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Bill 5

An Act to amend the Mining Duties Act

Introduction

Introduced by
Madam Denise Carrier-Perreault
Minister for Mines, Lands and Forests

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EXPLANATORY NOTE

This bill amends the Mining Duties Act to give effect to changes announced in the Budget Speech of 9 May 1995. The new measures include

- the introduction of a credit on duties for the cost of bringing an orebody into production;*
- the introduction of an additional allowance for a northern mine;*
- the clarification of the definition of mining operation;*
- the harmonization of the vocabulary used in the Act with that of the Civil Code of Québec.*

Bill 5

An Act to amend the Mining Duties Act

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 1 of the Mining Duties Act (R.S.Q., chapter D-15), replaced by section 1 of chapter 47 of the statutes of 1994, is amended

(1) by inserting the word “advance,” after the word “deduction,” in the third line of the definition of “government assistance”;

(2) by replacing the definition of “processing asset” by the following definition:

““processing asset” means a depreciable asset of an operator, other than property used in the operation of a mine tailings site, which is situated in Québec and used at a stage of mining operations taking place after the extraction, primary crushing and secondary crushing of a mineral substance, and which constitutes either the whole or a part of a building in which only processing is carried out by the operator, or equipment used by the operator almost exclusively for processing;”;

(3) by replacing the definition of “mining operation” by the following definition:

““mining operation” means all work related to the various phases in the mineral development process, namely exploration, mineral deposit evaluation, mine development, the reclamation or rehabilitation of land situated in Québec, the extraction, processing, transportation, handling, storage and marketing of a mineral substance extracted from Québec soil up to the time of its alienation or use by the operator, and the processing of mine tailings from Québec, but does not include work

(1) performed for others;

(2) relating to the extraction of a mineral substance the well head value of which is subject to the royalty referred to in section 204 of the Mining Act (chapter M-13.1);

(3) carried out after 17 October 1990 in respect of surface mineral substances as defined in section 1 of the Mining Act, or of mineral substances the rights in or over which have been surrendered to the owner of the soil under section 5 of that Act;";

(4) by replacing the definition of "amalgamation" by the following definition:

" "amalgamation" means a merger of several legal persons, hereinafter called "predecessor legal persons", which are replaced to form one legal person hereinafter referred to as the "new legal person", which is formed otherwise than by the acquisition of property of another legal person or by the distribution of property of another legal person being wound up;";

(5) by inserting, after the definition of "mining operation", the following definition:

" "northern mine" means a mine situated north of the fifty-fifth parallel of north latitude;";

(6) by inserting, after the definition of "processing asset", the following definition:

" "processing product" means a product, by-product or derivative obtained as a result of the processing of a mineral substance;";

(7) by adding, after the definition of "orebody", the following definition:

" "processing" means any activity involving the concentration, smelting or refining of a mineral substance and includes pelletization, the production of steel powder or steel billets, or any other activity prescribed by regulation;".

2. Section 6 of the said Act, replaced by section 6 of chapter 47 of the statutes of 1994, is again replaced by the following section:

“6. The gross value of the annual output for a fiscal year is the actual value of the mineral substances and, where applicable, of the processing products, derived from the operator's mining operation that are alienated or used by him, in the fiscal year, at the market price at the time of their alienation or use. However, the actual value of the mineral substances and processing products does not include a gain or loss resulting from a hedging or speculative transaction.”

3. Section 7 of the said Act, amended by section 7 of chapter 47 of the statutes of 1994, is replaced by the following section:

“7. In case of doubt, the Minister may value the mineral substances and, where applicable, the processing products; alienated or used by an operator, and such valuation shall constitute the gross value of the annual output for the purposes of this Act.”

4. Section 8 of the said Act, replaced by section 8 of chapter 47 of the statutes of 1994, is amended

(1) by replacing the words “*f* to *h*” in the seventh line of subparagraph *c* of paragraph 2 by the words “*f* to *h* and *j*”;

(2) by replacing subparagraphs *d* to *h* of paragraph 2 by the following subparagraphs:

“(d) subject to sections 8.6 and 10, the amount deducted by the operator, for the fiscal year, as a depreciation allowance;

“(e) subject to section 16, the amount deducted by the operator, for the fiscal year, as an exploration, mineral deposit evaluation or mine development allowance;

“(f) subject to section 17, the amount deducted by the operator, for the fiscal year, as an investment allowance;

“(g) subject to section 19.1, the amount deducted by the operator, for the fiscal year, as an additional exploration allowance;

“(h) subject to section 21, the amount deducted by the operator, for the fiscal year, as a processing allowance;”;

(3) by adding, after subparagraph *i* of paragraph 2, the following subparagraph:

“(j) subject to section 26.1, the amount deducted by the operator, for the fiscal year, as an additional allowance for a northern mine.”

5. Section 19 of the said Act, replaced by section 18 of chapter 47 of the statutes of 1994, is again replaced by the following section:

“19. The allowance referred to in section 17 for a fiscal year shall not exceed 33 1/3% of the annual profit for that fiscal year, determined without reference to that allowance, the additional exploration allowance, the processing allowance and the additional allowance for a northern mine referred to in subparagraphs *f* to *h* and *j* of paragraph 2 of section 8.”

6. Section 19.3 of the said Act, enacted by section 19 of chapter 47 of the statutes of 1994, is replaced by the following section:

“19.3 The annual ceiling on exploration expenses for a fiscal year is the amount corresponding to the annual profit for that fiscal year computed without reference to the additional exploration allowance, the processing allowance and the additional allowance for a northern mine referred to in subparagraphs *g*, *h* and *j* of paragraph 2 of section 8.”

7. Section 21 of the said Act, replaced by section 22 of chapter 47 of the statutes of 1994, is amended by replacing paragraph 2 by the following paragraph:

“(2) an amount that is 65% of the annual profit, for that fiscal year, determined before deduction of the processing allowance and the additional allowance for a northern mine referred to in subparagraphs *h* and *j* of paragraph 2 of section 8.”

8. The said Act is amended by inserting, after Division V of Chapter III, the following:

“DIVISION V.1

“ADDITIONAL ALLOWANCE FOR A NORTHERN MINE

“26.1 The amount that an operator may deduct as an additional allowance for a northern mine in computing his annual profit for a particular fiscal year, under subparagraph *j* of paragraph 2 of section 8, shall not exceed the lesser of the following amounts:

(1) the operator’s annual profit, for the particular fiscal year, determined without reference to subparagraph *j* of paragraph 2 of section 8;

(2) the cumulative northern mine expenses at the end of the particular fiscal year.

Notwithstanding the first paragraph, where the particular fiscal year ends after the ninth fiscal year following the fiscal year during which the operator begins processing ore from the northern mine, the operator may not deduct any amount for the particular fiscal year under subparagraph *j* of paragraph 2 of section 8.

“26.2 Cumulative northern mine expenses, at any time, are the amount by which

(1) the aggregate of all amounts each of which is $166\frac{2}{3}\%$ of the capital cost to the northern mine operator of each asset situated in Québec that is used immediately before that time in processing ore from the mine, and that is acquired after 9 May 1995 and before that time,

exceeds

(2) the aggregate of all amounts each of which is an amount granted to the operator, for a fiscal year ending before that time, as an additional allowance for a northern mine under subparagraph *j* of paragraph 2 of section 8.

“26.3 For the purposes of sections 26.1 and 26.2, where an operator, hereinafter called the “new operator”, obtains as a result of a distribution or acquires, at a particular time, an asset situated in Québec that is used in processing ore from a northern mine of a particular operator, and where such operator has deducted an amount under subparagraph *j* of paragraph 2 of section 8,

(1) each fiscal year ending after the fiscal year during which the particular operator begins processing ore from the northern mine and before the particular time is deemed to be a fiscal year of the new operator, and the new operator is deemed to have begun processing ore from the northern mine at the same time as the particular operator began processing ore;

(2) the capital cost of the asset to the particular operator, immediately before the particular time, is deemed to be, at the particular time, the capital cost of that asset to the new operator;

(3) the part of each of the amounts that may reasonably be considered to relate to the asset distributed to or acquired by the new operator, and that is deducted by the particular operator under

subparagraph *j* of paragraph 2 of section 8 for a fiscal year ending before the particular time as an additional allowance for a northern mine, is deemed to be an amount granted for that fiscal year to the new operator under the said subparagraph *j*.”

9. The said Act is amended by inserting, after Division II of Chapter V, the following:

“DIVISION II.1

“CREDIT ON DUTIES FOR THE COST OF BRINGING AN OREBODY INTO PRODUCTION

“32.2 In this division,

“plan to bring an orebody into production” means a plan submitted by a qualified operator, describing all the property and work necessary to bring an orebody situated in Québec into production;

“prior ministerial approval” means a written confirmation by the Minister, sent to a qualified operator not later than (*insert here the date occurring five years after the coming into force of this Act*) subject to the availability of sums appropriated for the purposes of this division, that the operator’s plan to bring an orebody into production and the related feasibility study have been found to be consistent with the objectives of this division, following examination of the plan and study and of any additional study or information considered necessary by the Minister for granting his approval;

“qualified expense” means the cost of a qualified operator’s property that is a road, a building, or equipment other than service property, and that is property

(1) described in the operator’s plan to bring an orebody into production that has received prior ministerial approval;

(2) acquired and used by the operator after the prior ministerial approval and before the third fiscal year following the fiscal year during which the operator has received, as a result of a qualified investment, the sums necessary to finance the work and property described in the operator’s plan to bring an orebody into production;

(3) used by the operator in the exploitation of the orebody that has been brought into production, and is in regular use for a period of 730 consecutive days beginning on the day after the day on which its utilization begins or, if exploitation of the orebody ceases for

economic reasons, for such shorter period as is reasonable in the circumstances;

“qualified investment” means the acquisition of a qualified security issued by a qualified operator by a qualified investor as first purchaser if, as a result of such acquisition, the investor does not exercise control over more than 50% of the voting rights attached to the operator’s outstanding securities;

“qualified investor” means a specified financial institution within the meaning of section 1 of the Taxation Act (chapter I-3) or an institution or body incorporated under one of the following Acts:

(1) the Act respecting the Caisse de dépôt et placement du Québec (chapter C-2);

(2) the Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.) (chapter F-3.2.1);

(3) the Supplemental Pension Plans Act (chapter R-15.1);

(4) the Act to establish Fondation, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l’emploi (1995, chapter 48);

“qualified operator” means an operator who is a legal person if, during the fiscal year preceding the fiscal year during which prior ministerial approval is granted to the operator or, in the event of the operator’s first fiscal year, at the beginning of the operator’s first fiscal year,

(1) the aggregate of the assets of the operator and of a legal person related to the operator, or the aggregate of the net shareholders’ equity and the net shareholders’ equity of a legal person related to the operator, as shown in the financial statements presented to the shareholders, is less than \$50,000,000 or \$40,000,000, respectively;

(2) the operator’s activities are principally carried on in Québec or the operator’s head office is in Québec;

“qualified security” means a security recognized as such in the trade, the rights attached to which do not include the right to redeem the security less than four years after its issue, but does not include an instrument evidencing a loan of money other than an unsecured bond that is convertible into a security that is a share.

"32.3 The department shall pay, to a qualified operator, the amount determined under section 32.4 as an advance on the credit on duties for the cost of bringing an orebody into production if the operator

(1) has submitted a plan to bring an orebody into production, supported by a feasibility study prepared by a person who is not related to the operator;

(2) has submitted, with his plan to bring an orebody into production, a prescribed form, duly completed;

(3) has obtained the capital from a qualified investment within six months from the date of the prior ministerial approval, or within such longer period as the Minister considers reasonable.

"32.4 The amount paid under section 32.3 to a qualified operator as an advance on the credit on duties for the cost of bringing an orebody into production is the lesser of the following amounts:

(1) 12% of the aggregate of all amounts each of which is the estimated cost of a property that is a road, a building, or equipment, other than service property, described in the operator's plan to bring an orebody into production;

(2) 12% of the capital from the qualified investment;

(3) \$3,000,000.

"32.5 The Minister shall determine, after the fourth fiscal year following the fiscal year during which a qualified operator has received an amount under section 32.3, the amount of the credit on duties for the cost of bringing an orebody into production to which the operator is entitled, which is the lesser of the following amounts:

(1) 12% of the aggregate of all amounts each of which is a qualified expense of the operator;

(2) 12% of the capital from the qualified investment;

(3) \$3,000,000.

"32.6 A qualified operator must reimburse any amount by which the amount received as an advance, under section 32.3, exceeds the lesser of the following amounts:

(1) the amount determined under section 32.5;

(2) zero, if, during the period beginning after the day preceding the date of the prior ministerial approval and ending before the fifth fiscal year following the fiscal year during which the operator has received an amount under section 32.3,

(a) the operator has made a substantial disbursement in favour of his shareholders, a legal person related to him, the qualified investor or the shareholders of the qualified investor that effected the qualified investment, or in favour of persons related to such shareholders, qualified investor or qualified operator, except a disbursement previously authorized by the Minister;

(b) the operator has purchased by agreement or redeemed a qualified security issued by him as part of the qualified investment;

(c) the operator did not adhere to the plan to bring an orebody into production;

(d) the operator's interest in a property referred to in the definition of "qualified expense" in section 32.2 is less than 30%;

(e) the qualified investor controls more than 50% of the voting rights attached to the outstanding securities of the operator;

(f) a legal person that does not otherwise qualify as a qualified operator acquires control of the operator;

(3) zero, if the operator obtained prior ministerial approval on the basis of false or deceiving information that misled the Minister."

10. The said Act is amended by inserting, after section 43, the following section:

"43.0.1 The Minister may re-determine the credit on duties for the cost of bringing an orebody into production and make a reassessment

(1) at any time, if the operator who obtained, under section 32.3, an advance on the credit on duties for the cost of bringing an orebody into production

(a) has made a misrepresentation that is attributable to negligence or wilful default or has committed any fraud in supplying any information required under Division II.1 of Chapter V; or

(b) has filed a waiver with the Minister using the form prescribed by the Minister;

(2) within four years from the day of mailing of the statement determining, in accordance with section 32.5, the amount of the credit on duties for the cost of bringing an orebody into production, in all other cases."

11. The said Act, amended by chapter 47 of the statutes of 1994, is again amended

(1) by replacing the word "corporation", wherever it appears in sections 16.4 to 16.6, paragraphs *a* and *b* of section 18.1, sections 19.5 to 19.7, section 35.2, paragraphs 1 to 7 of section 35.3, sections 46.0.4 to 46.0.6, and section 92, by the words "legal person";

(2) by replacing the word "corporations", wherever it appears in section 35.2 and in that part of paragraph 1 of section 35.3 preceding subparagraph *a*, by the words "legal persons".

12. Section 37 of the said Act, amended by section 40 of chapter 47 of the statutes of 1994, is again amended by striking out the words "trustee in bankruptcy, assignee, liquidator, curator, tutor, sequestrator and every agent or other" in the first and second lines.

13. Section 67 of the said Act is amended by inserting the words "or in which his establishment is situated" after the word "resides" in the second line.

14. Section 71 of the said Act, amended by section 59 of chapter 47 of the statutes of 1994, is again amended by replacing the words "place of business, his residence" in the second and third lines by the words "residence, at his establishment".

15. Section 75 of the said Act is amended by striking out the words "or by solemn affirmation" in the fifth line of subparagraph *c* of the second paragraph.

16. Section 83 of the said Act, amended by section 63 of chapter 47 of the statutes of 1994, is again amended

(1) by replacing the words "court of competent jurisdiction" in the first line of the first paragraph by the words "competent court";

(2) by replacing the words “the prothonotary or the clerk, as the case may be,” in the second and third lines of the first paragraph by the words “the clerk”;

(3) by replacing the words “Her Majesty in right of Québec” in the fourth line of the first paragraph by the words “the Attorney General”.

17. Paragraphs 2, 3, 6 and 7 of section 1 and sections 2 and 3 apply to a fiscal year ending after 12 May 1994.

18. Paragraph 5 of section 1, paragraphs 1 and 3 of section 4 and sections 5 to 8 apply to a fiscal year beginning after 9 May 1995.

19. This Act comes into force on (*insert here the date of assent to this Act*).