

PROCLAMATION No. 69/1995
PROCLAMATION TO PROVIDE FOR PAYMENT OF
TAX ON INCOME FROM MINING OPERATION

WHEREAS, the payment of tax on income from mining operations calls for particular tax treatment,

NOW, THEREFORE, it is hereby proclaimed as follows:

1. Short Title

This Proclamation may be cited as the “**Mining Income Tax Proclamation No.69/1995**”.

2. Definitions

In this Proclamation unless the context requires otherwise:

1. all definitions set forth in Article 2 of the Mining Proclamation No.68/1995 shall apply.
2. “**accounting year**” means the year ending on 31 December, according to the Gregorian Calendar.
3. “**affiliate**” means any person who directly or indirectly controls or is controlled by or under direct or indirect common control of another person, with “control” meaning the power to direct or administer the management and policies of such person, or the ownership of 50 percent or more of the voting rights in such persons.
4. “**capital expenditure**” means expenditure, other than pre-production costs, incurred for operations, the useful life or the benefits of which extend beyond the accounting year in which the expenditure is incurred.
5. “**commencement of production**” means the commencement of regular production for commercial purposes from the license area of the licensee.
6. “**income**” means all revenue credited or received from mining operations within Eritrea, irrespective of where it is credited or received.
7. “**pre- production costs**” means all expenditure incurred before the date of commencement of production in establishing the mine and other facilities necessary to carry out mining operations.
8. “**revenue expenditure**” means an expenditure incurred for mining operations, other than capital expenditure and pre-production costs.

3) Tax

1. A holder of a mining license shall pay income tax on the taxable income at the rate of 38 percent.
2. Income tax shall be calculated for each accounting year and shall be paid within 90 days after the end of such year.
3. A holder of an artisanal mining license shall pay income tax on taxable income in accordance with directives issued by the Minister.

4. Determination of Taxable Income

Taxable income shall be computed on a historical accrual accounting basis by subtracting from gross income for the accounting year in question all allowable revenue expenditure, depreciation, reinvestment deduction and permitted losses.

5. Determination of Gross Income

Gross income shall include all revenue actually received from mining operations, provided that such revenue resulted from a transaction with a person who was not an affiliate. If any revenue was received from an affiliate, the Licensing Authority may adjust such amount to reflect revenue that would have been received based on market prices for a similar transaction carried out at the time at arms-length or shall use such other provisions as may be determined by agreement.

6. Determination of Costs

1. All capital expenditures, pre-production costs and revenue expenditure shall be entered in the books of account of the licensee as the actual amount of such expenditure, provided that they arose as a result of a transaction with a person who was not an affiliate. If any expenditure was paid to an affiliate, the licensing authority may adjust such amount to reflect the proper expenditure that would have been paid at the time based on market prices for similar arms-length transactions or shall use such other provisions as may be determined by agreement.
2. If the licensee has received a contribution to capital in the form of physical assets, services or expenditure, such contribution shall be valued at the market value of the assets or services on the date they were contributed.
3. The value of such assets and services and the amount of such expenditure contributed to capital shall be treated by the licensee as capital expenditure or pre-production costs, as the case may be, and shall be depreciated in accordance with Article 8 of this Proclamation.

7. Revenue Expenditure

Revenue expenditure shall be comprised of all costs and expenses incurred after the date of commencement of production which are not capital expenditure, and shall include the following:

1. cost of geological, geochemical and geophysical surveys and studies and related services carried out anywhere in Eritrea in the context of mineral exploration and mining operations in general;
2. cost of production, including extraction, storage, treatment, transport and sale of minerals;
3. cost of restoration of land within a license area and an area covered by a lease, including the cost of filling, closing or blocking or generally rendering safe all installations used in mining operations;
4. general administrative expenses and management and professional commissions and services, lease licensing and other fees incurred within and outside of Eritrea for mining operations, provided that the amounts expended were for services actually rendered or property actually provided and correspond to amounts normally paid by other persons in similar transaction;
5. interest payments on loans used exclusively to finance mining operations, excluding those to prospect and explore, provided that the interest rate is fixed on a reasonable commercial basis and reflects that which would normally be paid by another person with a similar credit rating and equity; debt ratio as the tax payer in question for similar financing and that the loan has been previously approved on this basis by the Licensing Authority;
6. all fees, rentals, royalties and other taxes paid to the Government, except taxes payable pursuant to this Proclamation.

8. Depreciation

All capital expenditure and pre-production costs shall be depreciated. Depreciation of such expenditure and costs for any accounting year shall commence when the related assets are installed and ready for use and shall be calculated on a historical cost basis using the straight – line method over a useful life of four consecutive years with no residual value left at the end of the fourth year.

9. Reinvestment Deduction

1. The licensee shall be entitled to deduct from his taxable income for each accounting year an amount equal to five percent of gross income. This amount is to be reinvested

in other mining operations, or in other investments within Eritrea approved by the Licensing Authority.

2. If any part of such amount is not reinvested by the licensee by the end of the second accounting year following that in which it was deducted, it shall be included in the gross income of that second accounting year.

1. Permitted Losses

1. Any financial loss, resulting from the mining operations of a licensee in an accounting year may be carried forward and deducted from gross income in the ten accounting years, which follow the year in which the loss is incurred.
2. The amount of any loss or damage to physical assets or other liability, except fines and penalties, which is not covered by insurance may be deducted from gross income in the accounting year in which such loss or damage occurred or became known or such liability was paid.

11. Transfer of Interest

1. If any licensee transfers or assigns wholly or partially any interest in a license, the consideration he receives for such transfer or assignment shall be taxable income to the extent that such consideration exceeds the amount of his unrecovered expenditure in that part of the interest transferred, regardless of whether recovery has been through dividends received or through deduction of revenue expenditure, depreciation, reinvestment deduction or permitted losses, as the case may be.
1. If a person acquires wholly or partially any interest in a license the consideration he pays with such acquisition shall represent his cost and shall, to the extent that it represent the transferor or assignor licensees unrecovered expenditure, be treated as capital expenditure, to be depreciated in accordance with Article 8 of this Proclamation.

12. Dividend Tax

There shall be no tax on dividends declared and distributed from taxable income after deduction of income tax.

13. Taxes on Services, Leases and Licenses

1. The licensee who contracts for services, the lease of movables or the licensing of intellectual property from a person who is not a resident of Eritrea or who is temporarily present in Eritrea shall pay the taxes on behalf of such person. Such taxes shall be paid quarterly, within 20 days after the end of the period to which the payment relates.

2. Expenditure paid under sub-article 1 of this article shall be at the rate of 10% (ten percent) on the amount paid, less all charges for mobilization and demobilization.
3. For the purpose of this article, a person is temporarily present in Eritrea if he performs work in the country for more than 183 days in any accounting year.

14. Application of Other Laws

The tax laws presently in force in Eritrea shall not apply to matters provided for in this proclamation.

15. Power to Issue Directives

The Minister of Finance in consultation with the Minister of Energy, Mines and Water resources shall have the power to issue directives necessary for the effective implementation of this Proclamation.

16. Effective Date

This Proclamation shall enter into force on the date of its publication in the Gazette of Eritrean Laws.

**Done at Asmara, this 20th day of March 1995.
Government of Eritrea.**