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Mineral Rights Taxation Order, 1973

Kings Order in Council 34 of 1973

Legislation as at 1 December 1998

FRBR URI: /akn/sz/act/order-in-council/1973/34/eng@1998-12-01

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PDF created on 21 February 2024 at 16:59.

Collection last checked for updates: 1 December 1998.

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Kings Order in Council 34 of 1973

Assented to on 12 September 1973

There are multiple commencements

Provisions	Status
Section 12, section 510	commenced on 10 May 1973.
Section 34	commenced on 1 July 1973.

[This is the version of this document at 1 December 1998.]

A King's Order-in-Council to make provision for the imposition of a mineral rights tax, capital gains tax in respect of mineral rights, and an amendment of section 3 of the Transfer Duty Act [No. 8 of 1902](#) in respect of transactions relating to mineral or prospecting rights.

1. Short title and commencement

This King's Order-in-Council may be cited as the Mineral Rights Taxation Order, 1973 and shall be deemed to have come into force on the 10th of May, 1973, except for sections 3 and 4 which shall be deemed to have come into force on the 1st of July, 1973.

2. Interpretation

In this Order, unless the context otherwise requires—

“**capital gain**” means the amount remaining after deducting the actual unrecovered capitalized costs incurred by a holder in the acquisition of the mineral right held by him from the total amount of money or the value of any other consideration of any kind whatsoever received by, or accruing to or in favour of or for the benefit of any person from the sale, exchange, cession, assignment, transfer or other disposal of such mineral right, as the case may be;

“**Collector**” means the Collector of Income Tax appointed under the Income Tax (Consolidation) Act [No. 84 of 1959](#) for the administration of that law and shall include an Assistant Collector of Income Tax;

“**holder**” means the holder of a mineral right to whom such right was granted in the first instance and includes any person in whom such right or part thereof has become lawfully vested by sale, exchange, cession, assignment, transfer or other disposal;

“**mineral right**” includes a mineral concession, or a right granted by the Ngwen-yama to mine or to prospect for precious or base metals, precious stones or other minerals or mineral products and includes all types of licences, locations, leases and similar agreements;

“**mineral concession**” means a concession confirmed under the provisions of the Concessions Act [No. 3 of 1904](#) giving a right to precious or base metals precious stones, other minerals or mineral products on any piece of land, and where the area subject to any such concession has been subdivided, shall include the title to any subdivision thereof, and shall be deemed to include any agreement, special authority or lease made prior to the coming into force of this Order conferring a right to prospect or mine for a period (including a right of renewal) of not less than ten years, but shall not include any concession vested in the Ngwenyama in trust for the Swazi Nation;

“**mineral**” and “minerals” mean all substances (including mineral oils) which can be obtained from the earth by mining, digging, dredging, hydraulicking, quarrying or other operations for purposes of profit, and without affecting the generality of the foregoing includes—

- (a) metalliferous ores and other substances in their natural state which, are obtainable only by mining or in the course of prospecting operations;
- (b) metalliferous ores and other substances in their natural state mined or obtained in the course of prospecting operations;
- (c) the valuable parts of such ores and other substances for marketing or export;
- (d) the product of treating or dressing such ores or other substances for marketing or export; but shall not include clay (other than kaolin), limestone, shale, laterite, sand, gravel, stone, chalk, slate and any such other common mineral substance as the Ngwenyama may by notice in the *Gazette* declare not to be minerals for the purposes of this Order, used as construction or building material;

“**Minister**” means the Minister for Finance;

“**mineral rights tax**” means the tax mentioned in [section 3\(1\)](#);

“**tax year**” means the period 1st July through the following 30th June inclusive;

“**unrecovered capitalised costs**” means all capital costs to the extent that such costs have not been redeemed, depreciated, amortised or otherwise allowed as deduction in the computation of such income as is subject to income tax in Swaziland prior to the date of the disposal of a mineral right.

3. Provision for a mineral rights tax

- (1) There shall be charged, levied and paid an annual mineral rights tax as provided for in this section by any person who is the holder of any mineral right in Swaziland to be administered by the Collector.
- (2) Such tax shall become payable for the current tax year on the 15th day of October, 1973 and thereafter in advance on the 1st day of July of each succeeding year.
- (3) Subject to subsection (4) such tax shall be charged, levied and paid as follows:

For the first five tax years from the 1st July, 1973 or the date on which the holder has been granted a mineral right by the Ngwenyama, whichever is the later date, an annual sum equal to R10 per each hectare of the land or part thereof in respect of which the mineral right is held by such holder and thereafter, at the rate of R50 per each hectare or part thereof:

Provided that no such tax shall be charged for the first tax year in which such mineral right has been granted in respect of any mineral right granted after the 1st July, 1973.
- (4) From the amount of mineral rights tax payable under subsection (3) there shall be deducted in any tax year any reasonable expenditure (excluding general administration and management expenditure) actually incurred by the holder in respect of *bona fide* mining operations or prospecting or development work undertaken proper to the commencement of mining operations, carried out in the area in respect of which each mineral right is held during the tax year preceding the tax year in respect of which such tax is payable.
- (5) The mineral rights tax shall be paid by the holder to the Collector on behalf of the Ngwenyama in trust for the Swazi Nation.
- (6) Every holder of a mineral right shall furnish such information to the Collector as may be required by him in such form prescribed by regulation and within such time as therein set out.
- (7) The Collector shall determine the amount to be deducted in terms of subsection (4) from the amount of the mineral rights tax payable by a holder, but such decision shall be subject to objection and appeal by such holder and the provisions of the Income Tax (Consolidation) Act [No. 84 of 1959](#)

and any regulations made thereunder relating to objections and appeals by any taxpayer under that Act *mutatis mutandis* apply to any objection or appeal made by the holder in terms of this section.

4. Repeal of sections 108-110 inclusive of the Mining Proclamation (Cap. 145)

Sections 108-110 inclusive of the Mining Proclamation (Cap. 145) are hereby repealed.

5. Capital gains tax

- (1) A capital gains tax shall be charged, levied and paid by any holder who on or after the 10th of May, 1973 sells, exchanges, cedes, assigns, transfers or in any manner disposes in whole or in part of his mineral right to another person.
- (2) The granting of an option to another person to acquire a mineral right shall for the purpose of this section be deemed to be a disposal of such mineral right.
- (3) Such tax shall be an amount equal to 37½% of the capital gain as defined in [section 2](#).
- (4) The capital gains tax shall be paid to the Collector on behalf of the Government and shall become due and payable within one month from the date of the conclusion of the agreement in terms of which a mineral right is disposed of.
- (5) For the purpose of this section any transaction in terms of which the control of a company which is the holder of any mineral right is transferred to another person shall be deemed to constitute a disposal of such right to such person in terms of subsection (2) hereof, and for the purpose of this subsection a person shall be deemed to have control of a company if he exercises, or is able to exercise or is entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the foregoing, if he possesses or is entitled to acquire—
 - (a) the greater part of the share capital or voting power of the company; or
 - (b) such part of such capital as would, if the whole of the income of the company were in fact distributed to the members of such company, entitle him to receive the greater part of the amount so distributed; or
 - (c) the greater part of the assets which, in the event of the winding up of the company, would be available for distribution amongst members of such company.
- (6) If two or more persons together satisfy any of the conditions in subsection (5), they shall be deemed to have control of the company for the purposes of this section.
- (7) In the event of the consideration (or any part thereof) for the disposal of any mineral right being otherwise than in cash, the Collector shall assess the amount of such consideration and for such purpose may call for such documentary or other evidence that he may think necessary:

Provided that the decision of the Collector shall be subject to objection and appeal by the holder and the provisions of the Income Tax (Consolidation) Act [No. 84 of 1959](#) and any regulations made thereunder, relating to objections and appeals by a taxpayer under Act, shall *mutatis mutandis* apply to any such objection or appeal.
- (8) In the event of the holder referred to in subsection (1) failing to pay such capital gains tax, the person acquiring the mineral right from such holder shall become liable to pay such tax.
- (9) The Mining Commissioner appointed under any law relating to mining shall be entitled to compel any person to desist from mining or prospecting on any land until such person provides him with satisfactory proof that any capital gains tax payable under this section has been duly paid.

6. Amendment of section 3 of the Transfer Duty Act [No. 8 of 1902](#)

Section 3 of the Transfer Duty Act [No. 8 of 1902](#) is amended by the addition of the following proviso thereto:

“Provided that in the case of any mineral or prospecting right the duty payable shall be an amount equal to 27½% on the first twenty thousand emalangeneni and 37½% on any amount above twenty thousand emalangeneni of the value of the mineral or prospecting right, as the case may be.”.

7. Exemptions

The Minister may in his sole discretion exempt any person from, or remit to him, any tax payable or paid by him under this Order, in whole or in part, if he is of the opinion that the payment of such tax operates unduly harshly on the person concerned or that it would be in the best interests of Swaziland so to do.

8. Offences

- (1) Any person who without good cause fails or neglects to furnish the Collector with the information required by him under [section 3\(6\)](#) or who furnishes the Collector with false or misleading information shall be guilty of an offence and liable on conviction to a fine of R500 or imprisonment for one year or both.
- (2) Any person who fails or neglects to desist from mining or prospecting after having been notified by the Commissioner to do so in terms of [section 5\(9\)](#) shall be guilty of an offence and liable on conviction to a fine of R500 or imprisonment for one year or both.

9. Regulations

The Minister may make such regulations as he deems necessary for the better carrying out of the purposes of this Order, and in particular but without affecting the generality of the foregoing may—

- (a) prescribe such forms as may be required for such purposes;
- (b) provide for the payment of interest on the amount of any tax due by any person under this Order, and not timeously paid by such person, at a rate not exceeding 12% per annum;
- (c) apply the provisions of section 60(1), (2) and (3) of the Income Tax (Consolidation) Act [No. 84 of 1959](#).

10. Recovery of tax

Section 60(1), (2) and (3) of the Income Tax (Consolidation) Act [No. 84 of 1959](#) shall *mutatis mutandis* apply to the recovery of the mineral rights tax and capital gains tax payable by any person in terms of this Order.