



# **GRA**

## **GHANA REVENUE AUTHORITY**

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**Practice Note on  
Separate Petroleum Operation under  
the Income Tax Act, 2015 (ACT 896)**

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## **TABLE OF CONTENT**

<b>1.0</b>	<b>TAX LAW .....</b>	<b>1</b>
<b>2.0</b>	<b>INTERPRETATION .....</b>	<b>1</b>
<b>3.0</b>	<b>THE PURPOSE OF THIS PRACTICE NOTE.....</b>	<b>1</b>
<b>4.0</b>	<b>APPLICATION OF THE LAW .....</b>	<b>1</b>
4.1	Separate Mineral Operation (Mine) .....	1
4.2	Separate Mineral Operation (Shared Processing Facility) .....	2
4.3	Separate Mineral Operation (Mineral Right) .....	2
4.4	Separate Mineral Operation as an Independent Business.....	3
4.5	Transactions between Separate Mineral Operations and any other activity .....	3
4.6	Deduction of Relevant Financial Cost under Separate Mineral Operation .....	4

## **1.0 TAX LAW**

The Commissioner-General of the Ghana Revenue Authority is empowered under paragraph 2 of the Seventh Schedule of the Income Tax Act, 2015 (Act 896) to issue practice notes setting out the interpretations placed on provisions of the Act by the Commissioner-General. Accordingly, this Practice Note is issued in respect of Separate Mineral Operation under sections 77 and 78 of the Income Tax Act, 2015 (Act 896).

## **2.0 INTERPRETATION**

In this Practice Note, unless the context requires otherwise, the word “Act” means the Income Tax Act, 2015 (Act 896)

Definitions and expressions used in this Practice Note, unless the context requires otherwise, have the same meaning as they have in the Act.

## **3.0 THE PURPOSE OF THIS PRACTICE NOTE**

This practice note is issued to clarify and provide guidelines to officers of the Ghana Revenue Authority, Tax Practitioners, Consultants, Taxpayers and the general public on the acceptable treatment of the ring fencing provisions under sections 77 and 78 of the Act that segregates mineral operations of a person into Separate Mineral Operations for tax purposes. This is to ensure consistency in the implementation of the said provisions.

## **4.0 APPLICATION OF THE LAW**

### **4.1 Separate Mineral Operation (Mine)**

Separate Mineral Operation under section 78 (1) (a) of the Act means mineral operations (reconnaissance, prospecting, and mining for minerals or mining of minerals) conducted in respect of each mine.

Where a person is conducting mineral operations in two or more mines, the mineral operations under each mine constitutes a Separate Mineral Operation for tax purposes.

#### **4.2 Separate Mineral Operation (Shared Processing Facility)**

Under section 78 (1) (b) of the Act, a Separate Mineral Operations means mineral operations with a shared processing facility.

Where a person is conducting mineral operations at different locations with a shared processing facility, such mineral operations are required to be considered as the same Separate Mineral Operation.

Where a person is conducting mineral operations with different processing facilities, the mineral operations relating to each processing facility is required to be considered as a Separate Mineral Operation.

#### **4.3 Separate Mineral Operation (Mineral Right)**

Under subsections (2) and (3) of section 78 of the Act, mineral operations conducted by a person under a reconnaissance licence; and subsequently under a prospecting licence and mining lease are required to be considered as the same Separate Mineral Operation, where the mining lease is carved out of the prospecting area, and the prospecting area is carved out of the reconnaissance license area.

For the avoidance of doubt mineral operation conducted by a person under a reconnaissance license only, is a separate mineral operation, and mineral operation conducted by a person under a prospecting license only, is a separate mineral operation and mineral operation conducted by a person under mining lease only is a separate mineral operation. Where a person conducts mineral operations under two or more mining leases with one processing facility, such mineral operations constitute a separate mineral operation.

#### **4.4 Separate Mineral Operation as an Independent Business**

Under section 77 (4), each Separate Mineral Operation is required to be treated as an independent business. The chargeable income of a person is required to be determined separately for each Separate Mineral Operation.

Any person engaged in mineral operations should therefore keep separate books of accounts and file tax returns for each Separate Mineral Operation.

#### **Illustration:**

- a) Company A is engaged in mineral operations in two mines. The law requires that the chargeable income of Company A be determined separately for each mine.
- b) If Company A is engaged in the conduct of mineral operations in two or more pits under the same mining lease and with a shared processing facility, such mineral operations constitute the same Separate Mineral Operation. The chargeable income of Company A should be determined for that Separate Mineral Operation.

#### **4.5 Transactions between Separate Mineral Operations and any other activity**

The arms-length principle should apply to transactions or any arrangements between two or more separate mineral operations of a person, and between a separate mineral operation and any other activity of that person. This means that transactions between a Separate Mineral Operation and another Separate Mineral Operation or any other business activities belonging to the same person should be carried out as though they were done between independent persons.

Where a person engaged in mineral operations earns income from a business other than from mineral operations, the chargeable income of the person is required to be determined separately for the mining operations and the other business. The chargeable income from the other business is required to be determined in accordance with the relevant provisions under section 1 of the Act.

#### **4.6 Deduction of Relevant Financial Cost under Separate Mineral Operation**

The following rules are provided for deducting relevant financial cost under section 81(4) to 81(7) of the Act.

- (i) Relevant financial gain or relevant financial cost may be included in ascertaining the chargeable income of a person from a Separate Mineral Operation.
- (ii) The relevant financial cost is deducted only to the extent the relevant financial gain is included in determining the chargeable income of a person from a Separate Mineral Operation.
- (iii) In a year of assessment, where any relevant financial cost is not allowed as deduction in determining the chargeable income by virtue of the limitation to the relevant financial gain, such cost may be carried forward and deducted from the relevant financial gain of the subsequent five years of assessment. The carried forward relevant financial costs are required to be deducted in the order in which they were incurred.
- (iv) The relevant financial cost not allowed as deduction in determining the chargeable income should be added back to the profit of the separate mineral operation to determine the chargeable income for the year of assessment in which the limitation of the financial cost was effected.

#### **ILLUSTRATION**

The profit of a company from a Separate Mineral Operation is GHS2,000,000.00. An amount of GHS420,000.00 and GHS200,000.00 in respect of relevant financial cost and relevant financial gain respectively were reckoned in determining profit from the Separate Mineral Operation.

**REQUIRED:**

Explain the tax treatment of the relevant financial cost and the relevant financial gain in respect of the derivative instrument, and determine the chargeable income of the company from mineral operations.

### SOLUTION

The Act requires that relevant financial cost should be limited to relevant financial gain included in the profit of the company. Even though the relevant financial cost reckoned in determining the profit of the company is GHS420,000 it has to be limited to the relevant financial gain included in the profit, which is GHS200,000. The excess of relevant financial cost over the relevant financial gain (Loss) may be carried forward and deducted from relevant financial gain of the subsequent five years.

To determine the chargeable income from the separate mineral operation, the excess relevant financial cost of GHS220,000 reckoned in arriving at the profit of the separate mineral operation should be added back.

### Computation of Chargeable Income

Profit		GHS2,000,000.00
Financial Cost		420,000
<u>Less Allowable Cost (limited to Financial Gain)</u>	<u>200,000</u>	
Excess cost added back	220,000	220,000.00
Chargeable Income (Mineral Operations)		<b>GHS2,220,000.00</b>
Financial Cost carried forward as loss		220,000.00

Signed .....

Date 06/10/2016 .....

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