance for the purposes of production, or the sale or marketing of the saleable mineral commodity of a production unit, and includes –
    - (b) eligible research and development expenditure;
    - (c) accounting and auditing fees;
    - (d) legal fees (other than those directly attributable to royalty matters);
    - (e) insurance premiums that are directly related to the operation of the production unit;
    - (f) the salaries, allowances, termination or similar payments or approved benefits of a similar nature, employer contributions to superannuation schemes and the wages of employees who, throughout their employment in the royalty year, were, during their ordinary hours of duty, engaged primarily in work relating to the administration of the production unit;
    - (g) office expenses directly associated with the operation of the production unit;
    - (h) fees for management services, being fees and services that are reasonable and essential respectively, for or to the operation of the production unit;
    - (j) tenement rentals;
    - (k) fees and charges imposed under a law in force in the Territory;
    - (m) such fees, charges or costs as may be prescribed;
    - (n) pay-roll tax; and
    - (p) other matters which were necessary for the proper administration of the production unit;
- but does not include –
  - (q) compensation for or in respect of the use or disturbance of land or improvements in excess of that reasonably required to be paid under section 184 of the *Mining Act*, or which would be required to be so paid if the land or improvements in respect of which it would be required to be paid were private land within the meaning of that Act or improvements on that land;
  - (r) taxes on income or profits;
  - (s) mineral royalties;
  - (t) the costs of negotiating with land holders unless the amounts were required to be expended in accordance with a law in force in the Territory;
  - (u) interest payments or payments in the nature of interest or any amount representing depreciation;
  - (w) payments in the nature of royalties; or
  - (y) any other payment being, or in the nature of a levy on mineral output, value, profits, income or export.

(2) In the first royalty year after the production unit commences the production of a commercial quantity of a saleable mineral commodity, any amounts expended in the 4 year period before that date, being amounts in the nature of operating costs under subsection (1), may be claimed as an operating cost.



**4C. Interpretation of "capital recognition deduction"**

- (1) In this Act "capital recognition deduction", for the purposes of a deduction under section 10(2), means a factor equivalent to a fraction of the value of each item representing an amount of eligible capital assets expenditure and used in relation to the operation of a production unit in each 6 monthly period of a royalty year, calculated as follows:
- (a) all items representing eligible capital assets expenditure are allocated within the capital deduction life schedule under subsection (5);
  - (b) a principal sum represented as 100% of an item from each group in the deduction life schedule is converted into a series of semi-annual annuities payable in arrears over the period of the deduction life, at a rate of interest determined under subsection (6) plus 2%, by the use of annuity tables having at least 5 significant places of decimals or by any other approved method; and
  - (c) the resulting amounts expressed as fractions of each principal sum mentioned in paragraph (b), are the factors used in calculating the capital recognition deduction for the items in each group of the capital deduction life schedule.
- (2) The Secretary shall from time to time announce the factors to be used in calculating a capital recognition deduction and the period during which they apply, being a specified period of 6 months before the Secretary's announcement.
- (3) The capital recognition deduction in respect of an item representing eligible capital assets expenditure not used on or directly related to the operations of the production unit for a whole 6 month period shall be reduced in proportion to the time during the 6 month period that it was not used.
- (4) If the Secretary does not make a further announcement under subsection (2) within 1 year after making an announcement under that subsection, the factors applying in the next 6 month period shall be those specified in the Secretary's first announcement, and those factors shall continue to apply in the next consecutive periods of 6 months until changed by the Secretary.
- (5) For the purposes of subsection (1), the Secretary shall promulgate guidelines under section 4E indicating the period over which a capital recognition deduction will be made for items representing eligible capital assets expenditure, being guidelines (in this section referred to as a capital deduction life schedule) based on rates of depreciation allowed in respect of items for income tax purposes and taking into account the residual life of items already partly or wholly depreciated, adjusted as shown in the following table:

Period over which depreciation allowed for income tax purposes	Corresponding period allowed for purposes of capital recognition deduction
4 years or less	3 years
Over 4 years but less than 10 years	5 years
10 years and over and all other assets	10 years.

- (6) The interest rate to be used under subsection (1)(b) is equivalent to the arithmetic mean of the published daily yields on Australian Federal Securities most closely approximating 10 years to maturity during the 6 month period announced by the Secretary under subsection (2).
- (7) The Secretary may, notwithstanding subsection (5) and guidelines promulgated pursuant to it, make special arrangements with a royalty payer for the treatment of items representing eligible capital assets expenditure for the purposes of this section.

**4CA. Additional deductions**

The Minister may, by agreement in writing with a royalty payer, agree that there may be claimed as an additional deduction in the royalty year during which –

- (a) a production unit first commences the production of a commercial quantity of a saleable mineral commodity; or
- (b) this Act first applies to and in relation to an already producing mine,

such amounts of expenditure directly relating to the production unit or mine as were expended at any time by the royalty payer or a company which, in the opinion of the Minister, is or was at the time a company related to the royalty payer, as are specified in the agreement and, subject to section 4D, those amounts may be deducted in calculating the royalty payable under Part II accordingly.

**4D. Deduction allowed once only**

Notwithstanding that an amount expended in respect of a production unit may –

- (a) fall under more than one head of allowance or deduction under this Act; or

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- (b) be reflected or capable of being reflected in the financial accounts relating to the production unit in more than one form,  
no deduction or allowance under this Act shall be made more than once in respect of any one amount expended.

### **4E. Guidelines**

- (1) The Secretary may issue written guidelines about any act, matter or thing under this Act.

(See back note 2)

- (2) A guideline may be of general or specific application.

(3) An act, matter or thing, to the extent that it complies with a guideline in force under this section, is to be taken to comply with this Act.

- (4) A guideline does not affect –

(a) the exercise by the Secretary of a power under this Act; or

(b) the right of a person to have the Secretary exercise a power under this Act.

### **4F. Secretary may determine certain matters before event**

- (1) A person may, in respect of a proposal to –

(a) set up a production unit;

(b) change a process; or

(c) adopt or change the accounting basis or system or a contractual arrangement,

apply to the Secretary for his or her opinion on the proposal in so far as it relates to the liability for the payment of royalty.

- (2) The Secretary may consider the proposal (after receiving such additional information as he or she considers necessary) and may give his or her opinion of the proposal to the applicant accordingly.

(3) The liability for the payment of royalty by a person who implements a proposal wholly or substantially in conformity with an opinion given under subsection (2) shall be determined by the Secretary in a manner consistent with that opinion.

### **4G. Arrangements purporting to alter incidence of royalty to be void**

- (1) For the purposes of this section –

"arrangement" means a contract, agreement, plan or understanding (whether enforceable or unenforceable) including all steps and transactions by which it is carried into effect;

"liability" includes a potential or prospective liability in respect of future royalty;

"royalty avoidance" includes –

(a) directly or indirectly altering the incidence of any royalty;

(b) directly or indirectly relieving any person from liability to pay royalty; and

(c) directly or indirectly avoiding, reducing or postponing any liability to royalty.

(2) An arrangement made or entered into, whether before or after the commencement of this Act, shall be absolutely void as against the Secretary for royalty purposes if and to the extent that, directly or indirectly –

(a) its purpose or effect is royalty avoidance; or

(b) where it has 2 or more purposes or effects, one of its purposes or effects (not being a merely incidental purpose or effect) is royalty avoidance, whether or not any other or others of its purposes or effects relate to, or are referable to, ordinary business or family dealings, whether or not any person affected by that arrangement is a party thereto.

(3) Where an arrangement is void under subsection (2) the value of any mineral commodity, asset or debt of a production unit affected by that arrangement shall be adjusted in such manner as the Secretary considers appropriate so as to counteract any royalty advantage obtained in respect of that production unit from or under that arrangement.

(4) Without limiting the generality of subsection (3), the Secretary may, in making an adjustment under that subsection, have regard to the royalty that, in his or her opinion, would have, or might be expected to have or would in all likelihood have, been paid in respect of a production unit if the arrangement had not been entered into.

(5) Nothing in this section shall apply to an arrangement made in conformity with guidelines promulgated under section 4E or the opinion of the Secretary under section 4F.

**5. Secretary to determine certain matters**

(1) The Secretary may determine the extent to which a particular expenditure is to be attributed to a particular category of eligible deduction in calculating the royalty payable by a royalty payer and, upon the determination being made, that particular expenditure shall be attributed accordingly.

(2) Where the activities of a royalty payer on or in relation to a production unit are activities which, in the opinion of the Secretary, are not directly related to the production of a saleable mineral commodity by that production unit but which would otherwise attract eligible deductions, the Secretary may, for the purpose of calculating the royalty payable by the royalty payer, apportion the expenditure between the activities directly related to the production of a saleable mineral commodity and those other activities, as the Secretary thinks fit.

**6. Certain allowances and deductions transferable**

Where a production unit is sold or transferred, any –

- (a) depreciation calculated in accordance with generally accepted accounting principles; or
- (b) capital recognition deduction in relation to items representing eligible capital assets expenditure sold or transferred with the production unit,

shall continue in the same manner and to the same extent as if the production unit and the items had not been sold or transferred.

**7. Exploration expenditure certificates**

(1) Subject to the Regulations, a person who expends money before 1 July 2003 on work carried out in the Territory in relation to the exploration for, or the determining of the existence, location, extent or quality of, a mineral occurrence in the Territory after the commencement of this Act may, within 6 months after the end of a period, not exceeding 12 months, during which the expenditure occurred, apply to the Secretary for the issue to the person of an exploration expenditure certificate in respect of that expenditure.

(2) An application under subsection (1) shall be in an approved form and be accompanied by such information as the Secretary thinks necessary to enable him or her to determine whether the expenditure is expenditure to which this section applies, and shall be verified by a statutory declaration by the applicant and accompanied by a statement in writing from an approved auditor giving his or her opinion as to whether or not the expenditure to which this section applies.

(3) Within 30 days after the Secretary is satisfied that an applicant has undertaken expenditure to which this section applies, the Secretary shall issue to the applicant a certificate in respect of that expenditure or so much of that expenditure as has not previously been taken into account in an assessment under section 18.

(4) A certificate issued under subsection (2) may be transferred to any person upon notice of its proposed transfer being given in an approved form to the Secretary.

(5) The Secretary may, before or after the period expires, extend the period for making an application under subsection (1) for a further specified period (not exceeding 3 months) if satisfied that in all the circumstances it is reasonable to grant the extension.

(6) In calculating an amount of expenditure for the purposes of this section, subject to subsection (7), an amount or value that affects the calculation is to be taken to be the amount or value exclusive of the amount of GST (if any) payable in relation to a supply to which that amount or value relates.

(7) Where an amount or value that affects the calculation referred to in subsection (6) is directly attributable to an acquisition that relates to a supply that is input taxed, the amount or value is to be taken to be the amount or value inclusive of the amount of GST (if any) payable in relation to the acquisition to which that amount or value relates.

(8) In subsections (6) and (7), "acquisition", "GST", "input taxed" and "supply" have the same respective meanings as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

**8. Substituted certificates**

(1) The Secretary shall, as soon as practicable after a certificate under section 7 is delivered to the Secretary with a statement under section 12, issue to the royalty payer a certificate for the balance of the amount of the delivered certificate not taken into account by the royalty payer as an eligible deduction for the purpose of calculating the royalty payable by the royalty payer in respect of the royalty year to which the statement relates.

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

(2) The Secretary may, on the application of the holder of a certificate under section 7 accompanied by the certificate, issue to the applicant such number of certificates, and in respect of such amounts, as the applicant requires, in substitution for the first-mentioned certificate.

### **PART II – IMPOSITION AND ASSESSMENT, ETC., OF ROYALTY**

#### **9. Royalty**

(1) There is payable under this Act to the Crown in right of the Territory a royalty in respect of all minerals vested in the Crown in right of the Territory obtained from a production unit in a royalty year.

(2) The holders of mining tenements that form part of a production unit are jointly and severally liable for the payment of royalty in respect of the production unit.

#### **10. Rate of royalty**

(1) The royalty payable under section 9 is 18% of the net value of a saleable mineral commodity sold or removed without sale from a production unit in a royalty year, but where that net value is –

- (a) \$50,000 or less, the royalty payable is nil; or
- (b) more than \$50,000, the royalty otherwise payable is reduced by \$9,000.

(2) For the purposes of subsection (1), the net value in a royalty year is calculated in accordance with the following formula:

$$GR - (OC + CRD + EEE + AD)$$

where –

GR is the gross realization from the production unit in the royalty year;

OC is the operating costs of the production unit for the royalty year;

CRD is the capital recognition deduction;

EEE is any eligible exploration expenditure, if any; and

AD is the additional deduction, if any, under section 4CA.

(3) For the purposes of subsection (2), the value adjustment for a capital asset scrapped, sold or removed without sale from the production unit, being an asset taken into account for the purposes of the definition of "eligible capital assets expenditure", is such amount as is agreed between the royalty payer and the Secretary to be the value of the asset or, in the absence of agreement within such period as the Secretary allows, is such amount as is determined by the Secretary to be the value of the asset, less that portion of the cost of the asset remaining to be depreciated in the accounts of the production unit.

(4) For the purposes of subsection (2), eligible exploration expenditure shall not be included in calculating the net value if the royalty payable in respect of the relevant production unit in relation to the royalty year would, in the absence of that eligible exploration expenditure deduction, be nil.

(5) Notwithstanding subsection (1), where –

- (a) a production unit has ceased the production of a saleable a mineral commodity; and
- (b) after the cessation amounts have been expended on the rehabilitation of the tenement forming part of the production unit,

the royalty payer of the production unit may, after the rehabilitation of the tenement is completed, furnish the Secretary with a statement, verified in such manner as the Secretary may require, of the amounts expended.

(6) After being satisfied of the correctness of a statement furnished pursuant to subsection (5) and making any adjustments necessary, the Secretary shall –

- (a) apportion the sum of the amounts allowed in the statement ratably over the previous 5 royalty years of the production unit or the life of the production unit, whichever is shorter;
- (b) allow the amount apportioned as a deduction to determine the net value of the saleable mineral commodity in each royalty year to which the amount has been apportioned; and
- (c) recalculate the royalty payable in each relevant royalty year.

(7) For the purposes of subsection (5), –

- (a) royalty does not include interest on royalty under section 42 or penal royalty under section 42A; and
- (b) where the specified accounting basis of the production unit is an accrual basis, amounts expended shall be interpreted as if that accounting basis were an incurred basis as described in paragraph (b) of the definition of "accounting basis" in section 4.

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

(8) Nothing in subsections (5) or (6) affects the liability of a royalty payer to furnish a statement under section 12 in respect of a saleable mineral commodity sold or removed without sale from a production unit in a royalty year after the production unit has ceased active production of a saleable mineral commodity.

(9) For the purpose of calculating or recalculating an amount of royalty under this section, subject to subsection (10), an amount or value that affects the calculation or recalculation is to be taken to be the amount or value exclusive of the amount of GST (if any) payable in relation to a supply to which that amount or value relates.

(10) Where an amount or value that affects the calculation or recalculation referred to in subsection (9) is directly attributable to an acquisition that relates to a supply that is input taxed, the amount or value is to be taken to be the amount or value inclusive of the amount of GST (if any) payable in relation to the acquisition to which that amount or value relates.

(11) In subsections (9) and (10), "acquisition", "GST", "input taxed" and "supply" have the same respective meanings as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

...

### **12. Royalty return**

(1) Subject to subsection (7), a royalty payer shall, within 3 months after the expiration of a royalty year or such longer period as the Secretary, in writing, allows, deliver to the Secretary a detailed statement, relating to the whole production unit, containing or indicating –

- (a) the name and description of the production unit;
- (b) the name and address of each royalty payer in respect of the production unit;
- (c) the quantity of a mineral commodity sold or removed without sale from the production unit during the royalty year;
- (d) the name and address of the smelter, refinery or mill to which a mineral commodity recovered was sent;
- (e) the name and address of, and relationship between, any person with an interest in the production unit and the operator of the smelter, refinery or mill;
- (f) the value and the basis of valuation of a mineral commodity sold or removed without sale from the production unit;
- (g) details of all sales or shipments of a mineral commodity from the production unit; and
- (h) details of all contracts and sale or exchange agreements relating to a mineral commodity obtained from the production unit,

and such other information as the Secretary requires.

(2) A statement referred to in subsection (1) shall, in addition to the matters required under that subsection to be contained or indicated, contain –

- (a) details of all expenditure claimed as eligible deductions in calculating net value under section 10(2);
- (b) by way of summary, a calculation of net value; and
- (c) an estimate of the royalty payable.

(3) The statement required under subsection (1) to be delivered shall be in an approved form and, subject to subsection (7), shall be signed by the holders of each mining tenement that forms part of the production unit or a person having knowledge of the affairs of the production unit on behalf of those mining tenement holders.

(4) The statement required by subsection (1) to be delivered shall be audited by an approved auditor whose written report shall accompany the statement, being a report indicating whether, in the opinion of the auditor, the statement –

- (a) is based on proper accounts and documents properly kept and is in agreement with those accounts and documents; and
- (b) complies with the relevant provisions of this Act.

(5) Where eligible exploration expenditure within the meaning of paragraph (a) of the definition of "eligible exploration expenditure" is taken into account by a royalty payer in estimating the royalty payable by him or her, the statement required under subsection (1) to be delivered shall be accompanied by a certificate issued under section 7 or 8 or, where no such certificate has been issued in respect of that expenditure, details of the application under section 7 for the issue of the certificate.

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

(6) Where a statement required under subsection (1) to be delivered is accompanied by details of an application under section 7 for the issue of a certificate in respect of eligible exploration expenditure taken into account by the royalty payer in estimating the royalty payable by him or her, and a certificate is subsequently issued under that section in respect of that expenditure, the royalty payer shall, within 30 days after receiving the certificate, deliver it to the Secretary to be dealt with under section 8(1) as if it were a certificate delivered with the statement.

Penalty: \$2,000.

(7) The Secretary may, with the consent in writing of all the royalty payers for a production unit, permit a royalty payer to deliver a statement under this section in respect of his or her operations in relation to the production unit separate from those of other royalty payers, and the Secretary may deal with that statement, and the statement or statements in relation to the remainder of the production unit, accordingly.

(8) Nothing in subsection (7) shall be construed as relieving a royalty payer from his or her liability for the payment of royalty in respect of the whole production unit.

...

### **17. Proper books to be kept**

(1) A royalty payer shall keep at the production unit, or at some other place in Australia agreed between the royalty payer and the Secretary or, in the absence of agreement, as determined by the Secretary, proper books of account in accordance with generally accepted accounting principles and the specified accounting basis showing in respect of that production unit –

- (a) the amount and particulars of each expenditure in each category of deduction;
- (b) details of all sales, transfers and other disposals of assets, being assets the costs of which have been included in calculating eligible capital assets expenditure;
- (c) details of the mass and grade of a mineral commodity recovered from the production unit and of sales, shipments, transfers and other disposals of a mineral commodity from the production unit, including the time, destination, value and basis of valuation and mass and grade of each sale, shipment, transfer or other disposal; and
- (d) details of all assets, being assets the costs of which have been included in calculating eligible capital assets expenditure, eligible exploration expenditure and eligible research and development expenditure.

(2) A mineral commodity shall not be sold or removed from a production unit, or treated in a processing plant not included in the production unit, until its mass and grade have been ascertained and entered in a book of account referred to in subsection (1).

Penalty: \$5,000.

### **18. Assessment**

From the statement required to be delivered under section 12, and from any other information in his or her possession, whether or not obtained under this Act, the Secretary shall make an assessment of the net value, and the royalty payable by the royalty payer, in respect of the royalty year to which that statement relates.

...

### **22. Notice of assessment**

As soon as practicable after an assessment under this Act is made, the Secretary shall, by post or otherwise, serve a written notice of assessment on the royalty payer.

## **PART III – OBJECTION AND REVIEW**

### ***Division 1 – Board of Review***

#### **26. Appointment of Board**

(1) For the purposes of this Part, the Minister may establish such Boards of Review as are necessary to consider applications for the review of assessments under this Act.

(2) The Minister may, in writing, appoint a Judge of the Supreme Court to be the Chairperson of a Board, and such other members as the Minister thinks fit, to review a particular assessment under this Act.

...

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

*Source:*

*<http://notes.nt.gov.au/dcm/legislat/legislat.nsf/0/e528334994039eed69256eca001e2fd5?OpenDocument>, accessed 22 February, 2005.*

## Queensland

### 1. Summary

Royalties in the Australian State of Queensland are levied under the provision of the **Mineral Resources Act 1989 and related Mineral Resources Regulations 2003**. Depending on the mineral, royalties are payable on either a specific unit (volume) or on an *ad valorem* basis.

Base and precious metals (i.e., gold, silver, copper, lead, zinc, nickel and cobalt) are "prescribed minerals" and attract royalty according to a fixed or a variable ad-valorem basis. Companies must elect which system they wish to apply, and the elected rate applies on all minerals sold, disposed of or used up to 1 January 2006. The fixed rate is 2.7% and the variable rates vary between 1.5% and 4.5% in linear proportion with bands according to reference prices and using a formula explained in the Mineral Resources Regulations 2003, Part 1. There is a statutory exemption on the first \$30,000 of the value of mineral sold and only half the royalty is payable on the next \$4 million of the total value of copper, lead and zinc. The regulations also make provisions for royalty discounts of 20% to 35% for base metals, provided rates of recovery above certain prescribed levels are achieved.

### 2. Extracts from source legislation

#### Mineral Resources Act 1989

##### Part 9 Royalties

##### 320 Royalty return and payment

- (1) The holder of a mining claim, mining lease or other authority under this Act or any other Act relating to mining who mines or allows to be mined mineral, whether or not the Crown has the property in the mineral, from land the subject of that mining claim, mining lease or other authority shall pay royalty as prescribed at the rate for the time being prescribed in respect of that mineral.
- (2) Subsection (1) does not apply in respect of—
  - (a) coal, that is not the property of the Crown, mined under the authority of a mining lease granted or renewed or deemed to be granted or renewed under this Act for as long as there subsists an agreement made prior to the commencement of the *Mining Act Amendment Act 1976* with the owner of the coal or the owner's predecessor in title as to the royalty to be paid to the owner in respect of the coal mined or where such an agreement has, as provided in that agreement, been renewed, whether before or after the commencement of the *Mining Act Amendment Act 1976* for as long as there subsists a renewal of such an agreement; or
  - (b) mineral, that is not the property of the Crown and is not referred to in paragraph (a), mined under the authority of a mining claim or mining lease granted or renewed under this Act for so long as there subsists an agreement made prior to the commencement of this Act with the owner of the mineral or the owner's predecessor in title as to the royalty to be paid to the owner in respect of the mineral mined or where such an agreement has, as provided in that agreement, been renewed, whether before or after the commencement of this Act for so long as there subsists a renewal of such an agreement.
- (3) Where mineral is mined under the authority of a mining claim or a mining lease royalty payable under this part shall be payable—
  - (a) where the Crown has the property in the mineral—to the Crown; or
  - (b) in any other case—to the person who has the property in the mineral.



## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- (4) The holder of a mining claim, mining lease or another authority under this Act or another Act about mining who mines mineral or allows mineral to be mined from land the subject of the mining claim, mining lease or other authority must, whether or not the State has property in the mineral, lodge royalty returns as required under a regulation.
- (5) Unless a regulation otherwise provides, the holder of a mining claim or mining lease that authorises the mining of minerals for which royalty is or would be payable must lodge a royalty return whether or not mineral has been mined during the period of the return.
- (6) Where, during a period in respect of which a royalty return is required to be lodged, mineral is mined by more than 1 person under a mining claim or mining lease or other authority under this Act or any other Act the holder shall ensure lodgment of the prescribed royalty return and payment of the prescribed royalty in respect of all mineral mined during the whole of the period under the mining claim, mining lease or other authority.
- (7) A person who mines mineral from land other than under a mining claim, mining lease or other authority mentioned in subsection (1) or (2), must, whether or not the State has the property in the mineral—
  - (a) lodge the royalty returns as required under a regulation; and
  - (b) pay royalty to the State or anyone else who has property in the mineral at the rate required under a regulation.
- (8) The Minister may in the Minister's discretion determine that for the purpose of calculating royalty payable under this part, mineral has been mined under the 1 mining operation notwithstanding that that operation may be carried on under more than 1 authority granted under this or any other Act to mine that mineral.

### **321 Prescription of royalty**

- (1) Regulations made pursuant to section 417, may prescribe the royalties payable in respect of mineral mined from land to the Crown or other person who had the property in the mineral.
- (2) Royalty may be prescribed whether the obligation to pay the royalty arises under this Act or under any agreement made with the State of Queensland or under any undertaking given by any person and shall be calculated at such rate or rates, in such manner and on such basis or bases as are prescribed by regulation.
- (3) Without limiting the authority of the Governor in Council to regulate with respect to royalty, a rate of royalty and the manner and basis of its calculation—
  - (a) may be prescribed by reference to the quantity of mineral-bearing ore removed or by reference to the quantity of mineral mined;
  - (b) may be prescribed by reference to a proportion of the profits made from specified operations or from a particular operation or of the gross proceeds of the sale or disposal of the product of specified operations or of a particular operation;
  - (c) may vary as between royalties payable in respect of different minerals;
  - (d) may vary as between royalties payable by the same person or by different persons whether—
    - (i) in respect of the same mineral or different minerals;
    - (ii) in respect of mineral mined at the same place or at different places;
    - (iii) in respect of mineral mined at the same point in time or at different points in time;
    - (iv) in respect of mineral mined by the same method of mining or by different methods of mining;
  - (e) may be prescribed to apply generally throughout the State or in any prescribed locality of the State;
  - (f) may be prescribed in respect of all mining operations in the State or in respect of a particular mining operation or in respect of the mining operations of a particular person.

### **322 Minister may request audit**

- (1) Without in any way limiting the powers of the Minister or any other person under this Act, in order to ascertain the accuracy of any royalty return document or statement lodged as prescribed by or under this Act for the purposes of this part by a person who is or was the holder of a mining claim or mining lease or who otherwise mines or who, the Minister suspects, may have mined from any land mineral, the Minister may, at any time, request and authorise—

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- (a) the auditor-general; or
  - (b) with the concurrence of the auditor-general—an officer of the audit office; to examine that person's accounts and accounting records and to compare such records with the return, document or, as the case may be, statement.
- (2) The auditor-general or officer authorised under subsection (1)—
- (a) shall examine such of that person's accounts and accounting records as the auditor-general or officer considers necessary and forthwith upon completion of the examination and comparison, shall report to the Minister the result thereof;
  - (b) shall have, in respect of that person's accounts and accounting records, the subject of the examination and comparison, such powers as are prescribed;
  - (c) if the return, document or statement has been lodged by or for a corporation—may rely on work performed by auditors who have examined the corporation's accounts.
- (3) The provisions of the *Financial Administration and Audit Act 1977* that apply in relation to audits of accounts required by any Act to be performed by the auditor-general apply in relation to examinations and reports under this section.

### **323 Resolving inconsistency between differing royalty provisions**

Where there is inconsistency between the requirements of the regulations and the provisions of any agreement made with the State of Queensland or of any undertaking given by any person (whether made or given before or after the commencement of the *Mining Royalties Act 1974* and whether or not such provisions have the force of law) as respects the royalty payable to the Crown in respect of mineral mined or mineral-bearing ore removed in any mining operation or as respects the manner or basis of its calculation, the requirements of the regulations shall prevail and the royalty payable and the manner and basis of its calculation shall be as prescribed by regulation, and any amount of royalty paid pursuant to such agreement or undertaking in relation to any period shall be offset against the amount of royalty duly payable pursuant to the regulations in relation to the same period.

### **324 Utilisation of security deposit towards royalty payments**

- (1) Where royalty is payable under this part by a person in respect of 1 mining operation (as determined by the Minister pursuant to section 320(8)) and is unpaid, that amount may be recovered by the Minister or, as the case may be, the mining registrar by utilisation of security deposited by or on behalf of that person in respect of mining claims or mining leases or any of them under which the mining operation is carried on.
- (2) This section shall not be construed to limit the right to utilise a security deposit for any purpose under any other provision of this Act.

### **325 Royalty return and payment upon assignment or surrender of mining claim or mining lease**

- (1) A person who assigns or surrenders, otherwise than for the purpose of a grant of a new mining claim or mining lease, a mining claim or a mining lease shall lodge with the document of assignment or surrender a royalty return with respect to mineral mined under the authority of the mining claim or mining lease for the current return period up to the last day of the month immediately preceding the lodgment of the assignment or surrender and shall lodge with the return the prescribed royalty in respect of that mineral.
- (2) Nothing in subsection (1) shall abrogate the liability of a holder of a mining claim or mining lease at the time that minerals are mined thereunder to pay royalty on the minerals mined during the period from the date up to which the return required under subsection (1) is required up to the date the assignment or surrender thereof takes effect.

### **326 Maintenance of records**

- (1) A person who is the holder of a mining claim or a mining lease or who otherwise mines mineral from land shall keep accurate and proper accounting records such as are necessary to determine the amount of royalty payable from time to time under this part in respect of mineral mined.
- (2) Such records shall be retained by that person for a period of 7 years after the completion of the transactions, acts or operations to which they relate.

### **327 Minister may require information**

- (1) The Minister may, for the purpose of—

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- (a) ascertaining whether there is any liability on a person to pay an amount of royalty under this Act, and if so, the amount of the liability; or
  - (b) ascertaining whether a person is required to comply with this part or whether this part has been contravened or not complied with by a person in any respect; or
  - (c) inquiring into any matter connected with the administration of this part; require a person—
  - (d) to lodge a royalty return as prescribed in respect of a specified period, whether or not any mineral has been mined during that period; or
  - (e) to give information of a kind and in a form or manner required or to produce records (or copies thereof) (being information or records believed to be within the knowledge, in the custody or under the control of the person) at a place and within a time specified by the Minister, to the Minister or an officer authorised by the Minister; or
  - (f) to attend before the Minister or other officer specified by the Minister at a time and place specified by the Minister and there to give information and to producer records of a kind specified (being information or records believed to be within the knowledge, in the custody or under the control of the person) and to answer questions or to do all or any of those things.
- (2) A person appointed for that purpose by the Minister and all other persons acting in aid of the person may enter any place wherein or whereon that person suspects on reasonable grounds that there are accounts, records, documents or other information in respect of which a requirement could be made under subsection (1), may search for and require production at that place, at the mining registrar's office or at any other specified place of such accounts, records, documents and information and may examine, copy and make extracts from any such accounts, records, documents and information.
  - (3) Before a person referred to in subsection (2) enters a part of any place which part is used exclusively as a dwelling house the person shall, save where the person has the permission of the occupier of that part to the person's entry, obtain from a justice a warrant to enter.
  - (4) A justice who is satisfied upon the complaint of a person referred to in subsection (2) that there is reasonable cause to suspect that in any place there are accounts, records, documents or other information referred to in subsection (2), may issue the justice's warrant directed to the complainant to enter the place named in the warrant for the purpose of exercising therein the powers conferred upon that person under this Act.
  - (5) A complaint made under subsection (4) shall be made on oath or affirmation and shall set out the grounds on which the suspicion of the person making the same is based.
  - (6) A justice who is the chief executive or other officer of the department of the Government for the time being administering this Act is not competent to issue a warrant to which subsections (3), (4) and (8) apply.
  - (7) A justice who issues the justice's warrant pursuant to subsection (4) shall forward a copy of the warrant to the mining registrar for the mining district in which the dwelling house is situated.
  - (8) A warrant shall be, for the period of 1 month from the date of its issue, sufficient authority for the person named therein and all persons acting in aid of the person—
    - (a) to enter the place specified in the warrant; and
    - (b) to exercise therein the powers conferred upon the person named therein by or under this Act.
  - (9) In subsections (3) to (8) premises that are used as a dwelling house do not include the curtilage of those premises.
  - (10) The Minister or an officer authorised by the Minister pursuant to subsection (1) may require information sought under this section to be given, verbally on oath or in writing by statutory declaration, as the case may be, and for that purpose the Minister, that officer or any justice may administer an oath or take a declaration.
  - (11) The Minister or an officer authorised by the Minister pursuant to subsection (1) may cause to be made copies of or extracts from the whole or part of the information or accounts, records or documents produced in accordance with subsection (1).
  - (12) A requirement pursuant to subsection (1) which requires a person to give information to, to attend before or to produce accounts, records or documents to an officer authorised by the Minister pursuant to subsection (1) may specify that officer by name or by the office that the officer holds.

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- (13) Notwithstanding that a requirement made pursuant to subsection (1) requires a person to give information to, to attend before or to produce accounts, records or documents to an officer whose name or office is specified in the requirement, the Minister may at any time (without notice to the person to whom the notice was given) authorise another officer for that purpose to exercise any power or perform any duty that the officer would be able to exercise or perform if the officer were authorised pursuant to subsection (1).
- (14) Any reasonable expenses incurred by a person whose attendance is required under this section which are acceptable to the Minister may be allowed.

### **328 Offence not to comply with s 327**

- (1) A person shall not fail to comply with a requirement made of the person under section 327.
- (2) A person shall not be convicted of an offence defined in subsection (1), if the court hearing the charge is satisfied—
- (a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates; or
  - (b) that the defendant complied with that requirement to the extent of the defendant's ability to do so.
- (3) A person is not excused from complying with a requirement under section 327 to give information or answer a question on the ground that the information or answer might tend to incriminate the person or make the person liable to a penalty.
- (4) Information given or an answer made by a person in complying with a requirement under section 327, which might tend to incriminate the person or make the person liable to a penalty, is not admissible against the person in any proceedings brought against the person in a court in Queensland with a view to the person's punishment for an alleged offence except—
- (a) proceedings in respect of an offence under this Act; or
  - (b) proceedings in respect of an offence in connection with verification of the information or answer by oath or affirmation.
- (5) Where a person commits an offence defined in subsection (1)—
- (a) the offence shall be a continuing offence and be deemed to continue for as long as the requirement in respect of which the offence was committed is not complied with; and
  - (b) the court may, upon convicting the person of the offence, in addition to any penalty that it may impose under subsection (1), order the person to pay a penalty of 5 penalty units for each day on which the offence is, pursuant to paragraph (a), deemed to have continued to the date of the person's conviction of the offence.
- (6) Subsection (5) applies notwithstanding that the failure or conduct alleged against a defendant related to a particular time by or a particular period in which the requirement was to be complied with.
- (7) Where a person has been convicted of an offence against subsection (1), the court may, in addition to imposing a penalty that it may impose under subsection (1) and, where applicable, subsection (5), order the person to comply with the requirement in respect of which the offence was committed.
- (8) Where a court makes an order under subsection (7), it shall specify therein a place where and a time or period by or within which the order is to be complied with.
- (9) A person shall not fail to comply with an order made by the court pursuant to subsection (7).
- (10) A person who after conviction of an offence defined in subsection (1) or this subsection (the *previous conviction*) continues to fail to comply with the requirement in respect of which the person incurred the previous conviction commits an offence against this Act. Maximum penalty—10 penalty units for each day on which the person has continued to fail to comply with the requirement from the date of the last occurring previous conviction to the date of the person's conviction for the offence under this subsection last committed by the person.
- (11) When a person is convicted of an offence as defined in subsection (1) and the court makes an order under subsection (7), the person shall not be punished under subsection (10) for continuing to fail to comply with the requirement to which the order relates.

### **329 False or misleading statements**

- (1) A person shall not give an answer, whether orally or in writing, that is false or misleading in a material particular to a question put to the person under section 327.

- (2) A person shall not, in providing information in accordance with section 327, make a statement or representation that is false or misleading in a material particular.
- (3) It is a defence to a charge under subsection (1) or (2) to prove that the defendant believed on reasonable grounds that the answer, statement or representation was neither false nor misleading.

**330 Determination of facts by Minister**

Where, in the opinion of the Minister a person who is required by this Act to lodge a royalty return in respect of a period fails to lodge the return as prescribed or fails to keep adequate records to enable the amount of royalty payable by that person to be determined, or the Minister considers that all relevant information has not been specified or information supplied is inaccurate or inappropriate, the Minister may determine what are the facts relevant to the determination of the royalty payable and the royalty payable shall be calculated and be payable accordingly.

**331 Reassessment of royalty**

- (1) If the Minister, at any time, is satisfied that royalty has been assessed upon incorrect or inaccurate facts, the Minister may reassess the royalty payable.
- (2) Where the royalty payable, upon a reassessment, is greater than any amount paid the person liable to pay the royalty shall pay the difference in the time specified by the Minister.
- (3) Where the royalty paid, upon a reassessment, is greater than the royalty payable the Minister shall cause the difference to be refunded.

**332 Interest upon unpaid royalty**

A person who fails to pay any amount of royalty payable by the person to the Crown under this part by the prescribed time for payment may be liable at the discretion of the Minister to pay to the Crown interest on the amount outstanding at the rate prescribed for the time being which interest shall form part of the royalty payable.

**333 Recovery of unpaid royalties**

Without limiting in any way any other means of recovery thereof, the Crown or any other person to whom any royalty is payable under this part may recover as a debt the royalty or such part as remains unpaid and, in the case where the royalty is payable to the Crown interest at the prescribed rate from the person by whom the royalty is payable as a debt due and owing to the Crown or, as the case may be, that other person.

**334 Confidentiality of information**

- (1) Except as provided in this section, an officer shall not disclose information or publish a record obtained by that officer or another person in connection with the administration of this part, unless the disclosure or publication is made—
  - (a) with the consent (express or implied) of the person to whose affairs the information or record relates; or
  - (b) in connection with the administration of this Act; or
  - (c) for the purpose of any legal proceedings (including any report thereon) arising out of this Act; or with the consent of the Minister.
- (2) The Minister may, if the Minister is of the opinion that it is necessary to do so for the purpose of enforcing a law which is designed to protect the public revenue of Queensland, disclose information or publish a record referred to in subsection (1) to such persons as necessary for the purpose of enforcing that law so as to enable those persons to exercise or perform a power or duty conferred or imposed on those persons by law.
- (3) A person shall not disclose information or publish a record communicated to the person under subsection (2) unless the disclosure or publication—
  - (a) is made with the consent of the Minister; and
  - (b) is to enable a person to exercise or perform, for a purpose referred to in subsection (2), a power or duty conferred or imposed on the person by law.
- (4) Neither the Minister nor an officer nor a person authorised by the Minister to represent the Minister shall be required to produce in court any return, declaration, statement, assessment, notice or any other document or disclose to a court the fact that the Minister has received any information or the nature thereof or the name of the person who gave such information or any matter or thing coming under the Minister's notice in the performance of the Minister's duties under this part, except when it is necessary to do so for the purposes of the administration of this Act.

(5) In this section—

**officer** means an officer of the public service whose duties include the carrying out of duties in the administration of this Act and other persons engaged to carry out such duties.

**335 Furnishing false particulars etc.**

A person whether liable to the payment of royalty or not shall not—

- (a) fail or neglect to furnish a royalty return as and when required to do so by this Act; or
- (b) fail or neglect to comply with any requirement of the Minister in regard to a royalty return; or
- (c) make or deliver a false royalty return or supply false information with respect to a royalty return so made or delivered by the person.

**Source:**

<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/MineralReA89.pdf>,  
accessed on February 15, 2005.

## **Mineral Resources Regulations 2003**

### **Part 9 Royalties**

#### **Division 1 Provisions about royalty returns**

##### **24 Application of div 1**

This division prescribes, for section 320(4)17 of the Act, the requirements for royalty returns lodged under the Act.

##### **25 Form of Royalty Return**

A royalty return lodged under the Act must be—

- (a) in the approved form; and
- (b) accompanied by the royalty payable for the period to which the return relates.

##### **26 Information to accompany or support royalty return**

The Minister may require –

- (a) that a royalty return lodged by a particular person, or for a particular mining operation, be accompanied by information to support the matters stated in the royalty return; or 17 Section 320 (Royalty return and payment) of the Act
- (b) a person who has lodged a royalty return to provide further information to support the matters stated in the royalty return.

##### **27 Period to which a royalty return must relate**

(1) A royalty return lodged by a person must relate to a period of -

- (a) 1 year starting on -
  - (i) 1 July; or
  - (ii) if the Minister has, by giving written notice to the person, approved another day for the start of the year—the day approved by the Minister; or
- (b) if the Minister has decided, having regard to the size of the operation to which the return relates, the return should be lodged for a quarter—1 quarter starting on the first day of the quarter decided by the Minister to be the quarter to which the return must relate.

(2) However, if the royalty return relates to oil shale, the royalty return must relate to a calendar quarter.

##### **28 When royalty return must be lodged**

(1) A royalty return lodged under the Act must be lodged -

- (a) if the return relates to a year—within 3 months after the day the year ended; or
- (b) if the return relates to a quarter—on or before the last business day of the month after the day the quarter ended.

(2) However, if a mining operation ends within the year or quarter, the royalty return must be lodged within 3 months after the day the operation ended.

(3) Also, a person may apply, in writing, to the Minister for approval to lodge the royalty return on a day later than the day mentioned in subsection (1) or (2).

(4) A royalty return lodged after the day mentioned in subsection (1) or (2) or, if the Minister has approved a later day under subsection (3), the later day approved by the Minister, must be accompanied by the prescribed fee.

#### **Division 2 Royalty payable for minerals**

### **Subdivision 1 Definitions**

#### **29 Definitions for div 2**

In this division -

***base prescribed mineral*** means the following—

- (a) cobalt;
- (b) copper;
- (c) lead;
- (d) nickel;
- (e) zinc.

***mining authority*** means a mining claim, mining lease or other authority under the Act or an authority under another Act relating to mining.

***mining operation*** means—

- (a) mining minerals under only 1 mining authority; or
- (b) mining minerals under 2 or more mining authorities if—
  - (i) the authorities are held by the same person or by related persons; and
  - (ii) any stage of the mining is carried out by using a common mining facility; or
- (c) if the Minister has made a determination under section 320(8)18 of the Act—the operation determined by the Minister, under that section, as being 1 mining operation.

***related person*** includes corporations that are related bodies corporate within the meaning of the Corporations Act, section 50.19

#### **Subdivision 2 Royalty payable**

##### **30 When royalty payable**

Royalty payable under the Act for a return period is payable on the day a royalty return must be lodged for the return period.

##### **31 General royalty payable under the Act**

(1) Royalty payable under the Act by a person is payable, for all minerals sold, disposed of or used in a return period, at the following rate—

for a prescribed mineral –

- (a) the fixed rate stated for the mineral in schedule 4, part 1, section 2; or
  - (i) if the person made an election, on the first royalty return lodged by the person, to pay
  - (ii) the royalty at the variable rate—the variable rate stated for the mineral in schedule 4, part 1, section 3;
- (b) for another mineral—the rate stated for the mineral in schedule 4, part 2.

(2) If a person, on the first royalty return lodged by the person, elected to pay royalty for a prescribed mineral at the variable rate, the person must pay royalty for the prescribed mineral at the variable rate for all of the prescribed mineral sold, disposed of or used before 1 January 2006.

(3) In this section –

***first royalty return***, in relation to a person, means –

- for a person who was carrying on a mining operation on or before 31 December 2000—the first royalty return lodged by the person after 31 December 2000; or
- for another person—the first royalty return lodged by the person.

##### **32 Royalty on stocks of mineral for mining operation that has ended**

This section applies if -

- (a) a mining operation has ended; and there are minerals mined under the operation that have not been sold, disposed of or used; and
- (b) the Minister reasonably believes the minerals will not be sold, disposed of or used within 12 months after the day the operation ended.

(2) The royalty payable for the return period in which the mining operation ended must include royalty for the minerals at the rate stated for the minerals in schedule 4.

#### **Subdivision 3 Exemptions for particular minerals**

##### **33 Exemption for hydrocarbons**

No royalty is payable for hydrocarbons that are –

- a. flared or vented; or

b. used for recovering more hydrocarbons.

#### **34 Threshold exemption for particular minerals**

- (1) This section applies if 1 or more of the following minerals are being mined under a mining operation -
  - (a) a prescribed mineral;
  - (b) corundum or a gemstone or precious stone;
  - (c) a mineral mentioned in schedule 4, part 2, section 10.21
- (2) No royalty is payable on the first \$30 000 of the combined value of the minerals sold, disposed of or used in a year.
- (3) A person must elect to apply the exemption mentioned in subsection (2) to the first \$30 000 of value of only 1 of the minerals, mentioned in subsection (1), sold, disposed of or used in the year.
- (4) However, if less than \$30 000 of value of the mineral elected for subsection (3) is sold, disposed of or used in the year, the person may apply the unused part for the mineral to another mineral mentioned in subsection (1).
- (5) In this section –  
**unused part**, in relation to a mineral, means the difference between \$30 000 and the value of the mineral sold, disposed of or used in a year.

#### **35 Threshold exemption for processed oil shale**

- (1) This section applies to oil shale mined under mining lease 80003.
- (2) No royalty is payable for the oil shale on the value of the first 1 600 000 barrels of oil processed, from the oil shale, in a calendar year.
- (3) If less than 1 600 000 barrels are processed from the oil shale in a calendar year –
  - (a) the shortfall for the calendar year may be carried forward to the following calendar year; and
  - (b) if the shortfall is carried forward to the following calendar year—no royalty is payable for the oil shale on the value of the first exempt number of barrels of oil processed, from the oil shale, in the calendar year.
- (4) However, any unused shortfall for a calendar year can not be carried forward beyond the calendar year immediately following the calendar year in which there was a shortfall.
- (5) In this section –  
**exempt number**, for a calendar year, means the sum of 1 600 000 and the shortfall carried forward, under subsection (3)(a), to that year.  
**shortfall**, for a calendar year, means the difference between 1 600 000 and the number of barrels actually processed in the year.  
**unused shortfall**, for a calendar year, means any shortfall that was carried forward, under subsection (3)(a), to the year but was not used in the year.
- (6) This section expires on 1 January 2006.

#### *Example –*

For the years 2002 to 2004, the barrels of oil processed from oil shale mined under mining lease 80003 are as follows –

- 2002—1 300 000 barrels
- 2003—1 700 000 barrels
- 2004—2 000 000 barrels

In 2002, no royalty is payable for the oil shale because the number of barrels of oil processed from the oil shale is below 1 600 000. Under subsection (3), the shortfall of 300 000 (i.e., 1 600 000 less 1 300 000) is carried forward to 2003 so that the exempt number for 2003 is 1 900 000 (i.e., 1 600 000 plus 300 000). In 2003, no royalty is payable for the oil shale because the number of barrels of oil processed from the oil shale is below 1 900 000 (the exempt number). There is no shortfall from 2003 to carry forward because the number of barrels of oil processed from the oil shale (i.e., 1 700 000) is above 1 600 000. Also, under subsection (4), the unused shortfall of 200 000 (i.e., 1 900 000 less 1 700 000) from 2002 cannot be carried forward to 2004. In 2004, royalty is payable for the oil shale on the value of 400 000 barrels of oil (i.e., 2 000 000 less 1 600 000) and there is no shortfall to be carried forward to 2005.

#### **Subdivision 4 Concessions for particular minerals**



### 36 Definitions for subdiv 4

In this subdivision –

**apportioned prescribed amount**, in relation to a base prescribed mineral sold, disposed of or used in a year or quarter, means the amount worked out by –

- (a) working out –
  - (i) the total combined value (the **total value**) of all the base prescribed minerals sold, disposed of or used in the year or quarter; and
  - (ii) the relevant prescribed amount for the base prescribed minerals sold, disposed of or used in the year or quarter; and
- (b) apportioning the relevant prescribed amount to each base prescribed mineral based on the amount of the total value that is attributable to the mineral.

**quarterly prescribed amount**, in relation to base prescribed minerals sold, disposed of or used in a quarter in a year, means –

- (a) for the threshold quarter for the year—the lower of the following after the first total combined value of \$30 000 for the year is exceeded—
  - (i) \$1 000 000;
  - (ii) the total combined value of all the minerals sold, disposed of or used in the quarter; or
- (b) for each following quarter in the year—the lower of the following –
  - (i) \$1 000 000 plus, if there is an unused part of the quarterly prescribed amount for the previous quarter, the unused part for the previous quarter;
  - (ii) the total combined value of the minerals sold, disposed of or used in the quarter.

**relevant prescribed amount** means—

- (a) for working out base prescribed minerals sold, disposed of or used in a year - the yearly prescribed amount; or
- (b) for working out base prescribed minerals sold, disposed of or used in a quarter - the quarterly prescribed amount.

**threshold quarter** means the quarter, in a year, in which the value of the minerals sold, disposed of or used in the year exceeds \$30 000.

**unused part**, in relation to a quarterly prescribed amount for a quarter in a year, means –

- a. for the threshold quarter for the year - the difference between -
  - (i) \$1 000 000; and
  - (ii) the value, exceeding the first \$30 000 for the year, of minerals sold, disposed of or used in the quarter; or
- b. for another quarter for the year—the difference between –
  - (i) \$1 000 000 and any unused part relating to the previous quarter; and
  - (ii) the value of the minerals sold, disposed of or used in the quarter.

**yearly prescribed amount**, in relation to base prescribed minerals sold, disposed of or used in a year, means the lower of the total combined value of all the base prescribed minerals sold, disposed of or used in the year and –

- (a) \$4 000 000; or
- (b) if the mining operation under which the minerals are mined was not operational for a part of a year because the project had not started on or before the start of the year or ended within the year—a proportionate amount of \$4 000 000 based on the number of months, or part months, in the year between and including –
  - (i) the month at the start of the year, or if the mining operation started after the start of the year, the month in which the project started; and
  - (iii) the month at the end of the year or, if the mining operation ended within the year, the month in which the project ended.

### 37 Concessional royalty for particular prescribed minerals

(1) The royalty payable for the minerals sold, disposed of or used in a year or quarter is the sum of the following -

- (a) the royalty payable for all base prescribed minerals sold, disposed of or used in the year or quarter worked out by adding the royalty payable for each base prescribed mineral sold, disposed or used in the year or quarter at the following rate –

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- (i) for the apportioned prescribed amount of the mineral sold, disposed of or used in the year or quarter - 50% of the rate stated in schedule 4, part 1, for the mineral;
  - (ii) for any remaining value of the mineral sold, disposed of or used in the year or quarter - the rate stated in schedule 4, part 1, for the mineral;
  - (b) the royalty payable for all minerals, other than base prescribed minerals, sold, disposed or used in the year or quarter, worked out by adding the royalty payable for each mineral sold, disposed of or used in the year or quarter at the rate stated in schedule 4 for the mineral.
- (2) However, for working out, under subsection (1), the royalty payable for a mineral, any value or amount of the mineral sold, disposed of or used that is exempt under section 34 or 35 must be disregarded.

### **38 Adjustment for concessions for particular prescribed minerals—quarterly returns**

- (1) This section applies if -
- (a) royalty returns lodged for a year in relation to a mining operation are lodged quarterly; and
  - (b) the royalty payable for the quarters to which the royalty returns relate are worked out under section 37; and
  - (c) either -
    - (i) the total combined value of the base prescribed minerals sold, disposed of or used in the year, under the mining operation, for which the royalty payable is worked out at the concessional royalty rate mentioned in section 37 is less than \$4 000 000; or
    - (ii) the mining operation started or ended in the year.
- (2) The last royalty return for the year must include an adjustment so that -
- (a) if section (1)(c)(i) applies—the total combined value of all base prescribed minerals sold, disposed of or used in the year, for which royalty is worked out at the concessional royalty rate mentioned in section 37 is the lower of -
    - (i) \$4 000 000; and
    - (ii) the total combined value of all base prescribed minerals sold, disposed of or used in the year; or
  - (b) if section (1)(c)(ii) applies—the total combined value of all base prescribed minerals sold, disposed of or used in the year, for which royalty is worked out at the concessional royalty rate mentioned in section 37 does not exceed the adjusted prescribed amount.
- (3) In this section -
- adjusted prescribed amount*** means a proportionate amount of \$4 000 000 based on the number of months, or part months, in the year between and including -
- (a) the month at the start of the year, or if the mining operation started after the start of the year, the month in which the project started; and
  - (b) the month at the end of the year or, if the mining operation ends within the year, the month in which the project ends.

### **Subdivision 5 Discounts for base prescribed minerals**

#### **39 Royalty discounts for base prescribed minerals**

- (1) This section applies to royalty payable for a base prescribed mineral sold, disposed of or used if -
- (a) the mineral is processed in the State; and
  - (b) the mineral, after it is processed, has a metal content of -
    - i. for cobalt—at least 50%; or
    - ii. for copper, lead and zinc—at least 95%; or
    - iii. for nickel—at least 70%.
- (2) For subsection (1), a mineral is processed if it is changed to another substance by a process, including, for example, leaching, refining, smelting and solvent extraction electro winning (SX-EW).
- (3) The royalty payable for the base prescribed mineral is reduced by -
- (a) zinc—35%. for cobalt, copper and nickel—20%; or
  - (b) for lead—25%; or

(c) for zinc-35%.

### **Division 3 Working out values of minerals**

#### **Subdivision 1 Preliminary**

##### **40 Application of div 3**

This division applies to a mineral for which, under division 2, royalty payable in relation to the mineral must be worked out by reference to the value of the mineral.

#### **Subdivision 2 Hydrocarbons**

##### **41 Working out value of hydrocarbons**

The value of hydrocarbons must be worked out by using the way stated in the *Petroleum Act 1923*, section 57, for working out the value of petroleum at the wellhead.<sup>22</sup>

#### **Subdivision 3 Minerals other than hydrocarbons**

##### **42 Meaning of gross value of a mineral**

- (1) The *gross value* of a mineral is the amount -
  - (a) for oil shale if it is processed—for which the oil processed from the oil shale could reasonably have been expected to be realised on sale to an arm's length buyer; or
  - (b) for a prescribed mineral—for which the mineral could, disregarding any cost relating to the processing of the mineral, reasonably have been expected to be realized on sale to an arm's length buyer; or
  - (c) for another mineral—for which the mineral could reasonably have been expected to be realised on sale to an arm's length buyer.
- (2) However, if the mineral was sold and the producer of the mineral has recovered an amount in relation to the royalty payable for the mineral from a buyer, the *gross value* of the mineral is the sum of the amount worked out under subsection (1) and the amount recovered.

##### **43 Working out value of minerals other than hydrocarbons**

- (1) The value of a mineral other than hydrocarbon must be worked out by -
  - (a) working out the gross value of the mineral; and 22 *Petroleum Act 1923*, section 57 (Ascertainment of value)
  - (b) if the mineral is coal—adding, to the gross value, any amount relating to an early despatch of the coal from a port; and
  - (c) subtracting the following amounts from the gross value or, if paragraph (b) applies, the amount worked out by adding the gross value and the amount mentioned in paragraph (b) -
    - (i) any marine cost for the mineral;
    - (ii) if the mineral is a prescribed mineral—the amount the Minister has decided, on reasonable grounds, is the amount that should be subtracted from the gross value to allow for the loss of metal content in the processing of the particular prescribed mineral;
    - (iii) any other cost the Minister has decided, on reasonable grounds, is a type of cost that should be subtracted from the gross value.
- (2) Also, in working out the value of a mineral that is sold, regard must be had to any change in the exchange rate from the time the mineral was sold and the time any payment for the sale is received by the producer.

(3) In this section -

*marine cost* means -

- (a) for coal -
  - (i) a cost relating to a late despatch of the coal from a port; or
  - (ii) a freight or an insurance cost relating to the transport of the coal by water to a port outside the State; or
- (b) for another mineral—a freight or an insurance cost relating to the transport, by water, of the mineral or, if the mineral is oil shale that has been processed, the oil processed from the oil shale, to a port outside the State.

### **Division 4 Assessment of royalty payable**

#### **44 Assessment of royalty payable**

The chief executive must assess the royalty payable under the Act for each royalty return that is lodged under the Act.

#### **45 Refund or credit if royalty paid higher than amount assessed**

- (1) This section applies if -

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- (a) a person has lodged a royalty return for a return period; and
  - (b) the amount of royalty paid with the return is higher than the amount of royalty payable assessed by the chief executive under section 44.
- (2) The chief executive must –
- (a) refund the part of the amount paid that exceeds the amount assessed; or
  - (b) credit the amount paid that exceeds the amount assessed to the royalty payable by the person for the next return period.

### **46 Notice requirement if royalty paid lower than amount assessed**

- (1) This section applies if –
- (a) a person has lodged a royalty return for a return period; and
  - (b) either of the following applies –
    - (i) the amount of royalty paid with the return is lower than the amount of royalty payable for the return period, assessed by the chief executive under section 44;
    - (ii) no amount of royalty is paid with the return and the amount of royalty payable for the return period assessed by the chief executive under section 44 is not \$0.
- (2) The chief executive must give the person a written notice stating –
- (a) there is unpaid royalty payable for the return period; and
  - (b) the amount of unpaid royalty that is payable; and
  - (c) the person must pay the unpaid royalty on or before the day stated in the notice; and
  - (d) if interest is payable on the unpaid royalty—the rate at which the interest is payable.
- (3) For subsection (2)(c), the day must be –
- (a) if no amount of royalty is paid with the return—at least 10 days after the day the notice is given to the person; or
  - (b) otherwise—at least 28 days after the day the notice is given to the person.

### **Division 5 Prescribed interest rate**

#### **47 Interest rate on unpaid royalty**

- (1) For section 33223 of the Act, the rate prescribed is the average of the prime rates of interest of the following banks, as published in the Australian Financial Review on the Monday immediately before the day the interest becomes payable –
- (a) Australian & New Zealand Banking Group Limited ACN 005 357 522;
  - (b) Commonwealth Banking Corporation ACN 123 123 124;
  - (c) National Australia Bank Limited ACN 004 044 937;
  - (d) Westpac Banking Corporation Limited ACN 007 457 141.
- (2) In this section –
- prime rate of interest** means –
- (a) for Australian & New Zealand Banking Group Limited—the reference rate; or
  - (b) for Commonwealth Banking Corporation—the corporate loan reference rate; or
  - (c) for National Australia Bank Limited—the base rate; or
  - (d) for Westpac Banking Corporation Limited—the indicator lending rate.

### **Schedule 4 Royalty payable for minerals**

#### **Part 1 Royalty rates for prescribed minerals**

##### **1. Definitions for pt.1**

In this part –

**average market price**, for a prescribed mineral, means the average for a return period of the following price, converted to Australian dollars at the hedge settlement rate for each day of the return period –

- (a) for cobalt—the warehouse spot price published in the Metal Bulletin;
- (b) for copper, lead, nickel or zinc—the spot price quoted on the London Metal Exchange;
- (c) for gold—the p.m. fix price quoted on the London Bullion Market;
- (d) for silver—the fix price quoted on the London Bullion Market.

**reference price 1**, for a prescribed mineral, means –

- (a) for cobalt—\$15 for each pound; or
- (b) for copper—\$2 640 for each tonne; or
- (c) for gold—\$430 for each troy ounce; or
- (d) for lead—\$740 for each tonne; or
- (e) for nickel—\$8 300 for each tonne; or

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- (f) for silver—\$5 for each troy ounce; or
- (g) for zinc—\$1 455 for each tonne.

**reference price 2**, for a prescribed mineral, means –

- (a) for cobalt—\$25 for each pound; or Schedule 4 (continued)
- (b) for copper—\$3 300 for each tonne; or
- (c) for gold—\$540 for each troy ounce; or
- (d) for lead—\$925 for each tonne; or
- (e) for nickel—\$10 400 for each tonne; or
- (f) for silver—\$7 for each troy ounce; or
- (g) for zinc—\$1 815 for each tonne.

**reference price 3**, for a prescribed mineral, means –

- (a) for cobalt—\$35 for each pound; or
- (b) for copper—\$4 180 for each tonne; or
- (c) for gold—\$680 for each troy ounce; or
- (d) for lead—\$1 170 for each tonne; or
- (e) for nickel—\$13 200 for each tonne; or
- (f) for silver—\$9 for each troy ounce; or
- (g) for zinc—\$2 300 for each tonne.

## 2 Fixed royalty rate

The fixed royalty rate for a prescribed mineral is 2.7 of the value of the prescribed mineral.

## 3 Variable royalty rate

(1) The variable royalty rate for a prescribed mineral is -

- (a) if the average market price for the mineral is lower than reference price 1 for the mineral—1.5 of the value of the prescribed mineral; or
- (b) if the average market price for the mineral is, or is higher than, reference price 1 for the mineral but lower than reference price 2 for the mineral—the prescribed percentage of the value of the prescribed mineral; or
- (c) if the average market price for the mineral is, or is higher than, reference price 2 for the mineral but lower than reference price 3 for the mineral—the prescribe percentage of the value of the prescribed mineral; or
- (d) if the average market price for the mineral is higher than reference price 3 for the mineral—4.5% of the value of the prescribed mineral.

(2) In this section –

**prescribed percentage** means—the amount, expressed as a percentage, rounded down to nearest increment of 0.02%, worked out by using the following formula –

$$PP = RR + [(PD)/(N \times RFD)]$$

Where –

**PP** is the prescribed percentage.

**RR** is -

- (a) for subsection (1)(b)—1.5; or
- (b) for subsection (1)(c)—2.5.

**PD** is the difference between the average market price and—

- (a) for subsection (1)(b)—reference price 1; or
- (b) for subsection (1)(c)—reference price 2.

**N** is -

- (a) for subsection (1)(b)—1; or
- (b) for subsection (1)(c)—0.5.

**RFD** is the difference between—

- (a) for subsection (1)(b)—reference prices 1 and 2; or
- (b) for subsection (1)(c)—reference prices 2 and 3.

*Example—*

If, for a quarter, the average market price for copper is \$3 045 for each tonne of copper, the variable rate of royalty for copper for the quarter must be worked out under subsection (1)(b) given the average market price is higher than reference price 1 for copper (\$2 640) but lower than reference price 2 for copper (\$3 300). The variable rate of royalty would be 2.10 being the amount

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(2.1136) worked out by using the formula Schedule 4 (continued) in subsection (2), definition prescribed percentage, rounded down to the nearest increment of 0.02%.

**Part 2 Royalty rates for minerals other than prescribed minerals**

**1 Particular minerals**

The royalty rate for the following minerals is the rate, for each tonne of the mineral, stated opposite the mineral -

\$	
1 Barytes.....	0.35
2 Bentonite .....	1.00
3 Building brick, roofing tile and glazed earthenware pipe clay.....	0.25
4 Calcite .....	0.25
5 Chromite .....	0.50
6 Clay shale .....	0.25
7 Diatomite.....	0.50
8 Dolomite .....	0.25
9 Felspar.....	0.50
10 Fireclay .....	0.25
11 Fluorspar .....	0.35
12 Fullers Earth .....	0.50
13 Graphite.....	1.00
14 Gypsum .....	0.25
15 Iron ore .....	0.35
16 Kaolin .....	0.50
17 Lime, earth.....	0.25
18 Limestone .....	0.30
19 Magnesite. ....	0.50
20 Marble .....	0.50
21 Mica. ....	1.00
22 Mineral pigments.....	0.35
23 Olivine.....	0.25
24 Oxide of iron .....	0.50
25 Perlite. ....	0.25
26 Pottery clay .....	0.50
27 Rock mined in block or slab form for building or monumental purposes .....	0.50
28 Salt.....	1.00
29 Sand, gravel and rock, other than rock mined in block or slab form for building or monumental purposes <sup>a</sup> . ....	0.50
30 Serpentine .....	0.25
31 Talc .....	0.50
32 Vermiculite. ....	0.50
33 Wollastonite.....	0.50

a See section 236(3) (Entitlement to use sand, gravel and rock) of the Act.

**2 Bauxite**

The royalty rate for bauxite is –

- (a) if the bauxite is mined for consumption outside the State—the higher of the following—
  - (i) 10% of the value of the bauxite;
  - (ii) \$1 for each tonne of bauxite; or
- (b) if the bauxite is mined for consumption within the State—half the royalty rate mentioned in paragraph (a).

**3 Coal**

The royalty rate for coal is 7% of the value of the coal.

**4 Corundum, gemstones and other precious stones**

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The royalty rate for corundum, gemstones or other precious stones is 2.7% of the value of the corundum, gemstones or precious stones.

### 5 Coal seam gas

The royalty rate for coal seam gas is the rate applying to petroleum under the Petroleum and Gas (Production and Safety) Act, section 590.<sup>65</sup>

65 Petroleum and Gas (Production and Safety) Act, section 590 (Imposition of petroleum royalty on petroleum producers)

### 6 Mineral sands

(1) The royalty rate for a concentrate of a mineral sand is 5% of the value of the concentrate.

(2) In this section -

**mineral sand** includes the following—

- (a) anatase;
- (b) ilmenite;
- (c) leucoxene;
- (d) monazite;
- (e) rutile;
- (f) zircon.

### 7 Phosphate

(1) The royalty rate for phosphate rock is the higher of the following -

(a) 80 cents for each tonne of phosphate rock;

(b) the rate, rounded down to 2 decimal places, for each tonne of phosphate rock worked out using the following formula –

$$R = \$1 * (G/32.3) * (P_{curr}/\$72.50)$$

Where –

**R** is the royalty rate.

**G** is the average P<sub>2</sub>O<sub>5</sub> content of the phosphate rock for the return period.

**P<sub>curr</sub>** is the average price for the return period, converted to Australian dollars at the average hedge settlement rate for the return period, of Moroccan phosphate rock with 32.3% P<sub>2</sub>O<sub>5</sub> content.<sup>66</sup>

66 The price, in US dollars, of Moroccan phosphate rock with 32.3% P<sub>2</sub>O<sub>5</sub> content is published in the magazine called Fertilizer Week.

(2) In this section –

**average hedge settlement rate**, for a return period, means the average, worked out for the return period, of the hedge settlement rates for each day in the return period.

Example for subsection (1)—

For a quarter—

- the average P<sub>2</sub>O<sub>5</sub> content of phosphate rock is 24%
- the average price of Moroccan phosphate rock with 32.3% P<sub>2</sub>O<sub>5</sub> content is US\$46
- the average hedge settlement rate is 65c.

The rate under subsection (1)(b), by applying the formula, is 72.53c.

Therefore, the royalty rate is 80c for each tonne of the phosphate rock.

### 8 Processed oil shale

(1) The royalty rate for oil shale that is processed is the lesser of the following—

(a) 10% of the value of the oil processed from the oil shale; or

(b) the WTI%, rounded to 2 decimal places, of the value of the oil processed from the oil shale.

(2) For subsection (1)(b), the WTI must be worked out using the following formula –

$$\text{WTI}\% = \left( \frac{\text{CPI}_{\text{base}}}{\text{CPI}_{\text{now}}} * \text{WTI} \right)^2 / 1000 + 0.5$$

Where –

**CPI<sub>base</sub>** is 110.0.

**CPI<sub>now</sub>** is the CPI for the calendar quarter for which the royalty for oil shale is being worked out.

**WTI** is the average crude oil price.

(3) In this section –

**average crude oil price** means the 'Crude Oil West Texas—Spot—Last' price published in the Australian Financial Review –

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- (a) converted to Australian dollars at the hedge settlement rate for each day of trading in the calendar quarter for which the royalty payable for oil shale is being worked out; and
- (b) averaged over the calendar quarter for which the royalty payable for oil shale is being worked out.

**CPI** means the 'Consumer Price Index: All Groups Index Numbers—Weighted Average of 8 Capital Cities' published by the Australian Bureau of Statistics.

Example for subsection (1) –

For a calendar quarter –

- the CPI is 134.2; and
- the WTI is \$A30.

The WTI%, worked out using the formula in subsection (2), is 1.10%.

Therefore, the royalty rate for oil would be 1.10% of the oil's value.

### **9 Silica**

The royalty rate for silica is the higher of the following –

- (a) 5% of the value of the silica;
- (b) 50c for each tonne of the silica.

### **10 Other minerals**

The royalty rate for a mineral for which a royalty rate is not already stated in this schedule is 2% of the value of the mineral.

**Source:**

***<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/M/MineralReR03.pdf>***  
***accessed February 15, 2005.***



## Western Australia

### 1. Summary

Mineral royalties are collected under either the **Mining Act 1978 (WA)** or statutory **Agreement Acts** which are negotiated for individual projects. In some cases the Agreement Act contains specific royalty clauses, while in other cases the Agreement Act simply refers to the Mining Act royalty sections and related **Mining Regulations 1981**.

Under the Mining Act, royalties are payable on all "minerals". A mineral is defined as a naturally occurring substance including evaporites, limestone, rock, gravel, sand and clay. The definition of "mineral" excludes the following where they occur on private land:

- limestone, rock or gravel
- shale, other than oil shale
- sand, other than mineral sands, silica sand or garnet sand
- clay, other than kaolin, bentonite, attapulgite, or montmorillonite

In Western Australia there are three systems of mineral royalty collection used:

- specific rate - flat rate per tonne
- *ad valorem* - percentage of value
- profit-based - percentage of profit. This system is project-based and profit is calculated by obtaining all project revenues and deducting allowable project costs.

The rate of royalty which applies under Regulation 86 of the Mining Act 1978 is based on the following principles:

- bulk material (subject to limited treatment) - 7.5% of the royalty value
- concentrate material - 5.0% of the royalty value
- metal - 2.5% of the royalty value

This system takes into account price fluctuations and grade of material. The different rates are intended to adjust for the change in the value as mined ore is processed and value is added.

The holder of a mining tenement is required to submit a royalty return with each royalty payment 30 days after each quarter to the Department of Industry and Resources. The return must be in an approved form, showing where relevant:

- the quantity of the mineral
- details of any sale, transfer, shipment or disposal of the mineral
- the royalty value of the mineral
- the gross invoice value of the mineral, when it was paid, and any allowable deductions for the mineral
- the rate of royalty used

It is now possible to prepare and lodge royalty returns online.

### 2. Extract from source legislation

## **Mining Act 1978**

### **Royalties**

**109.** (1) In the exercise of the power to make regulations under section 162, the Governor may by regulation – regulations

- (a) prescribe how, by whom, and at what rate, or differentiating rates, royalties shall be paid in respect of minerals or any class of minerals, obtained from land that is the subject of a mining lease or other mining tenement granted under this Act, or that is the subject of an application for the grant of a mining lease or other mining tenement under this Act;
  - (b) exempt, subject to conditions or unconditionally any person or class of persons from payment either generally, or in any class of case, or in any particular case, from payment of royalty so prescribed; and
  - (c) provide for penalties, including penalties for continuing offences, for contravention of the requirements of this Act in relation to royalties and the furnishing of information relevant to the assessment of royalties.
- (2) Regulations made under section 162 may empower the Minister —
- (a) to determine by what method a value shall be placed on a mineral or a class of minerals for the purpose of assessing the rate of royalty that shall be paid, and in so doing to take into account market factors, including pricing methods and merchandising practices; and
  - (b) to exercise a discretion as to the basis on which a rate of royalty shall be applied, taking into account particular circumstances.
- (3) For the purposes of this section, a reference to a mineral includes a reference to a material containing that mineral.
- (4) Notwithstanding section 160B or the provisions of any other Act, proceedings in respect of a failure to furnish information relevant to the assessment of royalties or to pay royalties under this Act may be brought within the Period of 3 years after the royalty return was required to be submitted or the royalty required to be paid or, with the consent of the Minister, at any later time.

[Section 109 amended by No. 100 of 1985 s.83; No. 58 OF 1994 s.43.]

**109A.** (1) Where the Minister is of the opinion that any royalty has not been paid or that, having regard to any particulars that may be furnished by a person pursuant to a requirement of this Act or regulations in respect of any mining operations, any royalty was not properly assessed or was not properly calculated, notwithstanding that a certificate may have been furnished in accordance with subsection (2), the Minister may make an estimate of the royalty, taking into account the relevant regulations and such information as has been furnished or is otherwise available to the Minister, and thereafter, having given to the person who paid or may be required to pay the royalty notice —

- (c) that the Minister proposes to exercise the power conferred by this subsection, particulars of the manner in which the proposed estimate is calculated being set out in the notice; and
  - (d) that any submissions as to the proposal should be made to the Minister within a period specified in that notice,
- the Minister, on the expiry of that period and having considered any submissions made, may determine the amount of royalty that should have been or which is to be paid.
- (2) For the purpose of verifying any royalty, the Minister may, where a person who has paid or may be required to pay a royalty under this Act so requests, in respect of a period stated in the request, accept a certificate that the royalty appears to the person signing the certificate to have been properly assessed and calculated, being a certificate which —
- (a) is prepared at the cost of the person by whom the request is made and is signed by —
    - (i) an auditor, being a person who is registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the Corporations Law; or
    - (ii) some other competent independent assessor, being a person approved by the Minister;and
  - (b) sets out the amount of the royalty paid or to be payable and, unless the Minister otherwise consents, sufficient detail of the methods of assessment and calculation, and of all weights, analyses, assays and other matters relevant to the certificate to enable the amount certified to be verified.
- (3) For the purpose of —

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- (a) determining whether or not in relation to any mining operations any royalties are payable, the rates of payment, the method of valuation which is to be used in relation to a mineral or class of minerals, the basis on which a rate of royalty shall be applicable, the methods of assessment and calculation, and the amount payable; or
- (b) ascertaining information as to pricing or accounting methods and storage, transportation, processing or merchandising practices, an officer of the Department or a person authorized by the Minister may, at any reasonable time, without warrant other than this section exercise the powers conferred by subsection (4).
- (4) For the purposes of subsection (3), the powers conferred re to —
- (a) enter upon any land where mining operations are carried out and into any premises situate there or any other premises elsewhere used for the purpose of preparing accounting or other records relating to the mining operations conducted on that land;
- (b) enter upon any other land or into any premises where that officer or authorized person has reasonable cause to believe any mineral derived from the mining operations, or any accounting records relating to that mineral, to be, if —
- (i) the officer or authorized person has reasonable cause to believe an offence against this Act or a breach of the conditions of any mining tenement has been, is being, or is about to be committed; or
- (ii) the consent of the owner or occupier of that land or premises has been obtained;
- (c) inspect and examine any mining operations and any accounting or other records in respect of those operations, and any mining product or mineral, in relation to which royalty is, or in his opinion may be, payable;
- (d) take copies or extracts of accounting or other records relating to mining operations, or of other sources of information examined by or produced to him;
- (e) require any person to produce, or to secure the production of to that officer or authorized person —
- (i) forthwith; or
- (ii) if by notice in writing a time and place for the production is specified, at the time and place specified, such accounting or other records or other sources of information as are in the custody or control of the person of whom the requirement is made and which relate to a mining tenement, or to any mining operations, mineral product or holder of a mining tenement specified by the officer or authorized person, and are relevant for the purpose of determining whether any, or what amount of, royalty may be payable in relation to the mining operations, for the purpose of seeking or obtaining the information that appears to the officer or person exercising that power to be necessary in relation to any question as to the royalties that may be payable.
- (5) A person who, without reasonable cause, refuses or fails —
- (a) to permit the entry upon any land or into any premises which an officer of the Department or other person authorized under subsection (3) reasonably believes to be necessary;
- (b) to permit inspection or examination, or the taking of copies or extracts of records or other sources of information, for the purposes of this section;
- (c) to produce, or secure the production of, to such an officer or authorized person the accounting or other records or sources of information that officer or authorized person reasonably believes to be necessary and requires to be produced;
- (d) to provide or secure the provision of any other information which such an officer or authorized person may reasonably require pursuant to this section; or
- (e) to provide such an officer or authorized person with appropriate means and reasonable facilities and assistance for the effective exercise of the powers conferred by this section,
- or who knowingly makes any false or misleading statement or otherwise furnishes or permits to be furnished false or misleading information, in relation to a matter to which this section applies, commits an offence against this Act.
- Penalty: \$5000.
- (6) Where a person who is the holder of, or an applicant for, a mining tenement is convicted in respect of that tenement of an offence contravening subsection (5) —

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- (a) an estimate of the royalty that, taking into account the relevant regulations and such information as has been furnished or is otherwise available to the Minister, might but for the contravention have been assessed in respect of minerals obtained from the land to which the tenement or application relates may be made by or on behalf of the Minister;
- (b) that person may by notice in writing be required to pay to the Minister —
  - (i) that estimated royalty; and
  - (ii) an amount by way of penalty determined by the Minister, being an amount not greater than 50 of that estimated royalty, within a time specified by the Minister; and
- (c) where in relation to an offence a requirement for payment of estimated royalty or a penalty, or both, was made of that person under paragraph (b) and is not complied with, the Minister may —
  - (i) in the case of a mining tenement, forfeit that tenement as though it were a mining lease liable to forfeiture for a breach of the lessee's covenant to pay royalty, effect being given to section 97 as though for the purposes of that section the tenement were a lease of which the holder was the lessee; or
  - (ii) in the case of an application for a mining tenement, refuse that application, effect being given to section 111A as though the Minister were satisfied on reasonable grounds in the public interest that the application should not be granted.

[Section 109A inserted by No. 22 of 1990 s.35; amended by No. 37 of 1993 s.27.]

### Mining Regulations 1981

#### Part V – General Regulations

##### Division 5 — Production and royalties

##### 85. Interpretation of Division

(1) In this Division, unless the contrary intention appears —

**“allowable deductions”**, in relation to a mineral, means —

- (a) the amount, in Australian currency, of any reasonable costs incurred in transporting the mineral, in the form in which it is first sold, where those costs—
  - (i) are incurred after the shipment date by the person liable to pay the royalty for the mineral; and
  - (ii) relate to transport of the mineral by a person other than the person liable to pay the royalty for the mineral; and
- (b) the price, in Australian currency, paid or to be paid by the person liable to pay the royalty for the mineral, for packaging materials used in transporting the mineral, in the form in which it is first sold;

**“concentrate”** means the product of a process of extraction of metal or a metallic mineral from mineral ore that results in substantial enrichment of the metal or metallic mineral concerned;

**“gross invoice value”**, in relation to a mineral, means the amount, in Australian currency, obtained by multiplying the quantity of the mineral, in the form in which it is first sold, for which payment is to be made (as set out in invoices relating to the sale) by the price for the mineral in that form (as set out in those invoices); **“nickel by-product”** means a by-product or co-product of nickel mining or processing;

**“purchaser”**, in relation to a mineral, means the person to whom the mineral is first sold;

**“quarter”** means any one of the 3 monthly periods of any year ending on 31 March, 30 June, 30 September or 31 December;

**“related corporation”**, in relation to a body corporate (the **“first body corporate”**), means a body corporate that, under section 50 of the Corporations Act, is related to the first body corporate;

**“royalty value”**, in relation to a mineral other than gold, means the gross invoice value of the mineral less any allowable deductions for the mineral;

**“shipment date”**, in relation to a mineral, means —

- (a) if the mineral is exported from Australia, the day on which the aircraft or ship transporting the mineral first leaves port in this State; or
- (b) if the mineral is not exported from Australia, the day on which the mineral is first loaded on a vehicle for transport to the purchaser;

**“sold”** includes transferred, shipped or otherwise disposed of, and **“sale”** has a corresponding meaning.

(2) In this Division a reference to a mineral includes a reference to a material containing that mineral.

*[Regulation 85 inserted in Gazette 16 Jun 2000 p. 2953; amended in Gazette 28 Sep 2001 p. 5357-8; 14 Dec 2001 p. 6403-4; 23 Jul 2002 p. 3425; 13 Dec 2002 p. 5803; 17 Jan 2003 p. 113.]*

**85AA. Effect of GST etc. on royalties**

- (1) For the purposes of this Division, a reference to a royalty value, or a price, of a mineral is to be treated as a reference to that value or price, reduced by an amount equal to the net GST (if any) payable on the supply to which the value or price relates.
- (2) For the purposes of this Division, a reference to the value of a mineral at a particular point in its production (other than its supply), or in a particular form, is to be treated as a reference to that value, reduced by an amount equal to the amount of GST that would be payable if the mineral were supplied at that point, or in that form.
- (3) If, when determining a value or price of a mineral (for the purposes of this Division), an amount (an “**expense**”) that relates to obtaining that mineral may be deducted from another amount, the amount that may be deducted is reduced by an amount equal to the net input tax credit (if any) that arises in relation to the expense.
- (4) The “**net input tax credit**” that arises in relation to an expense is —
  - (a) the input tax credit that arises in relation to that expense; plus
  - (b) the sum of any decreasing adjustments in relation to that expense; minus
  - (c) the sum of any increasing adjustments in relation to that expense.
- (5) In this regulation, “**decreasing adjustment**”, “**GST**”, “**increasing adjustment**”, “**input tax credit**”, “**net GST**” and “**supply**” have the respective meanings given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

*[Regulation 85AA inserted in Gazette 16 Jun 2000 p. 2953-4; amended in Gazette 14 Dec 2001 p. 6404.]*

**85AB. Conversion to Australian currency**

- (1) In this regulation —

“**RBA rate**” means the daily representative rate used by the Reserve Bank of Australia.
- (2) Where, for the purposes of determining the amount of royalty payable for a mineral, it is necessary to convert an amount or a price (other than a price to which subregulation (3) applies) to Australian currency, the conversion is to be calculated using the average of the RBA rates for the quarter in which the shipment date for the mineral occurred.
- (3) Where, for the purposes of the definition of “gold spot price” in regulation 86AA(11), it is necessary to convert a price to Australian currency, the conversion is to be calculated —
  - (a) using the RBA rate for the day on which the price was fixed; or
  - (b) if there is no RBA rate for that day, using the last RBA rate before that day.

*[Regulation 85AB inserted in Gazette 14 Dec 2001 p. 6404-5; amended in Gazette 13 Dec 2002 p. 5803-4.]*

**85A. Quarterly production reports**

- (1) The holder of a mining tenement, and the applicant for a mining tenement in respect of any land, shall, unless the Director General of Mines in a particular case otherwise approves, furnish the Director General of Mines with a production report in the form No. 27 in the First Schedule —
  - (a) within 30 days after the expiry of the first quarter after 31 December 2002 during which any mineral other than gold is produced or obtained from that mining tenement or land; and
  - (b) within 30 days after the expiry of each subsequent quarter (whether or not any mineral other than gold is produced or obtained from that mining tenement or land in that quarter).
- (2) The holder of a mining tenement, and the applicant for a mining tenement in respect of any land, shall, unless the Director General of Mines in a particular case otherwise approves, furnish the Director General of Mines with a production report in the form No. 27A in the First Schedule —
  - (a) within 30 days after the expiry of the first quarter after 31 December 2002 during which gold metal is to be regarded because of regulation 86AA as having been produced from gold bearing material produced or obtained from that mining tenement or land; and
  - (b) within 30 days after the expiry of each subsequent quarter (whether or not gold metal is to be regarded because of regulation 86AA as having been produced from gold bearing material produced from that mining tenement or land during that quarter).

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(3) A person who contravenes subregulation (1) or (2) commits an offence.

[Regulation 85A inserted in Gazette 13 Dec 2002 p. 5804.]

**85B. Royalty return**

(1) The holder of, or applicant for, a mining tenement shall, on each occasion that he pays royalties to the Department forward with the royalties a royalty return, in a form approved by the Minister, showing in full the details required to calculate those royalties, including, where relevant —

- (a) the quantity of the mineral;
- (b) details, including relevant terms and other parties involved, of any sale of the mineral;
- (c) the value, or royalty value of the mineral;
- (d) the gross invoice value of the mineral, when it was paid, and any allowable deductions for the mineral; (da) in the case of a royalty part-payment under regulation 86A, the method of calculating the royalty part-payment and details of the amount of the relevant part-payment of gross invoice value and when it was paid;
- (e) in the case of a mineral other than gold, the rate of royalty used where that rate is different from the rate set out opposite the mineral in the Table to regulation 86.

(2) A person who contravenes subregulation (1) commits an offence.

(3) Subregulation (1) does not apply to the tenement holder as defined in the *Mining (Ellendale Diamond Royalties) Regulations 2002* in relation to royalties payable under those regulations.

[Regulation 85B inserted in Gazette 20 May 1988 p. 1705; amended in Gazette 3 Oct 1997 p. 5530; 14 Dec 2001 p. 6405; 8 Feb 2002 p. 607.]

**86. Rates of royalty**

(1) When any of the minerals prescribed in this regulation are obtained from a mining tenement, or from land the subject of an application for a mining tenement, royalties shall be paid by the holder of, or applicant for, the mining tenement.

(2) The rate of royalty payable for a mineral referred to in the Table to this regulation is as set out opposite the mineral in column 1, 2 or 3 of that Table, unless otherwise provided in these regulations.

(3) This regulation does not apply to diamond obtained from the Ellendale mining lease as defined in the *Mining (Ellendale Diamond Royalties) Regulations 2002*.

**Table**

Column 1	Column 2	Column 3	
Mineral	Amount per tonne according to quantity produced or obtained	% of the royalty value	The rate as specified hereunder
Aggregate	30 cents		
Agricultural limestone inc. limesands and shellsands	30 cents		
Attapulgite		5%	
Bauxite		7½%	
Building Stone	50 cents		
Chromite		5%	
Clays	30 cents		
Coal (including lignite) not exported			\$1 per tonne, to be adjusted each year at 30 June in accordance with the percentage increase in the average ex-mine value of Collie coal for the year ending on that date when compared with the corresponding value of Collie coal for the year ending on 30 June 1981.

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exported		7½%	
Cobalt			<p>The rate is</p> <p>(a) if sold as a concentrate, 5% of the royalty value;</p> <p>(b) (b) if sold in metallic form, 2½% of the royalty value; or</p> <p>(c) if sold as a nickel by-product</p> <p>(d) (i) in the period beginning on 1 July 2000 and ending on 30 June 2005</p> <p style="padding-left: 40px;">(I) 2½% of the royalty value; or</p> <p style="padding-left: 40px;">(II) if an election is made under regulation 86AB(2), the rate calculated in accordance with the formula set out in subparagraph (ii);</p> <p>(ii) after 30 June 2005, the rate calculated in accordance with the following formula .</p>
			<p>Where</p> <p>P = the gross cobalt metal price per tonne f.o.b. in Australian currency or its computed equivalent used for the purpose of calculating the actual sale price of cobalt metal in the nickel by-product (under usual conditions of sale, without special discounts);</p> <p>U = the number of units per hundred of cobalt metal in the nickel by-product sold;</p> <p>R = the royalty.</p>
Construction Limestone	30 cents		
Copper			<p>The rate is</p> <p>(a) if sold as a concentrate, 5% of the royalty value;</p> <p>(b) if sold in metallic form, 2½% of the royalty value; or</p> <p>(c) if sold as a nickel by-product after 30 June 2005, the rate calculated in accordance with the following formula</p> $P \times \frac{U}{100} \times \frac{2.5}{100} = \$R \text{ per tonne}$
			<p>Where</p> <p>P = the gross copper metal price per tonne f.o.b. in Australian currency or its computed equivalent used for the purpose of calculating the actual sale price of copper metal in the nickel by-product (under usual conditions of sale, without special discounts);</p> <p>U = the number of units per hundred of copper metal in the nickel by-product sold;</p> <p>R = the royalty.</p>
Diamond		7½%	
Dolomite	30 cents		
Feldspar		5%	
Garnet			The rate shall be
			(a) 5% for the usual grades of garnet including that used for sand blasting and filtration;
			(b) 2½% for higher technology grades including that used for

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			garnet paper and polishing purposes,
			of the royalty value, calculated on the basis of the nearest available port if exported.
Gems and Precious Stones		7½%	
Gravel	30 cents		
Gypsum	30 cents		
Ilmenite			5% of the royalty value but on ilmenite concentrates used as feed stock into an ilmenite beneficiation plant of the producer or of a corporation which is a related corporation to the producer (i.e., a processing plant using any method whatsoever capable of producing or designed to produce upgraded ilmenite containing an average titanium dioxide (TiO <sub>2</sub> ) content of not less than 90 per cent) in Western Australia at the rate of \$1.50 per tonne on the ilmenite concentrate fed into the plant, to be adjusted each year at 30 June in accordance with the percentage movement in the average F.O.B. export price of all bulk ilmenite concentrates sales from Western Australian production for the year ending on that date when compared with the corresponding price of all bulk ilmenite concentrates sales from Western Australian production for the year ending 30 June 1987.
Iron Ore			
lump ore		7.5%	
fine ore		5.625%	
Beneficiated ore		5%	
Kaolin		5%	
Lead			The rate is (a) if sold as a concentrate, 5% of the royalty value; or (b) if sold in metallic form, 2½% of the royalty value.
Leucoxene		5%	
Limestone including limesands and shell sands (used as a neutralising agent)	30 cents		
Lithium Minerals		5%	
Manganese		7½%	
Manganese (beneficiated by the producer in Western Australia Otherwise than by washing, drying, crushing or screening)		5%	
Metallurgical limestone inc. limesands and shellsands	50 cents		
Nickel			In accordance with the following formula:
			$\frac{P}{100} \times \frac{U 2.5}{100} = \$R \text{ per tonne}$



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			Where P = the gross nickel metal price per tonne f.o.b. in Australian currency or its computed equivalent used for the purpose of calculating the actual sale price of the nickel containing product (under usual conditions of sale, without special discounts).
			Where U = the number of units per hundred of nickel metal in the nickel-containing products sold.
			Where R = the royalty.
Ochre		5%	
Platinoids		2½%	
Rock	30 cents		
Rutile		5%	
Salt	30 cents		
Sand	30 cents		
Semi-precious stones (including specimen stones)		7½%	
Silica	50 cents		
Silver		2½%	
Spongolite		5%	
Talc	50 cents		
Tantalum			The rate is (a) in the period beginning on 1 January 2003 and ending on 30 June 2003 (i) 3.3% of the royalty value if sold as concentrate; (ii) (ii) 3.3% of the value in concentrate form if processed further before sale;
			(b) in the period beginning on 1 July 2003 and ending on 30 June 2004 (i) 4.1% of the royalty value if sold as concentrate; (ii) 4.1% of the value in concentrate form if processed further before sale; and
			(c) on or after 1 July 2004 (i) 5% of the royalty value if sold as concentrate; (ii) 5% of the value in concentrate form if processed further before sale.
Tin			2½% of the royalty value of tin metal when sold in that form; or, when sold in any other form, 2½% of the value of the contained tin calculated at the ruling price of tin metal used for the purpose of the sale
Vanadium			The higher of (a) 5% of the amount calculated by deducting from the royalty value of vanadium pentoxide produced from the vanadium such costs of producing that vanadium pentoxide as are allowed by the Minister after consultation with the person liable to pay the royalty; and (b) 1.5% of the gross invoice value of vanadium pentoxide produced from the vanadium.

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Zinc			The rate is (a) if sold as a concentrate, 5% of the royalty value; or (b) if sold in metallic form, 2½% of the royalty value.
Zircon		5%	
Any other mineral not specifically listed in this Table, excluding gold metal within the meaning of regulation 86AA			The rate is (a) if sold as crushed or screened material, 7.5% of the royalty value; or (b) if sold as a concentrate, 5% of the royalty value.

*[Regulation 86 amended in Gazette 6 Aug 1982 p. 3099; 21 Aug 1987 p. 3268; 20 May 1988 p. 1706; 22 Jun 1990 p. 3073; 18 Dec 1992 p. 6127; 19 May 1995 p. 1881; 15 Dec 1995 p. 6115; 3 Oct 1997 p. 5531; 17 Mar 1998 p. 1434-5; 19 Nov 1999 p. 5791-2; 16 Jun 2000 p. 2954-6; 30 Jun 2000 p. 3473-4; 5 Jan 2001 p. 125; 27 Apr 2001 p. 2202; 17 Aug 2001 p. 4347; 14 Dec 2001 p. 6405; 8 Feb 2002 p. 607; 23 Jul 2002 p. 3425; 27 Aug 2002 p. 4356-7; 13 Dec 2002 p. 5805.]*

**86AA. Rates of royalty in respect of gold**

- (1) When gold metal is produced from gold bearing material that was produced or obtained from a mining tenement, royalties shall be paid by the holder of, or applicant, for the mining tenement.
- (2) No royalty is payable in respect of gold metal produced before the commencement of the period referred to in subregulation (3).
- (3) The rate of royalty payable for gold metal produced during the period commencing on 1 July 1998 and ending on 30 June 2000 is 1.25% of the royalty value of the gold metal produced.
- (4) Subject to subregulation (5), the rate of royalty payable for gold metal produced after 30 June 2000 is 2.5% of the royalty value of the gold metal produced.
- (5) If, during the period commencing on 1 July 2000 and ending on 30 June 2005, the average gold spot price for a quarter is less than \$450 per ounce in Australian currency, the rate of royalty payable for gold metal produced during that quarter is 1.25% of the royalty value of the gold metal produced.
- (6) Despite anything in this regulation, no royalty is payable in respect of the first 2 500 ounces of gold metal produced during a financial year from gold bearing material produced or obtained from the same gold royalty project.
- (7) The royalty value of gold metal produced shall be calculated for each month in the relevant quarter by multiplying the total gold metal produced during that month by the average of the gold spot prices for that month.
- (8) If gold bearing material is delivered to a refinery within 3 months after it, or gold bearing material from which it was produced, was taken from the ground —
  - (a) gold metal is to be regarded as being produced from the gold bearing material at the time of delivery to the refinery; and
  - (b) the amount of gold metal that is to be regarded as being produced from gold bearing material delivered within a particular period is to be —
    - (i) the amount actually produced as ascertained by the Director General of Mines from the deliverer after that amount has been verified by the refiner; or
    - (ii) the amount determined by the Director General of Mines, after consultation with the deliverer, to be a reasonable estimate of the gold metal content.
- (9) If gold bearing material is produced or obtained in a form that is acceptable for delivery to a refinery but subregulation (8) does not apply —
  - (a) gold metal is to be regarded as being produced from the gold bearing material at the time that a determination is made under paragraph (b) as to the amount of gold metal that the gold bearing material contained; and
  - (b) the amount of gold metal that is to be regarded as being produced from the gold bearing material is to be the amount determined by the Director General of Mines, after consultation with the person liable to pay the royalty, to be a reasonable estimate of the gold metal content.
- (10) If —

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- (a) after an amount has been determined under subregulation (8)(b)(ii) to be a reasonable estimate of the gold metal content of gold bearing material delivered to a refinery, the Director General of Mines is satisfied by information given by the deliverer that the amount of gold metal actually produced from that gold bearing material differs from the estimated amount; or
- (b) after an amount has been determined under subregulation (9)(b) to be a reasonable estimate of the gold metal content of gold bearing material, the Director General of Mines is satisfied by information given by the deliverer that the gold bearing material was delivered to a refinery and the amount of gold metal actually produced from that gold bearing material differs from the estimated amount, any necessary adjustment is to be made and may be taken into account in the next royalty payment made after that information is given to the Director General of Mines.
- (11) In this regulation —
- “deliverer”** means the person who produces the gold bearing material that is delivered to a refinery;
- “gold bearing material”** is material of any kind containing gold;
- “gold metal”** means gold that is at least 99.5% pure;
- “gold royalty project”** means —
- (a) subject to subregulation (12), the mining tenement or, if there is more than one, all mining tenements from which anyone produces or obtains gold bearing material that is treated or processed at a common —
- (i) treatment facility; or
- (ii) combination of treatment facilities; or
- (b) such other arrangement for producing, obtaining or treating of gold bearing material as is designated by the Minister under subregulation (13)(a);
- “gold spot price”** means —
- (a) the price fixed on the London Bullion Market for gold metal and known as the “London PM Fix”, as converted to Australian currency; or
- (b) such other price as is determined by the Minister under subregulation (13)(b);
- “mining tenement”** includes land the subject of an application for a mining tenement;
- “refiner”** means the operator of a refinery;
- “refinery”** means a place where gold metal is produced;
- “treatment facility”** means any plant at which gold bearing material is treated or processed, but does not include a refinery.
- (12) The Director General of Mines may approve in writing of mining tenements being treated as separate gold royalty projects, as specified in the approval, if satisfied that they are not all held by the same person or by persons between whom the Director General of Mines considers there to be a connection such that the mining tenements can fairly be treated as forming part of the same gold royalty project.
- (13) The Minister may, by notice published in the *Gazette* —
- (a) designate an arrangement for producing, obtaining or treating gold bearing material for the purposes of paragraph (b) of the definition of “gold royalty project” in subregulation (11), or amend or revoke any such designation; or
- (b) determine a price for the purposes of paragraph (b) of the definition of “gold spot price” in subregulation (11), or amend or revoke any such determination.

[Regulation 86AA inserted in Gazette 3 Oct 1997 p. 5531-3;  
amended in Gazette 24 Apr 1998 p. 2153; 14 Apr 2000 p. 1891;  
14 Dec 2001 p. 6406.]

### **86AB. Optional royalty rate for cobalt sold as a nickel by-product**

- (1) In this regulation —
- “optional royalty period”** means the period beginning on 1 July 2000 and ending on 30 June 2005; **“optional royalty rate”** means the rate of royalty calculated in accordance with the formula set out in paragraph (c)(ii) of the item relating to cobalt in column 3 of the Table to regulation 86.
- (2) A person liable to pay royalties for cobalt during the optional royalty period may elect, in writing, to pay the optional royalty rate in respect of all cobalt sold as a nickel by-product by that person.
- (3) An election under subregulation (2) is to be made —
- (a) in the manner and form approved by the Director General of Mines; and
- (b) before the end of the first quarter in respect of which the optional royalty rate is to apply.

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- (4) An election under subregulation (2) cannot be revoked.  
(5) Despite anything in regulation 86, if a person makes an election under subregulation (2), no royalty is payable in respect of the first 300 tonnes of cobalt sold as a nickel by-product by that person during

- (a) the period beginning on the first day of the first quarter in respect of which the optional royalty rate applies and ending on the next 30 June; or  
(b) any subsequent financial year in the optional royalty period.  
(6) If an election is made under subregulation (2) by 2 or more persons who are —  
(a) the holders of, or applicants for, the same mining tenement; or  
(b) related corporations, then those persons are taken to be the same person for the purposes of subregulation (5).

[Regulation 86AB inserted in Gazette 16 Jun 2000 p. 2956-7.]

### **86A. Payment of royalties**

- (1) Royalties for a mineral shall be paid to the Department at Perth.  
(2) Subject to this regulation, royalties for a mineral shall be paid within 30 days after the end of the quarter during which the relevant amount of the mineral was produced or obtained.  
(3) In the case of gold metal, royalties shall be paid within 30 days after the end of the quarter during which the gold metal is to be regarded because of regulation 86AA as having been produced.  
(4) In the case of nickel, or a nickel by-product the royalty for which is not based on royalty value, royalties shall be paid within 30 days after the end of the quarter during which the nickel or nickel by-product was sold.  
(5) In the case of a mineral the royalty for which is based on royalty value, royalties shall, subject to subregulation (6), be paid within 30 days after the end of the quarter during which the gross invoice value of the mineral (or any part of that value) was paid by the purchaser of the mineral.  
(6) If the gross invoice value of a mineral is paid in part-payments, royalties for the mineral may be paid in part-payments in accordance with subregulation (7).  
(7) For the purposes of subregulation (6), a royalty part-payment for a mineral —  
(a) shall be paid within 30 days after the end of the quarter during which a part-payment of the gross invoice value of the mineral was paid by the purchaser of the mineral; and  
(b) subject to subregulation (8), shall bear the same proportion to the total royalties payable for the mineral as the part-payment referred to in paragraph (a) bears to the gross invoice value of the mineral.  
(8) If the Director General of Mines is satisfied by information given by the person liable to pay the royalty that the amount of a royalty part-payment is incorrect because of a miscalculation of gross invoice value or allowable deductions or for any other reason, any necessary adjustment is to be made and may be taken into account in the next royalty part-payment paid after the information is given to the Director General of Mines.  
(9) This regulation does not apply to royalties payable under the *Mining (Ellendale Diamond Royalties) Regulations 2002*. [Regulation 86A inserted in Gazette 14 Dec 2001 p. 6406-7; amended in Gazette 8 Feb 2002 p. 607.]

### **86B. Tenement within Carnarvon Irrigation District**

Notwithstanding regulation 86(2) the holder of a mining tenement within the Carnarvon Irrigation District established under section 28(1)(a) of the *Rights in Water and Irrigation Act 1914*, is exempt from the payment of royalty on sand obtained from that mining tenement.

[Regulation 86B inserted in Gazette 6 Aug 1982 p. 3099.]

[86C. Repealed in Gazette 3 Oct 1997 p. 5533.]

### **86D. Exemption in respect of certain clay, gravel, limestone, rock or sand**

Notwithstanding regulation 86, the holder of a mining tenement who uses in the course of mining operations clay, gravel, limestone, rock or sand which is not —

- (a) sold; or  
(b) used for processing or manufacturing purposes, is exempt from the payment of royalty in respect thereof.

[Regulation 86D inserted in Gazette 12 Nov 1982 p. 4490.]

### **86E. Exemption in respect of rock for the Eyre Highway ...**

Notwithstanding regulation 86, no royalty is payable on rock sold by Central Norseman Gold Corporation Ltd to the department principally assisting the Minister to whom the administration of the

*Main Roads Act 1930* is committed in the administration of that Act, where that rock is to be used in the upgrading of the Norseman section of the Eyre Highway.

[*Regulation 86E inserted in Gazette 3 Jul 1992 p. 2973; amended in Gazette 4 Apr 1997 p. 1779.*]

**86F. Royalty relief**

(1) Despite anything in regulation 86, 86AA or the *Mining (Ellendale Diamond Royalties) Regulations 2002*, if the Minister is satisfied in a particular case that there are circumstances justifying royalty relief, the Minister may determine that in that case the rate of royalty payable —

- (a) under regulation 86, for any mineral produced or obtained while the determination is expressed to apply;
- (b) under regulation 86AA, for gold metal produced while the determination is expressed to apply;
- or
- (c) under the *Mining (Ellendale Diamond Royalties) Regulations 2002*, for diamond obtained while the determination is expressed to apply, is to be on the basis of a portion only, as specified in the determination, of the royalty base.

(2) Despite regulation 86A or the *Mining (Ellendale Diamond Royalties) Regulations 2002*, a determination under subregulation (1) may also specify the time and manner of payment of royalties.

(3) In this regulation —

“**circumstances justifying royalty relief**” means circumstances that meet criteria for the giving of royalty relief that the Minister has published in the *Gazette*;

“**gold metal**” has the same meaning as it has in regulation 86AA(11);

“**royalty base**” means —

- (a) in the case of gold metal, the realised value of the gold metal in respect of which the rate of royalty is payable;
- (aa) in the case of diamond obtained from the Ellendale mining lease as defined in the *Mining (Ellendale Diamond Royalties) Regulations 2002*, anything by reference to which those regulations fix the rate of royalty payable for that mineral;
- (b) in the case of any other mineral, anything by reference to which regulation 86 fixes the rate of royalty payable for that mineral.

[*Regulation 86F inserted in Gazette 14 Apr 2000 p. 1891-2; amended in Gazette 8 Feb 2002 p. 607-8.*]

**87. Minister may determine value of mineral for the purpose of calculating royalties**

(1) Where a royalty has been paid under regulation 86 or 86AA and the Minister is of the opinion that the royalty value on which the royalty was based was not a true or fair value on which to calculate the royalty because —

- (a) the royalty value does not reflect the market value of the mineral at the date the mineral was first sold;
- (b) the allowable deductions used to calculate the royalty value are excessive having regard to the type of sale; or
- (c) the holder of, or applicant for, the mining tenement has not shown to the satisfaction of the Minister, within the time specified by the Minister, that the first sale of the mineral was a genuine commercial transaction and was not principally for the purpose of minimising the royalty payable, the Minister shall determine the value of the mineral having regard to the market value for that type of mineral assessed at an arm’s length basis, at the date the mineral was first sold, for the type of sale concerned.

(2) Where a value is determined by the Minister under subregulation (1), the royalty shall be assessed at the relevant rate under regulation 86 or 86AA as if that value was the royalty value.

[*Regulation 87 inserted in Gazette 20 May 1988 p. 1706; amended in Gazette 3 Oct 1997 p. 5533; 14 Dec 2001 p. 6407; 13 Dec 2002 p. 5805.*]

**87A. Notice of determination and assessment under regulation 87**

(1) Where the Minister makes a determination under regulation 87 he shall cause notice of that determination and an assessment of any royalties payable, after taking into account any monies already paid, to be served on the person by whom the royalties are payable.

(2) A person on whom notice is served under subregulation (1) shall pay to the Department at Perth the royalties assessed to be payable within 14 days of service of the notice.

[*Regulation 87A inserted in Gazette 20 May 1988 p. 1706.*]

**87B. Records**

(1) The holder of, or applicant for, a mining tenement shall keep or cause to be kept such records in respect of the mineral produced or obtained from that mining tenement, or from land the subject of an application for a mining tenement, as are necessary —

(a) to give a true and complete indication of —

(i) the quantity of the mineral; and

(ii) each sale of that mineral, including time, destination, value and quantity of the sale;  
and

(b) to substantiate the details and calculations on all royalty returns forwarded under regulation 85B or the *Mining (Ellendale Diamond Royalties) Regulations 2002* in respect of the mineral, and shall retain those records for a period of 7 years after the completion of the sale of the mineral, or of the payment of the royalty, whichever is the later date.

(2) A person who contravenes subregulation (1) commits an offence.

*[Regulation 87B inserted in Gazette 20 May 1988 p. 1706; amended in Gazette 14 Dec 2001 p. 6407-8; 8 Feb 2002 p. 608.]*

*[88. Repealed in Gazette 31 May 1991 p. 2699.]*

**89. Recovery of royalty**

Any amount of royalty payable pursuant to these regulations or the *Mining (Ellendale Diamond Royalties) Regulations 2002* and unpaid may be recovered by the Minister on behalf of the Crown by action as for a debt due to the Crown in any court of competent jurisdiction.

## A1.4 EUROPE

### Finland

#### 1. Summary

In Finland, the state does not collect a royalty and instead a "mining fee" is paid to the landowner.

#### 2. Extracts from source legislation

##### **Mining Act (Statute 17.9.1965/503 updated 15 July 1997)**

Unofficial translation

§45

1. The concession holder shall, in compensation for the extractable minerals he has utilized, unless it is otherwise agreed, for each calendar year pay the landowner, for extractable minerals broken and brought to the surface within the concession, a reasonable *mining fee*, in determining of which consideration must be given to the value of the extractable minerals, their serviceableness, marketing and other factors affecting the economic value of the extractable minerals. The mining fee is determined by the Ministry of Trade and Industry after hearing the Mining Committee.
2. If there are several landowners, the mining fee due to them shall be divided among them in relation to the portion of each in the concession area.

*Source: <http://www.gsf.fi/explor>, accessed on January 14, 2005.*

## Russia

### 1. Summary

Russia levies an *ad valorem* type royalty under Federal Law 126-FZ. Rates are set by the type of mineral and range from around 3 to 8 percent. These rates are reduced by applying a coefficient of 0.7 to the rate in the case where the minerals being mined were discovered by the taxpayer.

Royalties are distributed to the central, provincial and local government in accord with statutory percentages that vary according to the class of mineral.

### 2. Extracts from source legislation

Note that Russian tax legislation is prone to very frequent modification and the following text should not be relied upon. It is provided for illustrative purposes only.

**FEDERAL LAW NO. 126-FZ** OF AUGUST 8, 2001 ON AMENDING PART 2 OF THE TAX CODE OF THE RUSSIAN FEDERATION AND SOME OTHER LEGISLATIVE ACTS OF THE RUSSIAN FEDERATION AND ON RECOGNISING AS INVALID SPECIFIC LEGISLATIVE ACTS OF THE RUSSIAN FEDERATION (with the Amendments and Additions of December 31, 2001, May 29, 2002, July 7, 2003)

Adopted by the State Duma July 13, 2001 Approved by the Federation Council July 20, 2001  
*Unofficial translation*

...

Chapter 26. The Mineral Resource Extraction Tax

Article 334. Taxpayers

Taxpayers of the mineral resource extraction tax (hereinafter in the present chapter referred to as “taxpayers”) shall be deemed organizations and individual entrepreneurs recognized as users of subsoil under Russian law.

Article 335. Registration as a Taxpayer

1. Taxpayers shall be registered as taxpayers of the mineral resources extraction tax (hereinafter referred to as “the tax”) at the location of the tract of sub-soil granted to the taxpayer for use under Russian law, except as otherwise required under Item 2 of the present article.
2. Taxpayers performing mineral resource extraction on the continental shelf of the Russian Federation, in the exclusion economic zone of the Russian Federation and also outside the territory of the Russian Federation if the recovery is being pursued on territories under the jurisdiction of the Russian Federation (and also rented from foreign states or used under an international treaty) in a tract of sub-soil granted to the taxpayer for use shall be subject to registration as taxpayers of the tax at their location.

Article 336. Tax Basis

1. The tax basis for the purposes of the mineral resources extraction tax (hereinafter in the present Chapter referred to as “the tax”) shall be as follows, except as otherwise required by Item 2 of the present article:
  - 1) mineral resources extraction from sub-soil on the territory of the Russian Federation in a sub-soil tract granted to a taxpayer for use under Russian law;
  - 2) mineral resources extracted from production waste (lost rock) if such an extraction is subject to a separate licensing under the Russian legislation on sub-soil;
  - 3) mineral resources extraction from sub-soil outside the territory of the Russian Federation if the extraction is done on territories under the jurisdiction of the Russian Federation (and also rented from foreign states or used under an international treaty) in a tract of sub-soil granted to a taxpayer for use.
2. For the purposes of the present chapter the following shall not be deemed taxable:



## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- 1) commonly occurring mineral resources extracted by an individual entrepreneur and used by him directly for his personal consumption;
- 2) mineralogical, paleontological and other geological collectors items extracted (collected);
- 3) mineral resources extracted from sub-soil in the case of formation, use, reconstruction and repair of specially-protected geological objects having scientific, cultural, aesthetic, sanitary, rehabilitation or another public significance. The procedure for the recognition of geological objects as specially-protected geological objects having scientific, cultural, aesthetic, sanitary, rehabilitation or another public significance shall be established by the Government of the Russian Federation;
- 4) mineral resources extracted from a mining extraction processing facility's or mining extraction-related processing facility's own waste (lost rock) if their extraction was taxable before.

### Article 337. Extracted Mineral Resources

1. For the purposes of the present chapter the mineral resources specified in Item 1 Article 366 extracted mineral resources. Here "mineral resources" shall mean an output or extractive industry contained in a mineral raw material (rock, fluid and another form) actually obtained (extracted) from sub-soil (waste, lost rock), the former being in compliance with a state standard of the Russian Federation, an industrial standard, regional standard, international standard in terms of its quality or in the absence of such standards in respect of a specific recovered mineral resource, in compliance with an organization's (enterprise's) standard (hereinafter referred to as "Quality standards."
2. Below are the types of mineral resources:
  - 1) commodity coal, bituminous coal, lignite and combustible shale;
  - 2) peat;
  - 3) hydrocarbon raw material:  
water-free, salt-free and stabilized oil, gas condensate from oil and gas fields;  
gas condensate from gas condensate fields which has undergone separation, water-separation, light fraction stripping and other admixture removal;  
combustible natural gas from gas and gas condensate fields;  
combustible natural gas from oil (gas and oil, oil and gas) and oil and gas condensate fields (hereinafter referred to as casing-head gas);
  - 4) commodity ores:  
of ferrous metals (iron, manganese, chromium);  
non-ferrous metals (in particular, aluminum, copper, nickel, cobalt, lead, zinc, tin, tungsten, molybdenum, antimony, mercury, magnesium);  
rare metals occurring in their own deposits (titanium, zirconium, niobium, rare earths, strontium, lithium, beryllium, vanadium, germanium, cesium, scandium, selenium, zirconium, tantalum, bismuth, rhenium, rubidium);  
radioactive metals (uranium and thorium);  
multi-component complex ores;
  - 5) useful components of a multi-component complex ore extracted from it, in the case of their being sent for further processing (dressing, technological process). A product obtained through further processing of a multi-component complex ore in a metal dressing production facility (dressing, technological process) shall not be deemed an extracted mineral resource;
  - 6) mining chemical non-metal raw materials (apatite-nephelinic and phosphorite ores, potassium, magnesium and rock salts, boron ores, sodium sulphate, natural sulfur and sulfur in oil, gas, iron pyrite and complex ore deposits, barite, iodine, bromine, fluorspar, earth dyes (mineral pigments), carbonaceous rock and other types of non-metal mineral resources for the chemical and mineral fertilizer industries);  
mining non-metal raw materials (abrasive rocks, vein quartz (except special-purity quartz and piezo-optical raw materials), quartzite, carbonaceous rock for metallurgy, quartz-feldspar and siliceous raw materials, glass sands, natural graphite, talcum (steatite), talcum magnesite, pyrophyllite, mica-muscovite, mica-phlogopite, vermiculite, refractory clay for the production of drilling slurries and sorbents, other

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- mineral resources not included in other groups);  
bituminous rocks (bituminous rock, asphalt and asphalt rocks);
- 7) rare metal raw materials (trace elements) (in particular, indium, cadmium, tellurium, thallium, gallium) and also other recovered mineral resources being associated components in the ores of other mineral resources;
  - 8) non-metal raw materials basically used in the building industry (gypsum, anhydrite, natural chalk, dolomite, limestone fusion agents, limestone, calcareous rock for the manufacture of lime and cement, natural building sand, pebbles, gravels, sand and gravel blends, building stone, facing stone, marl, clay, other non-metal mineral resources used in the building industry);
  - 9) quality piezo-optical raw materials, special-purity quartz raw materials and fine gem raw materials (topaz, nephrite, jadeite, rhodonite, lazurite, amethyst, turquoise, agate, jasper and others);
  - 10) natural diamonds, other precious stones from bedrock, gravel and man-made deposits, in particular, rough, graded and classified stones (natural diamonds, ruby, emerald, sapphire, alexandrite, amber);
  - 11) concentrated and other semi-products containing precious metals (gold, silver, platinum, palladium, iridium, rhodium, ruthenium, osmium) obtained at the extraction of precious stones, i.e., the extraction of precious metals from bedrock (ore), gravel and man-made deposits;
  - 12) natural salt and pure sodium chloride;
  - 13) underground waters containing mineral resources and or natural medical treatment resources (mineral water) or used in the production of heat.

3. An extracted mineral resource shall be defined separately for each type of mineral resource specified in Item 2 of the present article.

Furthermore, an extracted mineral resource shall include without limitation a mineral resource received from mineral raw material by means of processing technologies which are special types of extraction works (in particular, underground gasification and leaching, dredging and hydraulic excavation in gravel deposits, hydraulicking) and also the processes classified in compliance with mineral licenses as special type of recovery works (in particular, mineral resource recovery from overburden or ore dressing tailings, oil-spill collection by means of special-purpose machines).

### Article 338. Tax Base

1. The taxpayer shall be responsible for determining his tax base in respect of all extracted mineral resources (in particular, useful components and underground waters extracted from sub-soil in association with the extracted of a main mineral resource).
2. The tax base shall be determined as the value of extracted mineral resources, except as otherwise required by the present article. The value of extracted mineral resources shall be determined in compliance with Article 340.
3. The quantity of extracted mineral resources shall be determined in compliance with Article 339 of the present Code.
4. A tax base shall be determined separately for each type of extracted mineral resource defined under Article 337.

### Article 339. Determining the Quantity of an Extracted Mineral Resource

1. The taxpayer shall be responsible for determining the quantity of a extracted mineral resource. Depending on the type of extracted mineral resource its quantity shall be determined in net weight or volume units.
2. The quantity of an extracted mineral resource shall be determined directly (through the application of metering means and devices) or indirectly (by means of calculations, by the indicators of the content of extracted mineral resource in a mineral raw material (waste, lost rock) extracted from sub-soil, except as otherwise required by Item 3 of the present article. If it is impossible to determine the quantity of extracted mineral resources by a direct method an indirect method shall be applied.

The method applied by the taxpayer to determine the quantity of an extracted mineral resource shall be subject to approval within the accounting philosophy of the taxpayer for taxation purposes and it shall be applied by the taxpayer during the whole period of extraction

of the mineral resource. The mineral resource quantity assessment method approved by the taxpayer may be changed only if changes are introduced in the technical design of mineral deposit mining in connection with changes in the extraction technology used by the taxpayer. Here, if the taxpayer applies a direct mineral resource quantity assessment method the quantity of an extracted mineral resource shall be determined with account taken of actual loss of the mineral resource.

3. When precious metals are extracted from bedrock (ore), gravel and man-made deposits the quantity of a extracted mineral resource shall be determined according to the data from the compulsory extraction records kept under the legislation of the Russian Federation on precious metals and precious stones.  
Precious metal nuggets not intended for processing shall be recorded separately and they shall not be included in the quantity of extracted mineral resource mentioned in Paragraph 1 of the present item. Furthermore, a tax base shall be determined separately in respect of such nuggets.
4. When precious stones are extracted from bedrock, gravel and manmade deposits the quantity of an extracted mineral resource shall be determined after the primary grading, primary classification and primary valuation of rough stones. Here, unique precious stones shall be recorded separately and a tax base shall be determined separately in respect of such stones.

Article 340. Procedure for Valuing Extraction Mineral Resources When the Tax Base Is Calculated

1. The taxpayer shall be responsible for valuing extracted mineral resources by one of the below methods:
  - 1) on the basis of the taxpayer's prevailing selling prices in a relevant tax period with no account taken of state subventions;
  - 2) on the basis of the taxpayer's selling prices of an extracted mineral resource prevailing in a relevant tax period;
  - 3) on the basis of the rated value of the extracted mineral resources.
2. If the taxpayer applies the assessment method specified in Subitem 1 Item 1 of the present article the value of unit of extracted mineral resource shall be assessed on the basis of proceeds determined with the taxpayer's selling prices of the extracted mineral resource prevailing in the current tax period (or in the absence thereof, in the preceding tax period) with no account taken of subventions from the budget aimed at reimbursing the difference between wholesale price and rated value.

In such a case proceeds from the sale of an extracted mineral resource shall be determined on the basis of selling prices (less the sum of subventions from the budget) determined with due regard to the provisions of Article 40.

For the purposes of the present chapter the sum of delivery expenses shall include expenses incurred towards customs duties and fees relating to foreign trade deals, the expenses incurred through the delivery (transportation) of the extracted mineral resource from finished-product warehouse (recording centre, main pipeline entry, a centre for shipping to consumers or for processing, consignee network partition points and other similar conditions) to the consignee and also compulsory cargo insurance expenses calculated under Russian law.

For the purposes of the present chapter delivery (transportation) expenses relating to the movement of an extracted mineral resource to the consignee, include in particular, the expenses of delivery (transportation) by means of main pipelines, railway, waterway and other means of transport, the expenses of drainage, filling, loading, unloading and transshipment, port services charges and transportation forwarding charges.

The assessment shall be done separately for each type of extracted mineral resource on the basis of the selling prices for a relevant extracted mineral resource.

The value of an extracted mineral resource shall be determined as the quantity of the extracted mineral resource calculated under Article 339 times the unit value of the extracted mineral resource calculated under the present item.

The unit value of a extracted mineral resource shall be calculated as the ratio of proceeds from the sale of the extracted mineral resource calculated under the present item to the quantity of the sold extracted mineral resource.

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3. If there are no state subventions for the selling prices of a extracted mineral resource the taxpayer shall apply the assessment method specified in Subitem 2. ... For the purposes of the present chapter the sum of delivery expenses shall include expenses incurred towards customs duties and fees relating to foreign trade deals, the expenses incurred through the delivery (transportation) of the extracted mineral resource from finished-product warehouse (recording centre, main pipeline entry, a centre for shipping to consumers or for processing, consignee network partition points and other similar conditions) to the consignee and also compulsory cargo insurance expenses calculated under Russian law.

For the purposes of the present chapter the delivery (transportation) expenses relating to the movement of an extracted mineral resource to the consignee, include, in particular, the expenses of delivery (transportation) by means of main pipelines, railway, waterway and other means of transport, the expenses of drainage, filling, loading, unloading and transshipment, port services charges and transportation forwarding charges.

The assessment shall be done separately for each type of extracted mineral resource on the basis of the selling prices for a relevant extracted mineral resource.

The value of an extracted mineral resource shall be determined as the quantity of the extracted mineral resource calculated under Article 339 of the present Code times the unit value of the extracted mineral resource calculated under the present item.

The unit value of an extracted mineral resource shall be calculated as the ratio of the proceeds from the sale of the extracted mineral resource calculated under the present item to the quantity of the sold extracted mineral resource.

4. If an extracted mineral resource cannot be valued by the methods described in Subitems 1 and 2 Item 1 shall apply the assessment method specified in Subitem 3 Item 1 of the present article.

In such a case the taxpayer shall be responsible for assessing the rated value of an extracted mineral resource according to tax record data. Here, the taxpayer shall apply the incomes and expenses recognition procedure he uses for calculating the tax base for the purposes of profit tax.

The following types of expenses incurred by the taxpayer in the accounting (tax) period shall be taken into account in the calculation of the rated value of an extracted mineral resource:

- 1) material expenses calculated in keeping with Article 254 of the present Code, save material expenses incurred in the course of storage, transportation, packing and other preparation (in particular, pre-sale preparation) and sale of the extracted mineral resources (including material expenses incurred by the taxpayer in the manufacture and sale of other types of products, goods (works , services);
- 2) remuneration for labor calculated in compliance with Article 255 the labor of workers not engaged in mineral resources extraction;
- 3) accrued depreciation calculated in compliance with the procedure established by Articles 258-259 ...;
- 4) fixed asset repair expenses calculated in compliance with the procedure established by Article 260...;
- 5) natural resource mining expenses calculated in compliance with Article 261;
- 6) the expenses stipulated in Subitems 9 and 10 Article 265 present Code, save the expenses indicated therein as not relating to mineral resource extraction
- 7) other expenses calculated in compliance with Articles 263 and 269.

When the rated value of an extracted mineral resource is determined the expenses specified in Articles 266 and 267 shall not be taken into account.

When the rated value of an extracted mineral resource is determined the expenses incurred by a taxpayer in the tax period shall be subdivided into direct and indirect. The expenses established by 4 by Subitem 7 Item 4 of the present article shall be deemed indirect.

The direct expenses incurred by a taxpayer in the tax period shall be distributed among extracted mineral resources and work-in-process as of the end of the tax period. The work-in-process balance shall be determined and assessed with due regard to the peculiarities specified in Item 1 Article 319 ....

If a mineral raw material extracted contains several types of mineral resource the value of

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

each of the types of mineral resource shall be determined in proportion to the specific weight of each of the types of mineral resource in the total amount of mineral resources extracted.

Article 341. Tax Period

The quarter shall be deemed the tax period.

Article 342. Tax Rate

1. Taxation shall be effected at zero tax rate in the case of extraction of:
  - 1) mineral resources in as much as rated mineral resource loss is concerned.  
For the purposes of the present chapter the “rated losses of mineral resources” means the actual losses of mineral resources occurring during recovery which are technologically related to the accepted deposit mining scheme and technology, within the maximum limits on rated losses endorsed in compliance with the procedure established by the Government of the Russian Federation;
  - 2) casing-head gas;
  - 3) accompanying and drainage underground waters not recorded in the state balance sheet of mineral resources the extraction of which is connected with the mining of other types of mineral resources and which are extracted in the course of mineral deposit mining and in the case of construction and operation of underground structures;
  - 4) mineral resources in the case of mining of low-quality (remaining low-quality) mineral deposits or mineral deposits written off earlier (except for the cases of a deterioration in the quality of a mineral deposit as the result of a selective mining). Mineral deposits shall be classified as “low-quality” in the manner established by the Government of the Russian Federation;
  - 5) the mineral resources remaining in overburdens, diluting (impoverishing) rock, processing facility dumps or waste in connection with the lack of know-how in the Russian Federation for extracting them and also mineral resources mined from overburdens and diluting (impoverishing) rock, mining facility waste and mining-related facility waste (in particular, resulting from oil slurry processing) within the maximum limits on the content of mineral resources in the said rock and waste endorsed in the manner established by the Government of the Russian Federation;
  - 6) underground waters from monitoring or reserve wells in the case of a scheduled inspection of their operability, with the availability and operability of the wells being established by a federal executive body;
  - 7) mineral waters used exclusively for medical treatment and health rehabilitation purposes without direct sale thereof (in particular, treatment, preparation, processing and bottling);
  - 8) underground waters used exclusively for agricultural purposes, in particular, in irrigation of agricultural land, water supply to animal farms, comprehensive animal facilities, poultry farms, fruit and vegetable gardening and animal-breeding associations of citizens.

2. Except as otherwise required by Item 1 of the present Article the taxation shall be affected at the following rates:

Type of extracted Mineral Resource	Rate (Percentage Points)
..... Potassium salts .....	..... 3.8
..... Peat .....	..... 4.0
..... Ferrous metal ores .....	..... 4.8
..... Apatite-nipheline and phosphorite ores .....	..... 4.0
..... Non-metal mining chemical raw materials (except for potassium salts, apatite-niphelinic and phosphorite ores) .....	..... 5.5

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Natural salt and pure sodium chloride .....	5.5
Radioactive metals .....	5.5
Bituminous coal, lignite and combustible shale .....	4.0
Heat-carrying and industrial water .....	5.5
Non-metal raw materials used mainly in the building industry .....	5.5
Non-metal mining raw materials .....	6.0
Bituminous rock .....	6.0
Underground mineral waters .....	7.5
Other mineral resources not included in other groups .....	6.0
Quality piezo-optical raw material, high-purity quartz raw material and gem raw material products .....	6.5
Rare metals either occurring in their own deposits or present in ores with other mineral resources .....	8.0
Precious metals (extraction of precious metals from bedrock (ore), gravel and man-made deposits complete with the production of concentrates and other semi-products containing precious metals) and also precious metals being useful components of multi- component complex ores, except for gold .....	6.5
Gold .....	6.0
Natural diamonds, other precious and semi- precious stones .....	8.0
Non-ferrous metals .....	8.0
Combustible natural gas from gas fields and gas condensate from gas condensate fields .....	16.5
Oil and gas condensate from oil and gas condensate fields .....	16.5
Multi-component complex commodity ores and also the useful components of complex ores, except for precious metals .....	8.0

The taxpayers that have conducted at their own expense prospecting and exploration of the mineral deposits/fields they are mining or which have reimbursed the state in full for the expenses incurred towards the prospecting and exploration of a certain quantity of reserves of such minerals and which have been relieved as of July 1, 2001 under federal law from their duty to make deductions towards renewal of mineral and raw material reserves in respect of exploitation of such deposits/fields shall pay tax on the minerals extracted in a specific license tract with the coefficient of 0.7 being applied.

Article 343. Procedure for Calculating and Paying the Tax. Tax Advance Payment

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1. The amount of tax on extracted mineral resources in respect of which ad valorem (percentage) tax rates have been established shall be calculated as a percentage share of a tax base calculated under Article 338.
2. The sum total of the tax shall be calculated in respect of the results of each tax period by the type of extracted mineral resources.
3. The tax shall be payable separately on each type of extracted mineral resources.  
During the tax period advance payments shall be made to the budget. The amounts of monthly tax advance payments payable to the budget over the tax period shall be calculated as one third of the tax sum total for the preceding tax period.  
The difference between the tax sum total calculated according to the results of the tax period and the sum of tax advance payments paid over the tax period shall be payable to the budget on the result of the tax period.
4. A positive difference between the sum of tax advance payments effected over the tax period and the tax sum total calculated on the results of the tax period shall be recognized as a surplus tax amount to be refunded (accepted for offset) for the benefit of the taxpayer under Article 78.

### Article 344. The Terms for Payment of the Tax and for Tax Advance Payments

1. The tax amount payable according to the results of the tax period shall be paid not later than the last day of the month following the tax period.
2. Tax advance payments shall be payable not later than the last day of each month of the tax period.

### Article 345. Tax Return

1. The taxpayer's duty to file a tax return shall occur in respect of the tax period in which the actual extraction of mineral resources commenced.
2. The tax return shall be filed not later than the last day of the month following the past tax period.

### Article 346. The Peculiarities of Calculation and Payment of the Tax under Production Sharing Agreements

1. The investors under a production sharing agreement shall determine the amount of mineral resource extraction tax and the tax amount payable in keeping with the present chapter and with due regard to the peculiarities established in the present article.
2. The taxpayers of the tax shall be investors under production sharing agreements.  
If the performance of works under a production sharing agreement, in particular, extraction of mineral resources is carried out by an operator under a contract, the operator acting as an authorized representative of the taxpayer shall calculate and pay the tax.
3. Tax base shall be deemed the value of extracted mineral resources determined in compliance with Article 340 ...
4. Tax base shall be determined separately for each type of mineral resource and separately for each production sharing agreement and activities not relating to performance under a production sharing agreement.
5. When operating under a production sharing agreement concluded under Russian law the tax rates established by 342 of the present code shall be applicable ...  
The tax rates set by a production sharing agreement in compliance with Article 342 of the present Code shall not be changed throughout the effective term of the said agreement.
6. When operating under a production sharing agreement concluded prior to the entry into force of the Federal Law on Production Sharing Agreements the terms and conditions set out in the production sharing agreement shall apply.
7. When performance is being done under contracts concluded after the entry into force and prior to the entry into force of the present article the terms set in the production sharing agreements for the calculation and payment of the tax shall apply with due regard to the norms of the Russian legislation on taxes and fees effective as of the date when the contract is signed.

...

Assorted revisions pertaining to other article relating to distribution

Article 11. ...

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

The amount of the mineral resource extraction tax payable according to the results of the tax period and also advance payments of the tax shall be revenue for the federal budget, the budget of the Russian region and the relevant local budget.

The tax amount calculated by the taxpayer on extracted mineral resources (except for extracted mineral resources in the form of hydrocarbon raw materials and commonly occurring mineral resources) shall be distributed as follows:

40 per cent of the tax amount: as revenue of the federal budget;

60 per cent of the tax amount: as revenue of the budget of the Russian region.

The tax amount calculated by the taxpayer on mineral resources (except for extracted mineral resources in the form of hydrocarbon raw materials and commonly occurring mineral resources) extracted on the territory of an autonomous area incorporated in a territory (region) shall be distributed in the manner established by an agreement between the autonomous area and the territory (region).

The tax amount calculated by the taxpayer on extracted mineral resources in the form of hydrocarbon raw materials shall be distributed as follows:

80 per cent of the tax amount: as revenue of the federal budget;

20 per cent of the tax amount: as revenue of the budget of the Russian region.

The tax amount calculated by the taxpayer on extracted mineral resources in the form of hydrocarbon raw materials on the territory of an autonomous area incorporated in a territory or a region shall be distributed as follows:

74.5 per cent of the tax amount: as revenue of the federal budget;

20 per cent of the tax amount: as revenue of the budget of the area;

5.5 per cent of the tax amount: as revenue of the budget of the territory or the region.

In the case of extraction of commonly occurring mineral resources the total amount of the tax shall be payable as revenue to the budgets of Russian regions.

In the case of extraction of any mineral resources on the continental shelf of the Russian Federation or in the economic exclusion zone of the Russian Federation and also in the case of recovery of mineral resources from sub-soil outside of the territory of the Russian Federation if the extraction is being done on territories under the jurisdiction of the Russian Federation (or rented from foreign states or used under an international agreement) on a sub-soil tract provided to the taxpayer for use the full a



## A1.5 LATIN AMERICA

### Argentina

#### 1. Summary

In Argentina, the Constitution vests ownership of minerals to the province in which they occur. It also gives Congress the exclusive power to levy direct taxes but allows delegation of that power. The premise is accepted that royalty is a compensation fee payable to the mineral owner, and thus the ability to levy and collect royalty is given to the provinces. The federal government has an interest in the promotion of national interests and while the state governments have the power to set royalty rates and to collect and spend the royalty, this power has been limited through the mechanism of a federally imposed upper cap of 3% as set out in the **Mining Investment Law (Federal Law No. 24196)**. The result has been that some provinces have opted to levy the maximum rate, 3%, while others have decided to not impose a royalty. The taxable basis is defined in **Resolution 56/97** and is the value at the mine mouth. Mine mouth value is defined as sales value minus certain non-extraction related costs or in the case where the minerals has been transformed, the net smelter return less certain non-extraction related costs.

For example, in the case of Catamarca, a principal mining province, the royalty rate has been set at 3%. Of the amount collected by the province, 15% is for distribution to the municipalities where the mining project is located for financing of public investment projects and the remaining 85% is used to finance provincial projects or public investments in other departments or municipalities.

#### 2. Extracts from source legislation

**Mining Investment Law 24196** (amended by the laws 24296, 25151 and 25429)  
(unofficial translation)

**Chapter VI: Royalty**

**Art 22.**- the provinces that adhere to the regimen set out in the present law and that charge royalties or decide to charge, may not charge a percentage higher than (3%) of the value of the extracted mineral "at the mouth of the mine".

**Art 22 (bis).**- "Mineral at the mouth of the mine", is the mineral extracted, transported and/or stored prior to any transformation process.

The "mouth of the mine" value of the mineral and/or the minerals declared by the mining producer, corresponds to the amount obtained within the first phase of its commercialization, after deducting the direct and/or operational costs needed to take the mineral from the mouth of the mine to such phase, except for the expenses and/or direct and indirect costs inherent to the extraction process.

The deductible costs, according to its correspondence, shall be:

- costs of transportation, freight and insurance until the delivery of the product, except for costs corresponding to the mineral extraction process.
- costs of triturating, milling, beneficiation and all the treating processes which makes feasible the sale of the final product which derive from the mining operation.
- costs of commercialization until the sale of the finished good.
- costs of administration until the delivery of the finished good, except for the ones corresponding to the extraction.
- smelting and refining costs.

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If the value used as the base to calculate the mouth of mine value is lower than the value of such product in the national or international market, this last one shall be used as its calculation basis.

...

### Calculation of the mine mouth value Resolution n° 56/97 (01/24/1997)

Unofficial translation

Considering that:

the article 22 of chapter VI of the law n° 24.196 has established that the provinces that adhere to such law and that charge royalties or decide to do so may not charge a percentage higher than 3% over the mouth of the mine value of the extracted mineral.

(...) that the provinces have the faculty to not charge royalties or to charge it using a different procedure, but not exceeding 3% of the mouth of the mine value.

(...)art 1°.- to calculate the “mouth of mine” value, it is required to differ the minerals and the ordinary minerals from the products of high value obtained from these by means of adequate processes. For the first ones, the calculation of the “mouth of mine” value shall be held from the so called “net received value” (VNR), that is, the net value received by the mining producer as payment for the delivery of the sold good. If the value of such product is higher in the international market, this last one shall be used.

To calculate the “mouth of the mine” value:

$V_{bc} = V_f - (C_f + C_t + C_c + C_a + C_d)$ , whereas:

$V_{bc}$  = “mouth of the mine” value

$V_f$  = Value VNR

$c_f$  = Costs of transportation, freight and insurance until the delivery of the product, except for costs corresponding to the extraction process of the mineral.

$C_c$  = Costs of triturating, milling, beneficiation and all the treating processes which makes feasible the sale of the final product to which arrive from the mining operation.

$C_c$  = Costs of commercialization until the sale of the finished good.

$C_a$  = Costs of administration until the delivery of the finished good, except for the ones corresponding to the extraction.

$C_d$  = amortization costs (total investment deducted from the inv. in the mine).

Art 2°.- In the case of a refined product of high value, the royalty calculation basis shall be the amount repaid by the refiner. It is named “over the net smelter return”. Therefore, to calculate the “mouth of the mine” value, the procedure is the same as above, yet replacing “the net value” with “the “smelter return value””.

### Provinces levying royalties:

Province	Adhered to the law 24196	Adhered to by the Law No.	Royalty tax basis	Royalty tax rate (%)
Buenos Aires	Yes	11.482	There is no provincial law	-
Catamarca	Yes	4.759	Over the mine mouth value	3
Cordoba	Yes	8.324	There is no provincial law	-
Corrientes	Yes	4.792	There is no provincial law	-
Chaco	Yes	3.962	There is no provincial law	-
Chubut	Yes	3.866	Over the mine mouth value	3
Entre Rios	Yes	8.850	There is no provincial law	-
Formosa	No		There is no provincial law	-

Source: derived from <http://www.mineria.gov.ar>, accessed on February 15, 2005.

## Bolivia

### 1. Summary

The mining law, **Law 1777**, establishes the mining control commission and registry of miners. The Law declares that the State is the owner of all mineral substances and empowers the State the ability to grant concessions to extract minerals. To some extent the State participates in the operation of mines, through its parastatal entity, Corporacion Minera de Bolivia. This entity may enter into various types of contracts including joint ventures which must be granted by bid. Mining concessions are granted by the local Superintendent of Mines. Such superintendents are located in the capital of each regional Department.

The royalty type tax is called the Complementary Tax whose rates vary on a sliding scale basis between 1% and 6% on gross sales value. Gross sales value, for most minerals, is the weight of the commodity sold times a reference price. If the commodity is sold for domestic use the royalty rate is 60% of the normal rate.

### 2. Extracts from source legislation

#### **Mining Code, Law 1777, 03/17/1997** Sup dec 24780 of July 31, 1997

unofficial translation

##### Chapter II

##### Calculation base and percentage

Art 97.- the calculation base for the mining complementary tax is the gross sale value. The gross sale value is the result of the multiplication of the fine weight of the mineral times its official quotation in United States Dollars.

The official quotation is by means of an arithmetic procedure that is done every 15 days by the executive power, based on the lower of the quotations registered in one metal international stock market or in specialized publications of recognized prestige.

If there is no official quotation for any mineral, the gross sale value shall be set by the executive through a Supreme Decree.

Art 98.- the rate of the mining complementary tax is established in accordance to the following scales:

Minerals	Official quotation rate in % on American Dollars
For gold in its natural stage, its amalgamates, pre-concentrated, concentrated, stud, its sweeps, smelted and refined, and ingot	Price per try ounce in US\$ Higher than 700.00: 7% From 400.00 to 700.00: 0.001 (price) Below 400.00: 4%
For concentrated silver, stud, its sweeps smelted and refined, and ingot	Price per troy ounce in US\$ Higher than 8.00: 6% From 4.00 to 8.00: 0.75 (price) Below 4.00: 3%
The "silver concentrate" shall be defined by the zinc regulation. For zinc and silver in zinc concentrate	Price per pound in US\$ Higher than 0.94: 5% From 0.475 to 0.94: 8.43 (price) - 3 Below 0.475: 1%
For lead and silver and lead concentrate	Price per pound in US\$ Higher than 0.60: 5% From 0.30 to 0.60:13.4 (CO)-3 Below 0.30: 1%

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

For the rest of the minerals or metals, the executive power shall establish a rate of the mining complementary tax by means of a variable scale in accordance to its international quotation. Such rate shall fluctuate between 3% and 6% for stones and precious metals and between 1% and 5% for the other minerals

For the sales of minerals and metals in the internal market 60% of the rates above shall be applied. The quotation scales for determining the rate of the Mining complementary tax shall be adjusted annually by a restatement factor of 50% of the annual inflation rate of the United States of America, correspondent to the preceding management.

***Source for full Spanish version:***

***<http://www.asesor.com.pe/teleley/CODMIN.htm>, accessed February 15, 2005.***

## Brazil

### 1. Summary

The Brazilian Constitution, 1988 and its amendments 6 and 9, 1995—articles 20, IX, 22, XII, 176—define the properties and Legislative exclusivity of the Union, as well as which entity within the federation has the right to legislate taxes. It states that with regard to mineral resources the States, Federal District and Municipalities, as well as the Federal Government are assured a “share in the results” of mineral resource exploitation in their respective territory, or a financial compensation for this exploitation. **The 1967 Mining Code**—Executive Law n. 227, 02/28/1967—defines the systems and exploitation of mineral resources in Brazil but does not address the issue of royalty.

**Law 7990, 12/28/1989** enacted by federal parliament establishes the Financial Compensation for Exploiting Mineral Resources (CFEM), i.e., royalty. CFEM is set at 3%, but this single rate is superceded by the rates in Law 8001, and its calculation base is the net revenue from the sale of the mineral product, understood as the total of sales less taxation, transportation and insurance expenses.

**Law 8001, 03/13/1990** establishes the percentages of the CFEM per mineral as well as their distribution. The rate varies according to the mineral product, from 0.2% to 3%. This law also defines how royalty is to be distributed: 23% to the States and Federal District, 65% to the municipalities, 2% to the National Fund of scientific and technological development, and 10% to the mining and energy ministry, to be forwarded integrally to the DNPM, which shall give 2% of its share to environmental protection of the mining regions. The royalty is paid directly to the entitled entities.

### 2. Extracts from source legislation

#### Constitution of 1988

unofficial translation

##### Chapter II

##### The Union

Article 20 [Propriety of the Union]:

IX. mineral resources, including those in the subsoil;

1) Under the terms of the law, the States, Federal District, and the Municipalities, as well as the agencies of the direct administration of the Republic are assured participation in the results of the exploitation of (...) natural resources in their respective territory, continental shelf, territorial waters, or exclusive economic zone, or financial compensation for such exploitation.

Article 22 [Legislative exclusivity]

...

It is incumbent exclusively upon the Union to legislate on:

XII. mineral deposits, mines, other mineral resources;

A supplemental law may authorize the States to legislate on specific questions to the matters listed in this article.

...

##### Title VII Economic and Financial Order

##### Chapter I General Principles of Economic Activity

Article 176 [Monopolies]

...

Mineral deposits, whether being exploited or not, and other mineral resources ... represent property separate from the soil, for purposes of exploitation or use, and belong to the Republic, the grant holder being guaranteed ownership of the mined product.

**Law 7990, of 12/28/1989**

Unofficial translation

Establish, for the States, Federal District and Municipalities a Financial Compensation for the result of the exploration of (...) the mineral resources within its respective territory, continental platforms, territorial sea or exclusive economic zones

Art. 1º the exploitation of ... mineral resources shall result in the payment of a Financial compensation to the States, Federal District and Municipalities, to be calculated and distributed, applied in accordance to the present law.

...

Art. 6º the financial compensation for the exploration of mineral resources, for the purpose of economic exploitation, shall be of 3% (three per cent) over the net billing value resulting from the sale of the mineral product, obtained after the last phase of the adopted improvement process and before its industrial transformation

...

Art. 8º the the payment of the financial compensations .....shall be done on a monthly basis, directly to the States, Federal District, Municipalities and organs of the Direct Federal Administration, until the last working day of the second month subsequent to when it happened.

...

**source: <https://www.planalto.gov.br/legislacao/leisordinarias/1989.html>, accessed on February 16, 2005.**

**Law 8001, 03/13/1990**

Unofficial translation

Establishes the percentages of the financial compensation set by law 7990.

Art. 2º For the purpose of calculating the financial compensation mentioned in art 6º of the law nº 7.990, the net billing is the total of revenues from sales, minus the commercialization taxes of the mineral product and the expenses of transportation and insurance.

§ 1º the compensation percentages, in accordance to the minerals shall be:

I – aluminium ore, manganese, sodium chloride, potassium 3%;

II – iron, fertilizer, coal and the remaining minerals 2% (except for inc IV of the present article);

III – precious stones, engraved upon stones, carbon diamonds and noble metals 0.2%;

IV – gold 1% when extracted by mining companies, waived for garimpeiros.

§ 2º the distribution of the financial compensation shall be held as follows

I - 23% to the States and Federal District;

II - 65% to the municipalities;

II-A. 2% to the National Fund of scientific and technological development – FNDCT

III - 10% to the mining and energy ministry, to be forwarded integrally to the DNPM, which shall give 2% of its share to environmental protection of the mining regions

§ 3º the value of the financial compensation ... shall be considered within the cost structures whenever the prices are administered by the government.

§ 4º In the case of the minerals extracted under the permission regimen of the prospector mining, the amount shall be paid for the first purchaser...

**Source: <https://www.planalto.gov.br/legislacao/leisordinarias/1990.html>, accessed on February 16, 2005.**

## Chile

The nation of Chile does not currently impose a royalty tax on minerals. From time to time, and at the date of this publication, the merits and demerits of various forms and types of royalties have been debated by lawmakers.

## Cuba

### 1. Summary

Cuba imposes a royalty under **the Law No. 76** (the Mining Law) and through **Resolution No. 51/97**. The *ad valorem* royalty is determined for each mining concession granted subject to ranges set out in the mining law. The value basis is also decided for each concession and may be based on the sales price, a quarterly international reference price, or a value agreed by the parties.

### 2. Extracts from source legislation

**GACETA OFICIAL of the Cuban Republic**  
**Ordinary edition, Havana, February 23, 1995**  
**Number 3 Page 33**

...whereas, the Federal Constitution of Cuba, in its article 15, a, defines that the subsoil, the mines, water and natural resources...are owned by the socialist state of the people.

#### **Law No. 76**

#### **Mining Law**

*Unofficial translation*

#### **CHAPTER II**

#### **The regimen of ownership of mineral resources**

Art 4. - According to the constitution, the State has the domain of all the minerals, not being allowed to sell or burden them.

#### **CHAPTER III**

#### **The execution of the mining policy**

Art 5. - The Ministry Council or its executive committee, through the ministry of basic industry, controls the development, execution and application of the mining policy, respecting art 18 of the hereof law.

...

#### **CHAPTER XIV**

#### **Tax Regimen**

Art 75.- The parties who were granted a concession shall pay to the State, with no harm to what is stated in the general tax legislation nor in any other general payment established, the canon for the execution of mining activity as well as royalties for the extraction of mineral resources non renewable established herein.

Art 76. - The State will receive by the parties who were granted a concession, as canon, the annual amount of:

- a) two pesos per hectare during the sub-phase of prospecting;
- b) five pesos per hectare during the sub-phase of exploration; and
- c) ten pesos per hectare during the phase of exploitation

Art 77. - The quantities listed in the prior article enter into the budget of the State and the payment is done in advance on an annual basis, in accordance to the procedures established by the Ministry of Finance and Prices.

Art 78. - The parties who were granted a concession shall pay to the State the price of surface rights

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

established by the Ministry Council or its Executive Committee at the time the concession is granted, for the area where the processing facilities will be built. Nevertheless, the government sets the conditions of such surface right.

Art 79.- Whenever the conditions of mineral exploitation and the fulfillment of the production therein advises it, the Ministry Council or its executive council may establish the calculation for the payment of royalties over:

- a) the sale price of the production;
- b) the average trimester quotation registered in the international market of the finished goods, or
- c) the value expressly agreed.

Art 80.- The State collects the royalty for the exploitation of the mineral resources within the national territory per each individual granted concession, in the percentages established in the granting instrument, in accordance to the following ranges

### APPLICABLE ROYALTY

From 3 to 5 %

From 1 to 3 %

Until 1 %.

Art 81.- The parties responsible for paying royalties are the ones granted the concession for exploitation of a mineral resource.

Art 82.- The payment of royalties is paid in specie or cash, at the option of the State

Art 83.- The royalty calculation is done on the basis of the finished production. The payment must be held in cash, in the currency used by the responsible party in its operations.

*Source: <http://www.medioambiente.cu/legislacion/leyes/L-76.htm>, accessed on March 17, 2005.*

## RESOLUTION No. 51/97

*Unofficial translation*

**First:** The individuals or companies properly authorized by a concession title for the exercise of one or various phases of mining activities, is obliged, in accordance to the law, to

- a) pay the canon for execution of the mining activity,
- b) pay the surface right, per area used for building the processing facilities,
- c) pay royalty for the exploitation of mineral resources.

...

**Fifth:** The payment of royalties will be held monthly, through the presentation of the statement within the fifteen (15) first working days of the following month to the end of the production

**Sixth:** the payment of royalties in cash shall be held in accordance to what is legally established, over the sale price of the production; the average trimester quotation registered in the international market of the finished goods, or the value expressly agreed.

When the instrument that grants the concession establishes the payment of the royalty in specie, this shall be held over the base of the quantity of tons of a finished production in the prior month. The parties, to whom the goods the object of the concessions is destined, will pay to the State tax department their amount, within 15 working days following the closing in which its reception is produced.

...

**Eighth:** When the ones granted with a concession, in accordance to what is legally established, exceptionally request, through the Ministry of Basic Industry, the total or partial differing of the royalties payment, it will decide within 30 working days after its reception, it will issue a resolution accepting or denying the request.

The differing request must be based, with reference to the final term and the circumstances that provoked the request, to which shall be attached the following documents: ...

**Ninth:** The owners of a mining concession must fulfill the fiscal obligations regulated herein in the banks or other entities entitled for receiving...

**Manuel Millares Rodríguez**

**Ministro**

*Source: <http://www.mfp.cu/leyes/r51-97.html>, accessed on March 17, 2005.*



## Dominican Republic

### 1. Summary

The Dominican Republic levies an *ad valorem* royalty of 5% on the FOB value of minerals exported from the country. The FOB value is determined by the Secretariat of State for Industry and Commerce jointly with the Central Bank and may take into account international reference prices. Unlike most nations, the royalty paid is not deductible in computing taxable income for purposes of the income tax, rather it is credited against any income tax liability arising in the year the royalty is paid.

Some mines operate under special agreements and may be subject to a different royalty regime. As this study goes to press the Dominican Republic is considering a new mining law that may impose a new approach to royalty.

### 2. Extracts from source legislation

#### **MINING LAW OF THE DOMINICAN REPUBLIC LAW No. 146**

##### *Unofficial translation*

ARTICLE 1.- Mineral substances of every nature that are found in the soil and subsoil of the national territory as well as in the underwater soil and subsoil of the territorial sea, belong to the State.

...

ARTICLE 75.- It is the obligation of every concessionaire to pay the annual patent, royalty and income tax corresponding to him, under sanction of forfeiture. The concessionaire should deliver evidence of such payments to the Mining Department.

ARTICLE 76.- Concessionaires shall be obligated to keep formal accounting books, fulfilling the requirements and conditions of the laws in force governing the matter....

#### **TITLE VII**

#### **SYSTEM OF TAXATION**

#### **CHAPTER I**

#### **GENERAL PROVISIONS**

ARTICLE 113.- Taxation of the Mining Industry to the State shall consist of:

- a) The annual mining patent.
- b) The royalty over the export of mineral substances in their natural state or in form of concentrates of metalliferous minerals; and
- c) The annual income tax.

ARTICLE 114.- The mining patent cannot be credited or deducted. In exchange, the royalty on the exportation of mineral substances in their natural state or in concentrates shall constitute the minimum taxation received by the state, and, therefore, and for the total only the annual income tax shall be deducted

#### **CHAPTER III**

#### **ROYALTY OF MINIMUM TAX**

ARTICLE 119.- Mineral substances in their natural state or in the form of concentrates of metalliferous minerals which are exported, shall be subject to a royalty or minimum tax of five percent (5%) of the sales price F.O.B. Dominican port. The payment of the royalty shall be made temporarily in the corresponding Customs Office within ten (10) days after the shipment and shall be subject to a final liquidation within three (3) months after the exportation is made. The sales

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

price for the final liquidation shall be determined by the secretariat of State for Industry and Commerce jointly with the Central Bank, in all cases in the most favorable manner of the State, by approving the price of transfer among economically related enterprises or fixing it taking consideration the quotations from the international market, in accordance with the purity and other characteristics of the mineral product exported, that appear in international publications, within ten (10) days prior to the shipment.

ARTICLE 120.- The five percent (5%) royalty on export may be credited against the payment of the income tax of the same fiscal year. Any excess of the royalty over the income tax of a given year may not be credited against the payment of the income tax of successive years.

ARTICLE 121.- Processing plants which are called smelting and refining plants, which export metallurgical products in the form of metallic compounds, metalloids and metals, shall not be subject to the payment of the five percent (5%) export royalty.

ARTICLE 122.- Exploitation concessionaires and owners of processing plants may only export their production after meeting the demanded of the Dominican market. The sales price of the products on the Dominican market shall be the price F.A.S. Dominican port, determined by the secretariat of State for Industry and Commerce and the Central Bank in accordance with the provisions of the second paragraph of Article 119.

*Source: <http://www.dgm.gov.do/mision.htm>, accessed March 24, 2005.*

### **Regulation number 207/98**

#### *Unofficial translation*

##### Chapter VI

##### Royalty and Income tax

Art 31.- For the payment of export royalty or minimum tax stated in article 119 of the Law, Mineral Substance in its natural state is the one that has not suffered any transformation within its form or in its substance.

Art 32.- The income tax applicable to mining is regulated by the law 11 -92 of May 15 of 1992 which creates the Tax Code, in which has expressly derogated articles 123, 125, 126, 127, and 128 of the Law.

*Source: <http://www.dgm.gov.do/mision.htm#reglamento>, accessed March 24, 2005.*

## Mexico

### Summary

Article 27 of the Political Constitution of the United States of Mexico grants the Nation original ownership minerals and private parties may only participate in the exploitation and use of these natural resources through concessions granted by the Federal Executive. The Constitution grants the Congress the power to legislate mining matters. Mining activities are regulated under the Mining Law and the Regulation under the Mining Law. The Foreign Investment Law (Ley de Inversión Extranjera) refers to foreign investor participation in mining concessions.

The right to mine can be obtained either through an application procedure or in some cases a bidding procedure. A bid may include financial terms and the law does not exclude a proposal for royalties.

At the present time Mexico does not levy a mining royalty although the Mining Law does allow the imposition of mining fees.

#### *Source:*

*[http://www.cec.org/pubs\\_info\\_resources/law\\_treat\\_agree/summary\\_enviro\\_law/publication/mx18.cfm?varlan=English](http://www.cec.org/pubs_info_resources/law_treat_agree/summary_enviro_law/publication/mx18.cfm?varlan=English), accessed February 20, 2005.*

### 2. Extracts from source legislation

#### **MINING LAW, June 26, 1992, with the changes December 24, 1996.**

##### CHAPTER FIRST

##### General Provisions

ARTICLE 13A. Bidding procedures whereby the concessions referred to in the preceding article are granted shall guarantee the best economic conditions for the State and will be conducted upon the following rules:

...

II. The rules for the bidding procedure will include as a minimum:

...c) The system for filing the economic proposal and finder's fee, which may be in a closed envelope or otherwise as determined, and

III. Concessions will be granted to the person who evidences compliance with the requirements established in the rules and who presents the best economic bid; for this purpose, to be taken into account only is the economic consideration and finder's fee offered.

ARTICLE 27. Holders of exploration and exploitation concessions, irrespective of the date of their grant, are required to:

... II. Pay the mining duties established in the applicable Law; Holders of exploration concessions granted under a bidding procedure or those, which substitute the former, will be required to pay, in addition, the discovery premium and the economic consideration offered.

...

ARTICLE 32. When the price or demand for a mineral drops and results in a temporary lack of profitability of exploitation in general, the Ministry may reduce the minimum amounts of the investment to be made or the value of the mineral products to be obtained or may grant an extension for compliance. For this purpose, a resolution will be published in Mexico's Official Newspaper establishing the relevant requirements, the substances and types of deposits affected, the prices whereupon the resolution will be effective and the term thereof.

...

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

ARTICLE 56. Cancellation resulting from an infraction will not proceed when within a period of 60 calendar days from the date on which the interested party is notified of the commencement of the respective procedure, evidence is provided in respect to the causes contemplated in sections II, III, V and VII of the preceding article, respectively:

...

II. Payment of omitted mining fees and other accessories derived from a default, according to applicable fiscal provisions;

***Source: <http://www.economia.gob.mx/>, accessed on February 15, 2005.***

## Peru

### 1. Summary

The holders of mining concessions are subject to *ad valorem* royalties defined in a supreme decree issued in 2004. The rate payable is graduated based on annual cumulative sales, commencing at 1% and rising to a high of 3%. The *ad valorem* basis for many minerals is the sales value less beneficiation costs.

The Ministry of Economy and Finance has the responsibility to establish the procedures for payment, and implementation is done through SUNAT (tax authority).

The royalty is to be distributed as follows: 20% to the district municipalities where the exploitation takes place, of which 50% shall be given to the communities where the exploitation takes place; 20% to the provincial municipalities where the exploitation takes place; 40% to the district and provincial municipalities of the department whenever they are located where the exploration takes place; 15% to the regional government where the exploitation takes place; and 5% to the national universities of the region where the exploitation takes place.

### 2. Extracts from source legislation

#### Law of Mining Royalty N° 28258.- (06/24/2004)

Unofficial translation of selected articles

##### Art 1°.- Object

The object of the present law is to establish the mining royalty, its constitution, determination, administration, distribution and use.

##### Art 2°.- Definition

The mining royalty is the economic remuneration that those who own mining concessions pay to the State for exploiting mineral resources...

##### Art 3°.- Constitution of the mining royalty

The mining royalty shall be paid over the mineral concentrating value or its equivalent, in accordance to the quotation of their prices in the international market.

##### Art 4°.- Determination of the mining royalty

4.1 the mining royalty shall be determined monthly, in accordance to articles 3° and 5° of the present law.

4.2 in case a company transforms its product after the concentration process of the valuable parts of a mineral aggregation, the calculation basis shall be the gross sales value minus the treatment costs until reaching its concentration or the equivalent market value properly supported.

##### Art 5°.- Ranks for the payment of the mining royalty

The ranks for the payment of the mining royalty are over their concentrating value or its equivalent:

- a) first rank: up to US\$ 60 million annually, pays 1%.
- b) second rank: for higher than US\$ 60 million up to US\$ 120 million annually, pays 2.0%.
- c) third rank: for over US\$ 120 million annually, pays 3%.

For the minerals whose prices do not have international quotations, pays 1% over the mineral component. The Ministry of Energy and Mines shall publish monthly the quotation of the precious metals international quotation prices.

In case of small producers of and workman miners, the royalty shall be 0%.

##### Art 7°.- Collection and Administration

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

The mining royalty shall be collected and administered by the Ministry of Economy and Finance who will establish the way and conditions for the purpose of the correspondent payment. The Ministry of Economy and Finance authorizes the SUNAT to exert all the functions associated with the payment of the mining royalty.

### **Art 8°.- Distribution of the mining royalty**

- 8.1 ...the amount received from mining royalty shall be distributed as follows:
- 20% to the district municipalities where the exploitation takes place, of which, 50% shall be given to the communities where the exploitation takes place.
  - 20% to the provincial municipalities where the exploitation takes place.
  - 40% to the district and provincial municipalities of the department whenever they are located where the exploration takes place.
  - 15% to the regional government where the exploitation takes place.
  - 5% to the national universities of the region where the exploitation takes place.
- ...8.2 the Ministry of Economy and Finance shall distribute monthly, within a maximum term of 30 days, the 100% of what was effectively paid of mining royalty to the regional government.

**Source for full Spanish version:**

***[http://www.minem.gob.pe/archivos/dgm/legislacion/LEY%20N\\_28258.pdf](http://www.minem.gob.pe/archivos/dgm/legislacion/LEY%20N_28258.pdf)***  
***accessed on February 16, 2005.***

## **Supreme Decree N° 157-2004-EF (15.11.04) – regulates the law 28258 (royalty)**

Unofficial translation of selected articles

### **Art. 2- Definitions**

For the purpose of the application of the present law, the following definitions shall be followed:

SUNAT – National Supervision of Tax Administration

RUC – Sole Registrar of Taxpayers

International quotation – is the one used as reference to apply the valuation methods. For the purpose of article 5 of the present law, the minerals with international quotation are the ones listed in Annex 1. Such annex also mentions the reference quotation source.

Concentrating or equivalent – in case of the metallic minerals, it is the product obtained by means of the beneficiation process, through flocculation, flotation, gravity separation or leaching, until its enriched solution. For this purpose, products with metallurgical further processing such as roasting, pelletization, smelting, precipitation, refining, extraction through solvents, electrode deposition or other purification processes, shall not be considered. Neither the industrial or manufactured products shall be considered.

Mining component – In case of nonmetallic minerals, it is the product obtained at the end of the beneficiation process, in accordance to the activities regulated by the mining law, not including the further industrial or manufacturing processes.

Integrated company – is the company that, besides performing the exploitation and beneficiation activities until obtaining the concentrating or equivalent, does it directly or by means of other metallurgical, industrial or manufacturing further processes, until obtaining a final commercial product.

Gross sale value of a final product – is the total of revenues originating from the sales of a commercial product obtained at the end of any mechanical, metallurgical, refining, industrial or manufacturing processes of an integrated company.

Treatment costs – direct and indirect production costs incurred during the beneficiation processes of the mineral extracted after obtaining the concentrating or equivalent mineral component.

Place where the exploitation of the mining resource takes place – territorial area where the mining concession is granted.

...

### **Art 4.- Reference base for royalty**

4.1. the reference base for the payment of royalties per extracted mineral shall be:

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- a. the gross value of concentrated products or the equivalent of their mining component. (...) the reference base shall not include direct taxes, insurance, transportation and harbor storage costs.
  - b. in case of integrated companies that transform their own products, the base value shall be the gross value of the final product, after deducting indirect taxes, insurance, costs of transportation, storage in harbors as well as treatment costs.
  - c. the adjustments originating from final liquidation, as well as the ones originating from deductions, returns and any other similar procedure which correspond to the custom procedures, shall effect the reference base amount in the month in which they occur. Such adjustments shall be registered in documents issued in accordance to the payment regulation.
- 4.2. In case of self-consumption of mining products, the reference base shall be the market value, properly justified, certified and supported by a reliable reference.

...

6.1 In order to determine the monthly payment of the royalties corresponding to the minerals with international quotation, the responsible party shall monthly do the following:

- a. consider as the reference base, American dollars. In case of an operation using distinct currency, a conversion shall take place, using the currency exchange rate at the date the obligation is originated. For this purpose, the exchange rate used shall be the “purchase” exchange rate, published by the Department of supervision of banks and insurance.
- b. the reference base of the entire year shall be added, beginning in January until and including such month

(...) the percentages shall be as per the following table:

	<b>Rank</b>	<b>% Royalty</b>
First rank	- up to US\$ 60 million	1%
Second rank	- from US \$ 60 US \$ to 120 million	2%
Third rank	- over US\$ 120 million	3%

- d. the monthly royalty shall be calculated from the obtained value in the table above deducted from the accumulated royalty until the prior month.

...

6.2 In case of minerals whose price is not established through international quotation, the royalty shall be calculated monthly by 1% times the sum of the respective reference base, originated from all its mining concessions under

...

Art 9 – collection and administration

In accordance to what is established in article 7 of the current law, the SUNAT is authorized to fulfill all the activities associated with the payment of the mining royalty, including the registering, processing of the statements, fiscalization, determination of debt, control, collection, coercive execution, settlement of contentious and non contentious procedures, administration of infractions and sanctions.

The complementary norms for the fulfillment of the prior rules shall be made by means of a Decree enacted by the Minister of Economy and Finances.

...

Art 11 – beneficiary of the mining royalty and establishment of territorial limits

11.1 – the mining royalty shall be distributed to the local government, to the regional government and to the national universities of the regions, or if this is not the case, of the district circumscriptions where the mining concessions are taking place.

The local government is established by the law 27972...

11.2 – for the distribution of the mining royalty between the district and provincial municipalities, the Digital Cartographic Census enacted by the National Institute of Statistics and Computers – INEI shall be used...

Art 12 – distribution of the royalty

The distribution of the mining royalty as well as of its fines and interest calculated on a specific month, shall take into consideration the proportion in which each of the concessions of a specific

responsible party represents within the total declared as reference base of the last month which corresponds to the distribution.

**Art 13.- Distribution procedure**

13.1 the mining royalty shall be distributed in accordance to the following:

- a) 20% to the local government of the municipalities under exploitation.
- b) 20% to the local government of the provinces under exploitation.
- c) 40% to the local government of the district or regional circumscriptions, whenever they are located where the exploitation takes place.
- d) 15% to the regional government
- e) 5% to the national universities...

13.2 For the purposes of distribution between the district and provincial municipalities, mentioned in b) and c) above, criteria of probation and unsatisfied basic needs shall be used.

13.3 In the cases of mining concessions under exploitation, which extension includes regions, or, in the case of district circumscriptions where there are national universities, the distribution between these last ones shall be held proportionally in accordance to the area within the mining concession in each region, or, in case it is known, of each departmental circumscription where such universities are located.

13.4 Whenever a region, or in case this is not known, the beneficiary circumscriptions of the royalty, holds more than one national university, the distribution shall take place in equal parts between these study centers.

**Art 14.- Determining the influence area**

14.1 For the purpose of distribution of the mining royalty, the influence area shall be the territorial area of the local and regional government where the concession is granted...

14.2 In case the concession takes place in more than one region, the royalty shall be proportionally distributed, in accordance to the area within the concessions.

...

**Art 17 – Transference of royalty**

17.1 The National Council of Decentralization determines the amount of royalty payable to each regional, provincial or district government based on the distribution index approved by the Ministry of Economy and Finances

... distinguishing, in this last case, the component mentioned in the second part of letter a) of item 8.1 of article 8 of the law, acknowledging the General Direction of the Public Treasury Department, for it to make available its deposit in the accounts of the Nation Bank.

17.2 In the case of National Universities, the Ministry of Economy and Finance determines the amount of mining royalty that they shall receive over the base of the approved distribution indexes. And, through the General Direction of the Public Treasury department, it display its deposit to the corresponding accounts in the Nation Bank.

17.3 The Nation Bank shall establish an account named mining royalty for each of the provincial and district municipalities, regional governments and national universities who were beneficiaries with a correspondent royalty, in which deposit the amount available at the General Direction of the Public Treasury department. Even though that, the Nation Bank shall point out, through its correspondent deposit notes, to what are the deposits related to and its term, to each provincial and district municipality, as well as to each regional government and national universities. The balance not used shall form part of the balance of the Public Treasury, in accordance to what is established in article 6 of the Supreme Decree N° 310-89-EF.

17.4 The Ministry of Economy and Finances shall inform the procedures and methodology adopted when determining the indexes and amounts of mining royalty due to the local governments, regional governments and the national universities, in its web page and in the Peruvian Diario Oficial, with further publication of its corresponding Ministerial resolution.

**Source for full Spanish version:**

***[http://www.minem.gob.pe/archivos/dgm/legislacion/D.S.N\\_157-2004-EF.pdf](http://www.minem.gob.pe/archivos/dgm/legislacion/D.S.N_157-2004-EF.pdf),  
accessed February 28, 2005.***



## Venezuela

### 1. Summary

Venezuela imposes a royalty in the form of its exploitation tax which is established in **Mining Law Decree 295**. The law sets out rates from 3 to 4 percent of commercial value. The royalty is not paid until such time as the amount of royalty payable becomes equal to the amount of land use fee that is payable. The value basis is defined in **Decree 1234** of 2001, the mining regulations.

### 2. Extracts from source legislation

#### **Mining Law, Decree N° 295, dated September 28, 1999**

unofficial translation

##### **Title VI – taxes**

Art 90 – The holders of mining rights shall pay the following taxes:

- 1) Surface tax: per hectare of area granted, beginning in the fourth year after granting of the respective right and it shall be paid per trimester due within the five days following the end of each trimester.

For the purposes related to payment of this tax, the beneficiaries of the mining rights over gold and diamond shall be regulated by Table A which application shall be cumulative over the total extensions of granted areas. For the remaining minerals the payment shall be regulated by Table B; in both cases, the amount set in this Article will be calculated by the Tax Unit (U.T.) in force at the time of the payment closing.

The payment will be made to the National Tax Collection Offices after the taxes have been assessed by the relevant assessing office of the Ministry of Energy and Mines.

Once the exploitation of the concession is started, the surface tax will be reduced, by the amount of the exploitation tax for the same period, until they both become equal.

Table A ...

Table B ...

- 2) The exploitation tax is applicable from the moment the mineral is extracted, and it shall be paid within the first 15 continuous days of the following month from when it was extracted. It may be paid in cash or in kind, at the option of the National Executive. In the first case, this tax shall be calculated as follows:

A – 3% of the commercial value in Caracas of the refined mineral, when it is gold, silver, platinum and metals associated to platinum.

B – 4% of the commercial value in Caracas when it is diamonds and the remaining precious stones.

C – 3% calculated over the commercial value in the mine, for other minerals, in which it is included the costs that incur until the moment that the extracted mineral, crushed or not, is deposited on the vehicle that will transport it outside the boundaries of the granted area or to a beneficiation or refining plant, regardless of its place of location, taking into consideration its content and the price of the mineral on the buyer's market among other relevant factors.

First paragraph: When the economic conditions allow, the National Executive may agree to a reduction of the exploitation tax from the rate in paragraph C down to no less than 1%; the National Executive may reestablish such tax at its original amount when, at its own criteria the causes that motivated the reduction have ceased.

....

Third paragraph: The statement to which the second paragraph refers shall be submitted to the Regional Assessing Office of the Ministry of Energy and Mines.

Article 91. When the beneficiary of mining rights trades with processed, refined or beneficiated product that originated from the exploited mineral, the reference price to calculate its commercial

value in the mine will be established by the Ministry of Energy and Mines, through a market study, taking into consideration the average content of the mineral, and its expected sale price in the purchaser's market, for payment of the exploitation tax.

**Source:** <http://www.gobiernoenlinea.gob.ve/docMgr/sharedfiles/029.pdf>,  
*accessed on March 9, 2005.*

**Decree 1234, of 03/06/2001 (published in "Gazeta Oficial" n° 37.155 in 03/09/2001)**

***General regulation of the mining code Decree N° 1.234 06, March 2001***

Unofficial translation

Title VI

The tax regimen

Art 122

For the purpose of applying the reduction established in article 90, number 1, of the Mining Law, concurrence takes place when the amount of exploitation tax is equal or higher than the surface tax. In such case, the owner of the mining right shall pay only the exploitation tax.

It is understood by exploitation tax correspondent to any period, the tax is the one generated within a trimester calendar period. If, by any reason the exploitation stops, the owner of the mining right shall continue to pay the surface tax.

Art 123

The owner of the mining rights, for the purpose of payment of the exploitation tax, shall present a statement within the first (10) continuous days of the following month from the extraction.

Art 124

Every statement of exploitation tax, besides the requirements set in the Mining Law and its regulations, shall be accompanied by a quality analysis of the produced mineral.

Art 125

Whenever the statements presented by the owners of a mining right show doubts regarding its veracity or accuracy, the head of the fiscal office shall prepare a correspondent note to embody and close its respective administrative summary ...in accordance to the tax code.... ..

Art 126

The exploitation tax shall be determined as follows:

1. When it is gold, silver, platinum or metals associated with this last one, the commercial value in Caracas shall be calculated taking as a reference the average weekly prices of such metals in the main international markets, correspondent to the week prior to its liquidation date; its equivalent in bolívares shall be calculated taking as basis the average exchange rate for sale of the respective foreign currency, published by the Central Bank of Venezuela within the same period. The reference price obtained shall be multiplied by the quantity of declared mineral, to which result shall be applied the rate stated in article 90, number 2, of the Mining Law;
2. When it is diamond and the remaining precious stones, the commercial value in Caracas shall be calculated taking as reference the international average monthly prices, correspondent to the prior month of the liquidation, for each specific mineral, in accordance to their classifications, types and qualities; its equivalent in bolívares shall be calculated taking as basis the sales exchange rate of the respective currency, published by the Central Bank of Venezuela within the same period. The reference prices obtained shall be applied to the classifications, types and qualities of the declared mineral, to which result the rate in article 90, number 2 of the mining code shall be applied.
3. In case of other minerals, the commercial value in the mine will be calculated taking as reference the higher price of the price of the mineral in the purchase market or the sales price of sales done by the taxpayer, from which shall be deducted costs and expenses needed for sale, in no case may this value be lower than the sum of costs of extraction and milling, with its respective proportion of general expenses, if such costs incur within the limits of the concession area.

Art 127

In order to determine the commercial value that shall be used as the base for calculating the exploitation tax, the Ministry of Energy and Mines, whenever, it finds it necessary, may use of the services of experts or qualified labs, for them to analyze the quality, type, form and classification of the declared mineral.

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

...

Art 129

The compensations and due dates of payment per concept of mining tax, shall be decided by the Ministry of Energy and Mining, who may delegate such competence.

Art 131

The reduction of the exploitation tax may be agreed by the National Executive through the Ministry of Energy and Mines, when the requestor demonstrates that the production cost included in the amount of the taxes, has reached the limit allowed by the commercial exploitation.

...

**Source:**

***<http://www.gobiernoenlinea.gob.ve/docMgr/sharedfiles/reglamentogralleyminas.pdf>, accessed on March 9, 2005.***

## A1.6 NORTH AMERICA

### Arizona (U.S.)

#### 1. Summary

For minerals found in state-owned lands, a royalty is payable. The royalty can be no less than 2% of the gross value of minerals produced. The *ad valorem* percentage rate is determined by a commissioner who also sets the method for determining gross value.

#### 2. Extracts from source legislation

##### Title 27 – Minerals, Oil and Gas

Chapter 2. Mining Rights in Land

Article 3. Lease of State Lands for Mineral Claims

27-234. Rent; royalty; appeal; interest; penalty; lien

A. ...

- B. In addition to the annual rental, a production royalty of at least two per cent is assessed against the gross value of all minerals produced and sold from the mineral lease. Where processing is performed after the mineral is extracted, the mineral shall be deemed produced and sold when the concentrate or cathode results from that processing. The royalty rate for each mineral lease shall be based on an appraisal of this state's interest as a lessor in the mineral and shall be established according to the appraisal standard prescribed by subsection C of this section. The gross value shall be based on the monthly average price of the mineral as quoted by the mineral commodities market and industry trade journals as determined by the commissioner and specified in the lease. If a mineral does not have a published price quotation, the gross value shall be based on an appraisal that establishes the fair market price of the mineral. The royalty shall not be based on any hedging or price protection arrangements that may be entered into by the lessee and any of these arrangements shall not be considered in any appraisal that established the fair market price of the mineral.
- C. The commissioner shall appraise this state's interest as a lessor in the mineral according to standard appraisal methodology and, to the extent feasible, shall base the appraisal on market royalty rates. The appraisal shall be completed in order to determine whether a royalty rate greater than two per cent of the gross value is required in order to obtain a fair market value for this state's interests as a lessor in the mineral. The appraisal shall be completed before issuing a mineral lease, at the end of the first year of commercial production and again for each renewal of the lease. If, during the term of the lease, new minerals are produced and sold from the mineral lease, or changes in technology substantially affect the value of this state's interest as a lessor, the commissioner at that time may reappraise that interest and, if appropriate, adjust the royalty rate.
- D. For mines existing on state lands on June 8, 1989, the royalty paid under this section shall not be less than the royalty which would have been paid under statutes in effect immediately before June 8, 1989.
- E. The costs of all appraisals conducted under this section shall be assessed against the lessee and added to the amount due as rental under this section.
- F. The department shall review all property tax assessment information relevant to the mineral lease. The department shall maintain that information on a confidential basis as prescribed by title 42, chapter 2, article 1.
- G. Every mineral lease of state land shall require the lessee to make the following records available on an annual basis:
1. Itemized statements of mineral production.
  2. Relevant tax records.

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

3. Additional relevant records pertinent to appraisal, compliance with the lease and mineral production deemed necessary by the commissioner.
- H. The information obtained under subsection G, paragraph 2 of this section and any trade secrets are confidential. For purposes of this subsection, trade secrets are information to which all of the following apply:
1. A person has taken reasonable measures to protect the information from disclosure and the person intends to continue to take those measures.
  2. The information is not and has not been reasonably obtainable by legitimate means by other persons without the person's consent, other than by governmental entities and other than in discovery based on a showing of special need in a judicial or quasi-judicial proceeding.
  3. A statute does not specifically require disclosure of the information to the public.
  4. The person has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the person's competitive position.
- I. Mineral lessees shall make monthly royalty payments based on the mineral production activity of the previous month.
- J. Appeals of the appraisal decision of the commissioner may be taken pursuant to section 37-215 to the board of appeals, established by section 37-213, which shall affirm, modify or reverse the decision of the commissioner within one hundred eighty days. Except as provided in section 41-1092.08, subsection H, decisions of the board of appeals under this subsection are subject to judicial review pursuant to title 12, chapter 7, article 6. As a condition of the appeal, the lessee must continue to make all rental and royalty payments due based on the commissioner's final appraisal decision, and the court shall not stay the commissioner's decision, in whole or in part, pending a final disposition of the case. The state shall segregate rents and royalties paid while an appeal is pending and shall not distribute such monies to the state general fund or to the trust beneficiaries until the appeal is completed.
- K. If a lessee fails to pay rent or royalty, including appraisal costs under subsection C of this section, on or before the date the payment is due, the amount due accrues interest at the rate and in the manner determined pursuant to section 42-1123. In addition, if it is determined that the failure to pay is not due to reasonable cause, a penalty of five per cent of the amount found to be remaining due shall be added to the rent or royalty for each month or fraction of a month elapsing between the due date and the date on which it is paid. The total penalty shall not exceed one-third of the rent or royalty remaining due. The penalty so added to the rent or royalty is due and payable on notice and demand from the commissioner.
- L. If any rent, royalty, appraisal assessment, interest or penalty is not paid by the lessee when due, the unpaid amounts constitute a lien from the date the amounts become due on all property and rights to property that belong to the lessee and that are located on state land.

**Source:**

***<http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/27/00234.htm&Title=27&DocType=ARS>, accessed February 10, 2005.***

## **British Columbia (Canada)**

### **1.Summary**

Under Chapter 291 of the **Mineral Tax Act** of British Columbia, the province levies a net current proceeds tax and a net revenue tax. The net current proceeds tax is defined as gross revenues from the sale of mineral products less operating expenses, development expenses once in production, and non-capital reclamation costs. Exploration and pre-production capital expenditures are not allowable. Net proceeds are taxed at a rate of 2% per annum and are fully deductible against the determination of net revenue taxes for the current year and any future year from the same mining operation. As such, the net current proceeds tax acts as a minimum tax. Net revenues are taxed at a rate of 13% per annum and are determined by the deduction of all operating expenses, pre-production and production capital and exploration expenses. The net current proceeds tax also is allowable as a deduction.

### **2.Extracts from source legislation**

#### **MINERAL TAX ACT [RSBC 1996] CHAPTER 291**

1 (1) In this Act:

"commissioner" means the commissioner of mineral tax appointed under this Act;

"co-operator" means a person who operates a mine in conjunction with another person but does not include a person who, under an arm's length agreement, has a right to receive only royalties paid or payable in cash;

"fiscal year of the mine" means,

- (a) in respect of a placer gold mine, the calendar year, and
- (b) in respect of any other mine,
  - (i) the period, not exceeding 12 months, for which the accounts of the mine have been or are ordinarily made up, or
  - (ii) in the absence of a chosen period, the calendar year;

"fiscal year of the operator" means, in respect of an operator, the period, not exceeding 12 months, for which the accounts of the operator have been or are ordinarily made up but, in the absence of a chosen period, the fiscal year of the operator is the calendar year;

"investment allowance rate" means the arithmetic mean of the bank rates, stated as a percentage, effective on the last Wednesday of each month, as published by the Bank of Canada, for each month of the fiscal year of the mine or the fiscal year of the operator, as the context requires, multiplied by 1.25 and by the number of days in the applicable fiscal year as a proportion of 365 days;

"mine" means a

- (a) mineral deposit,
- (b) site, or
- (c) separate economic unit designated by the commissioner in British Columbia from which a mineral will be or has been obtained, together with
- (d) the works or undertaking, and
- (e) the chattels,

whether located inside or outside British Columbia, that are used to obtain, transport and produce mineral product from the mineral deposit, site or designated separate economic unit;

"mine property" means a property from which an operator has a right to win minerals;

"mineral" means a mineral as defined in the Mineral Tenure Act and includes

- (a) a placer mineral as defined in that Act, and
- (b) coal;

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

"mineral product" means a product of a mine or a product produced from the product of a mine;

"operation of a mine" means the production of minerals from a mine and includes

- (a) all of the discovery, development, mining, milling, smelting, refining, washing, preparation, drying, beneficiation or other processing of those minerals required to obtain a mineral product, and
- (b) reclamation of the mine;

"operator" means, for each mine, the person who, either alone or with another person, is or was the owner, lessee, licensee, tenant or other holder of a right to win minerals from the mine but does not include a person who, under an arm's length agreement, has a right to receive only royalties paid or payable in cash;

"person" does not include a partnership;

"placer gold mine" means a mine having the following characteristics:

- (a) substantially all of the mineral product produced from the mine is placer minerals;
- (b) gold produced from the mine accounts for the majority of the value of the placer minerals produced from the mine;

"placer gold mine operator" means the operator of a placer gold mine;

"placer mineral" has the same meaning as in the Mineral Tenure Act;

"proportionate share" means, in relation to an operator, the share of any mineral product, benefit, cost or tax-related quantity to which the operator is legally entitled from, or for which the operator is obligated as a result of, the operation of a mine, or in the case of a quarry operator, one or more mines;

"quarry" means a mine from which substantially all of the minerals removed are quarry materials;

"quarry material" means a mineral that is

- (a) limestone,
- (b) dolomite,
- (c) marble,
- (d) shale,
- (e) clay,
- (f) volcanic ash,
- (g) diatomaceous earth,
- (h) sandstone,
- (i) quartzite,
- (j) dimension stone, or
- (k) a prescribed substance;

"quarry operator" means the operator of one or more quarries;

"reclamation" means a program of reclamation approved by the Chief Inspector of Mines under the Mines Act;

"reclamation fund" means a reclamation fund established by regulation under the Mines Act;

"related persons" means

- (a) persons who would be related within the meaning of section 251 (2) and (3) of the Income Tax Act (Canada) if that section were read on the assumption that a person who holds or controls, directly or indirectly, 15% or more of the outstanding voting stock or shares of a corporation controls that corporation,
- (b) partners of the same partnership and that partnership, or
- (c) any 2 persons if one is the employer or an officer or director of the other.

(2) If a person, other than the operator of the mine, has the right to win minerals from the tailings of a mine

- (a) that person is deemed to be an operator, and
- (b) those mine tailings are deemed to be a mine, for the purposes of this Act.

(3) For the purposes of this Act, related persons are deemed not to deal with each other at arm's length.

(4) Despite the definition of fiscal year, if an operator of a mine has become bankrupt or is discharged from bankruptcy, the following rules apply for the purposes of this Act:

- (a) a fiscal year of the mine that would otherwise have ended after the date on which the operator became bankrupt or was discharged is deemed to have ended on the day immediately before the date of that bankruptcy or discharge;

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

(b) a new fiscal year of the mine is deemed to have begun on the date the operator became bankrupt or was discharged.

(5) Despite the definition of fiscal year, if an interest in a mine is acquired or disposed of, the following rules apply for the purposes of this Act to the operator who acquired or disposed of the interest:

(a) a fiscal year of the mine that would otherwise have ended after the date on which the interest was acquired or disposed of is deemed to have ended on the day immediately before the date of that acquisition or disposition;

(b) a new fiscal year of the mine is deemed to have begun on the date on which the interest was acquired or disposed of.

(6) Subsection (5) does not apply if the interest that is acquired or disposed of is restricted to a right to a royalty or other similar payment.

Application of this Act to placer gold mine operators

1.1 Sections 2, 3 to 7, 8 (1) to (3), 9, 10, 11, 13, 14 and 15 do not apply in respect of a placer gold mine, or to the placer gold mine operator, for any fiscal year of the mine ending after December 31, 1998.

Application of this Act to quarry operators

1.2 (1) Unless subsections (2) to (4) apply, sections 2, 3 to 11, 12 (3) and (4), 13, 13.1, 14 and 15 do not apply in respect of a quarry, or to a quarry operator, for any calendar year ending after December 31, 2000.

(2) A quarry operator who has filed a return under this Act for any fiscal year of a mine ending before January 1, 2000 may elect to be treated under this Act as an operator who is not a quarry operator.

(3) An election under subsection (2) must

(a) be made in the prescribed form,

(b) contain the prescribed information, and

(c) be delivered to the commissioner, with the return for the fiscal year of the operator ending in 2001, on or before the last day of the sixth month following the end of that fiscal year.

(4) If a quarry operator makes an election in accordance with subsections (2) and (3), that election is irrevocable and this Act applies to the quarry operator as if he or she is an operator who is not a quarry operator.

Imposition of tax

2 (1) A person who is an operator must, for each mine of which that person is an operator, pay a tax in respect of each fiscal year of the mine equal to the aggregate for that mine of the following:

(a) the amount, if any, by which 13% of the net revenue of the operator derived from the operation of the mine exceeds the aggregate of

(i) the balance of the cumulative tax credit account at the end of the immediately preceding fiscal year of the mine,

(ii) the amount of imputed interest determined under section 3 (b) for the current fiscal year of the mine, and

(iii) the amount determined under paragraph (b);

(b) 2% of the net current proceeds of the operator derived from the operation of the mine for the current fiscal year of the mine.

(2) An operator may deduct from the tax otherwise payable under this section an amount equal to the lesser of the following:

(a) the earned depletion base account of the operator for the particular mine at the end of the immediately preceding fiscal year of the mine determined in accordance with section 11 (3);

(b) an amount equal to 25% of the tax otherwise payable before any deduction under subsection (3).

(3) An operator may deduct from the tax otherwise payable under this section royalties assessed and paid under the Mineral Royalties Act in respect of the calendar year 1976, to the extent that they have not been previously deducted under the Mineral Resource Tax Act or this Act.

Nisga'a exemption

2.1 (1) In this section, "Taxation Agreement" means the Nisga'a Nation Taxation Agreement tabled in the Legislative Assembly on November 30, 1998, but does not include any amendments made to that agreement after that date.



## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

(2) Despite section 2, a person is not subject to tax under this Act if and to the extent that the Taxation Agreement provides that the person is not subject to tax under this Act.

### Imposition of tax on placer gold mine operator

2.2 A person who is a placer gold mine operator must, for each placer gold mine of which that person is an operator, pay in respect of each calendar year a tax equal to 0.5% of the amount that is the operator's proportionate share of the transaction value of the mineral product disposed of in the calendar year.

### Imposition of tax on quarry operator

2.3 (1) A quarry operator must pay in respect of each calendar year a tax equal to 15¢ multiplied by the number of tonnes of quarry materials referred to in subsection (2).

(2) The number of tonnes of quarry materials that is to be used in the calculation in subsection (1) is the amount, if any, by which the quarry operator's proportionate share of the quarry materials that were removed from all of the quarries operated by the quarry operator in the calendar year exceeds the number of tonnes of quarry materials deducted under subsection (3).

(3) For the purposes of the calculation set out in subsection (2), a quarry operator may deduct up to 25 000 tonnes of quarry materials subject to the following:

(a) the total number of tonnes of quarry materials that the quarry operator may deduct for a calendar year under this subsection in relation to all of the quarries operated by the quarry operator must not exceed 25 000 tonnes;

(b) the total number of tonnes of quarry materials deducted for a calendar year in relation to any one quarry under this subsection by all quarry operators who operate that quarry must not exceed 25 000 tonnes.

### Cumulative tax credit account

3 The balance in the cumulative tax credit account of each operator for each mine at the end of a particular fiscal year of the mine is the amount, if any, by which the aggregate of the following exceeds 13% of the net revenue of the operator for the mine for the fiscal year of the mine:

(a) the balance of the account at the end of the immediately preceding fiscal year of the mine;

(b) imputed interest equal to an amount that is the investment allowance rate multiplied by the amount determined in paragraph (a);

(c) the amount calculated under section 2 (1) (b) for the fiscal year of the mine, provided that the tax payable under section 2 for the mine in respect of that fiscal year of the mine is paid.

### 1993-94 straddle provision

4 (1) The tax payable for a coal mine in respect of the fiscal year of the mine in which March 23, 1994 falls must be determined in accordance with section 2 (1) and, for that purpose,

(a) the reference in section 2 (1) (a) to 13% must be read as a reference to the percentage obtained by adding

(i) the proportion of 17.5% that the number of days in the fiscal year of the mine to and including March 22, 1994 bears to 365, and

(ii) the proportion of 13% that the number of days in the fiscal year of the mine after March 22, 1994 bears to 365, and

(b) the reference in section 2 (1) (b) to 2% must be read as a reference to the percentage obtained by adding

(i) the proportion of 7.5% that the number of days in the fiscal year of the mine to and including March 22, 1994 bears to 365, and

(ii) the proportion of 2% that the number of days in the fiscal year of the mine after March 22, 1994 bears to 365.

(2) The balance in the cumulative tax credit account of an operator of a mine must be determined in accordance with section 3 and, for that purpose, a reference in section 3 to 13% must be read as a reference to the percentage determined under subsection (1) (a).

### Reclamation tax credit

5 (1) The Lieutenant Governor in Council may, by regulation, establish a reclamation cost account and a reclamation tax credit account.

(2) Subject to the establishment of the accounts referred to in subsection (1), if

(a) the operator of a mine is actively engaged in reclamation during the fiscal year of the mine

(b) [Repealed 1999-38-49.]

the operator may claim a reclamation tax credit equal to the lesser of

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- (c) the prescribed percentage of the balance in the reclamation cost account at the end of the current fiscal year of the mine, and
- (d) the balance in the reclamation tax credit account at the end of the current fiscal year of the mine.

### Net revenue from operation of mine

6 Net revenue derived from the operation of a mine is the amount by which the aggregate of the amounts determined under section 9 (1) (f) to (h) exceeds the aggregate of the amounts determined under section 9 (a) to (e).

### Net current proceeds from operation of mine

7 (1) Net current proceeds derived from the operation of a mine is the amount by which the amount determined under section 9 (1) (f) exceeds the amount determined under section 9 (1) (b) and (e), excluding any costs included in the determination under section 9 (1) (b) that are on account of capital.

(2) For the purpose of this section, costs that are on account of capital include those costs under section 9 (1) (b) that are prescribed to be on account of capital.

### Gross revenues from operation of mine

8 (1) Subject to subsections (2) and (3), the gross revenue derived from the operation of a mine by an operator for each fiscal year of the mine is the aggregate of the following:

- (a) the amount that is the operator's proportionate share of the transaction value of the mineral product disposed of in the fiscal year of the mine;
- (b) the amount that is the operator's proportionate share of the transaction value of any mineral product consumed or used in the fiscal year of the mine by the operator or any co-operator of the mine;
- (c) the operator's proportionate share of any amount receivable in the fiscal year of the mine that is
  - (i) a grant, subsidy or other form of assistance received from a government, municipality or other public body,
  - (ii) the proceeds of an insurance policy, or
  - (iii) any other amount whatever

that may reasonably be regarded as a recovery of costs and expenses included, deemed included or to be included under section 9 (1) (b) in any fiscal year of the mine, except to the extent that the amount is to be or has been included under section 9 (1) (g);

(d) the amount of the operator's prescribed reclamation recovery.

(2) If an operator is an individual who is actively engaged in the operation of the mine, the operator may deduct from the operator's proportionate share of the aggregate under subsection (1) an amount equal to the proportion of \$50 000 that the aggregate of the amounts described in subsection (1) (a) to (c) of the operator for the fiscal year of the mine is of the aggregate of those amounts for the mine for the fiscal year of the mine.

(3) The commissioner may designate that a disposition of mineral product has occurred at a point earlier than its actual disposition and, if the commissioner so designates,

- (a) for the purposes of subsection (1) (a), the mineral product is deemed to have been disposed of for an amount equal to the transaction value at the designated point,
- (b) for the purposes of section 9 (1) (b), prescribed costs do not include any costs and expenses incurred or related to activities after the point at which the value has been determined, and
- (c) when the mineral product so designated is actually disposed of, the amount received on its disposition is deemed to be nil.

(4) The transaction value of a mineral product is the price paid or payable for the mineral product.

(5) Subsection (4) does not apply if

- (a) the price paid or payable for the mineral product is subject to some condition or consideration in respect of which a value cannot reasonably be determined,
- (b) the purchaser and vendor of the mineral product are related persons at the time of the sale and the price paid or payable is less than the price that would have been paid or payable if the purchaser and vendor had not been related persons,
- (c) the commissioner has designated under subsection (3) that the mineral product was disposed of earlier than its actual disposition, or

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

(d) a transaction value is prescribed for the particular mineral product.

(6) The transaction value of a mineral product to which subsection (4) does not apply because of subsection (5) (a), (b) or (c) is

(a) the amount determined by the operator to be the fair market value at which similar minerals would have sold,

(i) in the case described in subsection (5) (a) or (b), at disposition, or

(ii) in the case described in subsection (5) (c), at the designated point of disposition, at a sale between a purchaser and vendor dealing at arm's length, or

(b) if the commissioner considers that the amount determined by the operator under paragraph (a) is less than the fair market value of the mineral product at disposition or at the designated disposition point, as the case may be, the amount determined by the commissioner after taking into account any factors the commissioner considers relevant.

For the purposes of subsection (6), "similar minerals" means mineral products that are the same, or substantially the same, in all physical characteristics and quality as the mineral product being valued.

...

**Source:** [http://www.qp.gov.bc.ca/statreg/stat/M/96291\\_01.htm#section6](http://www.qp.gov.bc.ca/statreg/stat/M/96291_01.htm#section6), accessed on February 20, 2005.

## Michigan (U.S.)

### 1. Summary

Michigan State Royalties fall into two categories based on the type of mineral commodity produced. Metallic mineral production royalties are based on net smelter values per ton of ore produced indexed for inflation. Royalty rates are applied on a sliding scale basis from 2% for lower value ore to 7% for higher value ore. Non-metallic mineral royalties are applied on the basis of sales revenue. Examples include a royalty of 7% on coal and 5% on limestone.

### 2. Extracts from source legislation

#### **Metallic Minerals Lease**

Michigan Department of Natural Resources

Forest, Mineral and Fire Management

By Authority of Part 5, Section 502, Act 451, Public Acts of 1994

...

PR 4340 (Rev. 01/08/2004)

C. Economic Terms

3. Production Royalties

Lessee shall pay to the Lessor a production royalty calculated as follows:

Determine the gross sales of all minerals and /or mineral products from this lease sold during the past calendar quarter. Such sales value shall be based on the actual sales value on the open market as shown by sales receipts. If mineral or mineral products are not sold to an independent consumer on the open market at fair market price, but are processed further by a plant which is operated by the Lessee, or in which the Lessee has an interest, the gross sales value shall be determined using prices for the metallic form of for normally accepted forms as published by the Engineering and Mining Journal in the "E and MJ Markets" section, or other mutually agreed upon forms and prices. The gross sales value shall then be divided by the tons of ore processed in that production of minerals and/or mineral products sold to determine the gross sales value per ton.

Determine the price index factor by dividing the constant price index by the current price index. Both price indexes shall be obtained from the producer price index for all commodities, or its successor index, as published monthly by the U.S. Department of Labor, Bureau of Labor Statistics. The constant price index shall be the index for February (month) of 1983 (year), quoted as being 301.2. The current price index shall be the index for the middle month for that quarter.

Determine the adjusted sales value per ton by multiplying gross sales per ton by the price index factor.

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- d. The production royalty rate shall not be less than two percent or more than seven percent, and shall vary with Adjusted Sales Value per ton of ore. For every dry short ton of ores containing minerals and/or mineral products other than iron ores that is mined from the leased premises and sold, and for every dry long ton of ores containing minerals and/or mineral products mined principally for iron content that is mined from the leased premises and sold, the royalty rate shall be two percent when the adjusted sales value of the minerals and/or mineral products is twelve dollars (\$12.00) or less. The royalty rate shall be increased by one-half (1/2) percent for each six dollar (\$6.00) increase in the adjusted sales value per ton of minerals and/or mineral products above twelve dollars (\$12.00) per ton, fractions prorated to three decimal places, with a maximum royalty rate limit of seven (7) percent, which limit will be reached when the adjusted sales value per ton of minerals and/or mineral products is seventy-two dollars (\$72.00) per ton.
- e. The amount of production royalty is then the product of the royalty rate expressed in decimals to five places and the gross sales value.
- f. Production royalties shall be paid on a quarterly basis. If payments specified are not made on or before the twenty-fifth (25th) day of April, July, October and January of every year during the term of this lease for all minerals and/or mineral products sold during the preceding calendar quarter, Lessor may claim default under the provisions of Section H herein. In addition to any remedies available to Lessor under the lease, payments made after the due date shall include interest at the rate of 1.5 percent per month, or at the maximum legal rate, whichever is less, on the amount of royalty unpaid.

### *Source:*

*[http://www.midnr.com/Publications/pdfs/ForestsLandWater/Mineral/PR4340\\_MetallicMineralsLease.pdf](http://www.midnr.com/Publications/pdfs/ForestsLandWater/Mineral/PR4340_MetallicMineralsLease.pdf), accessed March 1, 2005.*

## MICHIGAN DEPARTMENT OF NATURAL RESOURCES FOREST, MINERAL AND FIRE MANAGEMENT NONMETALLIC MINERALS LEASE

By authority of Part 5, Section 502, Act 451 of 1994, as amended.

3 PR 4331 (Rev. 11/24/2004)

12. **Sales Value** means the value in U.S. dollars on the open market of all marketable products F.O.B. mining operation or processing plant in either bulk or (if specified in the production royalty schedule) processed form, and after which sale the Lessee no longer holds an economic interest in the marketable nonmetallic minerals and a shown by sales receipts. If nonmetallic minerals and/or nonmetallic mineral products are not sold to an independent consumer on the open market at fair market value, but are processed further by a plant which is operated by the Lessee, or in which the Lessee has an interest, the equivalent sales value on the open market for the nonmetallic minerals and/or nonmetallic mineral products shall be:

- (a) Estimated by Lessee, subject to review and approval of the Lessor or;
- (b) Extrapolated, as mutually agreed to by Lessor and Lessee, from pertinent tabulations of the U.S. Bureau of Mines averaged for the last three (3) years where feasible, Chemical Marketing Reporter, the Engineering and Mining Journal, and/or other similar publications.

For purposes of this lease, the sale of nonmetallic minerals and/or nonmetallic mineral products in place, or without extraction, is not considered production, and any sales value at that point shall not be used as the basis for calculation of production royalties.

Also for purposes of this lease, FOB mining operation or processing plant is defined as the mine, plant or stockpile for all nonmetallic minerals and/or nonmetallic mineral products except for bulk salt (NaCl) in solution which is extracted by solution mining in artificial brines or natural salines; FOB for this material shall be the wellhead.

4 PR 4331 (Rev. 11/24/2004)

### **C. ECONOMIC TERMS**

#### **1. Rentals**

Lessee shall pay to Lessor rental as follows:

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- a. Rental for the first (1) through fifth (5) year shall be paid at the rate of \$3.00 per acre per year.
- b. Rental for the first year shall be paid upon execution of the lease, and thereafter rental shall be paid annually in advance of the lease anniversary date. Lease rights shall terminate and the Lessee shall be required to file a release with the Lessor as hereinafter provided whenever any rentals coming due under the lease remain unpaid for a period of ten (10) days after the rental become due. Lessor may, at its sole discretion waive in writing termination of the lease for unpaid rental upon Lessee's submission in writing of proper and satisfactory proof as a cause, along with payments due. Any payments by Lessee after the due date shall include interest at the rate of 1.5 percent per month or at the maximum legal rate, whichever is less, on the amount unpaid.
- c. Payment of either production royalties or minimum royalties from a mining operation area shall abate the rental on that part of the leased premises contained in that mining operation area. The abatement shall be effective on the rental due date following the rental period in which the abatement is granted.

**2. Minimum Royalties**

- a. Lessee shall pay to Lessor a minimum royalty of \$10.00 per acre for the sixth (6) year of the lease and for each year thereafter the payment shall increase an additional \$5.00 per acre through the tenth (10) year. For the tenth (10) year of the lease and thereafter for the life of the lease, the minimum royalty shall be \$30.00 per acre per year.
- b. These payments shall be paid annually in advance of the lease anniversary date. Lease rights shall terminate and the Lessee shall be required to file a release with the Lessor as hereinafter provided whenever these payments remain unpaid for a period of ten (10) days after the anniversary date. Lessor may, at its sole discretion, waive in writing termination of the lease for unpaid minimum royalties upon Lessee's submittal in writing of proper and satisfactory proof as to cause, along with payments due. Any payments by Lessee after the due date shall include interest at the rate of 1.5 percent per month or at the maximum legal rate, whichever is less, on the amount unpaid.
- c. Approval of a mining and reclamation plan which includes a mining operation area shall abate all increases in the minimum royalty on that portion of the leased premises contained in the mining operation area. The abatement shall be effective on the next annual minimum royalty due date.  
Thereafter, minimum royalties shall be paid at that constant rate until production of nonmetallic minerals and/or nonmetallic mineral products in paying quantities begins on that portion of the leased premises included in the mining operation area. If production of nonmetallic minerals and/or nonmetallic mineral products commences prior to the sixth (6) year of the lease, rental shall be abated and minimum royalties shall be paid at the rate of \$10 per year for each acre in the mining operation area.
- d. Should the production of nonmetallic minerals and/or nonmetallic mineral products in paying quantities commence on the leased premises, the minimum royalties paid for that lease year for those lands included in the mining operation area shall be credited against the production royalties payable hereunder to the Lessor.
- e. In the absence of production of nonmetallic minerals and/or nonmetallic mineral products in paying quantities before the expiration of the primary term of this lease, all minimum royalties paid shall be forfeited to the Lessor.

**3. Production Royalties**

- a. Lessee shall pay to Lessor a production royalty for the nonmetallic minerals and/or nonmetallic mineral products produced and sold from the leased premises which shall be the product of:
  - (1) the sale value, as defined in this lease, of nonmetallic minerals and/or nonmetallic mineral products sold during the past calendar quarter; and
  - (2) the production royalty rate according to the following schedules:

...

(b) Other Nonmetallics -- Specified

Material	In Bulk	Processed
Coal	7.0%	n/a

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

Clay, Marl, Shale	5.0%	n/a
Gypsum	5.0%	n/a
Limestone, Dolomite	5.0%	n/a
Industrial Sand	7.0%	n/a
Construction Sand, Gravel	5.0%	n/a
Sandstone	5.0%	n/a
Stone (crushed, dimension)	5.0%	n/a

(c) Other Nonmetallics -- Not Specified

The royalty rate for all other nonmetallic minerals and/or nonmetallic mineral products included in this lease shall be negotiated on a case-by-case basis and mutually agreed to by Lessor and Lessee.

**Source:**

***<http://www.midnr.com/Publications/pdfs/ForestsLandWater/Mineral/NONMETALLIC-MINERALS-LEASE.pdf>, accessed March 1, 2005.***

## **Nevada (U.S.)**

### **1. Summary**

Mineral royalties in Nevada are applied as a percentage of net proceeds which are defined as gross yield (sales revenue) less most mine operating and capital costs, depreciation and downstream processing and transportation charges and private royalty payments. The rate is sliding scale based on profitability defined as the ratio of net proceeds to gross yield. The maximum rate of 5% applies when net proceeds are more than 50% of gross yield. Furthermore, the 5% rate applies to any operation that generates more than \$4 million in net proceeds in any calendar year.

### **2. Extracts from source legislation**

#### STATE OF NEVADA REVISED STATUTES

#### CHAPTER 362

#### **TAXES ON PATENTED MINES AND PROCEEDS OF MINERALS**

#### GENERAL PROVISIONS

##### ASSESSMENT AND TAXATION OF NET PROCEEDS OF MINERALS

##### NRS 362.100 Duties of Department.

1. The Department shall:

- (a) Investigate and determine the net proceeds of all minerals extracted and certify them as provided in NRS 362.100 to 362.240, inclusive.
- (b) Appraise and assess all reduction, smelting and milling works, plants and facilities, whether or not associated with a mine, all drilling rigs, and all supplies, machinery, equipment, apparatus, facilities, buildings, structures and other improvements used in connection with any mining, drilling, reduction, smelting or milling operation as provided in chapter 361 of NRS.

2. As used in this section, “net proceeds of all minerals extracted” includes the proceeds of all:

- (a) Operating mines;
- (b) Operating oil and gas wells;
- (c) Operations extracting geothermal resources for profit, except an operation which uses natural hot water to enhance the growth of animal or plant life; and
- (d) Operations extracting minerals from natural solutions.

...

NRS 362.105 “Royalty” defined. As used in NRS 362.100 to 362.240, inclusive, unless the context otherwise requires:

- 1. “Royalty” means a portion of the proceeds from extraction of a mineral which is paid for the privilege of extracting the mineral.
- 2. “Royalties” do not include:
  - (a) Rents or other compensatory payments which are fixed and certain in amount and payable periodically over the duration of the lease regardless of the extent of extractions; or
  - (b) Minimum royalties covering periods when no mineral is extracted if the payments are fixed and certain in amount and payable on a regular periodic basis.

...

NRS 362.110 Annual statement of gross yield and claimed net proceeds; annual list of lessees.

- 1. Every person extracting any mineral in this state or receiving any royalty:
  - (a) Shall, on or before February 16 of each year, file with the Department a statement showing the gross yield and claimed net proceeds from each geographically separate



## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

operation where a mineral is extracted by that person during the calendar year immediately preceding the year in which the statement is filed.

(b) May have up to 30 days after filing the statement required by paragraph (a) to file an amended statement, if beforehand he submits a written application to the Department and the Department finds good cause to allow the amendment of the statement.

2. The statement must:

(a) Show the claimed deductions from the gross yield in the detail set forth in NRS 362.120. The deductions are limited to the costs incurred during the calendar year immediately preceding the year in which the statement is filed.

(b) Be in the form prescribed by the Department.

(c) Be verified by the manager, superintendent, secretary or treasurer of the corporation, or by the owner of the operation, or, if the owner is a natural person, by someone authorized in his behalf.

3. Each recipient of a royalty as described in subsection 1 shall annually file with the Department a list showing each of the lessees responsible for taxes due in connection with the operation or operations included in the statement filed pursuant to subsections 1 and 2.

...

NRS 362.115 Annual statement of estimated gross yield, net proceeds and royalties; use of statement.

1. In addition to the statement required by subsection 1 of NRS 362.110, each person extracting any mineral in this state shall, on or before April 1 of each year, file with the Department a statement showing the estimated gross yield and estimated net proceeds from each such operation for the entire current calendar year and an estimate of all royalties that will be paid during the current calendar year.

2. The Department shall:

(a) Use the statement filed pursuant to subsection 1 only to prepare estimates for use by local governments in the preparation of their budgets; and

(b) Submit those estimates to the local governments on or before April 25 of each year.

...

NRS 362.120 Computation of gross yield and net proceeds.

1. The Department shall, from the statement filed pursuant to NRS 362.110 and from all obtainable data, evidence and reports, compute in dollars and cents the gross yield and net proceeds of the calendar year immediately preceding the year in which the statement is filed.

2. The gross yield must include the value of any mineral extracted which was:

(a) Sold;

(b) Exchanged for any thing or service;

(c) Removed from the State in a form ready for use or sale; or

(d) Used in a manufacturing process or in providing a service,

during that period.

3. The net proceeds are ascertained and determined by subtracting from the gross yield the following deductions for costs incurred during that period, and none other:

(a) The actual cost of extracting the mineral.

(b) The actual cost of transporting the mineral to the place or places of reduction, refining and sale.

(c) The actual cost of reduction, refining and sale.

(d) The actual cost of marketing and delivering the mineral and the conversion of the mineral into money.

(e) The actual cost of maintenance and repairs of:

(1) All machinery, equipment, apparatus and facilities used in the mine.

(2) All milling, refining, smelting and reduction works, plants and facilities.

(3) All facilities and equipment for transportation except those that are under the jurisdiction of the Public Utilities Commission of Nevada or the Transportation Services Authority.

(f) The actual cost of fire insurance on the machinery, equipment, apparatus, works, plants and facilities mentioned in paragraph (e).

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

(g) Depreciation of the original capitalized cost of the machinery, equipment, apparatus, works, plants and facilities mentioned in paragraph (e). The annual depreciation charge consists of amortization of the original cost in a manner prescribed by regulation of the Nevada Tax Commission. The probable life of the property represented by the original cost must be considered in computing the depreciation charge.

(h) All money expended for premiums for industrial insurance, and the actual cost of hospital and medical attention and accident benefits and group insurance for all employees.

(i) All money paid as contributions or payments under the unemployment compensation law of the State of Nevada, as contained in chapter 612 of NRS, all money paid as contributions under the Social Security Act of the Federal Government, and all money paid to either the State of Nevada or the Federal Government under any amendment to either or both of the statutes mentioned in this paragraph.

(j) The actual cost of developmental work in or about the mine or upon a group of mines when operated as a unit.

(k) All money paid as royalties by a lessee or sublessee of a mine or well, or by both, in determining the net proceeds of the lessee or sublessee, or both.

4. Royalties deducted by a lessee or sublessee constitute part of the net proceeds of the minerals extracted, upon which a tax must be levied against the person to whom the royalty has been paid.

5. Every person acquiring property in the State of Nevada to engage in the extraction of minerals and who incurs any of the expenses mentioned in subsection 3 shall report those expenses and the recipient of any royalty to the Department on forms provided by the Department.

6. The several deductions mentioned in subsection 3 do not include any expenditures for salaries, or any portion of salaries, of any person not actually engaged in:

- (a) The working of the mine;
- (b) The operating of the mill, smelter or reduction works;
- (c) The operating of the facilities or equipment for transportation;
- (d) Superintending the management of any of those operations; or
- (e) The State of Nevada, in office, clerical or engineering work necessary or proper in connection with any of those operations.

...

NRS 362.130 Preparation and mailing of certificate of amount of net proceeds and tax due; due date of tax; overpayments.

1. When the Department determines from the annual statement filed pursuant to NRS 362.110 the net proceeds of any minerals extracted, it shall prepare its certificate of the amount of the net proceeds and the tax due and shall send a copy to the owner of the mine, operator of the mine or recipient of the royalty, as the case may be.
2. The certificate must be prepared and mailed not later than April 20 immediately following the month of February during which the statement was filed.
3. The tax due as indicated in the certificate prepared pursuant to this section must be paid on or before May 10 of the year in which the certificate is received.
4. If an overpayment was made, the overpayment may be credited toward the payment due on May 10 of the next calendar year. If the certificate prepared pursuant to this section shows a net loss for the year covered by the certificate or an amount of tax due for that year which is less than an overpayment made for the preceding year, the amount or remaining amount of the overpayment must be refunded to the taxpayer within 30 days after the certification was sent to the taxpayer.

...

NRS 362.135 Appeal of certification to State Board of Equalization; payment of tax pending determination of appeal.

1. Any person dissatisfied by any certification of the Department may appeal from that determination to the State Board of Equalization. The appeal must be filed within 30 days after the certification is sent to the taxpayer.

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

2. Pending determination of the appeal, the person certified as owing the tax shall pay it on or before the date due, and the tax is considered to be paid under protest.

...

NRS 362.140 Rate of tax upon net proceeds.

1. Except as otherwise provided in this section, the rate of tax upon the net proceeds of each geographically separate extractive operation depends upon the ratio of the net proceeds to the gross proceeds of that operation as a whole, according to the following table:

Net Proceeds as Percentage of Gross Proceeds	Rate of Tax as Percentage of Net Proceeds
Less than 10.....	2.00
10 or more but less than 18.....	2.50
18 or more but less than 26.....	3.00
26 or more but less than 34.....	3.50
34 or more but less than 42.....	4.00
42 or more but less than 50.....	4.50
50 or more.....	5.00

2. If the combined rate of tax ad valorem which would be assessed but for the provisions of Section 5 of Article 10 of the Constitution of this state, including any rate levied by the State of Nevada, upon property at the situs of the operation is more than 2 percent, the minimum rate of tax under this section equals that rate of tax ad valorem.
3. The rate of tax upon royalties is 5 percent.
4. The rate of tax upon the net proceeds of a geothermal operation taxable pursuant to NRS 362.100 is the combined rate of tax ad valorem applicable to the property at the situs of the operation.
5. The rate of tax upon an operation for which the net proceeds in a calendar year exceed \$4,000,000 is 5 percent.

**Source:** <http://www.leg.state.nv.us/nrs/NRS-362.html#NRS362Sec105>, accessed March 2, 2005.

## Northwest Territories (Canada)

### 1. Summary

The Northwest Territories is a federal government jurisdiction and thus pays mining royalties as outlined in the Canada Mining Regulations. The royalty payment is determined on the basis of the value of mine output which is defined as the market value of mineral production less most exploration, development and transportation expenses. A special processing allowance is included in deductions to encourage further processing of mineral products. Royalties are paid on the basis of a graduated schedule linked to the value of mine output. No royalties are paid on the first \$10,000 of mine output value. The royalty rate increases from 5% to 14% on incremental output value up to \$45 million per year. The maximum overall rate is limited to 13% of output value. In addition to NWT Mining Royalties, in many parts of the territories, mining companies can expect to make payments to aboriginal groups with ancestral or treaty rights. These payments are usually negotiable and may be included in a broader Impact Benefit Agreement signed between or among a mining company and local aboriginal groups.

### 2. Extracts from source legislation

*Source: <http://laws.justice.gc.ca/en/T-7/C.R.C.-c.1516/text.html>, accessed February 27, 2005.*

**Updated to August 31, 2004**

**Canada Mining Regulations**

**C.R.C., c. 1516**

**TERRITORIAL LANDS ACT**

**PUBLIC LANDS GRANTS ACT**

REGULATIONS RESPECTING THE ADMINISTRATION AND DISPOSITION OF  
MINERALS BELONGING TO HER MAJESTY IN RIGHT OF CANADA UNDER ALL  
LANDS FORMING PART OF THE NORTHWEST TERRITORIES

[SOR/88-9, s. 1]

1. These Regulations may be cited as the Canada Mining Regulations.

INTERPRETATION

2. (1) In these Regulations,

"Act" means the Territorial Lands Act; (Loi)

"adjacent claims" means claims that are contiguous or are intended by the locator to be contiguous; (claims adjacents)

"assay" [Repealed, SOR/79-234, s. 1]

"authorized officer" means any person authorized by the Minister to perform any function related to the administration and enforcement of these Regulations; (agent autorisé)

"Chief" means the Director, Mineral Resources, of the Natural Resources and Environment Branch of the Department of Indian Affairs and Northern Development; (chef)

"claim" means a plot of land located or acquired in the manner prescribed by these Regulations; (claim)

"claim inspector" means a person designated as a claim inspector pursuant to section 4; (inspecteur de claim)

"co-holder" means a person in whose name a claim is recorded under these Regulations either jointly or in common with another person; (co-détenteur)

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- "Department" means the Department of Indian Affairs and Northern Development; (ministère)
- "depreciable assets", in respect of a mine, means buildings, plant, machinery and equipment that form part of the mine; (actif amortissable)
- "Deputy Mining Recorder" means a person designated as a Deputy Mining Recorder pursuant to section 4; (registraire minier adjoint)
- "engineer of mines" means a person designated as an engineer of mines pursuant to section 4; (ingénieur des mines)
- "exploration cost" means an expense incurred for the purpose of determining the existence, location, extent, quality or economic potential of a mineral deposit in the Territories, but does not include an expense incurred for the purpose of bringing a mine into production; (frais d'exploration)
- "exploratory work" means any work done for the purpose of determining the economic potential of a permit area; (travaux d'exploration)
- "fiscal year", in respect of a mine, means the fiscal period of the mine's operator as defined in section 249.1 of the Income Tax Act; (exercice)
- "identification tag" means a tag used to mark a corner of a claim and made of a substance and of a size approved by the Minister and issued as one of a set of four by the Mining Recorder; (plaque d'identification)
- "lease" means a lease of a recorded claim granted to the holder of the claim pursuant to section 58; (concession)
- "legal post" means a post, tree, mound of earth or stone used for making a claim in accordance with section 14; (borne légale)
- "lessee" means a person in whose name a lease of a claim is granted under these Regulations; (cessionnaire)
- "licence" means a licence to prospect issued under section 8; (licence)
- "licensee" means a person who holds a licence; (titulaire de licence)
- "locate" means to mark out a claim in accordance with these Regulations; (localiser)
- "locator" means a licensee who locates a claim or for whom a claim is located; (localisateur)
- "mine" means any work or undertaking in which minerals or ore containing minerals are removed from the earth or from talus by any method, and includes works, mills, concentrators, machinery, plant and buildings below or above ground belonging to or used in connection with the mine; (mine)
- "mineral" means precious and base metals and other naturally occurring substances that can be mined, but does not include
- (a) coal, petroleum and related hydrocarbons, native sulphur, construction stone, carving stone, limestone, soapstone, marble, gypsum, shale, clay, sand, gravel, volcanic ash, earth, ochre, marl or peat, or
  - (b) any other substances regulated under the Territorial Coal Regulations, the Territorial Dredging Regulations or the Territorial Quarrying Regulations; (minéraux)
- "mineral claim staking sheet" means
- (a) a map of an area bounded on the north and south by 15-minute intervals of latitude and on the east and west by 30-minute intervals of longitude south of 68 degrees north latitude, or
  - (b) a map of an area bounded on the north and south by 15-minute intervals of latitude and on the east and west by one degree intervals of longitude north of 68 degrees north latitude; (feuille de jalonnement d'un claim minier)
- "mining district" means an area established as a mining district pursuant to paragraph 23(g) of the Act; (district minier)
- "mining property" means
- (a) a recorded claim or lease within the boundaries of which a mine is situated, or
  - (b) a group of contiguous recorded claims or leases, or both, within the boundaries of which a mine is situated,
    - (i) that are held by the same owner, or
    - (ii) where the mine is operated as a joint venture, that are held exclusively by the members of the joint venture or parties related thereto, regardless of the degree of ownership of each claim or lease; (propriété minière)

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- "Mining Recorder" means a person designated as a mining recorder pursuant to section 4; (registraire minier)
- "mining royalty valuer" means a person designated by the Minister as a mining royalty valuer; (évaluateur des redevances minières)
- "Minister" means the Minister of Indian Affairs and Northern Development; (ministre)
- "owner", in respect of a claim, lease, mine, mining property or abandoned mining work, means any person with a legal or beneficial interest therein; (propriétaire)
- "permit" means a permit to prospect issued under section 29; (permis)
- "permittee" means a person who holds a permit; (titulaire de permis)
- "processing" means
- (a) crushing, grinding, floatation, beneficiation, concentrating, milling, roasting, smelting, leaching, recrystallization or refining performed to recover minerals from ore or from a mineral-bearing substance, or
  - (b) where the output of a mine is precious or semi-precious stones, cleaning and sorting that output; (traitement)
- "processing assets" means tailings disposal facilities and depreciable assets located in the Territories that are used directly and exclusively in processing; (biens utilisés pour le traitement)
- "qualifying environmental trust" means a qualifying environmental trust, as defined in subsection 248(1) of the Income Tax Act, that is created by a trust indenture approved by the Minister; (fiducie pour l'environnement admissible)
- "recorded claim" means a claim recorded with the Mining Recorder in the manner prescribed by these Regulations; (claim enregistré)
- "reduced area tag" means a tag used to mark a corner of a claim, the area of which has been reduced in accordance with section 43, and made of a substance and of a size approved by the Minister and issued as one of a set of four by the Mining Recorder; (plaque de superficie réduite)
- "related", in respect of two or more persons, means that the persons are
- (a) related persons within the meaning of section 251 of the Income Tax Act, read without reference to paragraph 251(5)(b),
  - (b) associated corporations within the meaning of section 256 of that Act, read without reference to subsection 256(1.4),
  - (c) affiliated persons within the meaning of section 251.1 of that Act, or
  - (d) other than for the purpose of paragraph 67.1(1)(b), owners or operators of the same mine; (liées)
- "representation work" means work of a kind described in subsection 38(1); (travaux obligatoires)
- "Supervising Mining Recorder" means the person designated as Supervising Mining Recorder pursuant to section 4; (registraire minier en chef)
- "surface holder" means the lessee or registered holder of the surface rights to the land on which a mineral claim is or is proposed to be recorded; (détenteur des droits de surface)
- "Surveyor" has the same meaning as "Canada Lands Surveyor" in the Canada Lands Surveys Act; (arpenteur)
- "Surveyor General" has the same meaning as in the Canada Lands Surveys Act; (arpenteur général)
- "Territories" means the Northwest Territories and Nunavut; (territoires)
- "undeducted balance" means
- (a) in respect of a depreciation allowance, the original cost of the depreciable assets in respect of which the depreciation allowance is claimed, less any depreciation allowances previously claimed in respect of those assets,
  - (b) in respect of a development allowance, the unamortized balance of costs eligible for a development allowance under paragraph 65.1(1)(h), and
  - (c) in respect of a qualifying environmental trust contribution allowance, the total of all contributions made to the qualifying environmental trust, less any deductions previously claimed; (fraction non amortie)
- "year", for the purpose of representation work, means the period between the date of the recording of a claim and the anniversary date next following, and then from year to year. (année)

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(2) For the purposes of these Regulations, a person who is related to another person is considered to be also related to any person to whom the other person is related. SOR/79-234, s. 1; SOR/88-9, s. 2; SOR/92-552, s. 1(F); 1998, c. 14, ss. 101(F), 102(F); SOR/99-219, s. 1.

APPLICATION

3. (1) These Regulations apply to lands in the Territories that are vested in Her Majesty in right of Canada or of which the Government of Canada has power to dispose.

(2) These Regulations are subject to any Act governing the production, conservation and control of ores containing radioactive elements. SOR/88-9, s. 3.

...

64. (1) For the purposes of these Regulations, the date on which a mine commences production is  
 (a) where the mine includes a mill or concentrator, the first day of the first 90-day period during which the mill or concentrator operates at an average of at least 60 per cent of its rated capacity; and  
 (b) where the mine does not include a mill or concentrator, the day the mine begins to produce minerals or mineral-bearing substances in reasonable commercial quantities.

(2) For the purposes of these Regulations, a mineral or mineral-bearing substance shall be considered to be produced and part of the output of a mine if the mineral or mineral-bearing substance is in a saleable form or has been removed from the mine.

(3) For the purposes of these Regulations, minerals or mineral-bearing substances produced from the reprocessing of tailings from a mine shall be considered to form part of the output of the mine.

(4) For the purposes of these Regulations,

(a) where minerals or mineral-bearing substances that have been sold by an operator to a person not related to the operator are later sold to a person related to the operator, those minerals or mineral-bearing substances shall be considered to have been sold by the operator to a related person; and

(b) where minerals or mineral-bearing substances that have been sold by an operator to a person related to the operator are later sold to a person not related to the operator and evidence of that sale is provided, those minerals or mineral-bearing substances shall be considered to have been sold by the operator to a person not related to the operator. SOR/88-9, s. 22; SOR/99-219, s. 5.

65. (1) For each fiscal year, royalties shall be paid to Her Majesty in right of Canada by the owner or operator of every mine on lands referred to in subsection 3(1), on the value of the output of the mine during that fiscal year, in an amount equal to the lesser of

(a) 13% of the value of the output of the mine; and

(b) the amount calculated in accordance with the following table.

TABLE

Column I	Column II
Item Value of output (\$)	Royalty payable on that portion of the value
1. 10,000 or less	0
2. in excess of 10,000 but not exceeding 5 million	5%
3. in excess of 5 million but not exceeding 10 million	6%
4. in excess of 10 million but not exceeding 15 million	7%
5. in excess of 15 million but not exceeding 20 million	8%
6. in excess of 20 million but not exceeding 25 million	9%
7. in excess of 25 million but not exceeding 30 million	10%
8. in excess of 30 million but not exceeding 35 million	11%
9. in excess of 35 million but not exceeding 40 million	12%
10. in excess of 40 million but not exceeding 45 million	13%
11. in excess of 45 million	14%

(2) Royalties payable under subsection (1) in respect of a mine accrue during a fiscal year as the output of the mine is produced and shall be paid to the Receiver General and delivered to the Chief not later than the last day of the fourth month after the end of that fiscal year.

(3) Subject to paragraph 67.1(1)(b), Her Majesty may recover the entire amount of the royalties payable on a mine under subsection (1) from any person who was an owner or operator of the

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

mine, or a person related thereto, during the fiscal year in respect of which the royalties were payable.

(4) For the purposes of this section, the value of the output of a mine for a fiscal year shall be calculated in accordance with the formula

$$A + B - C + D + E + F + G + H - I$$

where

A is the total of

(a) the proceeds from sales, during the fiscal year, of minerals or mineral-bearing substances produced from the mine to persons not related to the operator, where evidence of those sales is provided, and

(b) the market value of any minerals or mineral-bearing substances produced from the mine that were otherwise sold or transferred during the fiscal year, determined under subsection (5),

B is the market value of any inventories of minerals or mineral-bearing substances produced from the mine, as at the end of the fiscal year, determined under subsection (5),

C is the market value of any inventories of minerals or mineral-bearing substances produced from the mine, as at the beginning of the fiscal year, determined under subsection (5),

D is the lesser of

(a) the amount of any payment received during the fiscal year that is related to a cost that has been claimed as a deduction or allowance under this section, and

(b) that cost,

E is any excess amount referred to in paragraph 65.1(5)(b),

F is any amount withdrawn during the fiscal year from a qualifying environmental trust established in respect of the mine, up to a maximum of the aggregate of the amounts contributed to the trust,

G is any proceeds received during the fiscal year from insurance on minerals or mineral-bearing substances produced from the mine,

H is the amount of any grants in respect of the mine that were made to the operator, or of any loans to the operator in respect of the mine that were forgiven, by the federal government during the fiscal year, and

I is the total of the deductions and allowances claimed under subsection 65.1(1).

(5) Subject to subsection (6), the market value of minerals or mineral-bearing substances sold or transferred to a person related to the operator, or to any other person where evidence of the proceeds of disposition is not provided, and of inventories of minerals and mineral-bearing substances, shall be

(a) in respect of precious or semi-precious stones, the maximum amount that would be expected to be realized from the sale of the stones on the open market, after sorting into market assortments,

(i) in respect of stones in inventory at the beginning or end of the fiscal year of the mine, as at that time, and

(ii) in any other case, as at the last time the stones were valued by the mining royalty valuer; and

(b) in respect of any other minerals or mineral-bearing substances, the amount that would be expected to be realized from the sale of those minerals or mineral-bearing substances, to a person who is not related to the operator,

(i) at the beginning or end of the fiscal year, where the value is calculated for opening or closing inventory purposes, and

(ii) at the time the minerals or mineral-bearing substances were shipped from the mine, where the value is calculated for any other purpose.

(6) Where precious or semi-precious stones produced from a mine are to be sold to a person related to the operator of the mine,

(a) if the mining royalty valuer and the operator have agreed on a sample and price book for the period during which the valuation takes place and the mining royalty valuer and the operator agree that the stones have been sorted according to that sample, the value of the stones, including their value for inventory purposes, is the value as determined in accordance with the sample and price book; or



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- (b) if the mining royalty valuer and the operator agree on a value for the stones, the value of the stones, including their value for inventory purposes, is the agreed-on value.
- (7) Gains and losses from hedging transactions shall not be included in calculating the value of the output of a mine. SOR/79-234, s. 22; SOR/88-9, s. 23; SOR/98-433, s. 1; SOR/99-219, s. 5.
- 65.1 (1) In calculating the value of the output of a mine for a fiscal year, only the following deductions and allowances may be claimed:
- (a) the costs, incurred during the fiscal year, of sorting, valuing, marketing and selling the minerals or mineral-bearing substances produced from the mine;
  - (b) the costs, incurred during the fiscal year, of insurance, storage, handling and transportation to the smelter, treatment plant or refinery or to market of, and any duties payable in respect of, the minerals or mineral-bearing substances produced from the mine;
  - (c) the costs, incurred during the fiscal year, of mining and processing ore or mineral-bearing substances from the mine or of reprocessing tailings from the mine;
  - (d) the costs, incurred during the fiscal year, of repair and maintenance at the mine;
  - (e) general and indirect costs incurred during the fiscal year for property, employees or operations at the mine that are not otherwise allocated to operating costs;
  - (f) exploration costs incurred during the fiscal year by an owner of the mine on land referred to in subsection 3(1), other than on the mining property, if those costs have not been otherwise claimed as an allowance or deduction under these Regulations, in an amount not exceeding 10 per cent of the value of the output of the mine multiplied by the owner's share of that output, calculated
    - (i) after deduction of the costs referred to in paragraphs (a) to (e), and
    - (ii) before deduction of any depreciation allowance, qualifying environmental trust contribution allowance, development allowance or processing allowance;
  - (g) subject to subsection (5), a depreciation allowance, not exceeding the undeducted balance of the depreciable assets at the end of the fiscal year of the mine;
  - (h) a development allowance, determined by the operator, not exceeding the undeducted balance at the end of the fiscal year of the mine of
    - (i) exploration costs incurred, prior to the date of commencement of production, on the mining property as constituted on the date of commencement of production and not deducted under paragraph (f) in respect of any other mine,
    - (ii) all costs incurred for the purposes of bringing the mine into production, less the aggregate of
      - (A) the value of any minerals or mineral-bearing substances produced from the mining property that were sold or transferred prior to the date of commencement of production, calculated in accordance with section 65, and
      - (B) the market value of any minerals or mineral-bearing substances produced from the mining property that are in inventory on the date of commencement of production, calculated in accordance with subsection 65(5),
  - (iii) exploration costs incurred on the mining property after the date of commencement of production,
  - (iv) costs incurred after the date of commencement of production for workings designed for continuing use, including the clearing, removing or stripping of overburden from a new deposit at the mine, the sinking, excavation or extension of a mine shaft, main haulage way or similar underground work, the construction of an adit or other underground entry and the construction of a road or of tailings disposal structures at the mine, and
  - (v) where minerals or mineral-bearing substances are being produced in reasonable commercial quantities from a recorded claim or lease that was incorporated into the mining property after the date of commencement of production,
    - (A) where the claim or lease was purchased, the purchase price of the claim or lease or the amount referred to in clause (B), whichever is the lesser, or
    - (B) in any other case, the costs referred to in subparagraphs (i) and (ii) that were incurred on the incorporated claim or lease and that have not been previously claimed as a deduction or allowance under these Regulations;

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- (i) a qualifying environmental trust contribution allowance, determined by the operator, not exceeding the undeducted balance at the end of the fiscal year of amounts contributed to the qualifying environmental trust in respect of the mine; and
- (j) if ore or mineral-bearing substances are processed by the operator of the mine prior to sale, an annual processing allowance equal to the lesser of
  - (i) subject to subsection (2), 8 per cent of the original cost of processing assets owned by the operator at the end of the fiscal year of the mine, and
  - (ii) 65 per cent of the value of the output of the mine, after deduction of the amounts referred to in paragraphs (a) to (i).
- (2) Where a mine is in production for less than 12 months in a fiscal year or a fiscal year of a mine is less than 12 months,
  - (a) the processing allowance shall be a percentage equal to 8 per cent multiplied by one-twelfth times the number of months in the fiscal year that the mine is in production or the number of months in the shortened fiscal year, as the case may be; and
  - (b) the amounts in column I of the table to subsection 65(1) shall be reduced by multiplying each amount by one-twelfth times the number of months in the fiscal year that the mine is in production or the number of months in the shortened fiscal year, as the case may be.
- (3) Where the operator of a mine claims a deduction for costs incurred in a transaction with a related person, the costs allowed as a deduction under this section shall be the amount of the actual costs incurred by the related person, exclusive of any profit, gain or commission to the related person or to any other related person.
- (4) A depreciation allowance may be claimed in respect of a depreciable asset in the fiscal year in which it is first used in the operations of the mine.
- (5) Where an operator disposes of, or receives insurance proceeds in respect of, assets for which a depreciation allowance has been claimed,
  - (a) the undeducted balance of depreciable assets shall be reduced by the lesser of
    - (i) the proceeds of disposition or insurance proceeds, as the case may be, and
    - (ii) the original cost of the asset; and
  - (b) where the lesser of the amounts referred to in subparagraphs (a)(i) and (ii) exceeds the undeducted balance of depreciable assets in the fiscal year in which the assets were disposed of, the excess shall be included in the value of the output of the mine for that fiscal year.
- (6) For the purposes of subsection (5), where the operator of a mine sells an asset for which a depreciation allowance has been claimed to a related person or removes the asset from the mine, the proceeds of disposition of the asset shall be the amount that could be expected to be realized from the sale of the asset to a person not related to the operator.
- (7) Where the operator of a mine purchases an asset that is eligible for a depreciation allowance from a related person or transfers to the mine an asset from another mine owned by the operator, the cost of the asset for the purposes of calculating a depreciation allowance is the amount that the operator could be expected to pay to purchase that asset from a person not related to the operator.
- (8) Where in a particular fiscal year the operator of a mine uses processing assets at a mine to process mineral or mineral-bearing substances produced at another mine,
  - (a) the revenue earned from the processing shall not be included in the value of the output of that mine;
  - (b) the deductions for the fiscal year for the mill operating costs and asset base used for the calculation of the processing allowance shall be reduced by a percentage equal to the proportion of the mill operating costs attributable to the processing of the minerals or mineral-bearing substances from the other mine in that fiscal year; and
  - (c) the depreciation allowance for depreciable assets involved in processing for the fiscal year shall be reduced by a percentage equal to the proportion of the mill operating costs attributable to the processing of the minerals or mineral-bearing substances from the other mine.
- (9) Where a deduction for a depreciation allowance in a fiscal year has been reduced pursuant to paragraph (8)(c), the undeducted balance of the depreciable assets of the mine that are eligible for a depreciation allowance for the fiscal year shall be reduced by the amount of the depreciation allowance claimed, before any reduction pursuant to that paragraph for the proportion of mill

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

operating costs attributable to the processing of the minerals or mineral-bearing substances from the other mine.

(10) Notwithstanding any other subsection of this section, no deduction or allowance shall be made in respect of a mine in relation to

- (a) the capital cost of buildings, plant, machinery or equipment, other than under paragraph (1)(g);
- (b) depletion in the value of the mine or mining property by reason of exhaustion of the ore or minerals;
- (c) where an owner or the operator of the mine is a corporation,
  - (i) remuneration and travel costs of directors,
  - (ii) stock transfer agents' fees,
  - (iii) the preparation of corporate financial statements, shareholders' reports and shareholders' meetings, and
  - (iv) legal, accounting and other costs incurred in connection with incorporations, reorganizations or security or stock issues;
- (d) interest on any debt, including an overdraft, loan, mortgage, advance, debenture or bond, that is capitalized or expensed for accounting purposes;
- (e) remuneration of executive officers, administrative and consulting costs and costs in respect of offices not located at the mine site, unless that remuneration or those costs are directly related to operations of the mine or to the marketing and selling of minerals or mineral-bearing substances produced from the mine;
- (f) taxes on profits, property or capital, or payments in lieu of such taxes, paid to any level of government;
- (g) royalties paid for the use of mining property or royalties calculated on revenue, production or profits of the mine;
- (h) payments made to an organization, community or corporation, including an aboriginal organization, community or corporation, that are not attributable to the provision of goods and services directly related to the development and operation of the mine or to prospecting and exploration on land referred to in subsection 3(1);
- (i) payments made for the use or lease of, or access to, the surface of the land on which the mine is located;
- (j) discounts on bonds, debentures, shares or sales of receivables;
- (k) increases in reserves or provisions for contingencies, other than in respect of a qualifying environmental trust;
- (l) dues and memberships for persons other than employees involved in the operation of the mine;
- (m) insurance premiums that are not applicable to minerals or mineral-bearing substances produced from the mine;
- (n) costs incurred during the fiscal year to produce revenue that does not form part of the value of the output of the mine;
- (o) subject to subparagraph 65.1(1)(h)(v), the purchase price of a recorded claim, a lease or a mine;
- (p) the purchase price of any financial instrument;
- (q) charitable donations;
- (r) advertising costs not directly identified with the output of a particular mine; or
- (s) any cost not evidenced in accordance with generally accepted auditing practices. SOR/99-219, s. 5.

65.2 (1) A change in the ownership or of the operator of a mine does not affect

- (a) the undeducted balance of the depreciable assets eligible for a depreciation allowance;
- (b) the undeducted balance of the costs eligible for a development allowance;
- (c) the undeducted balance of contributions to a qualifying environmental trust; or
- (d) the original cost of the assets used for calculating a processing allowance.

(2) Subject to paragraph 65.1(1)(h), where a recorded claim or lease lapses, is cancelled or is surrendered, any costs incurred in respect of that claim or lease that would otherwise be eligible for a development allowance expire and are no longer eligible for a development allowance in respect of any mine. SOR/99-219, s. 5.

## Ontario (Canada)

### 1. Summary

The province of Ontario assesses a mining tax on profits from mining operations with profits being defined as the gross revenue from sale of mineral products less most operating and capital costs including exploration and an allowance for depreciation. Special processing allowances also are deductible reflecting incentives to further process ores in the province. No mining taxes are paid on annual profits for mining tax which are determined to be less than \$500,000. Furthermore, a mining tax holiday is in place for new mines by which the first \$10,000,000 in profits for mining taxes is tax free subject to a maximum duration of 3 years from the beginning of production. The tax rate applied in the determination of mining taxes is set at 10% of taxable income. Special incentives for the development of mines in remote areas of Ontario also are in place in the Mining Tax Act. Remote mines are granted a tax holiday for up to 10 years subject to the \$10,000,000 maximum profit for mining tax. Furthermore, the mining tax rate for remote mines is 5% rather than the 10% rate applicable more generally.

### 2. Extracts from source legislation

#### **Mining Tax Act, R.S.O. 1990, CHAPTER M.15**

Amended by: 1992, c. 4; 1994, c. 18, s. 6; 1996, c. 29, s. 35; 1997, c. 19, s. 14; 1998, c. 15, Sched. E, s. 17; 2000, c. 10, s. 21; 2000, c. 42, ss. 70-73; 2001, c. 23, ss. 150-154; 2002, c. 22, s. 137; 2004, c. 16, Sched. D, Table.

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Interpretation

1(1) In this Act,

“assessment” includes a reassessment; (“cotisation”)

“associated corporations” has the meaning given to that expression by section 256 of the *Income Tax Act* (Canada); (“sociétés associées”)

“Deputy Minister” means the Deputy Minister of Finance; (“sous-ministre”)

“exploration and development expenditures” means any outlay or expense made or incurred that is,

- (a) for the purpose of determining the existence, location, extent or quality of a mineral substance in Ontario,
- (b) for the purpose of bringing a mine in Ontario into production,
- (c) for the purpose of developing a mine in Ontario after the mine comes into production, including sinking or constructing a mine shaft, mine haulage way or similar underground work designed for continuing use, and any extension thereof, or
- (d) any outlay or expense referred to in clause (a), (b) or (c) made or incurred pursuant to an agreement whereby the outlay or expense represents consideration for the acquisition of,
  - (i) interest in a mine or in a right to mine a property, or

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- (ii) shares of the capital stock of a corporation or any interest in or right to acquire such shares,

but, for greater certainty, shall not include,

- (e) any consideration given for any mine, right to mine a property or any share or interest therein or right thereto, except as provided by clause (d), or
- (f) any outlay or expense described in clause (d) to the extent that the outlay or expense was, by virtue of that clause, an exploration and development expenditure of another operator; (“frais d’exploration et d’aménagement”)

“fair market value” means the amount that could be expected to be realized on a sale in the open market by a willing seller to a willing buyer; (“juste valeur marchande”)

“hedging” means the fixing of a price for output of a mine before delivery by means of a forward sale or a futures contract on a recognized commodity exchange, or the purchase or sale forward of a foreign currency related directly to the proceeds of the output of a mine, but does not include speculative currency hedging except to the extent that the hedging transaction determines the final price and proceeds for the output; (“couverture”)

“mine” means any opening in the ground, any working of the ground and any tailings source from or by which any mineral substance is taken, and comprises the mining claim, mining location and the whole parcel of land in which any such tailings source does or did exist or such workings are or have been carried on in Ontario; (“mine”)

“mineral substance” means every type and kind of ore, rock, mineral and tailings, whether organic or inorganic, but does not include diatomaceous earth, limestone, marl, peat, clay, building stone, stone for ornamental or decorative purposes, non-auriferous sand or gravel, or natural gas or petroleum, or sodium chloride recovered by solution method; (“substance minérale”)

“mining assets” means the plant, equipment, machinery and buildings acquired for the purpose of the extraction of mineral substances from the ground and ancillary activities, but does not include processing assets or social assets; (“actif minier”)

“Minister” means the Minister of Finance; (“ministre”)

“Ministry” means the Ministry of Finance; (“ministère”)

“operator” includes,

- (a) a person who has the right to work a mine and win mineral substances therefrom, personally or through agents or employees or together with one or more other persons, and
- (b) a person who has the right to receive a share of the proceeds or the profits of a mine or who has an interest in a mine, whether as a member of a joint venture, as a member of a partnership, or as a beneficiary of a trust that has the right to work the mine and win mineral substances therefrom, but does not include any person whose only right or interest is the right to receive royalties; (“exploitant”)

“output” means,

- (a) the mineral substances raised, taken or obtained from any mine in Ontario, if those mineral substances are sold as such, or
- (b) the product of a processing operation, where the mineral substances are raised, taken or gained from any mine in Ontario, if the processed product is sold; (“production”)

“proceeds” means the total consideration that is received or is receivable from another person or persons, in any currency, whether in cash or non-cash form, from the output of the mine, including all by-products sold, or the amount determined in the prescribed manner, and all consideration received or receivable from hedging and future sales or forward sales of the output of the mine, converted at the date of receipt of the consideration to the equivalent in Canadian funds, if receivable in funds of another country; (“recettes”)

“processing” means, with respect to mineral substances, any form of beneficiation, concentrating, smelting, refining, fabricating of metallic mineral substances, manufacturing of non-metallic mineral substances and any combination thereof; (“traitement”)

“processing assets” means processing plants, machinery, equipment and structures acquired for the purpose of processing mineral substances and ancillary activities, but does not include,

- (a) the value of spare parts held in inventory for such assets,
- (b) stockpiles or inventories of processed mineral substances,
- (c) assets used for the transportation of processed mineral substances to market, or
- (d) mining assets or social assets; (“actif servant au traitement”)

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

“social asset” means a tangible asset owned by an operator that is incidental to mining and processing operations and that relates directly to the provision of housing, recreational or service facilities, if the asset,

- (a) is necessary to attract or retain employees, and
- (b) is available for the use of all employees; (“élément d’actif social”)

“remote mine” means a mine that is certified under section 4 as a remote mine; (“mine éloignée”)

“stone for ornamental or decorative purposes” does not include diamonds; (“pierre servant à des fins ornementales ou décoratives”)

“taxation year” means the period for which the accounts of the operator of a mine are ordinarily made up and accepted for the purposes of assessment under this Act, and any change in a usual and accepted taxation year shall, for the purposes of this Act, be made only with the approval of the Minister, but no taxation year shall be for a period greater than fifty-three consecutive weeks; (“année d’imposition”) R.S.O. 1990, c. M.15, s. 1 (1); 1994, c. 18, s. 6 (1-4); 2000, c. 42, s. 70; 2001, c. 23, s. 150; 2004, c. 16, Sched. D, Table.

Non-arm’s length

- (2) For the purposes of this Act, in the determination of whether two or more persons are not dealing at arm’s length, section 251 of the *Income Tax Act* (Canada) applies with necessary modifications. R.S.O. 1990, c. M.15, s. 1 (2).

Amount of tax payable

- (3) The amount of the tax payable by an operator for a taxation year under this Act is the amount of tax as assessed or reassessed by the Minister, subject to variation on any objection or appeal under this Act. 1994, c. 18, s. 6 (5).

Calculation and time of tax payments

When taxes accrue

- 2.(1)The tax payable under this Act by an operator for a taxation year shall be deemed to accrue proportionately during the taxation year. R.S.O. 1990, c. M.15, s. 2 (1).

Payment of taxes

- (2) Every operator liable to pay tax under this Act for a taxation year shall pay the tax by monthly instalments during the taxation year with the balance of the tax, if any, payable not later than two months after the end of the taxation year. R.S.O. 1990, c. M.15, s. 2 (2).

Amount of instalments

- (3) The amount of each monthly instalment payable under this section for the taxation year is the lesser of,
  - (a) the amount of tax payable by the operator for the taxation year divided by the number of months commencing in the taxation year; or
  - (b) the amount of tax payable by the operator for the taxation year ending immediately before the taxation year for which the instalment is being calculated, divided by the number of months commencing in that immediately preceding taxation year. R.S.O. 1990, c. M.15, s. 2 (3).

Instalments after amalgamation

- (4) If the taxation year of an operator is the first taxation year after an amalgamation within the meaning of section 87 of the *Income Tax Act* (Canada), the amount of each monthly instalment payable under this section for the taxation year is the lesser of,
  - (a) the amount determined under clause (3) (a); or
  - (b) the aggregate of all amounts each of which is the amount of tax payable by a predecessor corporation of the operator, within the meaning of section 87 of the *Income Tax Act* (Canada), for its last taxation year divided by the number of months commencing in the year. R.S.O. 1990, c. M.15, s. 2 (4); 2004, c. 16, Sched. D, Table.

Payment of instalments

- (5) Instalment payments under this section shall be paid to the Minister on or before the 25th day of each month commencing in the taxation year by remitting the payments to the Minister. R.S.O. 1990, c. M.15, s. 2 (5); 1994, c. 18, s. 6 (6).

Mining tax

- 3.(1) Every operator is liable for and shall pay a tax for a taxation year equal to the amount calculated using the formula,  
[( A – B ) × C] + [(D – E) × 0.05]

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in which,

“A” is the amount of the operator’s profit, if any, as determined under subsection (5) for the taxation year, from all mines, other than remote mines, in which the operator has an interest,

“B” is the amount calculated under subsection (1.2) for the taxation year,

“C” is the tax rate for the taxation year as determined under subsection (3.1),

“D” is the amount of the operator’s profit, if any, as determined under subsection (7) for the taxation year, from all remote mines in which the operator has an interest, and

“E” is the amount calculated under subsection (1.3) for the taxation year. 2001, c. 23, s. 151 (1).

Deemed not to be a remote mine

(1.1) A remote mine for which an election is made by an operator under subsection 4 (4.1) is deemed not to be a remote mine for the purposes of determining the amount of tax payable under this Act for a taxation year before the first taxation year in which the operator treats the mine as a remote mine. 2001, c. 23, s. 151 (1).

Calculation of “B”

(1.2) The variable “B” in subsection (1) for a taxation year is the amount calculated using the formula,

$$F \times A / (A + D)$$

in which,

“A” has the same meaning as in subsection (1),

“D” has the same meaning as in subsection (1), and

“F” is the amount of the operator’s annual deduction for the taxation year, as determined under subsection (2) for the taxation year. 2001, c. 23, s. 151 (1).

Calculation of “E”

(1.3) The variable “E” in subsection (1) for a taxation year is the amount calculated using the formula,

$$F \times D / (A + D)$$

in which,

“A” has the same meaning as in subsection (1),

“D” has the same meaning as in subsection (1), and

“F” has the same meaning as in subsection (1.2). 2001, c. 23, s. 151 (1).

Annual deduction

(2) The amount of an operator’s annual deduction for a taxation year is the amount claimed by the operator, not exceeding the lesser of,

(a) the proportion of \$500,000 that the number of days in the taxation year is of 365; and

(b) the sum of the amounts determined under section (3) for the taxation year for each mine in which the operator has an interest. 2001, c. 23, s. 151 (1).

Annual deduction, associated corporations

(2.1) Despite subsection (2), associated corporations who are operators of one or more mines shall claim annual deductions for a taxation year in amounts that in total do not exceed \$500,000. 2001, c. 23, s. 151 (1); 2004, c. 16, Sched. D, Table.

Part interest

(3) The amount determined under this subsection in respect of an operator’s interest in a mine is the product of the operator’s interest in the mine multiplied by the lesser of,

(a) \$500,000; and

(b) if applicable, the amount determined under subsection (4) in respect of the mine.

R.S.O. 1990, c. M.15, s. 3 (3).

Tax rate

(3.1) The tax rate for an operator’s taxation year is the decimal number that is the total of each of the amounts calculated using the following formulas, for which the variables are defined in subsection (3.2):

1.  $A/T$  0.2
2.  $B/T$  0.18
3.  $C/T$  0.16
4.  $D/T$  0.14
5.  $E/T$  0.12
6.  $F/T$  0.10

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2000, c. 10, s. 21 (2).

Same

(3.2) For the purposes of subsection (3.1),

“A” is the number of days in the taxation year before May 2, 2000,

“B” is the number of days in the taxation year after May 1, 2000 and before January 1, 2001,

“C” is the number of days in the taxation year after December 31, 2000 and before January 1, 2002,

“D” is the number of days in the taxation year after December 31, 2001 and before January 1, 2003,

“E” is the number of days in the taxation year after December 31, 2002 and before January 1, 2004,

“F” is the number of days in the taxation year after December 31, 2003,

“T” is the total number of days in the taxation year.

2000, c. 10, s. 21 (2).

Part year production

(4) Where a mine is out of production in a taxation year for sixty or more consecutive days, the amount determined under this subsection for the purpose of clause (3) (b) is that proportion of \$500,000 that the number of days in the taxation year that the mine has been in production is of 365. R.S.O. 1990, c. M.15, s. 3 (4).

Profit, mines other than remote mines

(5) An operator's profit for a taxation year from all mines, other than remote mines, in which the operator has an interest is the amount, if any, by which,

- (a) the operator's proceeds for the taxation year from the mines, other than amounts included in the computation of tax payable under this Act for a prior taxation year in respect of the mines, exceeds the aggregate of,
- (b) the expenses incurred by the operator in the taxation year that are not otherwise deductible under this subsection, to the extent that the expenses are attributable to the production of output from the mines;
- (c) the operator's operating and maintenance expenses incurred in the taxation year with respect to social assets in Ontario for the mines, after deducting all rents, fees, grants and other payments received by the operator during the taxation year in connection with those expenses;
- (d) the administrative and overhead expenses incurred by the operator in the taxation year, to the extent the expenses are reasonably attributable to the production or sale of output of the mines;
- (e) the expenses incurred by the operator in the taxation year in respect of scientific research conducted in Canada or product use development research conducted in Canada, to the extent the research is related to output of the mines;
- (f) the donations made by the operator in the taxation year for charitable, educational or benevolent purposes that are reasonably related to mining operations in Ontario, other than donations that are reasonably related to any remote mines in which the operator has an interest;
- (g) an amount not exceeding the maximum amount deductible by the operator for the taxation year in respect of exploration and development expenditures, as determined under subsection (13), less the amount, if any, deducted by the operator for the taxation year under subsection (8) or (9) in respect of those expenditures;
- (h) an amount not exceeding the operator's allowance for depreciation for the taxation year, calculated in accordance with subsection (12), less the allowance for depreciation, if any, deducted by the operator for the taxation year under subsection (8) or (9);
- (i) the expenses and outlays incurred by the operator in the taxation year for the transportation of output from the mines to the point of delivery of the output to purchasers;
- (j) such reserves and deductions as may be prescribed for the purposes of determining an operator's profit from mines that are not remote mines;



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- (k) the operator's prescribed processing allowance for the taxation year, other than its processing allowance for the year in respect of remote mines in which it has an interest; and
- (l) the amount, if any, of the operator's remote mine loss deduction, as determined under subsection (6), in respect of any remote mines in which the operator has an interest. 2001, c. 23, s. 151 (2).

### Remote mine loss deduction

(7) The amount of an operator's remote mine loss deduction for a taxation year is the amount calculated using the formula,

$$(G - H) \times (0.05/C)$$

in which,

"G" is the sum of all amounts, if any, each of which is the operator's loss for the taxation year from a remote mine in which the operator has an interest, as determined under subsection (9),

"H" is the amount by which the sum of the operator's profit for the taxation year from each remote mine in which the operator has an interest, as determined under subsection (8), exceeds the amount, if any, claimed by the operator under subsection 3.2 (4) for the taxation year, and

"C" is the tax rate for the taxation year as determined under subsection (3.1). 2001, c. 23, s. 151 (2).

### Profit from all remote mines

(7) An operator's profit for a taxation year from all remote mines in which the operator has an interest is the amount calculated using the formula,

$$I - (J + K + L)$$

in which,

"I" is the sum of all amounts, if any, each of which is the operator's profit for the taxation year from a remote mine, as determined under subsection (8),

"J" is the amount, if any, deducted under subsection 3.2 (4) by the operator for the taxation year,

"K" is the sum of all amounts, if any, each of which is the operator's loss for the taxation year from a remote mine, as determined under subsection (9), and

"L" is the amount, if any, of the operator's loss for the taxation year from mines that are not remote mines, as determined under subsection (10). 2001, c. 23, s. 151 (2).

### Profit from remote mine

(8) An operator's profit, if any, from a remote mine for a taxation year is the amount, if any, that would be determined under subsection (5) for the taxation year if the operator were deemed to have no interest in any mine other than the remote mine during the taxation year, the remote mine were deemed not to be a remote mine and the following rules applied:

1. The only amounts deductible under clause (5) (g) are exploration and development expenditures made or incurred in respect of the remote mine for a purpose described in clause (b) or (c) of the definition of "exploration and development expenditures" in subsection 1 (1).
2. The amount deductible under clause (5) (h) is determined without reference to clause (12) (c).
3. No amount is deductible under clause (5) (l).
4. The allowance for depreciation under clause 3 (5) (h) is the amount equal to the aggregate of the maximum amounts calculated in accordance with clauses 3 (12) (a) and (b), subject to clauses 3 (12) (d) and (e) and subsection 3 (21). 2001, c. 23, s. 151 (2).

### Loss, remote mine

(9) An operator's loss for a taxation year from a remote mine is the amount, if any, by which the amount that would otherwise be determined under subsection (8) for the taxation year in respect of the remote mine would be less than zero. 2001, c. 23, s. 151 (2).

### Loss, mines other than remote mines

(10) The amount of an operator's loss, if any, for a taxation year from mines other than remote mines is the amount calculated using the formula,

$$M \times C/0.05$$

in which,

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“M” is the amount by which the sum of the amounts determined for the taxation year in respect of the operator for the purposes of clauses (5) (b) to (k) exceed the amount determined for the taxation year in respect of the operator under clause (5) (a), and  
“C” is the tax rate for the taxation year as determined under subsection (3.1). 2001, c. 23, s. 151 (2).

(11) Repealed: 1992, c. 4, s. 1 (1).

Calculation of allowance for depreciation

- (12) The operator’s allowance for depreciation for a taxation year in respect of depreciable property is,
- (a) the amount calculated in accordance with subsection (12.0.1) if the depreciable property is a processing asset or an asset for transporting processed mineral substances to market from the place where the processing is completed;
  - (b) the amount calculated in accordance with subsection (12.0.3) if the depreciable property is a mining asset but not a mining asset for which an allowance for depreciation is calculated under clause (c);
  - (c) where a mine is a new mine or a major expansion of an existing mine designated by the Minister for the purpose of this clause, an amount at the option of the operator, instead of the amount calculated under clause (b), in respect of mining assets acquired after the 7th day of March, 1978, and before completion of the project from a person dealing at arm’s length for use in the new mine or the major expansion, not exceeding the lesser of,
    - (i) the operator’s profit for the taxation year from the new mine or the major expansion calculated in the prescribed manner, and
    - (ii) the undepreciated capital cost of the mining assets as of the end of the taxation year (before making any deduction calculated under this clause for the taxation year);
  - (d) despite clauses (a), (b) and (e), subsection (21) and clause 4 (3) (b), where the operator’s taxation year is less than 365 days, an amount not exceeding that proportion of the aggregate of the amounts determined under clauses (a) and (e), subsection (21) and clause 4 (3) (b) in respect of processing and transportation assets and clause (b) in respect of mining assets that the number of days in the taxation year is of 365; and
  - (e) despite clause (a), where processing assets are situated outside Canada or assets for transporting processed mineral substances are used outside Canada, an amount not exceeding that proportion of the amount determined under clause (a),
    - (i) in respect of processing assets, that the value of mineral substances mined in Ontario is to the total value of mineral substances fed into the processing plant situated outside Canada, or
    - (ii) in respect of assets used for transporting processed mineral substances, that the value of processed product derived from output is of the total value of processed product transported by those assets. R.S.O. 1990, c. M.15, s. 3 (12); 2002, c. 22, s. 137 (1).

Same, processing and transportation assets

- (12.0.1) The amount of the operator’s allowance for depreciation under clause (12) (a) for a taxation year in respect of assets acquired in the taxation year or in a prior taxation year is the total of all amounts, if any, determined in respect of the assets referred to in that clause, each of which is an amount determined in respect of the assets acquired in the taxation year or a prior taxation year that does not exceed the lesser of,
- (a) 15 per cent of the capital cost of the assets acquired in the particular taxation year; and
  - (b) the undepreciated capital cost, as of the end of the taxation year and before any deduction under subsection (12) is made for the taxation year, of the assets acquired in the particular taxation year. 2002, c. 22, s. 137 (2).

Same

- (12.0.2) In calculating the operator’s allowance for depreciation under subsection (12.0.1) for the taxation year, the operator shall determine the lesser of the amounts described in clauses (12.0.1) (a) and (b) in respect of the assets acquired in each particular taxation year and then shall add the resulting amounts, if any, in order to determine the operator’s aggregate allowance for depreciation. 2002, c. 22, s. 137 (2).

Same, certain mining assets

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- (12.0.3) The amount of the operator's allowance for depreciation under clause (12) (b) for a taxation year in respect of assets acquired in the taxation year or in a prior taxation year is the total of all amounts, if any, determined in respect of the assets referred to in that clause, each of which is an amount determined in respect of the assets acquired in the taxation year or a prior taxation year that does not exceed the lesser of,
- (a) 30 per cent of the capital cost of the assets acquired in the particular taxation year and after April 9, 1974 that have not been used previously in mining operations and 15 per cent of the capital cost of any other mining assets acquired in the particular year; and
  - (b) the undepreciated capital cost, as of the end of the taxation year and before any deduction under subsection (12) is made for the taxation year, of the assets referred to in clause (a). 2002, c. 22, s. 137 (2).

Same

- (12.0.4) In calculating the operator's allowance for depreciation under subsection (12.0.3) for the taxation year, the operator shall determine the lesser of the amounts described in clauses (12.0.3) (a) and (b) in respect of the assets acquired in each particular taxation year and then shall add the resulting amounts, if any, in order to determine the operator's aggregate allowance for depreciation. 2002, c. 22, s. 137 (2).

Exception

- (12.0.5) Despite the re-enactment of clauses (12) (a) and (b) by section 137 of the *Keeping the Promise For a Strong Economy Act (Budget Measures), 2002*, those clauses, as they read immediately before being re-enacted, continue to apply with respect to an operator for a taxation year commencing after December 31, 1999 if both of the following conditions are satisfied:
1. Before October 30, 2002, the operator files a return under this Act for the taxation year.
  2. In the return or in an adjustment to the return that is filed before October 30, 2002, the amount calculated under clause (12) (a) or (b) (as those clauses read immediately before being re-enacted) for the taxation year is based in whole or in part on assets that have been fully depreciated. 2002, c. 22, s. 137 (2).

Same

- (12.1) The following rules apply if an operator has an interest in more than one mine during a taxation year and at least one of the mines is a remote mine:
1. The allowance for depreciation deductible by the operator in calculating the amount of the operator's profit for a taxation year under subsection (5) or (8) or loss for the taxation year under subsection (9) or (10) is the amount that would be the operator's allowance for depreciation for the taxation year under subsection (12) in respect of only the depreciable property that is reasonably related to the mine or mines in respect of which the calculation is made under subsection (5), (8), (9) or (10).
  2. The total of all amounts deducted as an allowance for depreciation for a taxation year in respect of all mines in which the operator has an interest must not exceed the operator's allowance for depreciation for the taxation year, as determined under subsection (12). 2001, c. 23, s. 151 (3).

Exploration and development expenditures

- (13) For the purposes of clause (5) (g), the maximum amount deductible by an operator for a taxation year in respect of exploration and development expenditures is the aggregate of,
- (a) exploration and development expenditures incurred in Ontario by the operator to the extent that such expenditures qualified as exploration and development expenditures under this Act at the time they were incurred; and
  - (b) exploration and development expenditures incurred by another person to the extent that,
    - (i) such expenditures qualified as exploration and development expenditures under this Act at the time they were incurred by the other person, and
    - (ii) such expenditures qualify to be renounced and have been renounced by the other person in favour of the operator under subdivision e of Division B of Part I of the *Income Tax Act* (Canada) and have not been deducted by the other person under this Act or in the calculation of taxable income of the other person under Part I of the *Income Tax Act* (Canada),less the aggregate of,

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- (c) all amounts deducted under this Act by the operator in any previous taxation year in respect of exploration and development expenditures;
- (d) all amounts allowed as eligible exploration expenses under the *Ontario Mineral Exploration Program Act*;
- (e) the amount of any assistance or benefit from a government, municipality or other public authority in respect thereto, including any grant, subsidy, forgivable loan, investment allowance or other form of assistance or benefit received or receivable by the operator, other than a grant or tax credit under the *Ontario Mineral Exploration Program Act*; and
- (f) all exploration and development expenditures that qualify to be renounced and have been renounced by the operator in favour of another person under subdivision e of Division B of Part I of the *Income Tax Act* (Canada). R.S.O. 1990, c. M.15, s. 3 (13).

### Reduction of capital cost

- (14) For the purposes of this section, where an operator has deducted an amount under subsection 127 (5) of the *Income Tax Act* (Canada) in respect of depreciable property or has received or is entitled to receive assistance from a government, municipality or other public authority in respect of, or for the acquisition of, depreciable property, whether as a grant, subsidy, forgivable loan or any other form of assistance, the capital cost of the property shall be deemed to be the amount by which the aggregate of,
- (a) the capital cost thereof to the operator determined without reference to this subsection; and
  - (b) the part, if any, of the assistance that has been repaid by the operator before the disposition thereof by the operator, exceeds the aggregate of,
  - (c) all amounts deducted under subsection 127 (5) of the *Income Tax Act* (Canada); and
  - (d) the amount of assistance the operator has received or is entitled to receive in respect of that property before the disposition thereof by the operator. R.S.O. 1990, c. M.15, s. 3 (14).

### Non-allowable deductions

- (15) No allowance or deduction shall be claimed or made under this section in respect of,
- (a) an outlay, loss or replacement of capital, a payment on account of capital or an amount in respect of depreciation, amortization, obsolescence or depletion, unless expressly permitted by this Act;
  - (b) interest or dividends paid;
  - (c) royalties for the right to extract mineral substances, or use real property in connection with the extraction of mineral substances, paid to any person other than Her Majesty in Right of Canada or Ontario; and
  - (d) any income or profits tax and any tax on capital paid to any jurisdiction. R.S.O. 1990, c. M.15, s. 3 (15).

### Undepreciated capital cost

- (16) The undepreciated capital cost of any depreciable property at any time means the amount by which the aggregate of,
- (a) the capital cost of the property acquired before that time; and
  - (b) all amounts included in profit by virtue of subsection (17) for a taxation year ending prior to that time, exceeds the aggregate of,
  - (c) the total of the amounts deducted under this Act before that time as an allowance for depreciation with respect to the property;
  - (d) for each disposition of the property or part thereof, the lesser of,
    - (i) the proceeds of disposition of the property or part, and
    - (ii) the capital cost of the property or part; and
  - (e) the total of the amounts not deductible under this Act as a result of the application of clause (12) (e) or subsection (21) in respect of an allowance for depreciation. R.S.O. 1990, c. M.15, s. 3 (16).

### Recapture

- (17) Where, at the end of a taxation year, the aggregate of all amounts determined under clauses (16) (c) and (d) exceeds the aggregate of all amounts determined under clauses (16) (a)

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and (b), the excess shall be deemed to be proceeds for the purposes of clause (5) (a). R.S.O. 1990, c. M.15, s. 3 (17).

Where not dealing at arm's length

- (18) Where any property is acquired from or transferred to a person not dealing at arm's length with the operator, the capital cost of the property to the purchaser for the purposes of this Act and the proceeds of disposition of the property for the purposes of this Act shall be deemed to be,
- (a) the amount or amounts determined in the prescribed manner where the property is depreciable property referred to in subsection (12); and
  - (b) fair market value where the property is not depreciable property referred to in subsection (12). R.S.O. 1990, c. M.15, s. 3 (18).

Idem

- (19) Where output from a mine is sold to a purchaser who does not deal at arm's length with the operator, the amount of the proceeds for the purposes of clause (5) (a) shall be deemed to be the fair market value of the output. R.S.O. 1990, c. M.15, s. 3 (19).

Idem

- (20) Where any goods or services are obtained or acquired from a supplier who does not deal at arm's length with the operator for an amount that exceeds the fair market value of the goods or services, no amount in excess of the fair market value of the goods or services shall be deductible under subsection (5). R.S.O. 1990, c. M.15, s. 3 (20).

Reduction in processing costs

- (21) For the purposes of clauses (5) (b), (c), (d), (e), (i) and (j), (12) (a) and 3.1 (3) (a), where a processing plant owned and operated by the operator is,
- (a) located in Ontario, the amount of the operator's expenses, outlays or allowances relating to processing shall be reduced by the proportion that the value of the input of mineral substances mined in Canada outside Ontario is of the total value of the input of mineral substances to the processing plant; or
  - (b) located in Canada outside Ontario, the amount of the operator's expenses, outlays or allowances shall be reduced by the proportion that the aggregate of the value of input of,
    - (i) mineral substances from Ontario mines, other than mineral substances from the operator's Ontario mines, and
    - (ii) mineral substances from mines located outside Ontario, whether from the operator's mines or not,is of the total value of the input of mineral substances to the processing plant. R.S.O. 1990, c. M.15, s. 3 (21); 1992, c. 4, s. 1 (2).

Processing plant located outside Canada

- (22) No deduction shall be made under clauses (5) (c), (d), (e) and (f) for expenses and outlays related to processing at an operator's processing plant located outside Canada. R.S.O. 1990, c. M.15, s. 3 (22).

Exemption re new mine or major expansion of existing mine

- 3.1 (1) An operator having an interest during a taxation year in a new mine that came into existence after the 20th day of May, 1987, or in a mine in which a major expansion occurred after the 20th day of May, 1987, may elect to exclude from profit for the taxation year an amount not exceeding the operator's exempt amount for the taxation year for the mine, as determined under subsection (2), if the operator files or has filed a declaration and allocation for the mining tax exemption in the form approved by the Minister at the prescribed time or times. 1992, c. 4, s. 2; 1997, c. 19, s. 14 (1).

Exempt amount

- (2) An operator's exempt amount for a taxation year for a mine is the lesser of,
- (a) the operator's profit, if any, from the new mine or from the major expansion of the existing mine, for the portion of the exempt period that is both within the taxation year and after the 30th day of April, 1991; or
  - (b) the amount, if any, by which the operator's exemption limit for the mine exceeds the aggregate of all amounts, if any, each of which is an amount excluded under subsection (1) from the operator's profit for a previous taxation year. 1992, c. 4, s. 2.

Determination of profit

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- (3) The operator's profit from the new mine or from the major expansion of the existing mine shall be determined under subsection 3 (5) as if the operator's interest in the new mine or in the major expansion is the only interest the operator had in a mine during the taxation year provided that,
- (a) the allowance for depreciation under clause 3 (5) (h) shall be the amount equal to the aggregate of the maximum amounts calculated in accordance with clauses 3 (12) (a) and (b), subject to clauses 3 (12) (d) and (e) and subsection 3 (21); and
  - (b) no amount shall be deducted in respect of the allowance for depreciation of the operator calculated under clause 3 (12) (c) in respect of depreciable property that can reasonably be considered to be used in connection with the new mine or the major expansion of the existing mine. 1992, c. 4, s. 2.

### Transitional adjustment

- (4) If the operator's taxation year commences before the 1st day of May, 1991, the operator may exclude from profit, in addition to any amount determined under subsection (2) for the taxation year, an amount not exceeding the operator's profit, if any, from the new mine or the major expansion of the existing mine for the portion of the exempt period that is both within the taxation year and before the 1st day of May, 1991. 1992, c. 4, s. 2.

### Prorating depreciation allowance

- (5) If only part of the operator's taxation year is within an exempt period in respect of a new mine or major expansion, the amount of the operator's allowance for depreciation required to be deducted in determining the operator's profit from the mine or major expansion shall be equal to the proportion of the allowance for depreciation determined under clause (3) (a) that the number of days during the portion of the exempt period in the taxation year is of the total number of days in the taxation year. 1992, c. 4, s. 2.

### More than one operator

- (6) If more than one operator is entitled to elect under subsection (1) to exclude an amount from profit in respect of the same mine, the operators shall determine among themselves the exemption limit of each of them, but in no case shall the total of the operators' exemption limits for the mine exceed \$10,000,000 less the total of all amounts, if any, each of which is an amount that has been excluded under subsection (1) in respect of the mine from the profit of a person who is no longer an operator of the mine. 1992, c. 4, s. 2.

### Interpretation

- (7) For the purposes of this section,
- (a) an operator's exemption limit for a mine is,
    - (i) if there have been no other operators of the mine after the 30th day of April, 1991, \$10,000,000,
    - (ii) if there are or have been other operators of the mine after the 30th day of April, 1991, \$10,000,000 less the aggregate of,
      - (A) all amounts, if any, each of which is an amount that was excluded from profit in respect of the mine under subsection (1) by a person who is no longer an operator of the mine, and
      - (B) all amounts, each of which is the amount of an exemption limit allocated to another operator of the mine in a determination made under subsection (6);
  - (b) the exempt period, in respect of a new mine or a major expansion of an existing mine, is the thirty-six month period commencing with the month when the new mine or the major expansion comes into production in reasonable commercial quantities;
  - (c) a new mine shall be deemed to come into production in reasonable commercial quantities on the first day of the month when an operator of the new mine first becomes entitled to receive proceeds from the output of the mine; and
  - (d) a major expansion of an existing mine shall be deemed to come into production in reasonable commercial quantities on the first day when the rate of production of mineral substances from the expanded mine exceeds by at least 30 per cent the average daily rate of production of mineral substances from the mine during each of the five calendar years ending immediately before the calendar year in which the first outlay was made to expand the mine. 1992, c. 4, s. 2.

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### Loss

- (8) This section does not apply in respect of a new mine or a major expansion of an existing mine if a determination under this section of the operator's profit from the new mine or the major expansion produces a loss with respect to the portion of the exempt period within the taxation year for which the determination was made. 1992, c. 4, s. 2.

### Exempt amount for remote mines

3.2(1) In this section,

“exempt amount for remote mines” means, with respect to an operator, the amount determined under subsection (4) for a taxation year; (“montant exonéré au titre des mines éloignées”)

“exemption limit” means, with respect to an operator's remote mine, the amount determined under subsection (6); (“limite d'exonération”)

“exempt period” means, with respect to a remote mine, the exempt period described in subsection (5). (“période d'exonération”) 2000, c. 42, s. 72.

### Application

- (2) This section applies to an operator that has an interest in a remote mine that comes into existence after May 7, 1996. 2000, c. 42, s. 72.

### Election by operator

- (3) An operator may exclude from the operator's profit for a taxation year ending after May 7, 1996 from remote mines in which the operator has an interest an amount not exceeding the operator's exempt amount for remote mines. 2000, c. 42, s. 72.

### Calculation of exempt amount

- (4) The operator's exempt amount for remote mines for a taxation year is the total of all amounts, if any, each of which relates to a remote mine in which the operator has an interest and equals the lesser of,
- the operator's profit, if any, from the remote mine for that portion of the exempt period that is during the taxation year; and
  - the amount, if any, of the operator's exemption limit, if any, for the remote mine for the taxation year. 2000, c. 42, s. 72; 2001, c. 23, s. 152 (1).

### Exempt period

- (5) The exempt period for a remote mine is 120 months less the number of calendar months that have passed in the exempt period for the mine under clause 3.1 (7) (b) and the exempt period begins with the month in which any operator of the mine first becomes entitled to receive proceeds from the output of the mine. 2000, c. 42, s. 72.

### Exemption limit

- (6) The operator's exemption limit for a remote mine for a taxation year is the following amount:
- If there has been only one operator of the mine since it came into existence, the operator's exemption limit for the mine is the amount, if any, by which \$10 million exceeds the total of all amounts, if any, excluded from profit by the operator for a previous taxation year under subsection (3) or 3.1 (1).
  - If there have been or are two or more operators of the mine, an operator's exemption limit for the mine is the amount, if any, by which \$10 million exceeds the aggregate of,
    - all amounts, if any, each of which is an amount that was excluded from profit in respect of the mine by the operator for a previous taxation year under subsection (3) or 3.1 (1),
    - all amounts, if any, each of which is the amount of an exemption limit allocated to another operator of the mine under subsection (7) or 3.1 (6), and
    - all amounts, if any, each of which is an amount that has been excluded under subsection (3) or 3.1 (1) from profit by a person who is no longer an operator of the mine. 2000, c. 42, s. 72.

### Exemption limit, more than one operator

- (7) If, in a taxation year, more than one operator holds an interest in a remote mine, the operators shall, by agreement, allocate among themselves the exemption limit for the remote mine and each operator shall file a copy of the allocation agreement with its tax return for each taxation year in which the operator makes an exclusion under subsection (3). 2000, c. 42, s. 72.

### Restriction on allocation of exemption limit

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- (8) The total of all operators' exemption limits for a remote mine as allocated under subsection (7) shall not exceed the amount by which \$10 million exceeds the amounts, if any, that have been excluded under subsection (3) or 3.1 (1) from profit by a person who is no longer an operator of the mine. 2000, c. 42, s. 72.

### Determination of profit

- (9) For the purposes of this section, an operator's profit from a remote mine for a portion of the exempt period that is during a taxation year is determined under subsection 3 (8) as if that portion of the exempt period were a taxation year. 2001, c. 23, s. 152 (2).

### Certification of a remote mine

- 4.(1) The Minister of Northern Development and Mines may certify a mine as a remote mine for the purposes of this Act,
- if the mine comes into existence after May 7, 1996;
  - if there is a closure plan for the mine under Part VII of the *Mining Act*; and
  - if, in the opinion of the Minister of Northern Development and Mines, there is at least 30 kilometres between the pit's mouth of the mine and the nearest all-weather road or railway suitable to meet the transportation requirements of the mine. 2000, c. 42, s. 73.

### When mine comes into existence

- (2) For the purposes of clause (1) (a), a mine is considered to come into existence after May 7, 1996 in either of the following circumstances:
- No operator of the mine is entitled to receive proceeds from the output of the mine before May 8, 1996. The mine is separate and distinct geologically from, and has no common workings with, any other mine that is operated at any time before the taxation year in which any operator of the mine first becomes entitled to receive proceeds from the output of the mine.
  - The mine reopens after May 7, 1996 after having been closed for a continuous period of at least 60 months. 2000, c. 42, s. 73.

### Application for certification

- (3) An operator who wishes to have a mine certified as a remote mine shall apply to the Minister of Northern Development and Mines for certification of the mine and shall include in the application,
- evidence, acceptable to the Minister of Northern Development and Mines, that the criteria set out in subsection (1) are met; and
  - such other information as the Minister of Northern Development and Mines may require. 2000, c. 42, s. 73.

### Time for applying

- (4) An application for certification cannot be made before there is an initial closure plan for the mine under Part VII of the *Mining Act*. 2000, c. 42, s. 73.

### Election

- (4.1) Subject to subsection (4.2), an operator may elect to calculate its profit for a taxation year under subsection 3 (5) or section 3.1, as the case may be, in respect of a remote mine in which the operator has an interest as if the mine were not a remote mine. 2001, c. 23, s. 153.

### Time of election

- (4.2) An operator may elect under subsection (4.1) for a taxation year only if,
- an election under that subsection is made by the operator in a return delivered under section 7 for the taxation year in which the mine was certified as a remote mine; and
  - the operator has not treated the mine as a remote mine for a prior taxation year. 2001, c. 23, s. 153.

### Exception

- (4.3) Despite clause (4.2) (a), if an operator delivers the return mentioned in that clause before subsection (4.2) comes into force, the operator may elect under subsection (4.1) for a taxation year if,
- the election under subsection (4.1) is delivered to the Minister within 90 days after subsection (4.2) comes into force; and
  - the operator has not treated the mine as a remote mine for a prior taxation year. 2001, c. 23, s. 153.

### Revocation of certification



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- (5) The Minister of Northern Development and Mines may revoke the certification of a mine under this section,
- (a) if it is reasonable to believe that an incorrect statement was made in the application or information was omitted from the application for the purpose of obtaining the certification; or
  - (b) if either of the criteria set out in clauses (1) (a) and (b) is not met. 2000, c. 42, s. 73.

Effect of revocation

- (6) If the certification of a mine is revoked, it shall be deemed never to have occurred. 2000, c. 42, s. 73.

Effect of mine closure

- (7) If a mine certified under this section is closed for a continuous period of at least 60 months, the mine ceases to qualify as a remote mine. 2000, c. 42, s. 73.

Reopening of mine

- (8) If a mine described in subsection (7) is reopened, it is considered to be a new mine upon the reopening and the operator may make a fresh application for certification of the mine under this section. 2000, c. 42, s. 73.

Definition

- (9) In this section, “pit’s mouth”, in respect of a mine, has the meaning prescribed by regulation. 2000, c. 42, s. 73.

**Source:** [http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90m15\\_e.htm](http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90m15_e.htm) ,  
**accessed on February 5, 2005.**

## Saskatchewan (Canada)

### 1. Summary

Saskatchewan collects a mix of profit and sales based royalties on the basis of commodity type. Precious and base metal royalties are applied as a percentage of net profit. Exploration and pre-production capital expenditures are included in a pool for capital recovery. No royalties are paid until 150% of the capital recovery pool have been deducted. Royalty rates double from 5% to 10% once cumulative threshold output levels are exceeded. The Saskatchewan uranium royalty comprises a base rate of 5% on gross sales revenue less a 1% resources allowance. In addition, a tiered royalty scheme is applicable to uranium production. Royalty rates are scaled on the basis of indexed uranium price. The rate applies to gross revenues less deductions from the capital recovery bank set up on the basis of an allowance per unit of various capital expenditures related to annual capacity. Coal royalties in Saskatchewan are based on gross sales of coal less transportation and downstream processing costs and a resource credit. Current royalty is 15% of gross sales less 1% resource credit.

### 2. Extracts from source legislation

#### *Sources:*

<http://www.qp.gov.sk.ca/index.cfm?fuseaction=publications.details&p=1531>

<http://www.qp.gov.sk.ca/index.cfm?fuseaction=publications.details&p=1030>

(accessed February 27, 2005)

#### **SCHEDULE**

#### **PART I**

#### **Crown Mineral Royalties**

##### **TITLE**

##### **Short Title**

1 This schedule may be cited as *The Crown Mineral Royalty Schedule, 1986*.

##### **PART II**

#### **Crown Mineral Royalties**

##### **Application**

2 This Part applies to the calculation and payment of royalties for all minerals, other than uranium, extracted, recovered or produced from, or allocated under a unitization agreement to, any Crown mineral lands on or after January 1, 1999.

##### **Interpretation of Part**

2.1(1) In this Part:

- (a) “**allocated exploration expenses**”, relating to a production unit for the year, means exploration expenses that have been allocated to the production unit less all amounts deducted by the royalty payer as allocated exploration expenses for the year for all other production units of the royalty payer, but does not include those expenditures incurred on lands administered by the federal government or within the boundaries of an Indian Reserve unless the expenditures were incurred before the administration of the lands was transferred to the federal government or the Indian band;
- (b) “**allocated historical exploration expenses**”, relating to a production unit of a royalty payer, means the exploration expenditures that:

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- (i) have been incurred by the royalty payer during the 10-year period ending with the beginning of commercial production;
  - (ii) have been allocated to that production unit before the beginning of commercial production; and
  - (iii) have not been allocated to any other production unit;
- but do not include:
- (iv) those expenditures made on federal lands or within the boundaries of Indian Reserves located in Saskatchewan unless the expenditures were incurred before the administration of the lands was transferred to the federal government or the Indian band;
- (c) **“allocated pre-production expenses”**, relating to a production unit of a royalty payer, means the total of:
- (i) the allocated historical exploration expenses; and
  - (ii) expenditures incurred by the royalty payer on the design, development and construction of:
    - (A) the production unit before the beginning of commercial production from the production unit; and
    - (B) new mining operations in a production unit in commercial production that do not share a common point of access with other mining operations in the production unit; that were necessary for the production of minerals from the production unit, other than:
      - (C) expenditures incurred on a processing facility that is part of a separate production unit of the royalty payer other than those expenditures necessary to allow minerals from the production unit under development to be processed at the processing facility;
      - (D) expenditures previously allocated to another production unit of the royalty payer; and
      - (E) expenditures by the royalty payer on the design, development and construction of new mining operations that are claimed by the royalty payer before production of minerals from those new mining operations;
- less the total of:
- (iii) the royalty payer’s gross sales of minerals produced before the beginning of commercial production from the royalty payer’s production unit;
  - (iv) the proceeds of any disposition, before the beginning of commercial production, of an asset the cost of which was included wholly or in part as a pre-production expense; and
  - (v) the proceeds of any disposition, after the beginning of commercial production, of an asset, the cost of which was included wholly or in part as a pre-production expense, to the extent that the proceeds are less than or equal to the value of the allocated pre-production expenses less all amounts deducted in prior royalty years pursuant to clause (k);
- (d) **“beginning of commercial production”** means:
- (i) the first day of the first month in which the production unit begins production, measured in terms of rate of mineral production, which is equal to 60% of the maximum rate of production projected for the production unit over a period of 60 days; or
  - (ii) the first day of any month in which, in the opinion of the minister, production begins in reasonable commercial quantities;
- (e) **“capital recovery factor”** means a factor equal to 1.5;
- (f) **“decommissioning”** means the removal or permanent retirement from service of all or part of a production unit, and includes actions directly associated with the removal or retirement;
- (g) **“disposal”** includes any transaction or event entitling a royalty payer to the price or proceeds, or part of the price or proceeds, of assets sold or contributed, compensation for

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- assets taken, destroyed, injuriously affected, damaged or otherwise removed from the royalty payer's possession or control but does not include:
- (i) any transfer of assets for the purpose only of securing a debt or a loan;
  - (ii) any transfer by a creditor for the purpose only of returning assets that have been used as security for a debt or a loan; or
  - (iii) any transfer of assets by virtue of which there is a change in the legal ownership of the assets without any change in the beneficial ownership;
- (h) **“exploration expenses”** means the costs and expenses that are incurred by the royalty payer during the year for the purposes of determining the existence, location, quantity or grade of a mineral deposit under Crown mineral lands and includes expenses incurred in the course of:
- (i) prospecting;
  - (ii) carrying out geological, geophysical or geochemical surveys;
  - (iii) drilling; and
  - (iv) trenching, digging test pits, and preliminary sampling;
- but does not include:
- (v) interest expenditures;
  - (vi) acquisition costs of land or mineral rights;
  - (vii) any payment made or any royalty or overriding royalty paid to any person for the purchase or acquisition of, or the acquisition of an option to purchase or a right of first refusal for, mineral rights, any interest in mineral rights or the right to mine any mineral; or
  - (viii) any portion of expenses covered by a grant or subsidy or other third party contribution;
- (i) **“gross revenue”** means, subject to section 4, the total, without duplication, of all amounts each of which is an amount that was received or is receivable by the royalty payer as, on account of or in lieu of payment of, or in satisfaction of, revenue from the sale, disposal or transfer by the royalty payer of all minerals extracted, recovered or produced from, or allocated to, any Crown mineral lands forming part of the production unit of the royalty payer;
- (j) **“mining operations”** means the extraction, recovery or production of minerals from Crown mineral lands and the transportation of those minerals to the point of beginning of processing operations, but does not include any processing operations;
- (k) **“net profit derived from mining and processing operations”**, for a year, means, subject to subsections (2) and (2.1), the amount by which the total of:
- (i) the royalty payer's gross revenue, if any, for the year that has been derived from the royalty payer's share of the minerals extracted, recovered or produced from, or allocated under a unitization agreement to, the production unit; and
  - (ii) the proceeds from the disposal of any asset during the year the cost of which was:
    - (A) included in whole or in part in the allocated pre-production expenses to the extent that the proceeds exceed the unclaimed balance of allocated pre-production expenses; or
    - (B) deducted as a production cost;provided that the disposal of an interest in a production unit is not to be construed as a disposal of an asset for the purposes of this subclause; exceeds the total, without duplication, of the following that are properly applicable during the year to the royalty payer's share of the minerals mentioned in subclause (i):
  - (iii) all costs, charges and expenses incurred by the royalty payer that are direct production costs attributable to the mining or processing of minerals, less the proceeds from insurance on assets owned by the royalty payer in the year in which those proceeds were received;
  - (iv) approved costs for the operation of residential or community services or facilities in the vicinity of the production unit for the use of persons who normally work at the production unit;
  - (v) approved general and administrative expenses properly attributable to the production unit of the royalty payer;

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- (vi) all approved costs and expenses incurred by the royalty payer for the purpose of developing new markets or expanding existing markets for minerals produced in Saskatchewan;
- (vii) the cost of insurance associated with the royalty payer's share of:
  - (A) assets used in the production of minerals from the production unit; and
  - (B) assets used to provide residential, or community services or facilities in the vicinity of the production unit for the use of persons who normally work at the production unit;
- (viii) municipal and school taxes for which the royalty payer is liable for the production unit;
- (ix) allocated exploration expenses incurred by the royalty payer for the year and the amount by which the total of allocated exploration expenses from prior years exceeds the total of the allocated exploration expenses previously deducted by the royalty payer pursuant to this subclause;
- (x) depreciation of assets:
  - (A) used in the production of minerals from the production unit;
  - or
  - (B) used to provide residential or community services or facilities in the vicinity of the production unit for the use of persons who normally work at the production unit;not exceeding the amount, if any, by which the royalty payer's share of the cost of those assets exceeds the total of the amounts previously deducted by the royalty payer pursuant to this subclause;
- (xi) with respect to the production unit of the royalty payer and subject to section 8, an amount not exceeding the allocated pre-production expenses less the total of any amounts previously deducted by the royalty payer as allocated pre-production expenses in any prior year with respect to that production unit, multiplied by the \*capital recovery factor;
- (xii) reclamation and decommissioning expenses for the production unit of the royalty payer that have not been, or will not be, reimbursed from a fund, the contributions to which were previously deducted pursuant to paragraph (xiii)(B) and that are approved by the minister;
- (xiii) the cost of providing, or contributions to:
  - (A) a guarantee, irrevocable letter of credit, irrevocable letter of guarantee, performance bond, surety bond, or security interest that would constitute a financial assurance fund for decommissioning and reclamation pursuant to provisions of *The Mineral Industry Environmental Protection Regulations, 1996*;
  - (B) any other assurance fund required pursuant to *The Mineral Industry Environmental Protection Regulations, 1996*;
- (xiv) in the case of a sale other than a sale free on board the production unit, the transportation costs that have been approved by the minister and the payment of which is the responsibility of the royalty payer;
- (xv) the net losses in previous years, calculated as the amounts, if any, by which the total of the items in subclauses (iii) to (xiv) exceeds the total of the items in subclauses (i) and (ii) for previous years less the amounts previously deducted by the royalty payer pursuant to this subclause; but no deduction shall be made for:
- (xvi) depletion in the value of any mineral reserve by reason of exhaustion or partial exhaustion of that reserve; (xvii) interest or other financing costs;
- (xviii) expenses incurred for exploration outside Saskatchewan or on lands administered by the federal government or within the boundaries of an Indian Reserve unless the exploration was undertaken before the administration of the land was transferred to the federal government or the Indian band;
- (xix) taxes on profits, income or capital;
- (xx) royalties;
- (xxi) dividends, any distribution of surplus or capital;

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- (xxii) any expenditure that has been reimbursed in whole or in part by way of subsidy, grant or other reimbursement to the extent of the reimbursement;
  - (xxiii) any expenditure incurred in purchasing or acquiring the right to produce minerals or an option to purchase or acquire that right; or
  - (xxiv) reserves or provisions for reclamation or decommissioning other than contributions to a fund pursuant to paragraph (xiii)(B);
- (l) **“precious metals”** means the following minerals:
- (i) gold;
  - (ii) silver;
  - (iii) platinum;
  - (iv) palladium;
  - (v) rhodium;
  - (vi) ruthenium;
  - (vii) osmium;
  - (viii) iridium;
- (m) **“processing operations”** means any form of crushing, grinding, beneficiation, concentration, smelting, or refining of the royalty payer’s share of minerals extracted, recovered or produced from, or allocated under a unitization agreement to, the production unit of the royalty payer;
- (n) **“production costs”**, respecting a production unit of the royalty payer, means the total of:
- (i) all custom milling fees paid by the outlays or expenditures made or incurred by the royalty payer that are directly attributable in accordance with generally accepted accounting principles to the production of minerals from the production unit;
  - (ii) salaries and wages of employees of the royalty payer directly employed in the operation of the production unit;
  - (iii) the royalty payer where the mineral ore from the production unit is processed by a custom miller and:
    - (A) the custom milling fees are paid in money, not in kind; and
    - (B) the custom miller is deemed to deal at arm’s length with the royalty payer;
  - (iv) the production costs of the custom miller in providing the custom milling where the mineral ore from the production unit is processed by a custom miller and:
    - (A) the custom milling fees are paid in kind; or
    - (B) the custom miller is not deemed to deal at arm’s length with the royalty payer;
- (o) **“production unit”** means, subject to section 3:
- (i) the royalty payer’s processing facility to the extent used to process minerals produced from the Crown lease, any Crown lease of which the royalty payer is named as lessee and from which minerals are, were, or will be processed at the processing facility and any mine located on the lands described in the Crown lease; or
  - (ii) any:
    - (A) Crown lease in which the royalty payer is named as lessee;
    - and
    - (B) any mine located on the lands described in the Crown lease; from which minerals are, were, or will be processed at a processing facility in which the royalty payer has no interest;
- (p) **“production unit of the royalty payer”** means, subject to section 3, the royalty payer’s share of the production unit to the extent of the portion of the royalty payer’s processing facility used to process the royalty payer’s share of minerals produced from the production unit and:
- (i) the royalty payer’s interest shown in the Crown lease forming part of the production unit; or
  - (ii) the royalty payer’s interest as shown in the records of the department;
- (q) **“reclamation”** means the rehabilitation, following decommissioning, of all or part of the land, water or watercourses used or disturbed by the construction or operation of the production unit;
- (r) **“royalty payer”** means the person named as the holder of a Crown lease and, where there is more than one person named, means each person to the extent of that person’s interest

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shown in the disposition document or, if not so shown, to the extent of that person's interest shown in the records of the department, and if the person named as holder in a Crown lease is a partnership, each partner is deemed to be a royalty payer and to have incurred the expenditures and earned the net profit derived from mining and processing operations actually incurred or earned, as the case may be, by the partnership, to the extent of that person's interest in the partnership as shown in the partnership agreement, and the partnership is deemed not to be a royalty payer for the production unit;

- (s) **“royalty payer’s processing facility”** means any facility that:
- (i) is owned by the royalty payer, whether or not the royalty payer is also the owner of the land on which the facility is situated, and who is a lessee named in the Crown lease forming part of the production unit; and
  - (ii) is, or may reasonably be expected to be, used for processing the minerals produced from the production unit;
- and includes all assets used in processing operations, including waste management facilities, to the extent that they are used for processing minerals produced from the production unit;
- (t) **“year of termination”** means, unless otherwise determined by the minister, the year in which the royalty payer’s processing facility or the facility that last custom mills minerals from the royalty payer’s production unit ceases, other than temporarily, to process minerals from the production unit.
- (2) For the purpose of calculating the net profit derived from mining and processing operations:
- (a) a royalty payer shall carry back and apply to operating profits of the year of termination the amount, if any, by which the total amount in the fund pursuant to paragraph (xiii)(B) exceeds the cost of the royalty payer’s share of decommissioning and reclamation of the production unit; and
  - (b) the amount calculated pursuant to clause (a), when carried back, must be adjusted by an appropriate rate of discount determined by the minister.
- (2.1) Notwithstanding any other provision of these regulations, the net profit derived from mining and processing operations for a year is deemed to be zero for the purposes of this Part if:
- (a) the beginning of commercial production for the production unit of the royalty payer occurred in a year that is:
    - (i) after 2002; and
    - (ii) less than 10 years prior to the year for which net profit is being calculated; and
  - (b) the actual net profit from those operations for the year is greater than zero.
- (3) In this Part, persons are deemed not to deal at arm’s length with one another when they are associated as determined in accordance with the *Income Tax Act* (Canada).
- (4) Where persons are not within the deeming provisions of subsection (3), it is a question of fact whether they were at a particular time dealing with each other at arm’s length, and in determining that fact, consideration is to be given to whether each stands on the strict letter of that person’s rights and conducts the business in a formal manner without trusting to the other’s fairness or integrity and without being subject to the other’s control or overmastering influence.
- Each mine to form separate production unit**
- 3(1) Where the royalty payer shares in the production from more than one mine, each mine forms a separate production unit for the purpose of computing the royalty payable by the royalty payer.
- (2) Notwithstanding subsection (1), where two or more mines are owned by the same person having the same percentage ownership interest and those mines share a common processing facility having the same percentage ownership interest as the mines, or in any other circumstances the minister may determine, the mines form a single production unit for the purpose of computing the royalty, if:
- (a) the royalty payer applies in writing to the minister to request that the mines be considered one production unit; and
  - (b) the royalty payer receives the requested approval of the minister.
- (3) A production unit is deemed to continue in existence after mining is discontinued or the lease is terminated until:
- (a) there is no longer gross revenue attributable to the production unit; and
  - (b) decommissioning and reclamation have been completed by the royalty payer.

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(4) For the purposes of this Schedule, if any mine associated with a production unit, formed under this Schedule, was in commercial production before January 1, 1999, the production unit is deemed to be in commercial production as of the date of the beginning of commercial production at that mine.

### **Rate of royalty**

3.1(1) The payments to be made by the royalty payer for the production unit of the royalty payer for all minerals is:

- (a) 5% of the royalty payer's net profit derived from mining and processing operations related to the production unit of the royalty payer for the year for:
  - (i) those sales or other dispositions of precious metals from the production unit that, when added to the cumulative sales or other dispositions of precious metals in prior years are less than or equal to 1,000,000 troy ounces of precious metals; and
  - (ii) those sales or other dispositions of all minerals from the production unit that, when added to the cumulative sales or other dispositions of all minerals in prior years are less than or equal to 1,000,000 metric tonnes;

or

- (b) 10% of the royalty payer's net profit derived from mining and processing operations related to the production unit of the royalty payer for the year for:
  - (i) those sales or other dispositions of precious metals from the production unit that, when added to the cumulative sales or other dispositions of precious metals in prior years, are greater than 1,000,000 troy ounces of precious metals; or
  - (ii) those sales or other dispositions of all minerals from the from the production unit that, when added to the cumulative sales or other dispositions of all minerals in prior years, are greater than 1,000,000 metric tonnes.

(2) Where, in making a calculation for the purposes of this section, any amount is less than zero, the amount to be used in the calculation is zero.

### **Calculation of gross revenue**

4(1) Subject to subsections (2) and (3), for the purposes of calculating gross revenue for a year, the royalty payer is deemed to have received an amount equal to the fair market value of all minerals sold, transferred or disposed of by the royalty payer during the year determined at the time those minerals were sold, transferred or disposed of by the royalty payer and an amount equal to the fair market value of all minerals consumed by the royalty payer or a person not dealing at arm's length with the royalty payer during the year determined at the time those minerals were consumed by the royalty payer or that person.

(2) Where minerals are sold to a person not dealing at arm's length with the royalty payer, the gross revenue for those sales of minerals includes an amount equal to the difference between:

- (a) the total of:
  - (i) the sale price received or receivable by the person not dealing at arm's length for those minerals in the first arm's-length transaction, free on board the mine; and
  - (ii) all other amounts received or receivable by the royalty payer and the person not dealing at arm's length in connection with:
    - (A) the sale and transportation of minerals to the first arm's-length purchaser or transferee; and
    - (B) the loading, unloading, storage, handling, insurance, and demurrage of the minerals for the first arm's-length purchaser or transferee; and
- (b) either:
  - (i) in the case of sales that are not offshore sales, transportation costs incurred by the royalty payer or the person not dealing at arm's length in transporting the minerals from the production unit to the first arm's-length purchaser or transferee; or
  - (ii) in the case of offshore sales:
    - (A) any of the costs that, in the opinion of the minister, are reasonable, excluding any commissions or other fees paid or payable to a purchaser or export agent where the royalty payer or the person not dealing at arm's length has incurred the costs of:
      - (I) unloading, storing, handling, demurrage, or unloading the minerals onto vessels at the tidewater transshipment point; and



- (II) ocean transportation to the destination; and
  - (B) transportation costs incurred by the royalty payer and any person not dealing at arm's length in transporting the minerals from the production unit to tidewater transshipment point.
- (3) Where the minister is satisfied that the amount determined by the royalty payer to be included in the calculation of the gross revenue of the royalty payer for the year for any mineral does not accurately reflect the fair market value and that it is not possible to determine the value of first arm's-length sale of the minerals, the minister may specify an amount that, in the minister's opinion, more accurately reflects the fair market value and the amount specified is the fair market value of the mineral for purposes of subsection (1).

**Determining costs and allocating expenses**

5(1) Subject to sections 7 and 8, for the purpose of determining the cost of assets of a royalty payer, the cost is the cost to the royalty payer of acquiring the assets determined in accordance with generally accepted accounting principles in Canada.

(2) If there is more than one royalty payer associated with a production unit, the royalty payers may, with the prior written consent of the minister, allocate their expenses and deductions mentioned in clause 2.1(1)(k) amongst themselves in the manner approved by the minister.

...

### **PART III**

#### **Crown Uranium Royalties**

##### **DIVISION 1**

Interpretation

Application of Part

14 This Part applies to the calculation and payment of royalties with respect to uranium sold or consumed on and after January 1, 2001, whether or not the uranium was produced in Saskatchewan from Crown mineral lands prior to that date. 14 Dec 2001 SR 96/2001 s25.

Interpretation of Part

15(1) In this Part:

- (a) "basic royalty" means the basic royalty described in section 24;
- (b) "beginning of production" means the beginning of production determined in accordance with section 16;
- (c) "capital recovery bank" means the capital recovery bank determined in accordance with section 17;
- (d) "capital recovery bank deduction" with respect to a royalty payer means the deduction that is required to be claimed pursuant to section 25 against the royalty payer's gross sales that are subject to tiered royalties and that, in a royalty year, is the lesser of:
  - (i) the amount in the royalty payer's capital recovery bank at the end of the previous royalty year less any disposals and includes any additions in the current royalty year;
  - (ii) the amount necessary to reduce the royalty payer's tiered royalty payment to zero; or
  - (iii) 50% of:
    - (A) the sum of all additions to the royalty payer's capital recovery bank for the current year and previous years to the last previous year in which the balance was zero;less:
  - (B) the sum of all disposals of the royalty payer for the current and previous years to the last previous year in which the balance was zero;
- (e) "Crown lease" means:
  - (i) a lease of Crown mineral lands granted pursuant to Part V of The Mineral Disposition Regulations, 1986, being Saskatchewan Regulations 30/86;
  - (ii) a lease under The Mineral Disposition Regulations, 1961, being Saskatchewan Regulations 431/67, that is deemed to be a lease pursuant to clause 4(2)(c) of The Mineral Disposition Regulations, 1986, being Saskatchewan Regulations, 30/86; and
  - (iii) an agreement or lease issued pursuant to clause 4(b) of *The Crown Minerals Act*;
- (f) "disposal":

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- (i) means any transaction or event that entitles a royalty payer to the price or proceeds, or part of the price or proceeds, of:
  - (A) a facility sold or contributed for value; and
  - (B) compensation for a facility taken, destroyed, injuriously affected, damaged or otherwise removed from the royalty payer's possession or control; but
- (ii) does not include any transfer of a facility:
  - (A) for the sole purpose of securing a debt or loan;
  - (B) for the sole purpose of returning a facility that has been used as security for a debt or loan;
  - (C) where the beneficial ownership does not change; or
  - (D) to a royalty payer who:
    - (I) is owned in whole or in part by another royalty payer; or
    - (II) owns, in whole or in part, another royalty payer;
- (g) "facility" means, with respect to a royalty payer:
  - (i) any Crown mineral lands included in a Crown lease in which the royalty payer has an interest and any mine located on those Crown mineral lands from which uranium is, was or will be processed at a mill in which the royalty payer may or may not have an interest; or
  - (ii) the royalty payer's mill;
- (h) "gross sales" means, subject to section 26, the aggregate of the sales prices and all other amounts paid or payable to or for the benefit of the royalty payer for uranium;
- (i) "index value" means:
  - (i) for 1998, 1.0;
  - (ii) for a royalty year subsequent to 1998, the amount A calculated in accordance with the following formula:  
$$A = B/C$$
where:  
A is the index value for the royalty year;  
B is the price index for the previous royalty year; and  
C is the price index for 1998;
- (j) "kilograms of U 3 O 8" means the weight of uranium, in any chemical form, that is expressed in terms of the equivalent weight in kilograms of natural uranium concentrates triuranium octoxide, also known as U 3 O 8 ;
- (k) "mill" means a mill located in Saskatchewan and used in the processing of uranium;
- (l) "mill allowance" means the allowance granted at the beginning of production for the facility which is a mill and is the product of:
  - (i) the mill capacity;
  - (ii) the royalty payer's percentage ownership in the mill; and
  - (iii) the index value multiplied by \$80;
- (m) "mill capacity" means mill capacity in accordance with section 18;
- (n) "mill expansion allowance" means the allowance granted for a mill expansion at the beginning of production using the expanded capacity, and is the product of:
  - (i) the mill expansion capacity;
  - (ii) the royalty payer's percentage interest in the mill expansion capacity whether or not the royalty payer has a percentage ownership in the mill, but the sum of all interests of the royalty payer and all other royalty payers in the mill expansion capacity shall not exceed 100% of the mill expansion capacity; and
  - (iii) the index value multiplied by \$50;
- (o) "mill expansion capacity" means mill expansion capacity in accordance with section 19;
- (p) "mine" means one or more mines where uranium is removed in accordance with a Crown lease and that is designated by the minister pursuant to subsection (5);
- (q) "mine allowance" means the allowance granted at the beginning of production for the facility which is a mine and is the product of:
  - (i) the mine capacity;
  - (ii) the royalty payer's percentage ownership in the mine; and
  - (iii) the index value multiplied by:

Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- (A) \$45 for an open-pit mine or any other mine that does not include the development of a mine shaft or other means of access to an underground mining operation; or
  - (B) \$60 for an underground mine;
  - (r) “mine capacity” means the annual capacity at the beginning of production from a facility which is a mine stated in kilograms of U 3 O 8 that is set out in the Canadian Nuclear Safety Commission operating licence for the facility that includes the mine, and includes any changes to the Canadian Nuclear Safety Commission operating licence for the facility that includes the mine that qualified for an adjustment to the mill capacity pursuant to subsection 18(2);
  - (s) “price index” means the implicit price index for a royalty year published in the *Bank of Canada Review* as the gross domestic product at market value in the Table titled “Gross domestic product: Price indexes”;
  - (t) “royalty payer” means, subject to subsection (4):
    - (i) every lessee of a Crown lease given the right to mine uranium to the extent of the lessee’s interest in the Crown lease as shown in the lease or if not so shown, to the extent of the lessee’s interest shown in the records of the department;
    - (ii) where a partnership is a lessee of a Crown lease giving it the right to mine uranium, each partner to the extent of its interest in the partnership; and
    - (iii) where a joint venture has been entered into in relation to the mining of uranium, each joint venture participant to the extent of its interest in the joint venture;
  - (u) “royalty payer’s mill” means any mill that is owned in whole or in part by a royalty payer and that is or may reasonably be expected to be used to process the uranium removed in accordance with a Crown lease, whether or not that mill is located on the Crown mineral lands included in the Crown lease, and includes the tailings management facility;
  - (v) “royalty year” means the calendar year;
  - (w) “Saskatchewan resource credit” means the Saskatchewan resource credit described in section 35;
  - (x) “small producer credit” means a small producer credit described in section 20;
  - (y) “tiered royalty” means the tiered royalty determined in accordance with section 25;
  - (z) “uranium” means either or both of the following produced from Crown mineral lands in Saskatchewan:
    - (i) uranium ore;
    - (ii) uranium concentrate;
  - (aa) “uranium concentrate” means:
    - (i) the substance containing U 235 or U 238 resulting from the concentration of uranium ore; and
    - (ii) any substance or mineral extracted from uranium ore;
  - (bb) “uranium ore” means any substance found in nature that contains commercially recoverable amounts of U 235 or U 238 , with or without other minerals.
- (2) For the purposes of this Part, persons are dealing with each other at arm’s length if they fall within the meaning of section 251 of the *Income Tax Act* (Canada).
- (3) For the purposes of this Part, a facility is deemed to continue in existence after mining is discontinued or after the Crown lease is terminated until:
- (a) reclamation has been completed and the lease issued by the Crown for the surface has been surrendered or terminated; and
  - (b) all uranium produced from the facility has been:
    - (i) disposed of or consumed; and
    - (ii) included in determining the royalties payable.
- (4) A royalty payer continues to be a royalty payer until all facilities in which the royalty payer had an interest cease to continue in existence in accordance with subsection (3).
- (5) For the purposes of this Part, the minister may designate two or more mines as one mine where the mines are the subject of:
- (a) the same Crown lease; or
  - (b) a separate Crown lease with the same royalty payers, where all of the mines have been reviewed in the same environmental impact statement.

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

### Beginning of production

16(1) For the purposes of this Part, and subject to subsection (2), “beginning of production” for a facility means the first day of the first month in which a sale has been made of uranium produced or processed at that facility.

(2) In the case of a facility that had sales of uranium produced or processed at that facility prior to January 1, 1999, the beginning of production is deemed to be prior to January 1, 1999.

### Capital recovery bank

17 For the purposes of this Part:

(a) the capital recovery bank of a royalty payer at the end of a royalty year is the amount A calculated in accordance with the following formula:

$$A = (B + C - D) \times E / F$$

where:

A is the amount in the capital recovery bank at the end of the royalty year;

B is the amount in the capital recovery bank at the end of the previous royalty year;

C is the aggregate of the amounts of all mine allowances, mill allowances and mill expansion allowances granted in the current royalty year less any reductions arising from the disposal of an interest in a facility that qualified for any one of those allowances;

D is the total capital recovery bank deduction claimed as determined in clause 15(1)(d);

E is the index value for the next royalty year; and

F is the index value for the current royalty year; and

(b) a facility is not eligible for a mine allowance or a mill allowance if:

(i) its beginning of production was prior to January 1, 1999; or

(ii) it was constructed as a pilot project or for demonstration purposes to determine commercial viability and is licensed as a site or construction operation by the Canadian Nuclear Safety Commission.

### Mill capacity

18(1) For the purposes of this Part, “mill capacity” is the annual capacity of a facility which is a mill, as specified in the operating licence related to the mill issued by the Canadian Nuclear Safety Commission, and stated in kilograms of U 3 O 8 .

(2) The measurement determined in accordance with subsection (1) must be adjusted for any licenced capacity changes to the operating licence for which the operator has filed an application within the 24 month period following the beginning of production from the facility which is a mill.

(3) When calculating the mill allowance, any adjustment to the annual capacity in accordance with subsection (2) is to be deemed to have occurred at the beginning of production from the facility which is a mill.

### Mill expansion capacity

19(1) For the purposes of this Part, “mill expansion capacity” means the mill capacity in kilograms of U 3 O 8 , increased by at least a cumulative 25% through a Canadian Nuclear Safety Commission licensing process or processes, over the greater of the licenced capacity that was:

(a) used to grant the mill allowance;

(b) used previously to grant a mill expansion allowance; or

(c) if the mill was in production prior to 1999, the licenced capacity of the mill at January 1, 1999.

(2) For the purposes of this Part, the mill expansion capacity must be adjusted for any licenced capacity changes to the operating licence for which the operator has filed an application within the 24 month period following the granting of the mill expansion allowance.

(3) An adjustment to the mill expansion capacity in accordance with subsection (2) is deemed to have occurred at the time the mill expansion allowance is granted.

### Small producer credit

20(1) For the purposes of this Part, the small producer credit at the end of a royalty year is the amount A calculated in accordance with the following:

$$A = (B - C) \times D / E$$

where:

A is the small producer credit at the end of the royalty year;

B is:

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- (i) in the first royalty year in which it is claimed, the index value multiplied by \$750,000; or
- (ii) in any subsequent royalty year, the balance of the small producer credit at the end of the previous royalty year;

C is the total of all small producer credits claimed in the royalty year;

D is the index value for the next royalty year; and

E is the index value for the current royalty year.

(2) A royalty payer must claim a small producer credit beginning in the first month of sales of uranium in which:

- (a) the capital recovery bank is depleted; or
- (b) the maximum capital recovery bank deduction was claimed in that royalty year.

### DIVISION 2

#### **Royalty Payments**

##### Royalty payments

21(1) Every royalty payer shall remit a royalty payment in accordance with these regulations for all uranium sold or consumed by the royalty payer.

(2) On or before the last day of the month following the month in which the royalty payer sold or consumed the uranium, the royalty payer shall submit to the minister:

- (a) the royalty payment calculated in accordance with section 23;
- (b) a royalty return in a form acceptable to the minister; and
- (c) a copy of any statement that supports the royalty payment.

(3) Royalty payments must be calculated monthly.

(4) If a royalty payer shares in sales or consumption of uranium produced or processed from more than one facility, the royalty payer shall combine the uranium from each facility for the purpose of calculating the royalty payer's royalty payment.

(5) If a royalty payer is owned in whole or in part:

- (a) its owner shall:
  - (i) combine the owner's interest in any uranium sold or consumed by the royalty payer that the owner owns, based on the owner's proportional interest in that royalty payer, with all other uranium sold or consumed by the owner;
  - (ii) combine the owner's interest in any capital recovery banks, based on the owner's proportional interest in that royalty payer, with the capital recovery bank of the owner; and
  - (iii) calculate the owner's royalty payments after taking into account subclauses (i) and (ii); and
- (b) the royalty payer that is owned is not required to make a royalty payment on any uranium that is combined pursuant to clause (a) and for which a royalty payment is made by its owner.

(6) Notwithstanding subsection (5), the minister may approve an application by a royalty payer to report in another manner.

(7) For the purposes of subsection (5), "owner" means a royalty payer that owns another royalty payer in whole or in part.

(8) On or before the last day of the third month following the end of the royalty year, a royalty payer must submit to the minister:

- (a) an annual return for the previous royalty year; and
- (b) the royalty payment that is due in a royalty year less the sum of the monthly royalty payments made in that royalty year.

(9) If the total of the monthly royalty payments for the current royalty year made pursuant to subsection (2) exceeds the total of the annual royalty payment calculated in accordance with subsection (8), the minister shall refund to the royalty payer the difference between those amounts within 30 days after receiving the royalty payer's annual return.

##### Interest payable

22(1) Every royalty payer shall pay interest to the minister on any royalty payment or portion of a royalty payment that is not paid as required by subsection 21(8).

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- (2) The unpaid royalty payment or portion of a royalty payment mentioned in subsection (1) bears interest from the time the royalty payment was due pursuant to subsection 21(8).
- (3) For the purposes of this section, a royalty payment is considered to be paid on the date that it is received by the minister.
- (4) The minister shall pay interest to a royalty payer only with respect to amounts refunded to the royalty payer as a result of an assessment or reassessment pursuant to section 30, and the refund bears interest from the time the original royalty payment was paid pursuant to subsection 21(8).
- (5) For the purposes of this section, the annual rate of interest is equal to the product of:
- (a) 1.2; and
  - (b) the rate of interest published in the *Bank of Canada Review* as the “bank rate” as at December 31st of the preceding year.
- (6) Notwithstanding subsection (5), the minister may approve an application by a royalty payer to report in another manner.
- (7) For the purposes of subsection (5), “owner” means a royalty payer that owns another royalty payer in whole or in part.
- (8) On or before the last day of the third month following the end of the royalty year, a royalty payer must submit to the minister:
- (a) an annual return for the previous royalty year; and
  - (b) the royalty payment that is due in a royalty year less the sum of the monthly royalty payments made in that royalty year.
- (9) If the total of the monthly royalty payments for the current royalty year made pursuant to subsection (2) exceeds the total of the annual royalty payment calculated in accordance with subsection (8), the minister shall refund to the royalty payer the difference between those amounts within 30 days after receiving the royalty payer’s annual return.

### Interest payable

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- (3) For the purposes of this section, a royalty payment is considered to be paid on the date that it is received by the minister.
- (4) The minister shall pay interest to a royalty payer only with respect to amounts refunded to the royalty payer as a result of an assessment or reassessment pursuant to section 30, and the refund bears interest from the time the original royalty payment was paid pursuant to subsection 21(8).
- (5) For the purposes of this section, the annual rate of interest is equal to the product of:
- (a) 1.2; and
  - (b) the rate of interest published in the *Bank of Canada Review* as the “bank rate” as at December 31st of the preceding year.

### Calculation of royalty

23 The royalty payment to be made pursuant to section 21 is the amount A calculated in accordance with the following formula:

$$A = B + C - D$$

where:

- A is the royalty payable;
- B is the basic royalty payable;
- C is the tiered royalty payable; and
- D is the Saskatchewan resource credit.

### Basic royalty

24 The basic royalty is 5% of the royalty payer’s gross sales of uranium.

### Tiered royalty

25(1) The tiered royalty payment is the amount A calculated in accordance with the following formula:

$$A = B + C + D - E$$

where:

- A is the tiered royalty;

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

- B is the amount determined in accordance with subsection (2);  
C is the amount determined in accordance with subsection (3);  
D is the amount determined in accordance with subsection (4); and  
E is any small producer credit that has been claimed.
- (2) 15% of the lesser of:
- (a) the gross sales of the royalty payer, adjusted pursuant to section 36, less the product of:
    - (i) \$60;
    - (ii) the index value; and
    - (iii) the weight of uranium in kilograms of U 3 O 8 sold or consumed by the royalty payer; and
  - (b) the value determined in accordance with clause (a), less the capital recovery bank deduction that must be claimed.
- (3) 10% of the lesser of:
- (a) the gross sales of the royalty payer, adjusted pursuant to section 36, less the product of:
    - (i) \$45;
    - (ii) the index value; and
    - (iii) the weight of uranium in kilograms of U 3 O 8 sold or consumed by the royalty payer;
  - (b) the product of:
    - (i) \$15;
    - (ii) the index value; and
    - (iii) the weight of uranium in kilograms of U 3 O 8 sold or consumed by the royalty payer; and
  - (c) the lesser of the values determined in accordance with clauses (a) and (b), less the capital recovery bank deduction that must be claimed.
- (4) 6% of the lesser of:
- (a) the gross sales of the royalty payer, adjusted pursuant to section 36, less the product of:
    - (i) \$30;
    - (ii) the index value; and
    - (iii) the weight of uranium in kilograms of U 3 O 8 sold or consumed by the royalty payer;
  - (b) the product of:
    - (i) \$15;
    - (ii) the index value; and
    - (iii) the weight of uranium in kilograms of U 3 O 8 sold or consumed by the royalty payer; and
  - (c) the lesser of the values determined in accordance with clauses (a) and (b), less the capital recovery bank deduction that must be claimed.
- (5) For greater certainty, the capital recovery bank deduction must be claimed against revenues subject to tiered royalties in subsection (2) first, in subsection (3) second, and in subsection (4) last.
- (6) A royalty payer shall claim the maximum capital recovery bank deduction that it is entitled to each month and, if the royalty payer is capable of reducing its capital recovery bank to zero by claiming a capital recovery bank deduction in a month, the royalty payer shall do so.
- (7) For the purposes of this section, any value or amount calculated to be less than zero is deemed to be zero.
- (8) For the purposes of this section:
- (a) the tiered royalty calculated for a month must be based on the gross sales of the royalty payer in that month; and
  - (b) the gross sales of the royalty payer in any month must be calculated as the product of:
    - (i) the royalty payer's sales volume for the month; and
    - (ii) the estimated average sales price of the royalty payer's annual sales.
- (9) A royalty payer shall submit to the minister its estimated average sales price:
- (a) at the beginning of the royalty year; and
  - (b) at any other time that the minister requests.

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

(10) Subject to section 36, for the purposes of this section, the tiered royalty required to be paid pursuant to subsection 21(8) must be based on the gross sales of the royalty payer in accordance with clause 15(1)(h).

### Gross sales

26(1) For the purposes of determining the gross sales of a royalty payer:

- (a) a sale of uranium occurs:
  - (i) when the uranium changes ownership; or
  - (ii) when any other transaction involving the uranium has taken place and the minister, on the application of a royalty payer, has approved using that transaction as the change of ownership for the purposes of subclause (i); and
- (b) the sale price of the uranium is equal to the fair market value determined in accordance with section 27 less any of the following that have been approved by the minister:
  - (i) the cost of transporting the uranium from the royalty payer's mill or the mill that processed the royalty payer's uranium, to the first point of sale;
  - (ii) expenses incurred by the royalty payer for the conversion of the uranium concentrate to a form further refined than the compound produced at the mill and described in terms of kilograms of U 3 O 8 ; and
  - (iii) any other sale price deductions the minister considers appropriate in the circumstances.

(2) The minister shall not approve a deduction for any surcharge imposed by a converter or refiner because the uranium concentrate did not meet the required specifications or standards as set out in the sales contract.

(3) In determining the gross sales of uranium in accordance with subsection (1), the following sales shall not be included:

- (a) sales of uranium, where that uranium was received as a payment for custom milling; and
- (b) sales of uranium, where that uranium was not produced but purchased from another person.

### Fair market value

27(1) Subject to subsection (2), the fair market value for an arm's length sale of uranium is the price paid by the purchaser to the royalty payer for the uranium.

(2) Subject to section 29, where uranium is sold for consideration other than money, the value of the sale is the greater of the fair market value of the consideration and the fair market value of the uranium.

(3) Subject to section 28 and subsection (5), the fair market value for a sale of uranium that is not at arm's length is deemed to be:

- (a) in the case of uranium that enters into a pooled inventory, the average sale price of all arm's length sales of uranium from that pooled inventory in the current royalty year;
- (b) in the case of uranium that is re-sold in an arm's length sale without entering a pooled inventory, the sale price of the uranium in the first arm's length sale; and
- (c) in the case of uranium that is sold and subsequently consumed, the average sale price for all sales of uranium from the royalty payer to arm's length purchasers in the current royalty year.

(4) For the purposes of calculating the gross sales of the royalty payer in the current royalty year, an estimated average sale price must be used as an interim value of sales until the gross sales have been determined for the current royalty year.

(5) The minister may approve a sale price of uranium that is agreed upon by a royalty payer and a purchaser who are not dealing with each other at arm's length.

### Value to be determined by minister

28(1) Notwithstanding section 27, if, in the minister's opinion, the sales price to be included in the calculation of the gross sales of the royalty payer does not accurately reflect the fair market value, and it is not possible to determine the fair market value in accordance with section 27, the minister may deem a value that, in the minister's opinion, accurately reflects the fair market value.

(2) Where the minister deems a value in accordance with subsection (1), the minister shall provide written notice of it to the royalty payer.

## C-50.2 REG 3 COAL DISPOSITION



## SCHEDULE

### Crown Coal Royalties

#### PART I

##### Title, Application and Interpretation

1 This schedule may be cited as *The Crown Coal Royalty Schedule*.

##### Crown royalties

2 This schedule shall apply to the calculation and payment of royalties in respect of all coal extracted, recovered or produced from, or allocated under a unitization agreement to, any Crown coal lands.

##### Definitions

3 In this schedule:

- (a) **“average value of coal”** for a quarter means the royalty payer’s gross sales of coal for the quarter divided by the total number of units of coal extracted, recovered or produced from, or allocated to, any Crown coal lands which are subject to a lease held by the royalty payer and which are sold, transferred, disposed or consumed by the royalty payer during such quarter;
- (b) **“gross sales of coal”** means the aggregate without duplication of all amounts each of which is an amount that was received or is receivable by the royalty payer as, on account of or in lieu of payment of, or in satisfaction of, revenue from the sale, disposition or transfer by the royalty payer of all coal extracted, recovered or produced from, or allocated to, any Crown coal lands which are subject to a lease held by the royalty payer;
- (c) **“quarter”** means a calendar quarter ending on March 31, June 30, September 30 or December 31 in each year;
- (d) **“royalty payer”** means the person named as the holder of a lease of Crown coal lands giving the right to produce coal therefrom, and, where there is more than one person so named, means each of those persons to the extent of his interest shown in the disposition or if not so shown, to the extent of his interest shown in the records of the department, and if the person named as holder in a lease is a partnership, each partner shall be deemed to be a royalty payer and to have incurred the expenditures and earned the net profit derived from mining and processing operations actually earned or incurred, as the case may be, by the partnership, to the extent of his interest in the partnership as shown in the partnership agreement, and the partnership shall be deemed not to be a royalty payer in respect of a lease of Crown coal lands; and
- (e) **“unit”** means a metric tonne weighing 1000 kilograms.

#### C-50.2 REG 3 COAL DISPOSITION

#### PART II

##### Royalties

##### Rate of Royalty

4(1) The payments to be made under a Crown lease by the royalty payer shall be 15% of his average value of coal related to the Crown lease in respect of each quarter.

(2) Average value of coal shall, for the purposes of this Part, be deemed to be related to a Crown lease to the extent that it is derived directly or indirectly from the sale or other disposition of coal extracted, recovered or produced from, or allocated to, Crown coal lands which are subject to the lease.

##### Gross Sales of Coal

5(1) For the purposes of calculating the gross sales of coal for a quarter, the royalty payer shall be deemed to have received an amount equal to the following:

- (a) the price agreed to in the contract of sale for the coal less such transportation costs from the mine gate, other ex-mine costs and treatment costs that may be approved by the minister; or
- (b) where there is no contract of sale or where the transaction was not conducted at arm’s length, a price equal to the fair market value of the coal.

(2) Notwithstanding subsection (1), where the minister is satisfied that the amount determined by the royalty payer to be included in the calculation of gross sales of coal for the quarter in respect

## Appendix A1. Sample Royalty Provisions Extracted From National Laws and Regulations

of any coal does not accurately reflect the fair market value thereof, the minister shall so notify the royalty payer.

(3) Where the minister has provided notice to the royalty payer pursuant to subsection (2), the minister and the royalty payer shall negotiate with a view to arriving at the fair market value of the coal to be used for the purposes of determining the gross sales of coal for the quarter for the royalty payer.

(4) Where the minister and the royalty payer fail to agree on the fair market value of the coal within 90 days of the royalty payer receiving notice pursuant to subsection (2), the minister shall notify the royalty payer of the amount the minister considers to be the fair market value of the coal in which event the amount specified shall be deemed to be the amount included for the purposes of calculating gross sales of coal for a quarter for the royalty payer.

### **Payment of Royalty**

**6** A royalty payer liable for the payment of royalties in respect of any quarter shall pay to the minister, within one month following the end of each quarter, the amount of royalty that is payable by him for that quarter.

### **C-50.2 REG 3 COAL DISPOSITION**

#### **Saskatchewan resource credit**

**6.1(1)** In this section, “**gross sales of coal related to a Crown lease**” means gross sales of coal that are derived directly or indirectly from the sale or other disposition of coal extracted, recovered or produced from or allocated to Crown coal lands that are subject to the lease.

(2) For the quarter commencing on July 1, 1988 and for each subsequent quarter, the royalty payer may deduct from his royalty payment pursuant to section 6 the Saskatchewan resource credit equal to one percent of his gross sales of coal related to a Crown lease for that quarter.

(3) For the purposes of subsection (2), ex-mine costs mentioned in clause 5(1)(a) shall not be deducted in determining gross sales of coal pursuant to section 5.

### **Royalty Returns**

**7** Every royalty payer shall submit to the minister two copies of a royalty return in form prescribed or acceptable to the minister, together with supporting statements, at the same time as the quarterly royalty payments are due.

### **Existing Contracts**

**8** Within 90 days after this schedule comes into force, a royalty payer shall inform the minister in writing of the relevant terms of all existing contracts to which he is a party for the sale of coal from a mine, unless the minister has previously been informed of those contracts.

27 July 88 cC-50.2 Reg 3 Schedule s8.

### **Disclosure of Terms**

**9** A royalty payer shall:

(a) within 60 days after entering into a contract for the sale of coal produced from any Crown coal lands which are subject to a lease held by the royalty payer, inform the minister in writing of the relevant terms of the contract;

and

(b) within 60 days of a written request from the minister, submit a certified copy of the sale contract.

## **Appendix A2**

### **Financial Model Spreadsheets**

Section 4.1 of this study provides a description of the copper, gold, and bauxite models used to assess the impact of ten royalty methods on project economics. For each royalty method, a separate spreadsheet model was built incorporating the relevant calculations. To illustrate the level of detail in these models and their overall layout, key parts of the *ad valorem* net smelter return model are presented in Appendixes A2.1 (gold model), A2.2 (copper model), and A2.3 (bauxite model). The models for the other nine royalty methods are identical except for the details pertaining to the calculation method.

In the first section of Chapter 4 of this study, the impacts of royalty on cut-off grade, mine life, and reserves are investigated. Appendix A2.4 illustrates extracted key portions of the "cut-off grade" copper model.

**Appendix A2.1 Gold Model, Selected Recoverable Value, and After-Tax Cash Flow Data (selected spreadsheet extracts)**

**Gold Recoverable Value Calculations, Royalty (2) 3% of Net Smelter Return**

Unit / Calc. Evaluation Year	-1	0	1	2	3	4	5	6	7
Mine Production, Tonnes of Ore	-	-	-	1,700,000	2,600,000	3,500,000	4,300,000	4,500,000	4,500,000
Gold Content, Grade (g/tonne)	-	-	-	6.0000	6.0000	6.0000	6.0000	6.0000	6.0000
Gold Before Refining (ounces/tonne)	-	-	-	0.1929	0.1929	0.1929	0.1929	0.1929	0.1929
Gold Recovery	-	-	-	0.8500	0.8500	0.8500	0.8500	0.8500	0.8500
Recovered Gold / Tonne Ore, Ounces	-	-	-	0.1640	0.1640	0.1640	0.1640	0.1640	0.1640
Gold Smelter Recovery	-	-	-	0.9800	0.9800	0.9800	0.9800	0.9800	0.9800
Gold Payable Quantity, Ounces / Tonne	-	-	-	0.1607	0.1607	0.1607	0.1607	0.1607	0.1607
Gold Price Per Ounce	-	-	-	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00
Recoverable Insitu Value, \$/Tonne	-	-	-	\$64.28	\$64.28	\$64.28	\$64.28	\$64.28	\$64.28
Annual Insitu Ounces	-	-	-	327,938	501,552	675,166	829,489	868,070	868,070
Mill Recovery Ounces	-	-	-	278,747	426,319	573,891	705,066	737,860	737,860
NSR Ounces	-	-	-	273,172	417,793	562,413	690,965	723,102	723,102
Applicable Royalty %	-	-	-	3.0000%	3.0000%	3.0000%	3.0000%	3.0000%	3.0000%

Note: Tonnes of ore produced ramped up to 4,500,000 by year 6 and remained constant till the final year (18).

**Gold Leveraged After-Tax Cash Flow Model (2) 3% of Net Smelter Return**

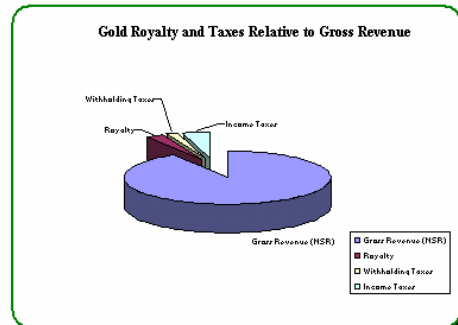
Evaluation Year	-1 Sunk Cost	0	1	2	3	4	5	6
Mine Production, Metric Tons	-	-	-	1,700,000	2,600,000	3,500,000	4,300,000	4,500,000
In-Situ Value per Metric Ton	-	-	-	\$64.28	\$64.28	\$64.28	\$64.28	\$64.28
Gross Revenue, Net Smelter Return (NSR)	-	-	-	109,268,813	167,117,009	224,965,204	276,385,822	289,240,976
- Freight	-	-	-	(1,414,944)	(2,207,313)	(3,030,810)	(3,798,038)	(4,054,185)
Revenue to the Mine	-	-	-	107,853,869	164,909,696	221,934,394	272,587,784	285,186,792
- Royalty (Unit Based, \$/NSR Ounces)	-	-	-	(3,278,064)	(5,013,510)	(6,748,956)	(8,291,575)	(8,677,229)
Net Revenue	-	-	-	104,575,805	159,896,186	215,185,438	264,296,209	276,509,562
- Mine Operating Expense	-	-	-	(21,224,160)	(33,109,690)	(45,462,151)	(56,970,569)	(60,812,771)
- Mill Operating Expense	-	-	-	(17,686,800)	(27,591,408)	(37,885,126)	(47,475,475)	(50,677,309)
- Overhead Expense	-	-	-	(12,734,496)	(19,865,814)	(27,277,290)	(34,182,342)	(36,487,662)
Operating Profit	-	-	-	52,930,349	79,329,274	104,560,871	125,667,824	128,531,821
- Dividend Withholding Tax (10%)	-	-	-	-	-	(1,945,627)	(4,204,597)	(6,281,648)
- Interest Expense	-	-	(3,672,000)	(12,815,280)	(16,523,266)	(16,523,266)	(14,457,857)	(12,392,449)
- Interest Withholding Taxes (15%)	-	-	-	(550,800)	(1,922,292)	(2,478,490)	(2,478,490)	(2,168,679)
- Mine Reclamation	-	-	-	-	-	-	-	-
Net Operating Profit	-	-	(3,672,000)	39,564,269	60,883,717	83,613,488	104,526,880	107,689,045
- Amortization of Mine Explor/Acq	-	-	-	(12,000,000)	(12,000,000)	(12,000,000)	(12,000,000)	(12,000,000)
- Amortization of Development	-	-	-	(12,168,000)	(12,168,000)	(12,168,000)	(12,168,000)	(12,168,000)
- Depreciation of Equipment	-	-	-	(48,185,657)	(49,186,225)	(50,206,804)	(51,247,794)	(52,309,604)
- Loss Carry Forward	-	-	-	(3,672,000)	(36,461,388)	(48,931,896)	(39,693,212)	(10,582,126)
Taxable Income	-	-	(3,672,000)	(36,461,388)	(48,931,896)	(39,693,212)	(10,582,126)	20,629,315
- Income Tax	-	-	-	-	-	-	-	(6,188,794)
Net Income	-	-	(3,672,000)	(36,461,388)	(48,931,896)	(39,693,212)	(10,582,126)	14,440,520
+ Total Amortization	-	-	-	24,168,000	24,168,000	24,168,000	24,168,000	24,168,000
+ Depreciation	-	-	-	48,185,657	49,186,225	50,206,804	51,247,794	52,309,604
+ Loss Carry Forward	-	-	-	3,672,000	36,461,388	48,931,896	39,693,212	10,582,126
Mine Development	-	(36,000,000)	(85,680,000)	-	-	-	-	-
Mine Equipment	-	(66,000,000)	(168,300,000)	(102,999,600)	-	-	-	-
Working Capital	-	-	-	(13,500,000)	-	-	-	-
Sustaining Capital	-	-	-	-	(7,003,973)	(7,144,052)	(7,286,933)	(7,432,672)
Borrowed Money Received	-	61,200,000	152,388,000	61,799,760	-	-	-	-
- Principal Repaid	-	-	-	-	(34,423,470)	(34,423,470)	(34,423,470)	(34,423,470)
Exploration / Acquisition	(60,000,000)	-	-	-	-	-	-	-
After Tax Cash Flow (ATCF)	(60,000,000)	(40,800,000)	(105,264,000)	(15,135,571)	19,456,274	42,045,966	62,816,477	59,644,109
Discounted After-Tax Cash Flow	-	(40,800,000)	(89,206,780)	(10,870,131)	11,841,689	21,686,841	27,457,661	22,094,059
Cumulative Discounted Cash Flow	-	(40,800,000)	(130,006,780)	(140,876,911)	(129,035,222)	(107,348,381)	(79,890,720)	(57,796,661)

### Appendix A2.1 Gold Model, Sample of Effective Tax Calculations (selected spreadsheet extracts)

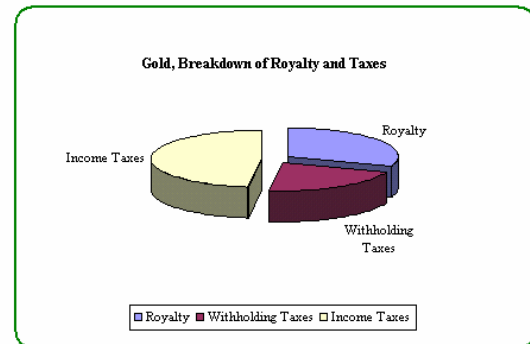
Effective Tax & Cash Flow Calculations							
Evaluation Year	-1	0	1	2	3	4	5
Gross Revenue	-	-	-	109,268,813	167,117,009	224,965,204	276,385,822
- Operating Expenses	-	-	-	(53,060,400)	(82,774,224)	(113,655,377)	(142,426,424)
- Development / Exploration	(60,000,000)	(36,000,000)	(85,680,000)	-	-	-	-
- Capital Expenditures	-	(66,000,000)	(168,300,000)	(116,499,600)	(7,003,973)	(7,144,052)	(7,286,933)
+/- Borrowed Money / Principal and Intere	-	61,200,000	148,716,000	48,984,480	(50,946,736)	(50,946,736)	(48,881,327)
Effective Before-Tax Cash Flow	(60,000,000)	(40,800,000)	(105,264,000)	(11,306,707)	26,392,076	53,219,039	77,791,138
Effective Total Taxes Paid	-	-	-	(3,828,864)	(6,935,802)	(11,173,073)	(14,974,661)
Cash Flow	(60,000,000)	(40,800,000)	(105,264,000)	(15,135,571)	19,456,274	42,045,966	62,816,477

Discount Rate		Cumulative, 0%	10%	12%	18%	25%
Project NPV Sensitivity		553,521,717	135,744,244	97,024,856	19,661,452	(28,748,872)
Project Internal Rate of Return	20.3%					
Uniform Royalty \$/Unit	3.00%					

Description of Cumulative Values	% of Gross	% of Tax Revenue	Total Values
Gross Revenue (NSR)	100.00%		4,499,304,078
Royalty	3.00%	30.72%	134,979,122
Withholding Taxes	2.07%	21.15%	92,950,196
Income Taxes	4.70%	48.13%	211,509,307
<b>Total Tax/Royalty Revenue Received</b>	<b>9.77%</b>	<b>100.00%</b>	<b>439,438,625</b>



Description of Cumulative Values	% of Gross	Total Values
Gross Revenue (NSR)	100.00%	4,499,304,078
Royalty	3.00%	(134,979,122)
Withholding Taxes	2.07%	(92,950,196)
Income Taxes	4.70%	(211,509,307)
Operating Expenses	57.74%	(2,598,087,076)
Mine Development/Explor.	2.70%	(121,680,000)
Capital	12.65%	(569,123,790)
Effects of Borrowed Money	2.34%	(105,299,833)
Value to Producer	14.80%	665,674,754



Description of Effective Tax Rate (ETR) Val	ETR #'s
Cumulative Tax All Sources	439,438,625
Cumulative Before-Tax Cash Flow	1,045,113,379
<b>Effective Tax Rate (Cum Tax / Cum BTCF)</b>	<b>42.05%</b>

**Appendix A2.2 Copper Model, Selected Recoverable Value  
(selected spreadsheet extracts)**

**Copper Leveraged After-Tax Cash Flow Model (2) NSR Royalty, 3% of NSR**

Unit / Calc. Evaluation Year	-1	0	1	2	3	4	5
Mine Production, Tonnes of Ore	-	-	-	10,941,176	18,235,294	18,235,294	18,235,294
Copper Content, Grade (% / tonne)	-	-	-	0.0150	0.0150	0.0140	0.0130
Copper Content, Grade (lbs / tonne)	-	-	-	33.0693	33.0693	30.8647	28.6601
Annual Insitu Copper Contained in Ore	-	-	-	361,817,047	603,028,412	562,826,518	522,624,624
Copper Recovery In Sx Solution	-	-	-	0.8000	0.8000	0.8000	0.8000
Sx Solution Copper / Tonne Ore, (Pounds)	-	-	-	26.4554	26.4554	24.6917	22.9280
Annual Copper in Sx Solution	-	-	-	289,453,638	482,422,729	450,261,214	418,099,699
Copper Recovery From SxEW	-	-	-	0.9000	0.9000	0.9000	0.9000
Copper Payable Quantity, Pounds / Tonne	-	-	-	23.8099	23.8099	22.2226	20.6352
Annual Payable Copper Produced, Pounds	-	-	-	260,508,274	434,180,456	405,235,093	376,289,729
Copper Price Per Pound	-	-	-	\$1.10	\$1.10	\$1.10	\$1.10
Copper Revenue (NSR) Per Tonne of Ore	-	-	-	\$26.19	\$26.19	\$24.44	\$22.70
Equivalent Payable Copper (RIV Divided by Copper Price)	-	-	-	23.8099	23.8099	22.2226	20.6352
Equivalent Copper in Ore	-	-	-	33.0693	33.0693	30.8647	28.6601
Equivalent Copper Grade (lbs / tonne)	-	-	-	0.0150	0.0150	0.0140	0.0130
Royalty %	-	-	-	3.0000%	3.0000%	3.0000%	3.0000%

*Note:* The copper model production is uniform in tonnage and grade after year 5.

## Appendix A2.2 Copper Model, Selected After-Tax Cash Flow Data (selected spreadsheet extracts)

### Copper ATCF Based on (2) NSR Royalty, 3% of NSR

Evaluation Year	-1	0	1	2	3	4	5
Mine Production, Tonnes	-	-	-	10,941,176	18,235,294	18,235,294	18,235,294
In-Situ Value per Tonne	-	-	-	\$ 26.19	\$ 26.19	\$ 24.44	\$ 22.70
Net Smelter Return	-	-	-	286,559,101	477,598,502	445,758,602	413,918,702
- Freight	-	-	-	(5,691,600)	(9,675,720)	(9,869,234)	(10,066,619)
Revenue to the Mine	-	-	-	280,867,501	467,922,782	435,889,368	403,852,083
- Royalty % of NSR	-	-	-	(8,596,773)	(14,327,955)	(13,372,758)	(12,417,561)
Net Revenue	-	-	-	272,270,728	453,594,827	422,516,610	391,434,522
- Mine Operating Expense	-	-	-	(31,872,960)	(54,184,032)	(55,267,713)	(56,373,067)
- Mill Operating Expense	-	-	-	(43,256,160)	(73,535,472)	(75,006,181)	(76,506,305)
- Overhead Expense	-	-	-	(17,074,800)	(29,027,160)	(29,607,703)	(30,199,857)
Operating Profit	-	-	-	180,066,808	296,848,163	262,635,012	228,355,292
- Dividend Withholding Tax (10%)	-	-	-	-	-	(13,519,376)	(9,807,201)
- Interest Expense	-	-	(7,452,000)	(26,289,360)	(36,402,048)	(36,402,048)	(31,851,792)
- Interest Withholding Taxes (15%)	-	-	-	(1,117,800)	(3,943,404)	(5,460,307)	(5,460,307)
- Mine Reclamation	-	-	-	-	-	-	-
Net Operating Profit	-	-	(7,452,000)	152,659,648	256,502,711	207,253,281	181,235,992
- Amortization of Mine Explor/Acq	-	-	-	(15,000,000)	(15,000,000)	(15,000,000)	(15,000,000)
- Amortization of Development	-	-	-	(9,126,000)	(9,126,000)	(9,126,000)	(9,126,000)
- Depreciation of Equipment	-	-	-	(131,415,429)	(134,144,249)	(136,927,646)	(139,766,711)
- Loss Carry Forward	-	-	-	(7,452,000)	(10,333,780)	-	-
Taxable Income	-	-	(7,452,000)	(10,333,780)	87,898,682	46,199,635	17,343,281
- Income Tax	-	-	-	-	(26,369,604)	(13,859,890)	(5,202,984)
Net Income	-	-	(7,452,000)	(10,333,780)	61,529,077	32,339,744	12,140,297
+ Total Amortization	-	-	-	24,126,000	24,126,000	24,126,000	24,126,000
+ Depreciation	-	-	-	131,415,429	134,144,249	136,927,646	139,766,711
+ Loss Carry Forward	-	-	-	7,452,000	10,333,780	-	-
Mine Development	-	(27,000,000)	(64,260,000)	-	-	-	-
Mine Equipment	-	(180,000,000)	(459,000,000)	(280,908,000)	-	-	-
Working Capital	-	-	-	(47,047,059)	-	-	-
Sustaining Capital	-	-	-	-	(19,101,744)	(19,483,779)	(19,873,454)
Borrowed Money Received	-	124,200,000	313,956,000	168,544,800	-	-	-
- Principal Repaid	-	-	-	-	(75,837,600)	(75,837,600)	(75,837,600)
Exploration / Acquisition	(75,000,000)	-	-	-	-	-	-
After Tax Cash Flow (ATCF)	(75,000,000)	(82,800,000)	(216,756,000)	(6,750,611)	135,193,763	98,072,012	80,321,953
Discounted After-Tax Cash Flow	-	(82,800,000)	(183,691,525)	(4,848,183)	82,283,098	50,584,452	35,109,466
Cumulative Discounted Cash Flow	-	(82,800,000)	(266,491,525)	(271,339,709)	(189,056,611)	(138,472,159)	(103,362,693)

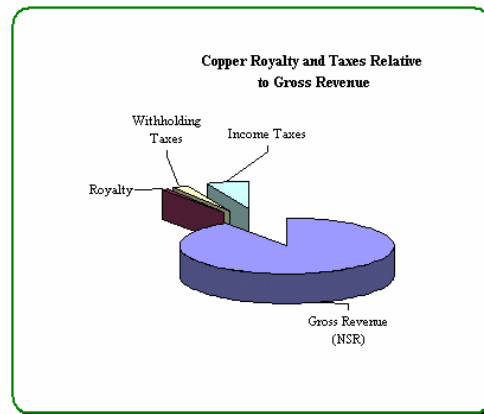
**Appendix A2.2 Copper Model, Cash Flow, and Effective Tax Rate Calculations (selected spreadsheet extracts)**

**Effective Tax & Cash Flow Calculations**

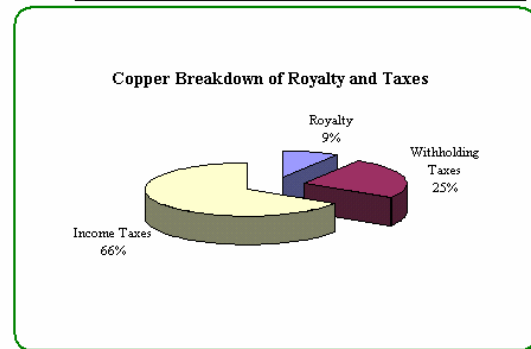
Evaluation Year	-1	0	1	2	3	4	5
Gross Revenue	-	-	-	286,559,101	477,598,502	445,758,602	413,918,702
- Operating Expenses	-	-	-	(97,895,520)	(166,422,384)	(169,750,832)	(173,145,848)
- Development / Exploration	(75,000,000)	(27,000,000)	(64,260,000)	-	-	-	-
- Capital Expenditures	-	(180,000,000)	(459,000,000)	(327,955,059)	(19,101,744)	(19,483,779)	(19,873,454)
+/- Borrowed Money / Principal and Interest	-	124,200,000	306,504,000	142,255,440	(112,239,648)	(112,239,648)	(107,689,392)
Effective Before-Tax Cash Flow	(75,000,000)	(82,800,000)	(216,756,000)	2,963,962	179,834,726	144,284,343	113,210,007
Effective Total Taxes Paid	-	-	-	(9,714,573)	(44,640,964)	(46,212,332)	(32,888,054)
Cash Flow	(75,000,000)	(82,800,000)	(216,756,000)	(6,750,611)	135,193,763	98,072,012	80,321,953

Discount Rate		Cumulative, 0%	10%	12%	18%	25%
Project NPV Sensitivity		1,351,531,542	305,980,174	221,719,009	61,234,390	(34,238,525)
Project Internal Rate of Return	21.93%					
Uniform Royalty	3.0000%					

Description of Cumulative Values	% of Gross	% of Tax Revenue	Total Values
Gross Revenue (NSR)	100.00%		8,412,101,617
Royalty	3.00%	24.92%	252,363,049
Withholding Taxes	2.53%	21.05%	213,111,827
Income Taxes	6.50%	54.03%	547,084,947
Total Tax/Royalty Revenue Received	12.04%	100.00%	1,012,559,822



Description of Cumulative Values	% of Gross	Total Values
Gross Revenue (NSR)	100.00%	8,412,101,617
Royalty	3.00%	(252,363,049)
Withholding Taxes	2.53%	(213,111,827)
Income Taxes	6.50%	(547,084,947)
Operating Expenses	49.49%	(4,162,861,193)
Mine Development/Exploration	1.08%	(91,260,000)
Capital	18.60%	(1,564,486,693)
Effects of Borrowed Money	2.73%	(229,402,368)
Value to Producer	16.07%	1,351,531,542



Description of Effective Tax Rate (ETR) Variables	ETR #'s
Cumulative Tax All Sources	1,012,559,822
Cumulative Before-Tax Cash Flow	2,289,091,364
Effective Tax Rate (Cum Tax / Cum BTCF)	44.23%



**Appendix A2.3 Bauxite Model, Selected Recoverable Value Data  
(selected spreadsheet extracts)**

**Bauxite Leveraged After-Tax Cash Flow Model (2) 3%Net Smelter (Refinery) Return**

Refinery Production Aluminum Oxide, tonnes 85,000,000  
 Mine Life, Production Years 37  
 Annual Refinery Capacity (tonnes) 2,300,000

Evaluation Year	-1	0	1	2	3	4	5
Overburden Removal, Tonnes	-	-	-	-	900,000	1,500,000	1,500,000
Annual Bauxite Mined, Tonnes	-	-	-	-	3,600,000	6,000,000	6,000,000
Moisture	-	-	-	-	7.00%	7.00%	7.00%
Net Annual Tonnes to Beneficiation Plant	-	-	-	-	3,852,000	6,420,000	6,420,000
Plant Recovery	-	-	-	-	95.00%	95.00%	95.00%
Net Annual Tonnage to Refinery	-	-	-	-	3,659,400	6,099,000	6,099,000
Refinery Moisture Adjustment	-	-	-	-	7.00%	7.00%	7.00%
Net Annual Tonnage Processed At Refinery	-	-	-	-	3,403,242	5,672,070	5,672,070
% of Extracted Alumina	-	-	-	-	45.00%	45.00%	45.00%
Net Annual Tonnage of Alumina	-	-	-	-	1,531,459	2,552,432	2,552,432
% Extraction Efficiency	-	-	-	-	90.00%	90.00%	90.00%
Net Annual Refinery Capacity (Tonnes Al2O3)	-	-	-	-	1,378,313	2,297,188	2,297,188
Selling Price, Alumina Oxide, \$/ Tonne	-	-	-	\$	340.00	\$ 340.00	\$ 340.00
Market Premium	-	-	-	\$	1.02	1.02	1.02
Applicable Royalty, %	-	-	-	-	3.0000%	3.0000%	3.0000%

**Appendix A2.3 Bauxite Model, Selected After-Tax Cash Flow Data  
(selected spreadsheet extracts)**

**Bauxite Leveraged After-Tax Cash Flow Model (2) 3% Net Smelter (Refinery) Return**

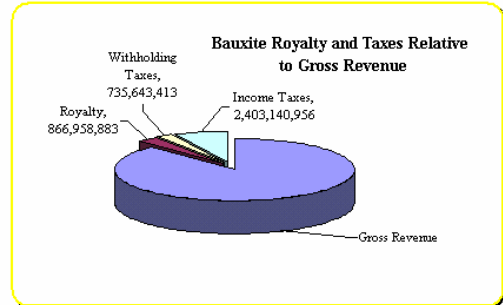
Evaluation Year	-1	0	1	2	3	4	5
Refinery Production, Tonne	-	-	-	-	1,378,313	2,297,188	2,297,188
Value / Tonne	-	-	-	-	\$ 340.00	\$ 340.00	\$ 340.00
Net Refinery Return	-	-	-	-	468,626,423	781,044,039	781,044,039
- Freight	-	-	-	-	(2,194,015)	(3,729,826)	(3,804,422)
Refinery Revenue to the Mine	-	-	-	-	466,432,408	777,314,213	777,239,617
- Royalty, % of Net Refinery Return	-	-	-	-	-14,058,793	-23,431,321	-23,431,321
Net Revenue	-	-	-	-	452,373,616	753,882,892	753,808,295
- Mine Operating Expense	-	-	-	-	(27,147,399)	(46,150,578)	(47,073,589)
- Mill Operating Expense	-	-	-	-	(143,342,326)	(243,681,954)	(248,555,593)
- Overhead Expense	-	-	-	-	(1,462,677)	(2,486,551)	(2,536,282)
Operating Profit	-	-	-	-	280,421,214	461,563,810	455,642,832
- Dividend Withholding Tax, 10%	-	-	-	-	-	(8,015,486)	(23,763,721)
- Interest Expense	-	-	(12,204,000)	(42,498,000)	(61,025,232)	(61,025,232)	(53,397,078)
- Interest Withholding Taxes, 15%	-	-	-	(1,830,600)	(6,374,700)	(9,153,785)	(9,153,785)
- Mine Reclamation	-	-	-	-	-	-	-
Net Operating Profit	-	-	(12,204,000)	(44,328,600)	213,021,282	383,369,307	369,328,248
- Amortization of Mine Explor/Acq	-	-	-	-	(10,000,000)	(10,000,000)	(10,000,000)
- Amortization of Development	-	-	-	-	(9,090,000)	(9,090,000)	(9,090,000)
- Depreciation of Equipment	-	-	-	-	(229,177,906)	(229,996,552)	(230,831,572)
- Loss Carry Forward	-	-	-	(12,204,000)	(56,532,600)	(91,779,224)	-
Taxable Income	-	-	(12,204,000)	(56,532,600)	(91,779,224)	42,503,531	119,406,676
- Income Tax	-	-	-	-	-	(12,751,059)	(35,822,003)
Net Income	-	-	(12,204,000)	(56,532,600)	(91,779,224)	29,752,471	83,584,673
+ Total Amortization	-	-	-	-	19,090,000	19,090,000	19,090,000
+ Depreciation	-	-	-	-	229,177,906	229,996,552	230,831,572
+ Loss Carry Forward	-	-	-	12,204,000	56,532,600	91,779,224	-
Mine Development	-	(27,000,000)	(45,900,000)	(18,000,000)	-	-	-
Mine Equipment	-	(312,000,000)	(795,600,000)	(496,645,344)	-	-	-
Working Capital	-	-	-	(73,257,336)	-	-	-
Sustaining Capital	-	-	-	-	(5,730,523)	(5,045,134)	(5,962,036)
Borrowed Money Received	-	203,400,000	504,900,000	308,787,206	-	-	-
- Principal Repaid	-	-	-	-	(127,135,901)	(127,135,901)	(127,135,901)
Exploration / Acquisition	(50,000,000)	-	-	-	-	-	-
After Tax Cash Flow (ATCF)	(50,000,000)	(135,600,000)	(348,804,000)	(323,444,074)	80,154,858	237,637,214	200,408,308
Discounted After-Tax Cash Flow	-	(135,600,000)	(303,307,826)	(244,570,188)	52,703,120	135,869,848	99,638,348
Cumulative Discounted Cash Flow	-	(135,600,000)	(438,907,826)	(683,478,014)	(630,774,894)	(494,905,046)	(395,266,698)

### Appendix A2.3 Bauxite Model, Selected Economic and Effective Tax Rate Data (selected spreadsheet extracts)

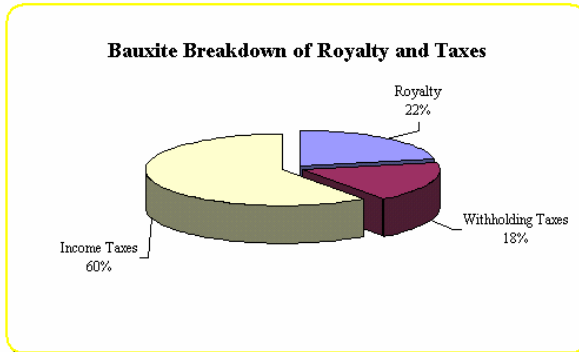
#### Effective Tax & Cash Flow Calculations

Evaluation Year	-1	0	1	2	3	4	5
Gross Revenue	-	-	-	-	468,626,423	781,044,039	781,044,039
- Operating Expenses	-	-	-	-	(174,146,416)	(296,048,908)	(301,969,886)
- Development / Exploration	(50,000,000)	(27,000,000)	(45,900,000)	(18,000,000)	-	-	-
- Capital Expenditures	-	(312,000,000)	(795,600,000)	(569,902,680)	(5,730,523)	(5,845,134)	(5,962,036)
+/- Borrowed Money / Principal and I	-	203,400,000	492,696,000	266,289,206	(188,161,133)	(188,161,133)	(180,532,979)
<b>Effective Before-Tax Cash Flow</b>	<b>(50,000,000)</b>	<b>(135,600,000)</b>	<b>(348,804,000)</b>	<b>(321,613,474)</b>	<b>100,588,351</b>	<b>290,988,865</b>	<b>292,579,138</b>
<b>Effective Total Taxes Paid</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(1,830,600)</b>	<b>(20,433,493)</b>	<b>(53,351,651)</b>	<b>(92,170,830)</b>
<b>Cash Flow</b>	<b>(50,000,000)</b>	<b>(135,600,000)</b>	<b>(348,804,000)</b>	<b>(323,444,074)</b>	<b>80,154,858</b>	<b>237,637,214</b>	<b>200,408,308</b>

Description of Cumulative Values	% of Gross	% of Tax Revenue	Total Values
Gross Revenue (NSR)	100.00%		28,898,629,443
Royalty	3.00%	21.64%	866,958,883
Withholding Taxes	2.55%	18.36%	735,643,413
Income Taxes	8.32%	59.99%	2,403,140,956
<b>Total Tax/Royalty Revenue Received</b>	<b>13.86%</b>	<b>100.00%</b>	<b>4,005,743,253</b>



Description of Cumulative Values	% of Gross	Total Values
Gross Revenue (NSR)	100.00%	28,898,629,443
Royalty	3.00%	(866,958,883)
Withholding Taxes	2.55%	(735,643,413)
Income Taxes	8.32%	(2,403,140,956)
Operating Expenses	56.77%	(16,405,834,150)
Mine Development/Explor.	0.31%	(90,900,000)
Capital	8.15%	(2,356,110,518)
Effects of Borrowed Money	1.32%	(382,712,624)
Value to Producer	-19.58%	5,657,328,898



Description of Effective Tax Rate (ETR) Values	ETR #'s
Cumulative Tax All Sources	4,005,743,253
Cumulative Before-Tax Cash Flow	9,613,072,152
<b>Effective Tax Rate (Cum Tax / Cum BTCF)</b>	<b>41.67%</b>

\*

**Appendix A2.4 Copper Cut-off Grade Model, Selected Recoverable Value Data  
(selected spreadsheet extracts)**

**Copper Leveraged After-Tax Cash Flow Model (2) NSR Royalty, 3% of NSR**

Unit / Calc. Evaluation Year	-1	0	1	2	3	4	5	6
Mine Production, Tonnes of Ore	-	-	-	10,941,176	18,235,294	18,235,294	18,235,294	18,235,294
Copper Content, Grade (% / tonne)	-	-	-	0.0180	0.0180	0.0170	0.0160	0.0150
Copper Content, Grade (lbs / tonne)	-	-	-	39.6832	39.6832	37.4785	35.2739	33.0693
Annual Insitu Copper Contained in Ore	-	-	-	434,180,456	723,634,094	683,432,200	643,230,306	603,028,412
Copper Recovery In Sx Solution	-	-	-	0.8000	0.8000	0.8000	0.8000	0.8000
Sx Solution Copper / Tonne Ore, (Pounds)	-	-	-	31.7465	31.7465	29.9828	28.2191	26.4554
Annual Copper in Sx Solution	-	-	-	347,344,365	578,907,275	546,745,760	514,584,245	482,422,729
Copper Recovery From SxEW	-	-	-	0.9000	0.9000	0.9000	0.9000	0.9000
Copper Payable Quantity, Pounds / Tonne	-	-	-	28.5719	28.5719	26.9845	25.3972	23.8099
Annual Payable Copper Produced, Pounds	-	-	-	312,609,929	521,016,548	492,071,184	463,125,820	434,180,456
Copper Price Per Pound	-	-	-	\$1.05	\$1.05	\$1.05	\$1.05	\$1.05
Copper Revenue (NSR) Per Tonne of Ore	-	-	-	\$30.00	\$30.00	\$28.33	\$26.67	\$25.00
Equivalent Payable Copper (RIV Divided by Copper Price)	-	-	-	31.7465	31.7465	30.1592	28.5719	28.5719
Equivalent Copper in Ore	-	-	-	44.0924	44.0924	41.8878	39.6832	39.6832
Equivalent Copper Grade (lbs / tonne)	-	-	-	0.0200	0.0200	0.0190	0.0180	0.0180
Royalty %	-	-	-	3.0000%	3.0000%	3.0000%	3.0000%	3.0000%

### Appendix A2.4 Copper Cut-off Grade Model, Selected After-Tax Cash Flow Data (selected spreadsheet extracts)

#### Copper Leveraged After-Tax Cash Flow Model (2) NSR Royalty, 3% of NSR

Evaluation Year	-1	0	1	2	3	4	5
Mine Production, Tonnes	-	-	-	10,941,176	18,235,294	18,235,294	18,235,294
In-Situ Value per Tonne	-	-	-	\$ 30.00	\$ 30.00	\$ 28.33	\$ 26.67
Net Smelter Return	-	-	-	328,240,425	547,067,375	516,674,743	486,282,111
- Freight	-	-	-	(5,691,600)	(9,675,720)	(9,869,234)	(10,066,619)
Revenue to the Mine	-	-	-	322,548,825	537,391,655	506,805,509	476,215,492
- Royalty % of NSR	-	-	-	(9,847,213)	(16,412,021)	(15,500,242)	(14,588,463)
Net Revenue	-	-	-	312,701,612	520,979,634	491,305,267	461,627,029
- Mine Operating Expense	-	-	-	(31,872,960)	(54,184,032)	(55,267,713)	(56,373,067)
- Mill Operating Expense	-	-	-	(43,256,160)	(73,535,472)	(75,006,181)	(76,506,305)
- Overhead Expense	-	-	-	(17,074,800)	(29,027,160)	(29,607,703)	(30,199,857)
Operating Profit	-	-	-	220,497,692	364,232,970	331,423,669	298,547,800
- Dividend Withholding Tax (10%)	-	-	-	-	(2,465,114)	(17,753,741)	(14,326,002)
- Interest Expense	-	-	(7,452,000)	(26,289,360)	(36,402,048)	(36,402,048)	(31,851,792)
- Interest Withholding Taxes (15%)	-	-	-	(1,117,800)	(3,943,404)	(5,460,307)	(5,460,307)
- Mine Reclamation	-	-	-	-	-	-	-
Net Operating Profit	-	-	(7,452,000)	193,090,532	321,422,404	271,807,573	246,909,699
- Amortization of Mine Explor/Acq	-	-	-	(15,000,000)	(15,000,000)	(15,000,000)	(15,000,000)
- Amortization of Development	-	-	-	(9,126,000)	(9,126,000)	(9,126,000)	(9,126,000)
- Depreciation of Equipment	-	-	-	(131,415,429)	(134,144,249)	(136,927,646)	(139,766,711)
- Loss Carry Forward	-	-	-	(7,452,000)	-	-	-
Taxable Income	-	-	(7,452,000)	30,097,104	163,152,155	110,753,927	83,016,988
- Income Tax	-	-	-	(9,029,131)	(48,945,646)	(33,226,178)	(24,905,096)
Net Income	-	-	(7,452,000)	21,067,973	114,206,508	77,527,749	58,111,891
+ Total Amortization	-	-	-	24,126,000	24,126,000	24,126,000	24,126,000
+ Depreciation	-	-	-	131,415,429	134,144,249	136,927,646	139,766,711
+ Loss Carry Forward	-	-	-	7,452,000	-	-	-
Mine Development	-	(27,000,000)	(64,260,000)	-	-	-	-
Mine Equipment	-	(180,000,000)	(459,000,000)	(280,908,000)	-	-	-
Working Capital	-	-	-	(47,047,059)	-	-	-
Sustaining Capital	-	-	-	-	(19,101,744)	(19,483,779)	(19,873,454)
Borrowed Money Received	-	124,200,000	313,956,000	168,544,800	-	-	-
- Principal Repaid	-	-	-	-	(75,837,600)	(75,837,600)	(75,837,600)
Exploration / Acquisition	(75,000,000)	-	-	-	-	-	-
After Tax Cash Flow (ATCF)	(75,000,000)	(82,800,000)	(216,756,000)	24,651,142	177,537,413	143,260,016	126,293,548
Discounted After-Tax Cash Flow	(82,800,000)	(183,691,525)	(17,704,067)	17,704,067	108,054,751	73,891,922	55,204,074
Cumulative Discounted Cash Flow	(82,800,000)	(266,491,525)	(248,787,459)	(248,787,459)	(140,732,708)	(66,840,786)	(11,636,712)

### Appendix A2.4 Copper Cut-off Grade Model, Cash Flow, Economic, and Effective Tax Rate Data (selected spreadsheet extracts)

**Effective Tax & Cash Flow Calculations**

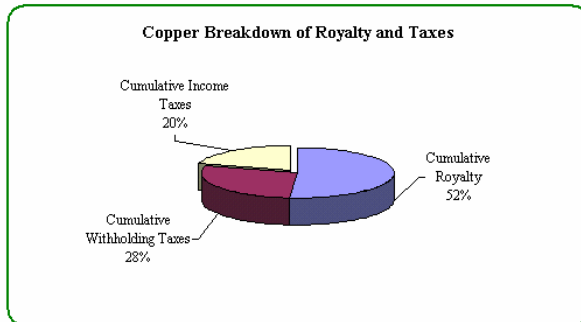
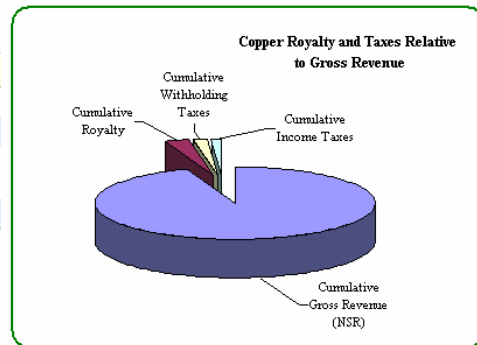
Evaluation Year	-1	0	1	2	3	4	5
Gross Revenue	-	-	-	328,240,425	547,067,375	516,674,743	486,282,111
- Operating Expenses	-	-	-	(97,895,520)	(166,422,384)	(169,750,832)	(173,145,848)
- Development / Exploration	(75,000,000)	(27,000,000)	(64,260,000)	-	-	-	-
- Capital Expenditures	-	(180,000,000)	(459,000,000)	(327,955,059)	(19,101,744)	(19,483,779)	(19,873,454)
+/- Borrowed Money / Principal and Intere	-	124,200,000	306,504,000	142,255,440	(112,239,648)	(112,239,648)	(107,689,392)
<b>Effective Before-Tax Cash Flow</b>	<b>(75,000,000)</b>	<b>(82,800,000)</b>	<b>(216,756,000)</b>	<b>44,645,286</b>	<b>249,303,599</b>	<b>215,200,485</b>	<b>185,573,416</b>
<b>Effective Total Taxes Paid</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(19,994,144)</b>	<b>(71,766,186)</b>	<b>(71,940,469)</b>	<b>(59,279,868)</b>
<b>After-Tax Cash Flow</b>	<b>(75,000,000)</b>	<b>(82,800,000)</b>	<b>(216,756,000)</b>	<b>24,651,142</b>	<b>177,537,413</b>	<b>143,260,016</b>	<b>126,293,548</b>

Discount Rate	Cumulative, 0%	10%	12%	18%	25%
Project NPV Sensitivity	257,801,865	133,096,912	109,642,382	48,807,703	(5,163,554)
Project Modified Internal Rate of Return	18.84%				
Uniform Royalty \$/Unit	3.0000%				

Description	% of Gross	% of Tax Revenue	Total Values
Cumulative Gross Revenue (NSR)	100.00%		6,564,808,502
Cumulative Royalty	3.00%	51.38%	196,944,255
Cumulative Withholding Taxes	1.65%	28.19%	108,045,903
Cumulative Income Taxes	1.19%	20.44%	78,343,656
<b>Total Tax/Royalty Revenue Received</b>	<b>5.84%</b>	<b>100.00%</b>	<b>383,333,814</b>

Description	% of Gross	Total Values
Cumulative Gross Revenue (NSR)	100.00%	6,564,808,502
Cumulative Royalty	3.00%	(196,944,255)
Cumulative Withholding Taxes	1.65%	(108,045,903)
Cumulative Income Taxes	1.19%	(78,343,656)
Cumulative Operating Expenses	63.41%	(4,162,861,193)
Cumulative Mine Development/Exploration	1.39%	(91,260,000)
Cumulative Capital	21.73%	(1,426,775,735)
Cumulative Effects of Borrowed Money	3.49%	(229,402,368)
Cumulative Value to Producer	4.13%	271,175,392

Description of Effective Tax Rate (ETR) Val	ETR #'s
Cumulative Tax All Sources	383,333,814
Cumulative Before-Tax Cash Flow	579,509,206
<b>Effective Tax Rate (Cum Tax / Cum BTCF)</b>	<b>66.15%</b>



## **Appendix A3**

### **Examples of Royalty Administrative and Collection Regimes**

This Appendix supports the discussion in Chapter 3 centring on the role of government departments with regard to administration, collection, and apportionment of royalties (under “Types of Royalties and Assessment Methods”). It provides a cross-section example of representative regulatory regimes and highlights, in tabulated form, which level of government, i.e.:

- central, federal,
- state, province, autonomous region and
- regional, county, local (regency, shire, city etc.), community,

is empowered to manage mineral resources, and to legislate about and administer royalties. Information is reported by region and in the following order:

#### **A3.1 AFRICA**

- Ghana
- South Africa

#### **A3.2 ASIA AND PACIFIC**

- India
- Indonesia
- Papua New Guinea
- Philippines

#### **A3.3 AUSTRALIA**

- Western Australia (and other states generally)

#### **A3.4 LATIN AMERICA**

- Argentina
- Brazil

#### **A3.5 NORTH AMERICA**

- Arizona
- British Columbia
- Michigan
- Nevada
  
- Northwest Territories
- Ontario
- Saskatchewan

### A3.1 AFRICA

<b>GHANA</b>				
<b>Level of government</b>	<b>Central / Federal</b>	<b>State / Province</b>	<b>Regional, County, Local (Regency, Shire, City), Community</b>	<b>Remarks</b>
<b>Formulates policy and legislates on mineral royalties</b>	Secretary for Lands and Natural Resources <sup>1</sup> in consultation with the Secretary for Finance and Economic Planning <sup>2</sup>			Minerals Commission has advisory role on all issues regarding mineral resource management
<b>Administers royalty legislation through following department(s)</b>	Commissioner of Internal Revenue <sup>3</sup>			
<b>Sets and amends royalty rates across the board</b>	Minerals Commission advising Secretary for Lands and Natural Resources <sup>4</sup>			
<b>Collects and retains or disperses mineral royalties</b>	Commissioner of Internal Revenue			

<b>SOUTH AFRICA<sup>5</sup></b>				
<b>Level of government</b>	<b>Central / Federal</b>	<b>State / Province</b>	<b>Regional, County, Local (Regency, Shire, City), Community</b>	<b>Remarks</b>
<b>Formulates policy and legislates on mineral royalties</b>	The National Treasury (Department of Finance)			Historically the Department of Minerals and Energy (DME)
<b>Administers royalty legislation through following department(s)</b>	South African Revenue Services (SARS)			Historically DME regional offices
<b>Sets and amends royalty rates across the board</b>	The National Treasury			

<sup>1</sup> See Minerals (Royalties) Regulations LI 1349 of 1987, Regulation 1.

<sup>2</sup> See Mining and Mineral Law 19 of 1986, Part IV, Section 22(3).

<sup>3</sup> See Minerals (Royalties) Regulations LI 1349 of 1987, Regulation 7.

<sup>4</sup> See Mining and Mineral Law 19 of 1986, Part IV, Section 22(2).

<sup>5</sup> The information in the table reflects the new position in South Africa. Historically the policy, administration and collection of mineral royalties were the responsibility of the Minister of Minerals and Energy. The new position was extracted from the Draft Mineral and Petroleum Royalty Bill, 10 March 2003, National Treasury, Pretoria, South Africa (not gazetted).





### A3.2 ASIA AND PACIFIC

<b>INDIA</b>				
<b>Level of government</b>	<b>Central / Federal</b>	<b>State / Province</b>	<b>Regional, County, Local (Regency, Shire, City), Community</b>	<b>Remarks</b>
<b>Formulates policy and legislates on mineral royalties</b>	Single nationwide Mining Act			
<b>Administers royalty legislation through following department(s)</b>		The Department of Mines		
<b>Sets and amends royalty rates across the board</b>	At intervals of not less than 3 years, except for coal	Special rules for the State of West Bengal		
<b>Negotiates individual royalty rates for special agreements</b>	Not applicable			
<b>Collects and retains or disperses mineral royalties</b>		Royalties are collected and retained by the States		

<b>INDONESIA</b>				
<b>Level of government</b>	<b>Central / Federal</b>	<b>State / Province</b>	<b>Regional, County, Local (Regency, Shire, City), Community</b>	<b>Remarks</b>
<b>Formulates policy and legislates on mineral royalties</b>	Ministry of Mines and Energy through its Directorate General of Mines			
<b>Administers royalty legislation through following department(s)</b>	Directorate General of Mines	26 provincial government branches of the Directorate	84 City/municipality administrative authorities and 243 Regencies administrative authorities	On average a project will deal with the central and provincial government and around 6–8 municipalities and regencies
<b>Sets and amends royalty rates across the board</b>	Yes, both for domestic and foreign owned production		There is some lack of clarity about their role	Serious decentralisation issues have arisen since the introduction of the Regional Administration Law in 1999

Appendix A3. Examples of Royalty Administrative and Collection Regimes

<b>Negotiates individual royalty rates for special agreements/CoWs</b>	Yes, some past CoWs have been negotiated outside the published pro-forma guidelines			
<b>Collects and retains or disperses mineral royalties</b>	No	Yes	Yes	

<b>PAPUA NEW GUINEA</b>				
<b>Level of government</b>	<b>Central / Federal</b>	<b>State / Province</b>	<b>Regional, County, Local (Regency, Shire, City), Community</b>	<b>Remarks</b>
<b>Formulates policy and legislates on mineral royalties</b>	Nation-wide Mining Act			
<b>Administers royalty legislation through following department(s)</b>	Department of Mining and Department of Finance			
<b>Sets and amends royalty rates across the board</b>	At irregular times			
<b>Negotiates individual royalty rates for special agreements</b>	Not applicable			
<b>Collects and retains or disperses mineral royalties</b>	Department of Mining collects the Central Government's share of royalty (80%)	Collects their share of royalties directly from the companies but subject to Central Government verification	Collects their share of royalties directly from the companies but subject to Central Government verification	

<b>PHILIPPINES</b>				
<b>Level of government</b>	<b>Central / Federal</b>	<b>State / Province</b>	<b>Regional, County, Local (Regency, Shire, City), Community</b>	<b>Remarks</b>
<b>Formulates policy and legislates on mineral royalties</b>	Department of the Environment and Natural resources (DENR), Ministry of Finance and Taxation Office			Provision for the levying of excise tax (royalties) are embodied in the Mining Act but specified in the Internal Revenue Code
<b>Administers royalty legislation through following department(s)</b>	Taxation Office			

Appendix A3. Examples of Royalty Administrative and Collection Regimes

<b>Sets and amends royalty rates across the board</b>	Infrequently			
<b>Negotiates individual royalty rates for special agreements</b>	Not normally		Yes, when mining takes place on ancestral land additional royalty payments are negotiated with a minimum of 1%	
<b>Collects and retains or disperses mineral royalties</b>	Yes			

### A3.3 AUSTRALIA

<b>WESTERN AUSTRALIA<sup>6</sup> (and other states generally)</b>				
<b>Level of government</b>	<b>Central / Federal</b>	<b>State / Province</b>	<b>Regional, County, Local (Regency, Shire, City), Community</b>	<b>Remarks</b>
<b>Formulates policy and legislates on mineral royalties</b>	Only for off-shore minerals and petroleum and as pertains to deductibility of state royalty payments for assessment of federal corporate income tax	Yes, on-shore and within territorial waters		
<b>Administers royalty legislation through following department(s)</b>		Department of Industry and Resources in consultation with the State Treasury		
<b>Sets and amends royalty rates across the board</b>		Infrequently, mainly for development of new commodities, to address emerging anomalies and in consultation with industry		

<sup>6</sup> NOTE – The situation in Western Australia is essentially representative of that in all other states and territories of Australia with the possible exception of the Northern Territory where the Federal Government has control over uranium mining and related royalty policy and collection. Royalty revenue is however remitted by the Federal Government to the Territory Government.

Appendix A3. Examples of Royalty Administrative and Collection Regimes

<b>Negotiates individual royalty rates for special agreements</b>		Infrequently and only for Special Agreement projects with very large economic impacts		In most cases in recent times the rates embodied in the Mining Act and related Regulations have been incorporated in special agreements
<b>Collects and retains or disperses mineral royalties</b>		Yes		

### A3.4 LATIN AMERICA

<b>ARGENTINA</b>				
<b>Level of government</b>	<b>Central / Federal</b>	<b>State / Province</b>	<b>Regional, County, Local (Regency, Shire, City), Community</b>	<b>Remarks</b>
<b>Formulates policy and legislates on mineral royalties</b>	Under the Constitution, Congress has the exclusive power to levy direct taxes but can delegate that power. Law 24196 allows provinces to set royalties but subject to a cap of 3% of the mineral value at mine mouth. Federal Branch: Ministerio de Planificacion Federal, Inversion Publica y Servicios (Ministry of federal planning, public investment and services)	Royalties are set at the provincial level subject to a federal maximum cap. Some provinces levy a royalty, others do not.		
<b>Administers royalty legislation through following department(s)</b>	Secretaria de Minería de la Nación (National Mining Secretariat)			
<b>Sets and amends royalty rates across the board</b>	Parliament sets the cap	At the discretion of the province, subject to the cap		
<b>Negotiates individual royalty rates for special agreements</b>	Parliament			
<b>Collects and retains or disperses mineral royalties</b>		Distribution of royalty income within a province is at the discretion of the province		

Source: Derived from <http://www.mineria.gov.ar>.

Appendix A3. Examples of Royalty Administrative and Collection Regimes

<b>BRAZIL</b>				
<b>Level of government</b>	<b>Central / Federal</b>	<b>State/Province</b>	<b>Regional, County, Local (Regency, Shire, City), Community</b>	<b>Remarks</b>
<b>Formulates policy and legislates on mineral royalties</b>	The Federal Parliament legislates (executive power). The Ministry of Mines and Energy is the federal branch responsible for coordinating and formulating the Brazilian Mineral Policy			
<b>Administers royalty legislation through following department(s)</b>	The <b>DNPM</b> (National Department of Mineral Production) has the objective of planning and fostering the exploration and exploitation of the mineral resources and overseeing geological, mineral and technology research, as well as to ensure, control and oversee the mining operations throughout Brazilian territory, with special powers to, among others: - Draw up regulations and oversee the collection of royalty. - Award, or propose such to the competent authorities, whenever applicable, mining rights deeds relating to the exploration and exploitation of mineral resources and issue the other acts referring to the execution of the mining legislation - Formulate and propose guidelines for orientation of the mineral policy			
<b>Sets and amends royalty rates across the board</b>	The federal parliament (executive power)			
<b>Negotiates individual royalty rates for special agreements</b>	Executive power			
<b>Collects and retains or disperses mineral royalties</b>	Yes			

Source: Derived from <http://www.planalto.gov.br>

### A3.5 NORTH AMERICA

<b>ARIZONA</b>				
<b>Level of government</b>	<b>Central / Federal</b>	<b>State / Province</b>	<b>Regional, County, Local (Regency, Shire, City), Community</b>	<b>Remarks</b>
<b>Formulates policy and legislates on mineral royalties</b>	Only as pertains to deductibility of state royalty payments for federal mining income	Yes, state jurisdiction under US constitution	Some counties level levies for mineral production	
<b>Administers royalty legislation through following department(s)</b>		Arizona Dept. of Mines and Mineral Resources		
<b>Sets and amends royalty rates across the board</b>		Infrequently		
<b>Negotiates individual royalty rates for special agreements</b>		No		
<b>Collects and retains or disperses mineral royalties</b>		Yes, for mining on state lands	For mineral production on private land royalties paid to mineral rights holder	Royalties for mineral production on Indian Land not paid to state

<b>BRITISH COLUMBIA</b>				
<b>Level of government</b>	<b>Central / Federal</b>	<b>State / Province</b>	<b>Regional, County, Local (Regency, Shire, City), Community</b>	<b>Remarks</b>
<b>Formulates policy and legislates on mineral royalties</b>	Federal taxation policy allowing deductibility of provincial royalties for federal income tax impacts on effective rate of royalties	Yes, under Canada's constitution mineral resources are provincially managed		



Appendix A3. Examples of Royalty Administrative and Collection Regimes

<b>Administers royalty legislation through following department(s)</b>		Ministry of Energy and Mines, Ministry of Finance		
<b>Sets and amends royalty rates across the board</b>		Frequent changes to mining tax rates and allowable deductions		
<b>Negotiates individual royalty rates for special agreements</b>		No		
<b>Collects and retains or disperses mineral royalties</b>		Yes	First Nations may collect some payments for operations on their lands	

**MICHIGAN**

<b>Level of government</b>	<b>Central / Federal</b>	<b>State / Province</b>	<b>Regional, County, Local (Regency, Shire, City), Community</b>	<b>Remarks</b>
<b>Formulates policy and legislates on mineral royalties</b>	Only as pertains to deductibility of state royalty payments for federal mining income	Yes, state jurisdiction under US constitution		
<b>Administers royalty legislation through following department(s)</b>		Dept. of Natural Resources, Forest, Mineral and Fire Management		
<b>Sets and amends royalty rates across the board</b>		Infrequently, in the process of reassessing royalty rates on the basis of two proposed base metal developments		
<b>Negotiates individual royalty rates for special agreements</b>		No		
<b>Collects and retains or disperses mineral royalties</b>		Yes, for mining on state lands	For mineral production on private land royalties paid to mineral rights holder	

**NEVADA**

<b>Level of government</b>	<b>Central / Federal</b>	<b>State / Province</b>	<b>Regional, County, Local (Regency, Shire, City), Community</b>	<b>Remarks</b>

Appendix A3. Examples of Royalty Administrative and Collection Regimes

<b>Formulates policy and legislates on mineral royalties</b>	Only as pertains to deductibility of state royalty payments for federal mining income	Yes, state jurisdiction under US constitution		
<b>Administers royalty legislation through following department(s)</b>		Nevada Department of Taxation, Division of Minerals, Bureau of Land Management		
<b>Sets and amends royalty rates across the board</b>		Infrequently		
<b>Negotiates individual royalty rates for special agreements</b>		No		
<b>Collects and retains or disperses mineral royalties</b>		Yes, royalty payments made to Dept. of Taxation		

<b>NORTHWEST TERRITORIES</b>				
<b>Level of government</b>	<b>Central / Federal</b>	<b>State / Province</b>	<b>Regional, County, Local (Regency, Shire, City), Community</b>	<b>Remarks</b>
<b>Formulates policy and legislates on mineral royalties</b>	Yes, the NWT is a federal jurisdiction and its mineral royalties are set under federal law	Only through negotiations and consultation with federal government		
<b>Administers royalty legislation through following department(s)</b>	Department of Indian and Northern Affairs, Natural Resources Canada, Dept. of Finance			
<b>Sets and amends royalty rates across the board</b>	Infrequently, for example when the first diamond mine came into production in the NWT			
<b>Negotiates individual royalty rates for special agreements</b>	No	No		
<b>Collects and retains or disperses mineral royalties</b>	Yes		First Nations may collect some payments for operations on their lands	

Appendix A3. Examples of Royalty Administrative and Collection Regimes

<b>ONTARIO</b>				
<b>Level of government</b>	<b>Central / Federal</b>	<b>State / Province</b>	<b>Regional, County, Local (Regency, Shire, City), Community</b>	<b>Remarks</b>
<b>Formulates policy and legislates on mineral royalties</b>	Federal taxation policy allowing deductibility of provincial royalties for federal income tax impacts on effective rate of royalties	Yes, under Canada's constitution mineral resources are provincially managed		
<b>Administers royalty legislation through following department(s)</b>		Ministry of Northern Development and Mines, Ministry of Natural Resources, Ministry of Finance		
<b>Sets and amends royalty rates across the board</b>		Frequent changes to mining tax rates and allowable deductions		Reduced rates are being phased in over a period of several years
<b>Negotiates individual royalty rates for special agreements</b>		Special royalty systems in place for remote areas		
<b>Collects and retains or disperses mineral royalties</b>		Yes	First Nations may collect some payments for operations on their lands	

<b>SASKATCHEWAN</b>				
<b>Level of government</b>	<b>Central / Federal</b>	<b>State / Province</b>	<b>Regional, County, Local (Regency, Shire, City), Community</b>	<b>Remarks</b>
<b>Formulates policy and legislates on mineral royalties</b>	Federal taxation policy allowing deductibility of provincial royalties for federal income tax impacts on effective rate of royalties	Yes, under Canada's constitution mineral resources are provincially managed		

Appendix A3. Examples of Royalty Administrative and Collection Regimes

<b>Administers royalty legislation through following department(s)</b>		Ministry of Industry and Resources, Ministry of Finance		
<b>Sets and amends royalty rates across the board</b>		Infrequently and in consultation with industry		
<b>Negotiates individual royalty rates for special agreements</b>		Special royalty systems in place for uranium, potash and coal		
<b>Collects and retains or disperses mineral royalties</b>		Yes	First Nations may collect some payments for operations on their lands	

## **Appendix A4**

### **Modality of Collection and Appropriation of Royalty Revenue**

Appendix A4 supports discussions in Chapter 3, dealing with how and by whom royalties are collected in a cross-section of nations, and how and at what level of government royalty revenue is appropriated or distributed. Information is reported by region and in the following order:

#### **A4.1 AFRICA**

- Ghana
- South Africa

#### **A4.2 ASIA AND PACIFIC**

- India
- Indonesia
- Papua New Guinea
- Philippines

#### **A4.3 AUSTRALIA**

- Western Australia (and other states generally)

#### **A4.4 LATIN AMERICA**

- Argentina
- Brazil

#### **A4.5 NORTH AMERICA**

- Arizona
- British Columbia
- Michigan
- Nevada
- 
- Northwest Territories
- Ontario
- Saskatchewan

Appendix A4. Modality of Collection and Appropriation of Royalty Revenue

<b>Central / Federal</b>	<b>State / Province</b>	<b>Local / Community</b>	<b>Remarks</b>
<b>A4.1 AFRICA</b>			
<b>Ghana</b>			
Commissioner of Internal Revenue collects all royalties which are appropriated into the Consolidation Fund.			
<b>South Africa</b>			
The National Treasury (Department of Finance) collects and retains all royalties.			
<b>A4.2 ASIA AND PACIFIC</b>			
<b>India</b>			
	Royalties are set centrally but collected and retained by the States.		
<b>Indonesia</b>			
Central government sets but does not collect royalties. 20% of total royalty are however remitted to the central government.	Provincial governments collect part of the royalties and retain 16% of total.	Regencies and cities/municipalities collect part of the royalties and retain 64% of total.	
<b>Papua New Guinea</b>			
Department of Mining collects the Central Government's share of royalty (80%).	Regional governments collect their share of royalties directly from the companies but subject to Central Government verification.	Communities and landowners collect their share of royalties directly from the companies but subject to Central Government verification.	
<b>Philippines</b>			

Appendix A4. Modality of Collection and Appropriation of Royalty Revenue

<b>Central / Federal</b>	<b>State / Province</b>	<b>Local / Community</b>	<b>Remarks</b>
The taxation office collects all royalties and remits 60% of royalty collected to central government, of this 10% is allocated to Department of the Environment and Natural Resources (DENR) to fund the Mines and Geoscience Bureau.	Provincial governments receive 40% of royalty collections of which they retain 20% (i.e. 8% of total collections) dispersing the remainder to lower levels of government.	The rest of the 40% collected by the provincial governments is dispersed 45% to the city/municipalities and 35% to the barangays in the mining area.	Traditional owners of ancestral land can negotiate and levy additional royalties at a minimum rate of 1%.
<b>A4.3 AUSTRALIA</b>			
<b>Western Australia (and other states generally)</b>			
	Royalties are generally collected by the relevant Department of Mines or equivalent and remitted to the State's Consolidated Revenue Funds (CRF).	Native Title, Land Rights and other land-access legislation may in some instances result in "royalty-like" payments being received at community level.	Although royalties are appropriated to the State's CRF, they influence the redistribution of corporate income and goods and services taxes from the federal government to the states through the Grant Commission process.
<b>A4.4 LATIN AMERICA</b>			
<b>Argentina</b>			
		Provincial governments set and collect royalties. The distribution of royalty revenue to lower levels of government with each province is at the discretion of the provincial government.	Although provincial government have the right to set royalty rates, they can only do so below a cap of 3% imposed by the central government.
<b>Brazil</b>			

Appendix A4. Modality of Collection and Appropriation of Royalty Revenue

<b>Central / Federal</b>	<b>State / Province</b>	<b>Local / Community</b>	<b>Remarks</b>
The <b>DNPM</b> (National Department of Mineral Production) draws up regulations and oversees the collection of royalty. 2% of total royalties collected goes to the Environmental Office, 2% to the National Fund of Scientific and Technological Development (FNDCT), and 8% to other parts of the Federal Government.	23% of total royalties is remitted to the states.	65% of total royalties is remitted to lower level of government at the regional to community level.	
<b>A4.5 NORTH AMERICA</b>			
<b>Arizona</b>			
	The Arizona Department of Mines and Mineral Resources collects all royalties for mining on state lands.	For mineral production on private land royalties are paid to the holder of the mineral rights.	Royalties for mineral production on Indian Land not paid to state.
<b>British Columbia</b>			
	The Ministry of Energy and Mines in close cooperation with Ministry of Finance collects royalties and remits them to general revenues.	First Nations may collect some payments for operations on their lands. These are usually negotiated directly with the companies involved in the form of an Impact Benefit Agreement.	
<b>Michigan</b>			
	The Department of Natural Resources, Forest, Mineral and Fire Management collects all mineral royalties for mining on state lands and remits them to the state treasury.	For mineral production on private land royalties are paid to the holder of the mineral rights.	
<b>Nevada</b>			
	Royalty payments are		



Appendix A4. Modality of Collection and Appropriation of Royalty Revenue

<b>Central / Federal</b>	<b>State / Province</b>	<b>Local / Community</b>	<b>Remarks</b>
	made to Department of Taxation and treated as part of general taxation revenues.		
<b>Northwest Territories</b>			
As the NWT is a federal jurisdiction and its mineral royalties are set under federal law, the Departments of Indian and Northern Affairs, Natural Resources Canada, and Finance collect royalties and remit them to the federal government's general revenues. A federal transfer from general revenues is then made to the NWT government each year.		First Nations may collect some payments for operations on their lands. These are usually negotiated directly with the companies involved in the form of an Impact Benefit Agreement.	Land claim agreements may contain provisions for surface and subsurface mineral rights.
<b>Ontario</b>			
	The state Ministry of Northern Development and Mines, Ministry of Natural Resources, Ministry of Finance collect royalties and remit them to state general revenues.	First Nations may collect some payments for operations on their lands. These are usually negotiated directly with the companies involved in the form of an Impact Benefit Agreement.	
<b>Saskatchewan</b>			
	Ministry of Industry and Resources, and the Ministry of Finance collect royalties and remit them to the state general revenues.	First Nations may collect some payments for operations on their lands. These are usually negotiated directly with the companies involved in the form of an Impact Benefit Agreement.	