Yukon
Energy, Mines and Resources

Information Sheet 2010-02
Explanation of Quartz Mining Act and Royalty Regulation Amendments

Note: This information sheet is not legal advice and should not be relied upon for legal purposes. It is intended to summarize certain aspects of the Quartz Mining Act and, as such, does not attempt to present all aspect of the Act and Regulations. The document may be amended from time to time. For complete information the reader must refer to the Quartz Mining Act and its Regulations.

Background

Under the *Quartz Mining Act* (QMA), royalty is a share of profits from a mine in the Yukon acquired under the QMA or the (predecessor) *Yukon Quartz Mining Act*, reserved for the Yukon government as owner of the mineral rights, for permitting extraction of mineral resources. It is paid by a mine owner or operator to the Yukon government. It is not a tax. Section 102 of the QMA specifies an annual royalty payable to the Yukon Commissioner on mining profits.

The QMA was enacted by the Yukon government in 2003, in accordance with devolution of control and administration of mineral rights from the federal government to the Yukon government. In November 2008, the QMA was amended to lower exploration costs, modernize outdated portions of the act, provide clarification to the royalty regime, and increase responsiveness to changes in the mineral exploration and mine development climate by moving the royalty provisions into a separate regulation. To support these changes, in May 2010, the new Quartz Mining Royalty Regulation came into effect.

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Part 1: Quartz Mining Act:

1. Royalty rate (amended)

The QMA royalty is a share of profits from mining pursuant to the QMA in the Yukon, paid by a mine owner or operator to the Yukon government, through the Commissioner, for the right to extract mineral resources.

The royalty is payable annually, on an escalating rate basis, for any profits from mining that exceed $10,000. The royaltiable profit is the amount by which the value of annual output from mining (revenues) exceeds eligible deductions (costs) for the year.

Royaltiable Profit = Revenues from mining – Eligible deductions

In its original form, the escalating royalty rate was open-ended when profits exceed $10 million. Any increase of $5 million in mine revenue greater than $10 million would result in a percentage increase in the royalty rate. This created a situation where a mine could owe 100% of its revenue in royalty if its revenues were high enough. This created a serious disincentive to large mine projects. Section 102(3) of the amended royalty provisions of the QMA caps the annual royalty rate at 12% for any profit in excess of $35 million (see below).

QMA Royalty Rate Table

On Annual Profits greater than:	**and up to:**	**Royalty rate** (applied to the increment)
$0	$10,000	0%
$10,000	$1 million	3%
$1 million	$5 million	5%
$5 million	$10 million	6%
$10 million	$15 million	7%
$15 million	$20 million	8%
$20 million	$25 million	9%
$25 million	$30 million	10%

$30 million	$35 million	11%
$35 million	Any amount greater than $35 million	12%

The specified incremental royalty rates apply to profits within each specified increment, not to the total profits. That is, for net profits of $8 million, the royalty would be:

Royalty calculation example:

	Annual Net Profits	**Rate**	**Royalty**
on the first	$10,000	0%	$0
on the next	$990,000	3%	$29,700
on the next	$4 million	5%	$200,000
on the next	$3 million	6%	$180,000
Total	**$8 million**		**$409,700**

The royalty is determined on a calendar year basis. Under section 102 of the QMA, royalty accrues as of January 1 in the year following production. An annual royalty return is required to be filed by April 1, and payment of royalty is due on October 1 of that year.

2. Consolidated Filing (repealed)
Section 102(2) of the previous QMA legislation required all mining operations in the Yukon under common management to be considered as a single mine for the purpose of filing and paying royalty. This provision has been removed from the amended QMA. Now that this part has been repealed, each mine is treated separately for the purposes of calculating revenues and royalties.

3. Deductibility of Income Tax (repealed)
Section 102(5)(j) of the previous QMA legislation allowed Federal income tax to be deducted when determining eligible profit. Since the mine royalty is itself a deduction for income tax purposes, allowing the deduction of income tax creates a circular function where each measure is deductible for the other. This provision has been repealed in the amended QMA.

Part 2: Quartz Mining Royalty Regulation

1. Eligible Deductions

a. Yearly Deductions (amended)
Under the previous QMA legislation, the provisions for annual deductions were dealt with under sections 102(5) and (6). These provisions were unclear and did not capture certain aspects of modern mining practice. The yearly deduction provisions have been moved from the Act and are now included in Part 4 of the new Regulation. They have been updated and the specific allowable deductions itemized to provide clarity for mine operators. Section 23 of the Regulation provides a list of eligible deductions, while prohibited deductions are listed in Part 8.

In order to be eligible, any deductions to be claimed must be incurred after the mine has officially commenced production. Eligible deductions can only be claimed in the year they are incurred. There is no carry forward provision for these costs.

b. Development Allowance (amended)
The previous QMA legislation specified any development costs were only allowed to be deducted in the year they were incurred. This meant that a new mine would not be able to deduct any of its pre-production exploration or development expenses until the mine was actually in production. Under the new regulation, pre-production exploration and development expenses are allowed to be pooled and carried forward, with the deductions amortized over the life of the mine. Part 5 of the new Regulation describes the provisions of the development allowance in detail.

The amount to be claimed as the development allowance is limited to pre-production expenses only. Any development or exploration costs incurred after the commencement of production are to be included as yearly deductions under Part 4 of the Regulation. The allowance is limited to eligible pre-production expenses incurred on the mine property as it was on the date of commencement of production.

c. Depreciation Allowance (amended)
Under the provisions of section 102(5)(h) of the previous QMA royalty legislation, the allowable deduction for depreciation of mine assets was limited to 15% of the original cost of the assets. Under Part 6 of the new Regulation, eligible capital asset costs are deductible as depreciation allowance at the rate of 15% until the original capital cost of the asset is fully claimed. Depreciable asset means tangible property, other than land, used in the operation of a mine and having an original capital cost of over $10,000 and an expected useful life of more than one year.

d. Community and Economic Development Expense Allowance (New)
In order to recognize the importance of providing direct benefits to communities, Part 7 of the new Regulation allows for deduction of some of the contributions or payments that mine operators make to community infrastructure or economic development. Expenses

eligible for the Community and Economic Development Expense Allowance (CEDEA) fall into the following categories:

- Capital costs for constructing or repairing community infrastructure works
- Capital costs for constructing or repairing other community facilities
- Operation or maintenance costs of community infrastructure or other community facilities
- Cost of equipment used in a community facility
- Cost of economic development or education programs
- Cost of environmental clean up programs for land not included in the mine property

The purpose of this list is to serve as a guideline for possible allowable expenses. It is not a definitive list of allowable or excluded expenses. Ministerial approval allows oversight of the process to ensure the expenses applied for under the allowance are valid under the regulation. Any costs that have already been claimed as deductions or allowances in the calendar year are not eligible for CEDEA. For further information, section 50(2) of the new Regulation contains a list of expenses prohibited under CEDEA.

The CEDEA is not a discretionary allowance and eligible amounts must be claimed every year, once approved by the Minister. CEDEA amounts are limited to **the lesser** of:

- The accumulated undeducted balance of qualifying expenditures for the mine for the calendar year;
- 15% of the sum of all amounts claimed for the mine as deductions, development allowance and depreciation allowance;
- 20% of the amount that would be the value of output of the mine for the year after all other deductions

2. Co-production Apportionment Procedures (New)
Under Part 10 of the new Regulation, co-production is defined as a situation where any of the minerals produced by the mine are extracted from a source other than the mine property as defined in the mine license. This includes exempt land, another mine or any land other than the mining property. In these cases, the mine operator(s) must apply to the Minister to have co-production apportionment procedures put in place to adjust the value of the output of the mine to reflect the percentage of minerals coming from off the mine property. If co-production occurs without apportionment procedures in place, the value of all the minerals produced by the mine, including those from the co-production source, will be added to the value of the output of the mine and the royalty calculated based on those numbers.

3. Pre-production Royalty (New)
Under Part 12 of the new Regulation, if a mine for which a mine license has not been issued has produced minerals with a value exceeding $10,000, the mine operator must file a return for pre-production royalty. This includes minerals produced from trenching,

bulk sampling or test pits as long as the value of the minerals produced exceeds $10,000, and regardless whether the production resulted in a profit. If no net profit is realized, then no royalty is payable. The pre-production royalty return is designed to ensure appropriate recording of the production, its value, and related costs and deductions.

4. Penalties and Interest (New)
Under Part 14 of the new Regulation, penalties are assessed for failure to file a return on time and making false statements in a filed return. False statements include omitting information under a return or failing to file a return other than the annual return on time.

Any penalties owing will be included in the notice of assessment (see below) sent to the company as part of the royalty payable for the calendar year. Interest on unpaid royalties and penalties will be assessed at the Bank of Canada rate detailed under section 126 of the regulation plus 2%. This interest accrues daily until the amount in arrears is paid in full.

5. Royalty Forms (new)

Royalty returns are to be submitted annually, in the form prescribed under Part 13 of the new Regulation.

6. Royalty Assessment and Audit (amended)

Under Part 14 of the new Regulation, royalty returns will be assessed annually by Yukon Energy, Mines and Resources, with a notice of assessment of the royalty owing reported back to the filer. Returns may also be subject to periodic audit. If a mine operator wishes to appeal an assessment, they must file in writing to the Minister within 90 days of the mailing of the notice of the assessment.

Any additional royalty amounts owing as a result of an assessment or audit will accrue immediately, and be due for payment on the normal payment date of the respective royalty.