

## FISCAL FRAMEWORK

In Ireland the importance of exploration and mining to the economy has long been recognised. Successive Governments have introduced a suite of financial legislation which aims to encourage investment in this sector.

Such legislation is a complex subject and what follows is necessarily in a condensed form. While every effort has been made to ensure its accuracy it is intended for general guidance only, and does not purport to be a statement of the law. Professional guidance should be sought before investment decisions are made.

### Legislation and Definition of Minerals

The legislation relating to minerals is contained in the Minerals Development Act, 1940, the Petroleum and Other Minerals Development Act, 1960, and the Minerals Development Acts, 1979, 1995 and 1999. Minerals are defined under these Acts as follows:

**1940 Act:** *"In this Act (save where the context otherwise requires) the word "minerals" means all substances (other than the agricultural surface of the ground and other than turf or peat) in, on, or under land, whether obtainable by underground or by surface working, and includes all mines, whether they are or are not already opened or in work and also includes the cubic space occupied or formerly occupied by minerals, and, for greater certainty but without prejudice to the generality of the foregoing, the said word also includes all scheduled minerals." See Appendix for list of Scheduled Minerals.*

**1979 Act:** *"In the Act of 1940 and this Act "minerals" shall not include stone, gravel sand or clay except to the extent that any such substance falls within the list of minerals*

*mentioned in the Schedule to the Act of 1940."*

### Ownership

The right of working almost all minerals is vested in the State.

This has occurred in two main ways:

- Mineral rights were reserved to the State (subject to some provisions about existing workings) during the division of large estates carried out by a State agency, the Land Commission, under a series of Land Acts. These are State Minerals under the 1940 Act, and can be leased under that Act.
- By statutory vesting in Section 12 the 1979 Act, which states that *"The exclusive right of working minerals is hereby vested in the Minister except as provided in this Part."* These minerals are leased or licensed under the 1979 Act. The exceptions are limited and relate to minerals being worked before 1979.

Some minerals were compulsorily acquired under now repealed Sections of the 1940 Act. These are also State Minerals which can be Leased under the 1940 Act.

### KEY FEATURES

- Sole right of working minerals belongs to Minister
- Royalties fixed by individual agreement. Currently a percentage of net revenues for base metals, and on tonnage extracted in the case of industrial minerals
- Private mineral owners receive compensation
- Corporation Tax at 25% for mines, and 16% on income and chargeable gains from general trading to be reduced to 12.5% from 2003
- Capital allowances include exploration and development expenditure, expenditure on plant, machinery, buildings, up to 120%
- Immediate write-off of exploration and development expenditure
- Cost of rehabilitation after closure tax deductible

### Royalties and Similar Charges

Minerals (as defined above) are normally developed by private enterprise through a **Lease** or **Licence** issued under the Minerals Development Acts, 1940 to 1999, as appropriate. These are legal contracts which once agreed may only be changed by agreement between the parties and can be enforced through the Courts.

- **Royalty for State Minerals to which the 1940 Act applies**

Section 26(2)a of the 1940 Act states that:

*" unless the Minister, with the concurrence of the Minister for Finance, is of opinion that such lease should in the public interest be made*

*free of payment, such lease shall be made subject to the payment to the Minister of such moneys, whether by way of fine or preliminary payment or by way of rent (including a royalty rent) or by any or all of such ways as the Minister, with the concurrence of the Minister for Finance, shall think proper and shall agree upon with the lessee;."*

Minister currently means the Minister for Communications, Marine and Natural Resources.

There is, therefore, wide discretion as to the form of royalty or other payment which may be set. Individual agreement on the royalty is currently required for each new lease.

In proposing rates, attention is paid to:

- the economics of the deposit being leased, assessed by projected return on investment;
- royalty rates internationally;
- the need to continue to attract international exploration funding;
- the expectations of the State as mineral owners and the developer achieving a fair return depending on economic circumstances and, recognising the need to allow for the many exploration failures.

Actual rates are then settled by negotiation.

## Examples of Royalty and Dead Rent

Recent examples for base metal mines are those for the Galmoy mine (1979 Act applies) which was opened in 1997, and the Lisheen mine (1940 Act applies) which commenced production towards the end of 1999. Revenue in these examples consists of payments to the mining company for the sale of its concentrates, less all transport costs from the mine to the point of delivery to the smelter.

There is an annual minimum payment ("Dead Rent") which merges into the royalty.

- **Industrial Minerals**

For industrial minerals, the commonest system is a royalty based on the tonnage extracted, Rates are likely to be in the range 25c to 50c (US\$0.25 - 0.5) per tonne.

- **Payments for Mineral Rights acquired under the 1979 Act.**

The position is basically similar to that for the 1940 Act for State minerals, except that a **Mining Licence** is issued by the State under the Minerals Development Act, 1979, and the former private owners of the right to work the minerals are entitled to compensation from the Minister. The amount of compensation is decided either by agreement or, failing that, through the arbitration procedure set out in the 1979 Act.

The Minister will usually seek an additional payment over and above this compensation. Similar considerations to those for State Minerals under the 1940 Act are applied to determine the level of payments, but will also take account of any compensation due to the private owner, which is normally recouped from the Licensee.

<b>Galmoy</b>	
Licence for 21 years under the 1979 Act. (Compensation Payable)	
<b>Dead Rent</b>	
Year 1	€63,486 (US\$55,500)
Year 2	€63,486 (US\$55,500)
Year 3 on	€126,973 (US\$111,000)
After Closure	€25,394 (US\$22,000)
<b>Royalty (per cent of revenue)</b>	
Production Years 1-3	1.5%
Production Year 4	2.5%
Production Year 5 on	3.0%

<b>Lisheen</b>	
Lease for 30 years under the 1940 Act. (No Compensation Payable)	
<b>Dead Rent</b>	
Year 1	€63,486 (US\$55,500)
Year 2	€126,973 (US\$111,000)
Year 3 on	€380,921 (US\$333,000)
After Closure	€25,394 (US\$22,000)
<b>Royalty (per cent of revenue)</b>	
Production Years 1-3	1.75%
Production Years 4-5	3.0%
Production Year 6 on	4.5%

# Corporate Taxation

## • Tax Rates

With effect from 1 January 2003, Corporation Tax is charged at a rate of 12.5% on income and chargeable gains from general trading. Corporation tax on mining operations remains at 25%. On site surface processing is considered to be part of the mining operations. However, these operations attract special allowances, as outlined below.

## • Capital Allowances

There are two different sets of provisions governing capital allowances depending on the type of mineral:

- those listed in Section 672 of the Taxes Consolidation Act, 1997.
- other minerals, including the remainder comprehended by the Minerals Development Acts, 1940 to 1999.

### **Allowances For Minerals Listed In The 1997 Act**

The following minerals are included:

Barytes, Feldspar, Serpentinous marble, Quartz rock, Soapstone, Ores of copper, Ores of gold, Ores of iron, Ores of lead, Ores of manganese, Ores of molybdenum, Ores of silver, Ores of sulphur, Ores of zinc.

The 1997 Act provides for various special allowances in the case of capital expenditure incurred by a person working a qualifying mine, which is, in general terms a mine being worked for the purposes of obtaining any of the above minerals. In certain circumstances exploration companies are deemed to be carrying on a trade of working a qualifying mine. This enables them to claim some allowances earlier than would otherwise be the case.

The principal categories of allowances are:

### **Exploration expenditure**

This covers searching for, discovering and testing - everything that would normally be understood as exploration expenditure, including abortive exploration expenditure in Ireland in the preceding 10 years. However, it excludes interest on borrowed money. An allowance up to 120% of the expenditure incurred is available. This allowance may be claimed in the period in which the expenditure is incurred or, if later, the period in which the mining trade commences.

### **Development Expenditure**

Development expenditure means expenditure on the development of a qualifying mine or on the construction of works in connection with the mine, which are of a nature that when the mine ceases to be operated they are likely to have little value. Development expenditure includes interest on borrowed money to meet such expenditure but not expenditure on the acquisition of the site of the mine or acquiring any scheduled mineral asset.

Expenditure may be claimed in the period in which it is incurred or, if later, the period in which the mining trade commences. The amount of the allowance is the difference between the expenditure incurred and the amount the assets representing the expenditure are likely to be worth at the end of the life of the mine.

### **Plant and machinery**

Capital expenditure on new machinery and plant qualifies for an immediate 20% investment allowance in addition to an annual wear and tear allowance of 12.5% for eight years. This means an effective allowance of 32.5% in year 1, and 12.5% in years 2 to 8. It is possible therefore to claim allowances up to 120% of qualifying expenditure.

### **Industrial buildings**

An annual allowance of 4% of the expenditure incurred is available in respect of expenditure on the construction of industrial buildings (as defined). This includes laboratories used wholly or mainly for mineral analysis. Where, on eventual sale, the proceeds realised are less than written down value, a balancing allowance is granted for the difference.

### **Acquisition of Scheduled Mineral Assets**

Expenditure on the acquisition of scheduled mineral assets (less residual value) qualifies for an allowance over the life of the mine or twenty years, whichever is shorter. Scheduled mineral assets are mineral deposits or land comprising such deposits or any interest in or right over such deposits on land.

### **Mine Closure and Rehabilitation**

Expenditure incurred after trading ceasing on closure and rehabilitation is deemed to occur on the last day of trading, thus allowing a degree of write-off against profits from previous years. In addition, if a separate fund is to be built up to provide for closure costs and returning the site to a greenfield state, provided that this is under an agreement with the Minister, the contributions to the fund can be written off over the mine's life. Withdrawals from the fund are taxable, but expenditures can be offset against them.

### **Other Minerals**

The relevant allowances are as follows:

#### **Exploration and Development**

Qualifying expenditure (less residual value) may be claimed on a straight line basis over twenty years or the life of the mine whichever is shorter. There is no additional 20% allowance in the case of exploration expenditure.

#### **Plant and Machinery/Industrial Buildings/Losses/Operating Costs**

As for scheduled minerals except that there is no additional investment allowance in the case of expenditure on plant and machinery.

- **Losses**

These can be carried forward indefinitely. They can also be carried back for a period of one year, or in the case of terminal loss relief (i.e. on closure), three years.

- **Operating costs**

Charges which are wholly and exclusively laid out for the purposes of a trade are allowable.

- **Royalties**

Generally, these will be allowed as a deduction from profits for tax purposes.

- **Marginal Mine Allowance**

There is provision for reduction in the taxation if it can be shown that a mine would cease operations if the full tax rate were applied. There are no cases to date where this has been applied.

## Review of Tax and Royalty Regime

The Minister has announced a comparative study by his Department of international royalty rates, mining taxes and equivalent charges to identify clearly where Ireland fits in with best international practice. This may lead to better pre-determination of royalties. The Minister for Finance also announced that a final decision on the possible application of the general 12.5% corporate tax and the revision of the special allowances for some minerals is still under review.

## Application Fees

A fee is payable for any mining facility application. The rates are set by regulation and are currently:

For metalliferous minerals:

€19,046 (US\$17,000) plus 13c (US\$0.11) per tonne of annual output of ore for a new mine or for an areal extension of an existing facility where the output is to be increased. €31,743 (US\$28,000) if no new process plant is required.

For other minerals:

€6,348 (US\$5,500) if the output will be less than 100,000 tpa; otherwise £12,697 (US\$11,000).

## APPENDIX

### MINERALS DEVELOPMENT ACT, 1940 SCHEDULED LIST OF MINERALS

Alum Shales	Copper, Ores of	Lead, Ores of	Quartz Rock
Anhydrite	Corundum	Lignite	Radioactive minerals
Antimony, Ores of	Cryolite	Lithomarge	Refractory Clays
Apatite	Diatomaceous Earth	Magnesium, Ores of	Rock Phosphates
Arsenic, Ores of	Dolomite and	Magnesite	Rock Salt
Asbestos minerals	Dolomitic Limestone	Manganese, Ores of	Roofing Slate
Ball Clay	Felspar	Marble	Serpentinous Marble
Barytes	Fireclay	Mercury, Ores of	Silica Sand
Bauxite	Flint and Chert	Mica	Silver, Ores of
Beryl	Fluorspar	Minerals Oils	Strontium, Ores of
Bismuth, Ores of	Ganister	Mineral Pigments	Sulphur, Ores of
Bitumens	Gem minerals	Molybdenite	Talc and Steatite
Calcite	Gold, Ores of	Monazite	or Soapstone
Chalk	Graphite	Natural Gas	Tin, Ores of
China Clay	Gypsum	Nickel, Ores of	Titanium, Ores of
Chromite	Iron, Ores of	Oil Shale	Tripoli
Coal	Kaolin	Platinum, Ores of	Tungsten, Ores of
Cobalt, Ores of	Laterite	Potash Mineral Salts	Witherite
			Zinc, Ores of