ETHIOPIA

MINING TAX PROCLAMATION NO. 53/1993

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by Foreign Tax Law, Inc.

PO Box 2189

Ormond Beach, Florida 32175-2189 USA

tel. (904) 253-5785

fax (904) 257-3003

e-mail: ftlp@foreignlaw.com

Website: http://www.foreignlaw.com

MINING TAX PROCLAMATION NO. 53/1993

A Proclamation to Provide for Payment of Tax on Income from Mining Operations

Amended by Mining Income Tax (Amendment) Proclamation No. 23/1996 published Feb. 15, 1996.

1. Short Title

This Proclamation may be cited as the "Mining Income Tax Proclamation No. 53/1993".

2. Definitions

In this Proclamation unless the context requires otherwise:

1. all definitions set forth in article 2 of the Mining Proclamation No. 52/1993 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 persons, or the ownership of 50% 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 years 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 Ethiopia, irrespective of where it is credited or received.

7. "pre-production costs" means all expenditure incurred for mining operations before the date of commencement of production.

8. "revenue expenditure" means an expenditure incurred for mining operations other than capital expenditure and pre-production costs.

3. Tax

1. (Amended by Mining Income Tax (Amendment) Proclamation No. 23/1996, effective Feb. 15, 1996) A holder of large scale or small scale mining license shall pay 35% income tax on the taxable income.

2. Artisanal mining shall be exempted from income tax.

3. Income taxes shall be calculated for each accounting year and shall be paid within 90 days after the end of such year.

4. Determination of Taxable Income

Taxable income shall be computed 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 the proper revenue that would have been received based on market prices for similar arms-length transactions or shall use such other provisions as may be determined by agreement.

6. Determination of Costs

1. All capital expenditure, pre-production costs and revenue expenditure shall be entered in the books of account of the licensee for 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 based on market prices for similar arms-length transactions or shall use such other provision 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 contributions shall be valued, respectively, at the market value of the assets or services on the date contributed.

3. The value of such assets and services and the amount of such expenditure contributed 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 and geophysical surveys and studies and related services;

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 generally rendering safe all installations used in mining operations;

4. general administrative expenses and management and professional commissions and service, lease licensing and other fees incurred within and outside of Ethiopia 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 transactions;

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 for similar financing and that the loan has been approved 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 may be depreciated, depreciation of such expenditure and costs for any accounting year shall be calculated on a straight-line basis over a useful life of four consecutive years.

9. Reinvestment Deduction

1. The licensee shall be entitled to deduct for each accounting year an amount equal to 5% of gross income.

This amount is to be reinvested in other mining operations, or in other investments within Ethiopia 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.

10. 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.

2. 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 represents the transferror or assignor licensee's unrecovered expenditure, be treated as capital expenditure to be depreciated in accordance with article 8 of this Proclamation.

12. Dividend Tax

1. Tax is payable on dividends declared and distributed from taxable income after deduction of income tax.

2. The tax on dividends is imposed at a rate of 10%. The licensee shall retain the tax and pay within 60 days after the distribution of such dividends.

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 Ethiopia or who is temporarily present in Ethiopia 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% on the amount paid, less all charges for mobilization and demobilization.

3. For the purpose of this article, a person in temporarily present in Ethiopia 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 Ethiopia shall not apply to matters provided for in this Proclamation.

15. Power to Issue Directives

The Minister of Finance in consultation with the Minister, 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 Negarit Gazeta. (June 23, 1993)