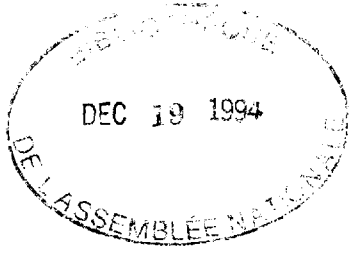
NATIONAL ASSEMBLY

FIRST SESSION THIRTY-FIFTH LEGISLATURE

Bill 47

An Act to amend the Mining Duties Act

Introduction



Introduced by
Mr François Gendron
Minister of Natural Resources

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EXPLANATORY NOTES

This bill amends the Mining Duties Act to give effect to the Budget Speech delivered on 12 May 1994. The measures introduced pertain, in particular, to

– the 100% accelerated capital cost depreciation for property used regularly in mining operation;

– the deductibility of expenses financed by flow-through shares issued in favour of a corporation;

– replacement of the 33 1/3% investment allowance by an additional 50% allowance for expenses incurred in respect of certain exploration work;

– the introduction of provisions pertaining to the rollover of fiscal accounts in the case of amalgamations or transfers of assets between related persons;

– the inalienability and unseizability of any sum due as a refund under the Act;

– the limiting of the credit on duties refundable for losses to exploration, mineral deposit evaluation and mine development expenses only;

– abolition of the 15% minimum of annual profit applicable in connection with the processing allowance and the taking into consideration of that allowance in the case of an annual loss;

– abolition of the $90 000 annual credit on duties and of the credit on duties for losses;

– harmonization of the method of calculation of interest and interest rates with the method applied under the Taxation Act;

– the reduction of the tax rate on annual profit to 12%.

The bill also proposes additional measures intended to safeguard the confidentiality of information and allow the conclusion of reciprocity agreements with other administrative bodies responsible for the levy of duties, royalties or taxes.

Lastly, the bill contains concordance amendments and transitional provisions.

ACT AMENDED BY THIS BILL:

– Mining Duties Act (R.S.Q., chapter D-15).

Bill 47

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) is replaced by the following section:

"**1.** In this Act,

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

"assessment" means an assessment, a reassessment or an additional assessment;

"concentration" means any processing of ore or mine tailings to separate a mineral substance from its gangue and obtain a concentrate;

"exploration" means all surface work performed for the research and identification of mineral substances in Québec, until a mineral deposit has been delimited, if the work consists in

(1) geological surveys;

(2) ground or airborne geophysical surveys;

(3) photogeological analyses;

(4) geochemical or biogeochemical surveys;

(5) soil stripping;

(6) trenching;

(7) sampling and analyses;

(8) diamond drilling, percussion drilling or reverse circulation drilling;

(9) any other surface work essential to the research and identification of a mineral deposit;

"government assistance" means any direct or indirect assistance from a government, municipality or other public body, whether as a subsidy, premium, forgivable loan, tax deduction, or as any other form of assistance other than assistance excluded by regulation of the Government;

"mine" means an industrial complex situated in Québec, the object of which is the extraction and processing of mineral substances, and which may include an ore processing mill, a laboratory and various infrastructures such as port and rail facilities, and a camp;

"mine development" means all work subsequent to mineral deposit evaluation work, the purpose of which is to bring into production an orebody situated in Québec, if the work consists in

(1) open pit stripping of overburden and waste rock above an orebody;

(2) shaft sinking, the excavation of ramps, drifts and raises and other related mine development works, except work performed to make such openings in a mineralized zone, or giving access to a mineralized zone if the total length of the opening is less than 20 metres;

"mineral deposit" means a quantity of mineral substance having known physical limits;

"mineral deposit evaluation" means all work, other than work performed pursuant to a decision to bring an orebody into production, the object of which is the technical and economic evaluation of a mineral deposit for the purpose of identifying an orebody situated in Québec, if the work consists in

(1) surface exploration work performed to ascertain more precisely the technical and economic parameters of a mineral deposit;

(2) the excavation of ramps, adits, shafts, drifts, raises and other related works necessary to the underground reserve evaluation of a mineral deposit;

(3) the underground or surface extraction of a bulk sample and testing in a mill or laboratory to verify drilling results and to determine the optimal conditions for extraction and processing;

(4) determination of mining extraction and metallurgical technologies;

(5) technical and economic studies necessary to a decision whether or not to bring an orebody into production;

(6) any other work essential to the identification of the orebody;

"mineral substance" means any natural mineral substance, whether solid, gaseous or liquid, except water, and includes a fossilized organic substance or mine tailings;

"mining operation" means all work related to the various phases in the mineral development process, namely exploration, mineral deposit evaluation, mine development, land reclamation or rehabilitation, the extraction of ore from the soil of Québec including the processing of it which consists in the concentration, smelting or refining of the ore to any stage that is prior to the prime metal stage or its equivalent, and the processing of mine tailings from Québec, but does not include

(1) work performed for others;

(2) work relating to mineral substances the well head value of which is subject to the royalty referred to in section 204 of the Mining Act (R.S.Q., chapter M-13.1);

(3) work performed 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 as provided in section 5 of that Act;

"operator" means a person or partnership, other than a joint venture, that performs mining operation work, either alone or with others, or through a mandatary, on land situated in Québec or in a mine he owns, leases or occupies;

"ore" means a mineral substance that may be extracted for the purpose of obtaining a commercial product;

"orebody" means a volume of ore having known physical limits;

"processing asset" means a depreciable asset of an operator, situated in Québec and used in mining operation, which constitutes

the whole or a part of a building in which the operator carries out the concentration, smelting or refining of a mineral substance, and any equipment he uses almost exclusively for those activities, other than property used to transport the mineral substance outside the mine;

"refining" means any processing of a product from a smelting or concentration operation to remove impurities, which produces very high grade metal;

"service property" means property, other than a railroad not situated at the mine, acquired for the purpose of realizing or producing income from a mine and of providing services to the mine or to a townsite in which a large proportion of persons who ordinarily work in the mine reside, if the property is

(1) an airport, dam, basin, fire station, natural gas pipeline, energy transmission line, wastewater treatment plant, sewer, street lighting network, water main, water pumping station, water supply network, wharf, or similar property;

(2) a road, sidewalk, runway, parking lot, storage area, or similar surface construction;

(3) a machine or material accessory to property referred to in paragraph 1 or 2;

"smelting" means any processing of an ore or concentrate wherein the charge is melted and chemically converted to produce a slag and a matte or metal containing impurities.

2. Section 2 of the said Act is amended by replacing the word "business" in the second line of the first paragraph by the words "mining operation".

3. The said Act is amended by inserting, after section 2, the following section:

"**2.1** In the event that an operator ceases, for an indeterminate period, all activities related to his mining operation, the fiscal year of the operator is deemed to end immediately before the time at which the activities cease and, for the purpose of determining his fiscal year after that time, the operator is deemed not to have established a fiscal year for his mining operation before that time."

4. Section 5 of the said Act is replaced by the following section:

"**5.** Every operator shall pay, for a fiscal year, duties on his annual profit for that fiscal year."

5. The heading of Division I of Chapter III of the said Act is replaced by the following heading:

"RULES RELATING TO THE COMPUTATION OF ANNUAL PROFIT".

6. Section 6 of the said Act is 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 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 does not include a gain or loss resulting from a hedging or speculative transaction."

7. Section 7 of the said Act is amended

(1) by replacing the words "sold, shipped" in the first and second lines by the word "alienated";

(2) by inserting the words "of the annual output" after the word "value" in the third line.

8. Section 8 of the said Act is replaced by the following sections:

"**8.** Subject to section 8.0.1, the annual profit of an operator for a fiscal year is the amount by which

(1) the aggregate of

(*a*) the gross value of the operator's annual output for that fiscal year;

(*b*) an amount, other than government assistance, received or receivable by the operator during the fiscal year from a person or partnership, by reason of an expense incurred by the operator for a particular fiscal year and that is an expense deducted in computing annual profit for the particular fiscal year or an expense taken into account for the particular fiscal year, for the purposes of subparagraph *b* of paragraph 1 of section 16.1; and

(*c*) the amount determined under section 10.2 or 10.3 for that fiscal year;

exceeds

(2) the aggregate of

(*a*) the total of all expenses each of which is an expense incurred by the operator in respect of a mining operation, for the fiscal year, to the extent that the expense was incurred to realize the gross value of the annual output from the mining operation and provided that the expense relates directly thereto;

(*b*) the total of all expenses each of which is an expense incurred by the operator, for the fiscal year, for scientific research and experimental development work carried out in Canada, to the extent that it may be considered to relate to the operator's mining operation;

(*c*) the total of all gifts each of which is a gift made in Québec by the operator during the fiscal year for cultural, educational or charitable purposes, to the extent that the gift is referred to in any of paragraphs *a* to *f* of section 710 of the Taxation Act (R.S.Q., chapter I-3) and provided that the total of the gifts does not exceed 10% of annual profit, determined without reference to this subparagraph or to subparagraphs *f* to *h*;

(*d*) subject to sections 8.6 and 14, the amount determined in accordance with section 10, claimed by the operator for the fiscal year as a depreciation allowance;

(*e*) the amount determined in accordance with section 16, claimed by the operator for the fiscal year as an exploration, mineral deposit evaluation or mine development allowance;

(*f*) the amount determined in accordance with section 17, claimed by the operator for the fiscal year as an investment allowance;

(*g*) the amount determined in accordance with section 19.1, claimed by the operator for the fiscal year as an additional exploration allowance;

(*h*) the amount determined in accordance with section 21, claimed by the operator for the fiscal year as a processing allowance; and

(*i*) the amount determined in accordance with section 10.4 or 10.5 for the fiscal year.

"**8.0.1** For the purposes of section 8, an operator shall not deduct, in computing his annual profit for a fiscal year,

(1) an expense, except to the extent that it was incurred by the operator in respect of a mining operation to realize the gross value of the annual output from the mining operation and provided that the expense relates directly thereto;

(2) an expense to the extent that it may reasonably be considered that an amount is received or receivable by the operator, in respect of the expense, as government assistance;

(3) an expense incurred for incorporation, organization or reorganization;

(4) a loss or replacement of capital, a payment or outlay of capital or a depreciation, obsolescence or depletion allowance, except as permitted by sections 10, 17 and 21;

(5) a royalty paid or payable in respect of output;

(6) a premium or assessment paid in respect of an insurance contract, except where the insurance contract pertains to property regularly used in mining operation or a person, other than an executive or director, who is an employee of the operator and whose duties relate to mining operation;

(7) costs of financing;

(8) an amount paid or payable under this Act;

(9) taxes on profits and on capital, income tax under a federal, provincial or foreign law and professional fees incurred in respect of an objection or an appeal in respect of an assessment provided for in any such law;

(10) a reserve or provision other than a reserve or provision prescribed by regulation of the Government;

(11) an amount referred to in paragraph 3 of section 16.3; and

(12) a loss resulting from a hedging or speculative transaction."

9. The said Act is amended by inserting, after section 8.1, the following sections:

"**8.2** An amount deductible under this Act in respect of an outlay or expense may be deducted only to the extent that the outlay or expense is reasonable in the circumstances.

"**8.3** For the purposes of this Act, except sections 35.3, 35.4 and 35.5, an outlay or expense resulting from a transaction with a person related to the operator is deemed not to exceed the fair market value of property or a service supplied where the outlay or expense exceeds that value, and an operator who supplied property or a service following a transaction with a related person is deemed to have

received an amount at least equal to the fair market value of the property or service where the consideration received for the property or service is less than that value or where there is no consideration for the property or service.

"**8.4** An operator who, in computing his annual profit for a fiscal year, has already included or deducted an amount, directly or indirectly, is not required to again include the amount or is not authorized, as the case may be, to again deduct it, directly or indirectly, unless he is expressly required or authorized by this Act or in terms in which that requirement or authorization may necessarily be inferred.

"**8.5** An amount referred to in subparagraph *a* or *b* of paragraph 2 of section 8 does not include an amount taken into account in computing an allowance referred to in subparagraphs *d* to *g* of paragraph 2 of that section.

"**8.6** The amount that an operator may claim as a depreciation allowance under subparagraph *d* of paragraph 2 of section 8 for a fiscal year is reduced by the reasonable amount of the allowance that relates to the portion of each property used in part, in that fiscal year, for purposes other than mining operation."

10. The heading of Division II of Chapter III of the said Act is replaced in the French text by the following heading:

"ALLOCATION POUR AMORTISSEMENT".

11. Section 9 of the said Act is replaced by the following sections:

"**9.** In this division,

"alienation of property" means any transaction or event which confers the right to the proceeds of the alienation of property;

"proceeds of alienation" of property, taking into account the necessary adjustments by reason of the application of section 9.2, where applicable, means

(1) the sale price of property alienated;

(2) compensation for property unlawfully appropriated by a person;

(3) compensation for property destroyed, and any amount received or receivable under an insurance policy in respect of the loss or destruction of property;

(4) compensation for property appropriated by a person under statutory authority, or in respect of which he has given notice of his intention to so appropriate it;

(5) compensation for acts or omissions of a person whether or not he is acting in the exercise of a right, under statutory authority or otherwise, that injuriously affect property;

(6) compensation for property damage and any amount received or receivable under an insurance policy covering such damage, except to the extent that the compensation or amount, as the case may be, is expended to repair the damage within a reasonable time after the damage is caused; and

(7) the amount by which the liability of the owner of property to a creditor is extinguished as a result of the transfer of the property to the creditor or of the forgiveness of the debt;

"property of the first class" means a road, a building or equipment purchased before 1 April 1975 and actually used in mining operation;

"property of the second class" means a road, a building or equipment purchased after 31 March 1975 and before 13 May 1994 and actually used in mining operation;

"property of the third class" means a road, a building, equipment or a service property acquired after 12 May 1994 and regularly used in mining operation;

"undepreciated capital cost" of property of a class of an operator, at any time, means the amount by which

(1) the aggregate of

(*a*) the total of all amounts each of which is the capital cost to the operator of each property of the class acquired before that time;

(*b*) the total of all amounts each of which is an amount determined in accordance with the second paragraph of section 10.2, in respect of that class, for a fiscal year ending before that time;

(*c*) the total of all amounts each of which is an amount determined in accordance with section 10.3, in respect of that class, for a fiscal year ending before that time; and

(*d*) the total of all amounts each of which is an amount of government assistance, determined taking into account, where applicable, the adjustment provided for in section 9.2, of the capital cost of property of that class to which the amount of assistance relates, that has been repaid by the operator, before that time, pursuant to an obligation to do so, subsequent to the alienation of the property and that would have been included in determining the capital cost thereof under section 9.1 had the repayment been made before the alienation;

exceeds

(2) the aggregate of

(*a*) the total of all amounts each of which is an amount allowed to the operator as a depreciation allowance for a fiscal year ending before that time, in respect of property of that class;

(*b*) the total of all amounts each of which is an amount, where the operator before that time alienated property of that class, that is the lesser of the proceeds of alienation of the property minus any expenses made or incurred by the operator for the purpose of making the alienation, and the capital cost to the operator of the property;

(*c*) the total of all amounts each of which is an amount determined in accordance with the second paragraph of section 10.4, in respect of that class, for a fiscal year ending before that time;

(*d*) the total of all amounts each of which is an amount determined in accordance with section 10.5, in respect of that class, for a fiscal year ending before that time;

(*e*) the total of all amounts each of which is an amount of government assistance, determined taking into account, where applicable, the adjustment provided for in section 9.2, of the capital cost of the property of that class to which the amount of assistance relates, that the operator received or was entitled to receive before that time subsequent to the alienation of the property and that would have been included under section 9.1 in the amount of assistance that the operator received or was entitled to receive in respect of the property had the amount been received before the alienation of the property;

(*f*) the total of all amounts each of which is an amount determined for a fiscal year ending before 13 May 1994 and that is applied to reduce the depreciation allowance in respect of a property of that class, for the portion of the property used in part for purposes other than mining operation;

(*g*) the total of all amounts each of which is an amount determined for a fiscal year ending before that time under section 8.6 and that is applied to reduce the depreciation allowance in respect of the property of that class; and

(*h*) the total of all amounts each of which is an amount determined in respect of that class in accordance with paragraph *c* of section 13, as it read before 13 May 1994.

"**9.1** For the purposes of this Act, where an operator has received or is entitled to receive government assistance in respect of property or for the acquisition of property, the capital cost to the operator of the property at a particular time is deemed to be the amount by which the total of the capital cost of the property, determined without reference to this section or section 9.2, and the amount of the assistance in respect of the property, repaid by the operator pursuant to an obligation to do so, before alienation of the property and before the particular time, exceeds the amount of assistance that the operator received or is entitled to receive, before the particular time, in respect of the property before its alienation.

"**9.2** For the purposes of this Act, except section 21, where property, in the first fiscal year in which it is regularly used by the operator for the first time, is used in part in connection with mining operation and in part for another purpose, the capital cost of the property for the first fiscal year and any subsequent fiscal year is deemed to be the amount by which the capital cost of the property, determined without reference to this section but with reference to section 9.1, where applicable, exceeds the amount that is equal to the proportion of the cost that the use of the property for another purpose is of the total use made of the property."

12. Section 10 of the said Act is replaced by the following sections:

"**10.** Subject to section 14, the amount that an operator may deduct under subparagraph *d* of paragraph 2 of section 8 in respect of property of a class as a depreciation allowance in computing his annual profit for a fiscal year shall not exceed the lesser of

(1) the part of the capital cost of the property of that class, for that fiscal year;

(2) the undepreciated capital cost of the property of that class, before any deduction under that subparagraph *d*, at the end of the fiscal year; and

(3) where the operator is no longer the owner of property of that class at the end of the fiscal year, zero.

"**10.1** The part of the capital cost referred to in section 10 for a fiscal year is equal to the amount obtained by applying, in respect of the property of a class acquired before the end of the fiscal year, the following percentage:

(1) 15% of the total of all amounts each of which is the capital cost of each property of the first class, except if that capital cost has been wholly allowed under section 10, as it read before 13 May 1994;

(2) 30% of the total of all amounts each of which is the capital cost of each property of the second class, except if that capital cost has been wholly allowed under section 10, as it read before 13 May 1994;

(3) 100% of the total of all amounts each of which is the capital cost of each property of the third class.

"**10.2** The amount that an operator is required to include in computing his annual profit for a particular fiscal year under subparagraph *c* of paragraph 1 of section 8 in respect of the first or second class, is the proportion of the amount determined under the second paragraph that the use of the property for the purposes of the operator's mining operation for the particular fiscal year is of the total use of the property of the class in that fiscal year.

The amount referred to in the first paragraph is the amount by which the aggregate of the amounts referred to in subparagraphs *a* to *h* of paragraph 2 of the definition of "undepreciated capital cost" in section 9, in respect of the class, exceeds the aggregate of the amounts referred to in subparagraphs *a* to *d* of paragraph 1 of the definition of that expression.

"**10.3** The amount that an operator is required to include in computing his annual profit for a particular fiscal year under subparagraph *c* of paragraph 1 of section 8 in respect of the third class, is the amount by which the aggregate of the amounts referred to in subparagraphs *a* to *h* of paragraph 2 of the definition of "undepreciated capital cost" in section 9, in respect of that class, exceeds the aggregate of the amounts referred to in subparagraphs *a* to *d* of paragraph 1 of the definition of that expression.

"**10.4** For the purposes of subparagraph *i* of paragraph 2 of section 8, where at the end of a particular fiscal year an operator is no longer the owner of property of the first or second class, the amount that he is required to deduct in computing his annual profit for that

particular fiscal year, in respect of the class, is the proportion of the amount determined under the second paragraph that the use of the property for the purposes of the operator's mining operation for the particular fiscal year is of the total use of the property of the class in that fiscal year.

The amount referred to in the first paragraph is the amount by which the aggregate of the amounts referred to in subparagraphs *a* to *d* of paragraph 1 of the definition of "undepreciated capital cost" in section 9, in respect of the class, exceeds the aggregate of the amounts referred to in subparagraphs *a* to *h* of paragraph 2 of the definition of that expression.

"**10.5** For the purposes of subparagraph *i* of paragraph 2 of section 8, where at the end of a particular fiscal year an operator is no longer the owner of property of the third class, the amount that he is required to deduct in computing his annual profit for that particular fiscal year, in respect of that class, is the amount by which the aggregate of the amounts referred to in subparagraphs *a* to *d* of paragraph 1 of the definition of "undepreciated capital cost" in section 9, in respect of the class, exceeds the aggregate of the amounts referred to in subparagraphs *a* to *h* of paragraph 2 of the definition of that expression."

13. Sections 11 to 13 of the said Act are repealed.

14. Section 14 of the said Act is replaced by the following section:

"**14.** Where the fiscal year of an operator comprises fewer than 12 months, the depreciation allowance shall not exceed the proportion of the maximum amount deductible under section 10 that the number of days in the fiscal year is of 365."

15. Section 15 of the said Act is repealed.

16. (1) Division III of Chapter III of the said Act is replaced by the following division:

"DIVISION III

"EXPLORATION, MINERAL DEPOSIT EVALUATION AND MINE DEVELOPMENT ALLOWANCE

"**16.** The amount that an operator may deduct as an exploration, mineral deposit evaluation and mine development allowance in

computing his annual profit for a fiscal year under subparagraph *e* of paragraph 2 of section 8 shall not exceed the cumulative exploration, mineral deposit evaluation and mine development expenses at the end of that fiscal year.

"**16.1** Cumulative exploration, mineral deposit evaluation and mine development expenses, at any time, are the amount by which

(1) the aggregate of

(*a*) subject to paragraph *c* of section 27, as it read before 13 May 1994, the total of all amounts each of which is a deductible expense referred to in paragraph *m* or *n* of section 8, as it read before 13 May 1994, and incurred by the operator after 31 December 1964;

(*b*) subject to sections 16.2 to 16.6, the total of all amounts each of which is a deductible expense incurred by the operator after 12 May 1994 and before that time, in respect of exploration, mineral deposit evaluation and mine development work performed in connection with the operator's mining operation; and

(*c*) the total of all amounts each of which is an amount repaid by the operator before that time under an obligation to repay, in whole or in part, government assistance relating to an amount referred to in subparagraph *a* or *b*;

exceeds

(2) the aggregate of

(*a*) the total of all amounts each of which is an amount allowed to the operator as a development allowance under paragraph *o* of section 8, as it read before 13 May 1994, in computing his annual profit for a fiscal year ending before 13 May 1994;

(*b*) the total of all amounts each of which is an amount deducted by the operator under paragraph *m* or *n* of section 8, as it read before 13 May 1994, in computing his annual profit for a fiscal year ending before 13 May 1994;

(*c*) the total of all amounts each of which is an amount allowed to the operator, for a fiscal year ending after 12 May 1994 and before that time, as an exploration, mineral deposit evaluation and mine development allowance under subparagraph *e* of paragraph 2 of section 8; and

(*d*) the total of all amounts each of which is an amount of government assistance relating to an amount referred to in

subparagraph *a* or *b* of paragraph 1, that the operator received or was entitled to receive before that time.

"**16.2** For the purposes of subparagraphs *a* and *b* of paragraph 1 of section 16.1, expenses are deductible only if the operator has declared the expenses to be deductible expenses, on or before the date on or before which he is required to file a return, in accordance with section 36,

(1) for his first fiscal year commencing after 12 May 1994, where the expenses are incurred before 13 May 1994; and

(2) for the fiscal year following that in which the expenses are incurred, where the expenses are incurred after 12 May 1994.

"**16.3** An amount referred to in subparagraph *b* of paragraph 1 of section 16.1 does not include an amount that is

(1) the capital cost of property taken into account in determining the undepreciated capital cost referred to in section 9;

(2) a general and administrative expense related to exploration, mineral deposit evaluation and mine development work, which is otherwise deductible under section 8;

(3) the cost of acquiring a mining property or an interest therein, payment of an option to purchase, staking costs and survey fees related to the delimitation of the property, and fees, duties and rents in respect of an immovable real right referred to in section 8 of the Mining Act (R.S.Q., chapter M-13.1).

"**16.4** Where a share of the capital stock of an operator is issued to a person other than a corporation under an agreement in writing entered into between that person and the operator, under which the operator has agreed to incur expenses in respect of exploration, mineral deposit evaluation or mine development work, that would be expenses referred to in subparagraph *b* of paragraph 1 of section 16.1, and to renounce, under the Taxation Act (R.S.Q., chapter I-3), in favour of that person, an amount that does not exceed the consideration received by the operator for the share, relating to expenses so incurred by the operator, the expenses to which the amount relates are deemed, from the day on which they are incurred, never to have been such expenses incurred by the operator.

"**16.5** Where a share of the capital stock of an operator is issued to a partnership under an agreement in writing entered into between the partnership and the operator, under which the operator has agreed to incur expenses in respect of exploration, mineral deposit

evaluation or mine development work, that would be expenses referred to in subparagraph *b* of paragraph 1 of section 16.1, and to renounce, under the Taxation Act (R.S.Q., chapter I-3), in favour of the partnership, an amount that does not exceed the consideration received by the operator for the share, relating to expenses so incurred by the operator, the expenses which relate to the amount or part thereof that has been renounced and which the partnership attributes to each partner that is not a corporation are deemed, from the day on which they are incurred, never to have been such expenses incurred by the operator.

"**16.6** Where an operator is a partnership that incurs expenses in respect of exploration, mineral deposit evaluation or mine development work that would be expenses referred to in subparagraph *b* of paragraph 1 of section 16.1, the expenses relating to the share, described in paragraph *d* of section 395 of the Taxation Act (R.S.Q., chapter I-3), which is attributed to each partner of the operator that is not a corporation, are deemed, from the day on which they are incurred, never to have been such expenses incurred by the operator."

(2) Subsection 1 applies to fiscal years ending after 12 May 1994. However, where it enacts sections 16.4 and 16.5 of the Mining Duties Act, it applies to expenses incurred after 12 May 1994 and financed out of the proceeds of a flow-through share issued after 12 May 1994 to a person or partnership, as the case may be.

17. Section 17 of the said Act is replaced by the following sections:

"**17.** Subject to sections 17.1 and 19, an operator may deduct for a fiscal year, as an investment allowance, 33 1/3% of the amount by which the expenses described in section 18 and incurred during the period commencing on 1 April 1975 and ending on 12 May 1994 exceeds the expenses in respect of which an investment allowance was claimed by the operator for the preceding fiscal years.

"**17.1** An operator shall not deduct an amount as an investment allowance for a fiscal year following the fifth fiscal year ending after 12 May 1994."

18. Section 19 of the said Act is 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 and the processing allowance referred to in subparagraphs *f* to *h* of paragraph 2 of section 8."

19. (1) The said Act is amended by inserting, after section 19, the following:

"DIVISION IV.1

"ADDITIONAL EXPLORATION ALLOWANCE

"**19.1** The amount that an operator may deduct as an additional exploration allowance in computing his annual profit for a fiscal year under subparagraph *g* of paragraph 2 of section 8 shall not exceed, at the end of that fiscal year, 50% of the lesser of cumulative exploration expenses and the annual ceiling on exploration expenses.

"**19.2** The cumulative exploration expenses of an operator at any time are the amount by which

(1) the aggregate of

(*a*) subject to sections 19.4 to 19.7, the total of all amounts each of which is an expense incurred by the operator after 12 May 1994 and before that time, in respect of exploration or underground core drilling work carried out in Québec, where the mineral substances in respect of which the work is carried out form part of the public domain and where the work is performed in connection with the operator's mining operation

i. elsewhere than on land under a mining lease or mining concession, and performed before ore is extracted; or

ii. on land under a mining lease or mining concession, except land from which ore has been or was extracted in the five fiscal years preceding that time; and

(*b*) the total of all amounts each of which is an amount repaid by the operator before that time pursuant to an obligation to repay, in whole or in part, government assistance relating to expenses referred to in subparagraph *a*;

exceeds

(2) the aggregate of

(*a*) the total of all amounts each of which is twice an amount allowed to an operator, in computing his annual profit for a fiscal year

ending before that time, as an additional exploration allowance under subparagraph *g* of paragraph 2 of section 8; and

(*b*) the total of all amounts each of which is an amount of government assistance relating to an amount referred to in subparagraph *a* of paragraph 1 that the operator received or was entitled to receive before that time.

"**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 and the processing allowance referred to in subparagraphs *g* and *h* of paragraph 2 of section 8.

"**19.4** An amount referred to in subparagraph *a* of paragraph 1 of section 19.2 does not include an amount that is

(1) the capital cost of property taken into account in determining the undepreciated capital cost referred to in section 9;

(2) a general and administrative expense relating to exploration and underground core drilling work carried out in Québec and which is otherwise deductible under section 8;

(3) the cost of acquiring a mining property or an interest therein, payment of an option to purchase, staking costs and survey fees related to the delimitation of the property, and fees, duties and rents in respect of an immovable real right referred to in section 8 of the Mining Act (R.S.Q., chapter M-13.1).

"**19.5** Where a share of the capital stock of an operator is issued to a person other than a corporation under an agreement in writing entered into between that person and the operator, under which the operator has agreed to incur expenses in respect of exploration or underground core drilling work carried out in Québec, that would be expenses referred to in subparagraph *a* of paragraph 1 of section 19.2, and to renounce, under the Taxation Act (R.S.Q., chapter I-3), in favour of that person, an amount that does not exceed the consideration received by the operator for the share, relating to expenses so incurred by the operator, the expenses to which the amount relates are deemed, from the day on which they are incurred, never to have been such expenses incurred by the operator.

"**19.6** Where a share of the capital stock of an operator is issued to a partnership under an agreement in writing entered into between the partnership and the operator, under which the operator has agreed to incur expenses in respect of exploration or underground

core drilling work carried out in Québec, that would be expenses referred to in subparagraph *a* of paragraph 1 of section 19.2, and to renounce, under the Taxation Act (R.S.Q., chapter I-3), in favour of the partnership, an amount that does not exceed the consideration received by the operator for the share, relating to expenses so incurred by the operator, the expenses which relate to the amount or part thereof that has been renounced and which the partnership attributes to each partner that is not a corporation are deemed, from the day on which they are incurred, never to have been such expenses incurred by the operator.

"**19.7** Where an operator is a partnership that incurs expenses in respect of exploration or underground core drilling work carried out in Québec, that would be expenses referred to in subparagraph *a* of paragraph 1 of section 19.2, the expenses relating to the share, described in paragraph *d* of section 395 of the Taxation Act (R.S.Q., chapter I-3), which is attributed to each member of the operator that is not a corporation, are deemed, from the day on which they are incurred, never to have been such expenses incurred by the operator."

(2) Subsection 1 applies to expenses incurred after 12 May 1994. However, where it enacts sections 19.5 and 19.6 of the Mining Duties Act, it applies to expenses incurred after 12 May 1994 and financed out of the proceeds of a flow-through share issued after 12 May 1994 to a person or partnership, as the case may be.

20. Section 20 of the said Act is repealed.

21. (1) Section 21 of the said Act is replaced by the following section:

"**21.** Subject to sections 23, 23.1 and 25, the amount that an operator may deduct as a processing allowance in computing his annual profit for a fiscal year under subparagraph *h* of paragraph 2 of section 8 shall not exceed the lesser of

(1) an amount equal,

(*a*) if the operator does not engage in smelting or refining, to 8% of the capital cost to the operator of each property that is a processing asset during the fiscal year and that is in his possession at the end of that fiscal year;

(*b*) if the operator engages in smelting or refining, to the total of

i. 8% of the capital cost of each property referred to in subparagraph *a*, where the property is used solely in processing ore from a gold or silver mine; and

ii. the amount by which 15% of the capital cost of each property referred to in subparagraph *a*, where the property is used in processing ore other than ore from a gold or silver mine, exceeds 7% of the proportion of the capital cost of the property, where it is used for the purposes of concentration, that the quantity of ore concentrated by the operator, which is not smelted or refined by the operator and the processing of which required the use of the property, is of the total quantity of ore the processing of which required the use of the property; and

(2) an amount that is 65% of the annual profit, for that fiscal year, determined before deduction of the processing allowance referred to in subparagraph *h* of paragraph 2 of section 8."

(2) Subsection 1 applies to fiscal years ending after 12 May 1994. However, in respect of a fiscal year ending after 12 May 1994 and including that date, the 15% minimum of annual profit may be claimed in the proportion that the number of days in that fiscal year until 12 May 1994 is of the total number of days in the fiscal year.

22. Section 22 of the said Act is repealed.

23. Section 23 of the said Act is replaced by the following sections:

"**23.** Where property is used in a fiscal year both for the processing of ore and for another purpose, the part of the amount determined under paragraph 1 of section 21 that relates to that property shall be reduced by an amount equal to the proportion of that part of the amount, determined without reference to this section or section 23.1, that the use of the property for a purpose other than the processing of ore for that fiscal year is of the total use of the property for that fiscal year.

"**23.1** Where property is used in a fiscal year for the processing of ore the actual value of which is not taken into account in determining the gross value of the annual output under section 6, the part of the amount determined under paragraph 1 of section 21, subject to section 23, that relates to that property shall be reduced by an amount equal to the proportion of that part of the amount that the part of the quantity of processed ore the actual value of which is not taken into account in determining the gross value of the annual output, for that

fiscal year, is of the total quantity of ore processed by the operator in that fiscal year and the processing of which required the use of the property."

24. Section 24 of the said Act is repealed.

25. Section 25 of the said Act is replaced by the following section:

"**25.** Where the fiscal year of an operator comprises fewer than 12 months, the amount determined under paragraph 1 of section 21 shall be reduced by the proportion of that amount that the remainder of 365 and the number of days in that fiscal year is of 365."

26. Section 26 and Division VI of Chapter III of the said Act are repealed.

27. (1) Section 30 of the said Act is replaced by the following section:

"**30.** The amount that an operator is required to pay, under section 5, as duties payable for a fiscal year, is equal to 12% of his annual profit for that fiscal year."

(2) Subsection 1 applies, subject to subsection 3, to fiscal years ending after 12 May 1994.

(3) Where a fiscal year ending after 12 May 1994 includes that date, section 30 of the Mining Duties Act, enacted by subsection 1, shall read as follows:

"**30.** The amount that an operator is required to pay, under section 5, as duties payable for the fiscal year ending after 12 May 1994 and including that date, is equal to the aggregate of

(1) the proportion of 18% of the annual profit for that fiscal year that the number of days in that fiscal year preceding 13 May 1994 is of the number of days in that fiscal year; and

(2) the proportion of 12% of the annual profit for that fiscal year that the number of days in that fiscal year after 12 May 1994 is of the number of days in that fiscal year."

28. (1) Section 31 of the said Act is repealed.

(2) Subsection 1 applies, subject to subsection 3, to fiscal years ending after 12 May 1994.

(3) Where a fiscal year ending after 12 May 1994 includes that date, section 31 of the Mining Duties Act, repealed by subsection 1, shall read as follows:

"**31.** The amount that an operator may deduct from the duties payable under section 5, as credit on duties, for the fiscal year ending after 12 May 1994 and including that date, shall not exceed the lesser of

(1) the proportion of 18% of the annual profit for that fiscal year that the number of days in that fiscal year preceding 13 May 1994 is of the number of days in that fiscal year; and

(2) the proportion of $90 000 that the number of days in that fiscal year preceding 13 May 1994 is of the number of days in that fiscal year."

29. Section 31.1 of the said Act is replaced by the following section:

"**31.1** An operator may deduct from his duties payable under section 5, for a particular fiscal year not later than the third fiscal year following the fiscal year ending on or after 12 May 1994 and including that date, an amount not exceeding 2/3 of the aggregate of

(1) the total of the amounts each of which is, for a fiscal year not prior to the third fiscal year preceding the particular fiscal year, other than the fiscal year ending after 12 May 1994 and including that date, the amount by which the amount determined under paragraph *b* of section 31, as it read before 13 May 1994, exceeds the amount deducted as credit on duties under section 31, as it read before 13 May 1994, for that fiscal year, except to the extent that such excess amount has been taken into account in establishing the amount deducted from the duties payable, under this section, for a fiscal year preceding the particular fiscal year; and

(2) the amount by which the proportion of the amount determined under paragraph *b* of section 31, as it read before 13 May 1994, that the number of days in the fiscal year preceding 13 May 1994 is of the number of days in that fiscal year ending after 12 May 1994 and including that date, exceeds the proportion of 18% of the annual profit for that fiscal year that the number of days in that fiscal year preceding 13 May 1994 is of the number of days in that fiscal year, except to the extent that such excess amount has been taken into account in establishing the amount deducted from the duties payable by the operator, under this section, for a fiscal year preceding the particular fiscal year."

30. (1) Section 31.2 of the said Act is repealed.

(2) Subsection 1 applies, subject to subsection 3, to fiscal years ending after 12 May 1994.

(3) Where a fiscal year ending after 12 May 1994 includes that date, section 31.2 of the Mining Duties Act, repealed by subsection 1, shall be read as follows:

"**31.2** Where the fiscal year of an operator ending after 12 May 1994 includes that date and comprises fewer than 12 months, the amount determined under paragraph 2 of section 31 for that fiscal year shall be reduced by the proportion of that amount that the remainder of 365 and the number of days in that fiscal year is of 365."

31. (1) Section 32 of the said Act is replaced by the following section:

"**32.** An operator who sustains an annual loss in a fiscal year may claim, on or before the date on or before which he is required to file his return under section 36 for that fiscal year, an amount as a credit on duties refundable for losses which shall not exceed

(1) for a fiscal year ending before 13 May 1994, 18% of the lesser of

(*a*) the annual loss for that fiscal year; and

(*b*) the aggregate of

i. subject to paragraph *c* of section 27, as it read before 13 May 1994, the total of the amounts each of which is an amount deducted for that fiscal year, under paragraph *m* or *n* of section 8, as it read before 13 May 1994, as mining exploration and development expenses incurred after 23 April 1985 by an operator for work carried out in Québec, except expenses incurred for work carried out in respect of the mining of surface mineral substances, as defined in section 1 of the Mining Act (R.S.Q., chapter M-13.1), and the mining of mineral substances the rights in or over which have been surrendered to the owner of the soil as provided in section 5 of that Act; and

ii. the amount deducted by the operator for that fiscal year in respect of property actually used by him in Québec, as a depreciation allowance under paragraph *o* of section 8, as it read before 13 May 1994, from which amount shall be deducted the part thereof relating to property acquired before 24 April 1985;

(2) for a fiscal year ending after 12 May 1994, 12% of the lesser of

(*a*) the adjusted annual loss for that fiscal year; and

(*b*) the total of the amounts, without however exceeding the amount deducted by the operator under subparagraph *e* of paragraph 2 of section 8 in computing his annual profit for that fiscal year, each of which is the amount by which the expenses in respect of exploration, mineral deposit evaluation and mine development work, incurred by the operator for the fiscal year in connection with mining operation, exceeds the amount of government assistance that the operator received or was entitled to receive for that fiscal year and that relates to those expenses, and provided that such expenses, notwithstanding section 16.2, have been declared by the operator to be deductible expenses, on or before the date on or before which he is required to file his return, in accordance with section 36, for that fiscal year."

(2) Subsection 1 applies from 12 May 1994. However, where section 32 of the Mining Duties Act, enacted by subsection 1, applies to a fiscal year ending after 12 May 1994 and including that date, it shall read as follows:

"**32.** An operator who sustains an annual loss in the fiscal year ending after 12 May 1994 and including that date, may claim, on or before the date on or before which he is required to file his return under section 36 for that fiscal year, an amount as a credit on duties refundable for losses which shall not exceed the lesser of

(1) the aggregate of

(*a*) the proportion of 18% of the annual loss for that fiscal year that the number of days in that fiscal year preceding 13 May 1994 is of the number of days in that fiscal year; and

(*b*) 12% of the adjusted annual loss for that fiscal year; and

(2) the aggregate of

(*a*) 18% of the total of the amounts each of which is an amount deducted as mining exploration and development expenses incurred during the fiscal year and before 13 May 1994 by an operator for work carried out in Québec, except expenses incurred for work carried out in respect of the mining of surface mineral substances, as defined in section 1 of the Mining Act (R.S.Q., chapter M-13.1), and the mining of mineral substances the rights in or over which have been surrendered to the owner of the soil under section 5 of that Act;

(*b*) the proportion of 18% of the amount referred to in subparagraph *d* of paragraph 2 of section 8 for that fiscal year, that relates to property actually used by the operator in Québec, from which amount shall be deducted the part thereof relating to property of the third class and to property acquired before 24 April 1985, that the number of days in that fiscal year preceding 13 May 1994 is of the number of days in that fiscal year; and

(*c*) the proportion of 12% of the total of the amounts, without however exceeding the amount by which the amount deducted by the operator under subparagraph *e* of paragraph 2 of section 8 exceeds the expenses referred to in subparagraph *a*, in computing his annual profit for that fiscal year, each of which is the amount by which the expenses in respect of exploration, mineral deposit evaluation and mine development work, incurred after 12 May 1994 by the operator for the fiscal year, in connection with mining operation, exceeds the amount of government assistance that the operator received or was entitled to receive for that fiscal year and that relates to those expenses, and provided that such expenses, notwithstanding section 16.2, have been declared by the operator to be deductible expenses, on or before the date on or before which he is required to file his return, in accordance with section 36, for that fiscal year."

32. (1) The said Act is amended by inserting, after section 32, the following section:

"**32.0.1** For the purposes of subparagraph *a* of paragraph 2 of section 32, the adjusted annual loss of an operator for a fiscal year is the amount by which the annual loss, for that fiscal year, exceeds the lesser of

(1) the amount determined under section 21 for that fiscal year, as if the said section were read without reference to paragraph 2 thereof; and

(2) 65% of the annual loss sustained by the operator for that fiscal year."

(2) Subsection 1 applies, subject to subsection 3, to fiscal years ending after 12 May 1994.

(3) Where a fiscal year ending after 12 May 1994 includes that date, section 32.0.1 of the Mining Duties Act, enacted by subsection 1, shall read as follows:

"**32.0.1** For the purposes of subparagraph *b* of paragraph 1 of section 32, the adjusted annual loss of an operator for the fiscal year

ending after 12 May 1994 and including that date is the amount by which the proportion of the annual loss, for that fiscal year, that the number of days in that fiscal year after 12 May 1994 is of the number of days in that fiscal year, exceeds the lesser of

(1) the proportion of the amount determined under section 21, for that fiscal year, as if the said section were read without reference to paragraph 2, that the number of days in that fiscal year after 12 May 1994 is of the number of days in that fiscal year; and

(2) 65% of the proportion of the annual loss sustained by the operator, for that fiscal year, that the number of days in that fiscal year after 12 May 1994 is of the number of days in that fiscal year."

33. Section 32.1 of the said Act is repealed.

34. Section 33 of the said Act is replaced by the following section:

"**33.** An operator may deduct from his duties payable under section 5,

(1) for a particular fiscal year ending before 13 May 1994,

(*a*) 18% of the amount by which the annual loss for a fiscal year, that is not earlier than the seventh fiscal year preceding the particular fiscal year, exceeds the allowable amount, determined under section 32.1 as it read before 13 May 1994, for that fiscal year;

(*b*) 18% of the amount by which the annual loss for a fiscal year, that is not later than the third fiscal year following the particular fiscal year, exceeds the allowable amount, determined under section 32.1 as it read before 13 May 1994, for that fiscal year, provided that the operator indicates in his return, filed on or before 12 May 1994, his intention of deducting the excess amount from his duties payable for that particular fiscal year;

(2) for a particular fiscal year ending after 12 May 1994, 12% of the amount by which the annual loss for a fiscal year ending before 13 May 1994, that is not earlier than the seventh fiscal year preceding the particular fiscal year, exceeds the allowable amount, determined under section 32.1 as it read before 13 May 1994, for that fiscal year."

35. (1) Section 34 of the said Act is replaced by the following section:

"**34.** Every person or partnership required to file a return for a fiscal year, under section 36 or 37, shall indicate therein the order

of application of the credits determined under sections 31.1 and 33, for that fiscal year."

(2) Subsection 1 applies, subject to subsection 3, to fiscal years ending after 12 May 1994.

(3) Where a fiscal year ending after 12 May 1994 includes that date, section 34 of the Mining Duties Act, enacted by subsection 1, shall read as follows:

"**34.** Every person required to file a return for the fiscal year ending after 12 May 1994 and including that date, under section 36 or 37, shall apply the credit determined under section 31, for that fiscal year, before the credits determined under sections 31.1 and 33, for that fiscal year, and indicate the order in which he intends to apply the latter two credits."

36. Division V of Chapter V of the said Act is repealed.

37. The said Act is amended by inserting, before Chapter VI, the following:

"CHAPTER V.1

"AMALGAMATION AND ACQUISITION OF ASSETS

"DIVISION I

"AMALGAMATION

"**35.2** Where an amalgamation takes place, the fiscal year of each predecessor corporation that is an operator referred to in section 5 is deemed to end immediately before the amalgamation and the first fiscal year of the new corporation is deemed to begin at the time of the amalgamation.

"**35.3** The following rules apply in the case of an amalgamation referred to in section 35.2 for the purposes of fiscal years ending after the amalgamation:

(1) each property of each class described in section 9 belonging to a predecessor corporation immediately before the amalgamation is deemed

(*a*) to have been acquired by the new corporation at the time at which the predecessor corporation acquired it; and

(*b*) to have a capital cost to the new corporation equal to its capital cost to the predecessor corporation;

(2) each of the amounts deducted or included in determining the undepreciated capital cost of property of a class of a predecessor corporation, and each of the amounts that would have been deducted or included by the predecessor corporation in determining such undepreciated capital cost for the first fiscal year ending after the amalgamation, assuming there were such a fiscal year, are deemed to be amounts deducted or included by the new corporation in determining the undepreciated capital cost of property of that class;

(3) each of the amounts incurred before the amalgamation by a predecessor corporation as an expense referred to in subparagraph *a* or *b* of paragraph 1 of section 16.1, or allowed the predecessor corporation as a deduction in computing its annual profit under paragraphs *m*, *n* and *o* of section 8 as they read before 13 May 1994, or under subparagraph *e* of paragraph 2 of section 8, is deemed to be an amount so incurred by the new corporation or an amount so allowed the new corporation as a deduction;

(4) each of the amounts that is an expense described in section 18 incurred by a predecessor corporation during the period beginning on 1 April 1975 and ending on 12 May 1994 or an expense in respect of which an investment allowance was claimed by the predecessor corporation is deemed to be, for the new corporation, an expense incurred or an expense in respect of which an investment allowance was claimed;

(5) each of the amounts incurred before the amalgamation by a predecessor corporation in respect of exploration and underground core drilling work carried out in Québec and referred to in subparagraph *a* of paragraph 1 of section 19.2, or allowed the predecessor corporation as a deduction in computing its annual profit under subparagraph *g* of paragraph 2 of section 8, is deemed to be an amount so incurred by the new corporation or an amount so allowed the new corporation as a deduction;

(6) each of the amounts of government assistance received or receivable, or repaid pursuant to an obligation to do so, by a predecessor corporation before the amalgamation is deemed to be an amount received or receivable, or so repaid, by the new corporation;

(7) for the purposes of Chapter V, the duties payable by a predecessor corporation and the annual profit or the annual loss, as the case may be, of a predecessor corporation for a fiscal year are deemed to be the duties payable by the new corporation and the annual

profit or the annual loss, as the case may be, of the new corporation, and the credit on duties, the deferrable credit on duties and the credit on duties refundable for losses and the credit on duties for losses of the predecessor corporation are deemed to be such credits of the new corporation.

"DIVISION II

"ACQUISITION OF ASSETS

"35.4 Where an operator, hereinafter referred to as the "purchaser", acquires property described in section 9, otherwise than as part of an amalgamation, from another operator to whom he is related, hereinafter referred to as the "former owner", the following rules apply to fiscal years ending after the acquisition of the property:

(1) the property is deemed to have been alienated by the former owner for an amount equal to the proportion of the undepreciated capital cost of the class of property which includes the property, determined immediately before the acquisition, that the capital cost of the property to the former owner is of the aggregate of all amounts each of which is the capital cost of a property of that class;

(2) subject to paragraphs 3 and 4, the property is deemed to have been acquired by the purchaser at a capital cost equal to the amount determined under paragraph 1;

(3) for the purposes of section 21, the capital cost of the property to the purchaser is deemed to be equal to the capital cost of the property to the former owner;

(4) where the cost of the property to the purchaser exceeds the capital cost of the property to the former owner immediately before the acquisition, the capital cost of the property to the purchaser is deemed to be equal to the capital cost of the property to the former owner immediately before that time;

(5) for the purposes of the definition of "undepreciated capital cost" in section 9, where the capital cost of the property to the former owner exceeds the amount determined under paragraph 1, the capital cost of the property to the purchaser is deemed to be the capital cost of the property to the former owner and the excess amount is deemed to have been allowed to the purchaser as a depreciation allowance in respect of the property for the fiscal years preceding the purchaser's acquisition of the property.

"35.5 Subject to section 35.4, where at a particular time a person or partnership that is an operator receives from a person a

dividend payable in kind consisting of property described in section 9, the person or partnership is deemed to have acquired the property at a cost equal to its fair market value at that time, and if the person paying the dividend is also an operator, that person is deemed to have alienated the property at the same time for proceeds equal to its fair market value."

38. Section 36 of the said Act is replaced by the following sections:

"**36.** Every operator shall, within six months after the end of his fiscal year, file with the Minister a return of his annual profit or annual loss on the form prescribed by the Minister, with a copy of the financial statements of the undertaking and the relevant schedules.

The Minister may, where he deems it appropriate for the operators as a whole, extend the time fixed for the filing of returns.

"**36.1** Every person or partnership whether or not liable to pay duties, and whether or not a return has been filed, shall, on demand from the Minister sent by registered or certified mail or served personally, send to the Minister a return on the form prescribed by the Minister for the fiscal year and within the time mentioned in the demand."

39. Section 37 of the said Act is amended by adding, at the end, the words "for that fiscal year".

40. Section 38 of the said Act is amended by replacing the word "compute" in the second line by the word "estimate".

41. Section 39 of the said Act is replaced by the following section:

"**39.** The Minister shall examine each return sent to him for a fiscal year and determine the duties payable for the fiscal year, interest and penalties, if any, and also the annual profit, the annual loss, the credit on duties, the deferrable credit on duties, the adjusted annual loss, the credit on duties refundable for losses and the credit on duties for losses, if any."

42. (1) Sections 43 to 43.2 of the said Act are replaced by the following sections:

"**43.** The Minister may re-determine the duties, interest and penalties, if any, and also the annual profit, the annual loss, the credit

on duties, the deferrable credit on duties, the allowable amount, the adjusted annual loss, the credit on duties refundable for losses and the credit on duties for losses, if any, and make a reassessment or an additional assessment, as the case may be,

(1) at any time, if the operator or the person who filed the return

(*a*) has made a misrepresentation that is attributable to neglect or wilful default or has committed fraud in filing the return or in supplying information required under this Act; or

(*b*) has filed with the Minister a waiver on the form prescribed by the Minister within four years from the day of mailing of a notice of original assessment or of a notification that no duty is payable for a fiscal year;

(2) within seven years from the day of mailing of a notice of original assessment or of a notification that no duty is payable for a fiscal year if the operator

(*a*) has amended the return for that fiscal year in accordance with section 43.2; or

(*b*) would have amended the return for that fiscal year pursuant to section 43.2 had the time prescribed in that section not expired;

(3) within four years of the day referred to in paragraph 2 in all other cases.

"**43.1** Where the Minister has re-determined the duties, interest, penalties, deferrable credit on duties and credit on duties for losses pursuant to paragraph 2 of section 43, the operator may object to the assessment and appeal to the Court of Québec in accordance with the provisions of this Act only on the grounds pertaining to the deductions provided for in sections 31.1 and 33.

"**43.2** An operator who sustains an annual loss in a fiscal year may amend the return he has filed for a previous fiscal year only for the purposes of claiming or changing a deduction provided for in section 33 and changing a deduction provided for in section 31.1, by sending a claim to the Minister on the form prescribed by the Minister before 12 May 1994 and within three years from the day on or before which he was required to file the return or, if he filed it before the time limit prescribed by law, from that day.

The Minister shall then re-determine the duties payable and the interest and penalties, if any, the deferrable credit on duties and the

credit on duties for losses for the previous fiscal year and for any relevant fiscal year not prior to that year."

(2) Subsection 1, where it replaces section 43 of the Mining Duties Act, applies in respect of determinations, re-assessments or additional assessments made after 12 May 1994 and, where it replaces sections 43.1 and 43.2 of the said Act, applies in respect of determinations made after 12 May 1994.

43. Section 46 of the said Act is replaced by the following section:

"**46.** Every operator liable to pay duties under this Act shall pay to the Minister, in respect of a fiscal year commencing after 31 March 1981,

(1) the following amounts:

(*a*) on or before the last day of each month of the current fiscal year, an amount equal to 1/12 of the estimated duties for the fiscal year in accordance with section 38 or of his first basic provisional account determined in the manner provided for in section 46.0.1 for the fiscal year; or

(*b*) on or before the last day of the first two months of the current fiscal year, an amount equal to 1/12 of his second basic provisional account determined in the manner provided for in section 46.0.2 for the fiscal year and, on or before the last day of each of the following months of the fiscal year, an amount equal to 1/10 of the amount by which his first basic provisional account referred to in subparagraph *a* exceeds the amount determined for the first two months of the fiscal year; and

(2) on or before the last day of the period ending two months after the end of his fiscal year, the balance of his duties estimated in accordance with section 38 for the fiscal year."

44. (1) The said Act is amended by inserting, after section 46, the following sections:

"**46.0.1** For the purposes of subparagraph *a* of paragraph 1 of section 46, the first basic provisional account of an operator for a fiscal year is the proportion of his duties payable for the preceding fiscal year that 365 is of the number of days in the fiscal year.

"**46.0.2** For the purposes of subparagraph *b* of paragraph 1 of section 46, the second basic provisional account of an operator for a fiscal year is his first basic provisional account for the preceding fiscal year.

"**46.0.3** Notwithstanding section 46.0.1, where the preceding fiscal year of an operator comprises less than 183 days, his first basic provisional account for the fiscal year is equal to the higher of the amount determined under section 46.0.1 and the amount that would be determined thereunder if "preceding fiscal year" were a reference to the last fiscal year of the operator which comprised more than 182 days.

"**46.0.4** Notwithstanding sections 46.0.1 and 46.0.2, for the purposes of the first fiscal year of a new corporation resulting from an amalgamation within the meaning of section 1,

(1) the first basic provisional account of the new corporation for the fiscal year is the aggregate of all amounts each of which would be the first basic provisional account of a predecessor corporation for the fiscal year; and

(2) the second basic provisional account of the new corporation for the fiscal year is the aggregate of all amounts each of which is the first basic provisional account of a predecessor corporation for its fiscal year preceding the fiscal year.

"**46.0.5** Notwithstanding sections 46.0.1 and 46.0.3, for the purposes of the second fiscal year of a new corporation referred to in section 46.0.4, where the preceding fiscal year of the new corporation comprised less than 183 days, the first basic provisional account of the new corporation for its second fiscal year is equal to the higher of the amount determined under section 46.0.1 and its first basic provisional account for the preceding fiscal year.

"**46.0.6** For the purposes of paragraph 1 of section 46.0.4, where the last fiscal year of a predecessor corporation comprises less than 183 days, the first basic provisional account for the first fiscal year of the new corporation is equal to the higher of the amount determined under section 46.0.1 and the first basic provisional account of the predecessor corporation for the preceding fiscal year."

(2) Subsection 1, where it enacts sections 46.0.1 to 46.0.3 of the Mining Duties Act, applies to fiscal years ending after 12 May 1994 and, where it enacts sections 46.0.4 to 46.0.6 of the said Act, applies to fiscal years commencing after (*insert here the date of assent to this Act*).

45. Section 47 of the said Act is replaced by the following sections:

"**47.** Every operator shall, before the twenty-first day of the month following the month in which a notice of assessment is mailed to him, pay to the Minister the duties, interest and penalties indicated in the notice then remaining unpaid, whether or not an objection or appeal from the assessment is pending.

"**47.1** For the purpose of computing the exigible interest, where an operator pays to the Minister all or part of the amount he is required to pay following a notice of assessment, the date of payment is deemed to be the date of mailing of the notice of assessment if the payment is made before the twenty-first day of the month following the month in which the notice of assessment was mailed.

The same rule applies where the payment is made by remittance to the Minister, before the day referred to in the first paragraph, of a negotiable instrument falling due before that day."

46. Section 49 of the said Act is amended by replacing the words "within thirty days of the date of mailing of the notice of assessment" in the second and third lines by the words "before the twenty-first day of the month following the month in which a notice of assessment is mailed".

47. (1) Sections 50 to 52 of the said Act are replaced by the following sections:

"**50.** Where, on the date the expiry of the time allowed for paying to the Minister the balance of his estimated duties for the fiscal year, the amount paid by an operator as duties payable for a fiscal year is less than the amount of duties payable for that fiscal year, the person liable to pay the duties shall pay interest, at the rate fixed under section 28 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31), on the difference between those two amounts, for the period extending from the date of expiry of the time allowed for paying to the Minister the balance of the estimated duties to the day of payment; if no amount has been paid by the operator, the interest is exigible on the total amount of duties payable for the same period.

"**51.** In addition to the interest payable under section 50, an operator liable to make a payment under section 46 shall pay interest on any payment or part of a payment he has not made on or before the date of expiry of the time allowed therefor, at the rate fixed under section 28 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31), for the period extending from that date to the day of

payment or to the day he becomes liable to pay interest under section 50, whichever is earlier.

"**52.** For the purposes of section 51, an operator required to make a payment for a fiscal year under section 46 is deemed to have been liable to make payments based on one of the methods described in paragraph 1 of section 46 that gives the lowest amount to be paid on or before each of the dates referred to in the said paragraph, by reference to

(1) his estimated duties for the current fiscal year or his first basic provisional account within the meaning of section 46.0.1 for the fiscal year; or

(2) his second basic provisional account within the meaning of section 46.0.2 for the fiscal year and his first basic provisional account for the fiscal year."

(2) Subsection 1, where it replaces section 50 of the Mining Duties Act, applies from 1 July 1994 in respect of debts outstanding on that date or thereafter and, where it replaces sections 51 and 52 of the said Act, applies from 1 July 1994.

48. The said Act is amended by inserting, after section 52, the following sections:

"**52.0.1** Notwithstanding sections 51 and 52, the interest payable by an operator under the said sections shall not exceed the amount by which the interest that would be payable by the operator under the said sections if he had made no payments exceeds the amount obtained by computing interest at the rate fixed under section 28 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) capitalized daily on each payment made by the operator, for the period extending from the day of the payment to the day on or before which the operator is required to pay to the Minister the balance of his estimated duties payable or would be so required if he had such a balance.

"**52.0.2** Every operator required to make a payment under section 46 shall pay, in addition to interest payable under section 51, additional interest at the rate of 10% per annum, for the period for which interest is payable under section 51, on each unpaid payment or part of a payment that is less than 90% of the payment he was required to make.

"**52.0.3** Notwithstanding section 52.0.2, the interest payable by an operator under the said section shall not exceed the amount by

which the interest that would be payable by the operator under the said section if he had made no payments exceeds the amount obtained by computing interest at the rate of 10% capitalized daily on each payment made by the operator, for the period extending from the day of the payment to the day on or before which the operator is required to pay to the Minister the balance of his estimated duties payable or would be so required if he had such a balance.

"**52.0.4** Sections 28 and 28.1 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31), adapted as required, apply to the computation of interest for the purposes of this Act."

49. Section 53 of the said Act is amended by replacing the words "in the form prescribed" in the first line by the words "on the form prescribed by the Minister".

50. Section 54 of the said Act is amended by replacing the words "a prescribed form" in the first line by the words "the form prescribed by the Minister".

51. Section 55 of the said Act is amended

(1) by replacing the word "exigibles" in the second line of the French text by the word "payables";

(2) by replacing the words ", to be fixed by the Minister, of not less than 15 per cent and not more than 50 per cent of the amount of the duties evaded or sought to be evaded" in the third, fourth and fifth lines by the words "equal to 50 per cent of the amount the payment of which he evaded or attempted to evade".

52. The second paragraph of section 58 of the said Act is amended by replacing the letter "*b*" in the third line by the figure "2".

53. The said Act is amended by inserting, after section 59, the following sections:

"**59.0.1** The Minister may determine that a refund due to an operator by reason of the application of this Act may be allocated to the payment of any amount for which the operator is indebted under an Act or program coming under the administration of the Minister of Natural Resources.

In such a case, the Minister shall

(1) first, make, where appropriate, the allocation provided for in the first paragraph;

(2) then, inform the operator of the amount allocated to the existing debt;

(3) pay the balance of the refund to the operator entitled thereto; and

(4) send to the operator, whether or not any amount is paid to him, a notice containing a detailed account of the sums allocated.

"**59.0.2** Where an operator who owes an amount exigible under this Act is also the creditor or beneficiary of an amount payable under an Act or program coming under the administration of the Minister of Natural Resources, the Minister may allocate all or part of the amount to the payment of the debt up to the full amount of the debt."

54. (1) Section 60 of the said Act is amended by replacing the first and second paragraphs by the following paragraph:

"**60.** Where an overpayment by an operator is refunded or allocated to another liability, interest shall be paid to him on the amount of the overpayment for the period ending on the day of such refund or allocation and commencing on the latest of

(1) the day on which the overpayment was made following a notice of assessment;

(2) the forty-sixth day following the day on which the overpayment was made otherwise than following a notice of assessment;

(3) the forty-sixth day following the day on or before which the return giving rise to the overpayment was required to be filed under section 36;

(4) the forty-sixth day following the day on which, pursuant to section 36, the operator filed the return giving rise to the overpayment, except where the return was filed on the day on or before which it was required to be filed; and

(5) where an overpayment is determined for a fiscal year following an application for the amendment of a return filed under section 36, 36.1 or 37 for the fiscal year, the forty-sixth day following the day on which the Minister received the application in writing."

(2) Subsection 1 applies

(*a*) to a refund or allocation made by the Minister following the examination of a return sent after 30 June 1994;

(*b*) to an application for a refund received after 30 June 1994.

55. The said Act is amended by inserting, after section 60.2, the following section:

"**60.3** Any amount owed under this Act as a refund is inalienable and unseizable."

56. Section 61 of the said Act is amended by replacing the words "in prescribed form" in the third line by the words "on the form prescribed by the Minister".

57. Section 65 of the said Act is amended

(1) by replacing the letter "*b*" in the third line by the figure "2";

(2) by replacing the letter "*c*" in the third line by the figure "3".

58. Section 71 of the said Act is amended by striking out the words ", in the manner prescribed by regulation," in the first line.

59. Section 74 of the said Act is replaced by the following sections:

"**74.** Any person required under this Act to keep records and books of account shall retain them as well as the invoices and any other voucher in support of the information they contain, for four years after the date of the first notice of assessment issued in respect of the fiscal year to which they pertain.

"**74.1** An operator subject to this division who has served a notice of objection in respect of an assessment or is a party to an appeal brought under this Act shall retain all records, books of account and vouchers necessary for the examination of the objection or the appeal until the time for appeal has expired or until the judgment on the appeal has been rendered and, where applicable, until any other time for appeal has expired or the judgment on it has been rendered."

60. The said Act is amended by inserting, after section 80, the following section:

"**80.1** Where a person has not complied with a formal demand in respect of information or a document, any court shall, on motion of the Minister, prohibit introduction of such information or document as evidence unless the person establishes that the demand was unreasonable under the circumstances."

61. The said Act is amended by inserting, in Chapter VII, the following:

"DIVISION II.1

"CONFIDENTIAL INFORMATION

"**80.2** All information obtained under this Act is confidential. No person holding or having held a position in the Ministère des Ressources naturelles may use such information for any purpose other than the purposes of this Act, communicate such information or allow it to be communicated to a person not legally entitled thereto or allow such a person to examine a document containing such information or to have access to it.

However, information concerning the operator may, upon a written request by the operator or his authorized representative, be communicated to a person or body designated in the request.

"**80.3** Notwithstanding section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1) and subject to sections 80.2, 80.4 and 80.5, no person has a right of access to the documents and information obtained under this Act.

"**80.4** For the purposes of section 80.2 and notwithstanding section 23 of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1), a person mentioned in the second paragraph is entitled, to the extent provided, to examine information obtained under this Act and the Minister may communicate such information or allow it to be communicated to such person.

The persons are

(1) the Auditor General, in respect of audits and inquiries necessary in the performance of his duties;

(2) the Minister of Finance, in respect of the information necessary to evaluate and formulate the fiscal policy of the Government.

No information so obtained may be disclosed in any manner.

"**80.5** Notwithstanding section 23 of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1) and section 80.2 of this Act, the Minister may, according to law and on a reciprocal basis, make an

agreement with a government in Canada for an exchange of information or documents obtained under an Act that provides for the imposition of a duty, royalty or tax.

"**80.6** Subject to section 80.7 and notwithstanding any other Act, in the case of judicial proceedings other than criminal or penal proceedings, no person holding or having held a position in the Ministère des Ressources naturelles may be summoned or is authorized to testify in respect of information referred to in section 80.2 or to produce a document containing such information or a document obtained or written by or on behalf of the Minister for the purposes of this Act.

"**80.7** Section 80.6 does not apply to proceedings between an operator and the Deputy Minister or to an appeal to the Commission de la fonction publique under the Public Service Act (R.S.Q., chapter F-3.1.1) or to other proceedings in matters of labour relations between the Department and one of its employees, but the Minister, the Deputy Minister and the Assistant Deputy Ministers of the Department are not compellable; they shall, however, upon a written request by a party served at least 30 days before the date of the hearing and specifying the facts concerning which a testimony is required, designate a public servant having knowledge of the facts to testify.

Where the Commission de la fonction publique, another labour relations authority party to proceedings between the Department and one of its employees or a board of inquiry established by the Government requires a public servant to testify before it, the testimony is given and, if applicable, documents are produced exclusively behind closed doors, and such testimony and documents shall not be mentioned in any document, report, stenographic notes or recording of that Commission, authority or board or mentioned at its other public sittings or sittings behind closed doors."

62. The second paragraph of section 83 of the said Act is amended by adding, at the end, the words "except in respect of the interest on the amount awarded, which shall be computed at the rate fixed under section 28 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) and capitalized daily."

63. The said Act is amended by inserting, after section 83, the following section:

"**83.1** Any sum due under this Act constitutes a debt for the operator and a claim in favour of the Minister.

The claim in favour of the Minister gives rise to a legal hypothec in accordance with article 2724 of the Civil Code of Québec on all the property of the debtor."

64. Section 84 of the said Act is replaced by the following section:

"**84.** Any person who contravenes the first paragraph of section 80.2 is guilty of an offence and is liable to a fine of not more than $5 000."

65. Section 85 of the said Act is amended by replacing the words "in the form prescribed" in the first line by the words "on the form prescribed by the Minister".

66. Sections 1 to 14, 17, 18, 20, 22 to 26, 29, 33, 36, 38 to 41, 43, 49 to 51, 56, 58, 59, 62 and 65 apply to fiscal years ending after 12 May 1994.

67. Sections 45 and 46 apply in respect of notices of assessment issued after 30 June 1994.

68. Section 48 has effect from 1 July 1994.

69. Section 52 applies to refunds made after 12 May 1994.

70. Section 57 applies in respect of notices of assessment issued after 12 May 1994.

71. Section 60 applies to demands made after 12 May 1994.

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