
PRACTICE NOTE NO.4

February 1994

MINE RATING

ISSN 1320-6788

DEPARTMENT OF LOCAL GOVERNMENT & CO-OPERATIVES

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DISCLAIMER

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MINE RATING UNDER THE LOCAL GOVERNMENT ACT 1919

The 1919 Act was repealed on 1 July 1993. In practice, however, many of its rating provisions will continue to remain effective until 30 June 1994 via the Local Government (Savings and Transitional) Regulation 1993. It may be helpful, therefore, to begin by looking briefly at the 1919 Act.

GENERAL RATE AND DIFFERENTIAL RATES UNDER THE 1919 ACT

The 1919 Act required each council to levy a 'general rate' every year based on the value of all rateable land in its area. The amount of this general rate was set by the council concerned, which could vary ('differentiate') the rate according to whether the land was classified as urban, farmland, non-residential or land comprising a coal mine.

If councils chose to establish a coal mine 'differential' rate, that differential rate had to apply uniformly to all coal mines within the area. The 1919 Act laid down rules for 'advertising' the proposed coal mine differential rate and for dealing with objections to it, and required the council to obtain the prior approval of the Minister for Local Government each year before it could be imposed.

If a council had a coal mine or mines within its area but chose not to use a coal mine differential general rate, the Act required all such assessments to be rated at the general (non-differentiated) rate. Section 118A (1) set an upper limit of two cents in the dollar of land value for all mines other than coal or shale mines. An upper limit of seven cents in the dollar normally applied to coal mines where the land value of the mine was determined by a valuation based on output, though no similar provision was made for shale mines.

LAND VALUE OF MINES

The 1919 Act allowed councils to value mines by one of three methods:

1. in accordance with the Valuation of Land Act 1916;
2. by a system based on output; and
3. in the case of a mine which was undeveloped, idle or partly idle, by multiplying any annual rent by twenty.

LAND VALUATION BY OUTPUT

The land value of a shale mine was a figure arrived at by calculating 25 cents per tonne on the

average annual output from the mine over the three years before the assessment. For coal mines, the value was normally calculated on \$3 per tonne produced by the mine in the financial year before the valuation.

For any other kind of mine, value was arrived at by calculating 25% of the average 'annual saleable value' to the miner of the mine's output for the previous three years.

'Annual saleable value', while ill-defined, was generally agreed to mean the price which all products from the mine would fetch if they were sold, less an estimate of transport and production costs. The valuation applied even if those goods remained unsold at the end of a particular year.

Up to thirty councils were basing mine rates upon valuations calculated on the basis of output in the years up to 1993.

OTHER RATES AND SPECIAL PROVISIONS UNDER THE 1919 ACT

Under the former Act all assessments, including mines, could also be subject to special rates, local rates, water, drainage and sewerage rates as appropriate.

There were special provisions for valuing and/or rating mines which extended over two or more areas, or extended under the sea, and where the surface of the mine was used for non-mining purposes.

MINE RATING UNDER THE LOCAL GOVERNMENT ACT 1993

The first levy of rates and charges under the 1993 Act will relate to the year starting 1 July 1994 (see MINE RATING IN THE TRANSITION PERIOD for regulations covering the interim).

ORDINARY RATES AND SPECIAL RATES UNDER THE 1993 ACT

Under section 494 of the 1993 Act, councils must make and levy each year (from 1 July to the following June 30) an 'ordinary rate' on all rateable land in their areas.

There are four major categories of land use subject to the ordinary rate: farmland, residential, mining and business. Section 529 of the 1993 Act allows each council to determine subcategories for the four main categories of rateable land within its area. A council could, therefore, establish separate subcategories under 'mining', for example for coal mining, silver mining and gold mining.

Councils may also levy a 'special rate' (section 495) on land which benefits from the council's works, facilities or other activities. Both the level of, and the structure of ordinary and special rates can be varied from category to category, or from subcategory to subcategory in the case of ordinary rates, or according to degree of "benefit" in respect of special rates, if the council so decides. In regard to the structure of rates, the options available under the Act are to -

- i. levy a pure ad valorem based assessment; or;
- ii. to levy an ad valorem assessment which is subject to a specified minimum amount of a rate at a particular valuation threshold; or,
- iii. to levy a part base amount/part ad valorem based assessment.

If a council does impose a two-part rate, the base amount must not produce more than half of the total revenue (section 500).

THE MINING CATEGORY: DEFINITIONS

Land is categorised as 'mining' land, according to section 517 of the Act, if its 'dominant use' is as a coal or metalliferous mine. The Act's dictionary defines a 'mine' as "land, on or below the surface or partly below the surface, used or held for any mining purpose." The expressions 'coal mine', 'metalliferous mine' and 'mining purpose' are not defined in the Act. They are considered commonly understood terms, though whether or not a particular operation fits into one of these categories could of course be a matter of debate.

It is worth noting that the Act considers a mine to be "land...used or held for any mining purpose". The implication is that mining activities can still be regarded as under way even when no actual mining is taking place. Such activities cover operations beyond extraction of ore and could include the surveying of a proposed mine, or plant maintenance above and below ground, and work connected with the protection and safety of the mine and mining rights.

The expression 'mining purpose' also has a meaning beyond the working of a mining property. It could reasonably include engineering and building works for the purpose of searching for or extracting minerals.

The word 'mine' as used in the 1993 Act is clearly not limited to underground operations. The definition given in the Mining Act 1992 may be helpful:

"any place, pit, shaft, drive, level or other excavation, drift, gutter, lead, vein, lode, reef or salt-pan (whether occurring naturally or artificially created) in, on, or by means of which any mining operation is carried on."

'Mining' covers the extraction of a mineral, or the ore which contains it, and its processing into a final product. The phrase 'coal mining operations' therefore includes not only the cutting of coal from the seam, but its removal from the pit to the surface, and its storage there in a disposable form. It may even extend to the rehabilitation of the land affected by mining.

A 'metalliferous mine' is one which produces a metal as the term is generally understood. The Concise Macquarie Dictionary definition of a 'metal' is:

"any class of elementary substances, such as gold, silver, copper, etc, all of which are crystalline when solid and many of which are characterised by opacity, ductility, conductivity, and a peculiar lustre when freshly fractured."

DOMINANT USE

The 'dominant use' of a particular parcel of land for mining activities is not determined merely by the proportion of its area which is given over to mining. In some cases the emphasis may be on the intensity of the mining activities.

MINES OTHER THAN COAL OR METALLIFEROUS MINES

Mines which are neither coal mines nor metalliferous mines must be categorised under the business category for rating purposes. However, the "centre of activity" criteria of section 529 contain the potential for councils to create one or more rating sub-categories under 'business' and it may be possible for a council to use these provisions to levy the same level of ordinary rate upon all mines in their areas, regardless of type.

Section 529(2)(d) of the Act says that a 'business' subcategory may be determined according to a 'centre of activity' although the expression 'centre of activity' is not defined in the Act. The words may be generally taken to refer to an area such as a business centre, an industrial estate or some other concentration of like business activities. In this context the word 'business' could extend to a mining centre (other than coal mines or metalliferous mines), for example, an individual mining operation of substantial character or numerous smaller scale contiguous mining operations.

MINES AND QUARRIES

The question of the difference between a mine and a quarry has caused some confusion in the past. The distinction may be significant because quarries fall under the 'business' rating category, which may be subject to a rate different from that which applies to mines in the same council area. Councils may find the following guidelines useful.

A mine consists of underground or surface workings for the purpose of obtaining a metal or mineral. However, a quarry always consists of surface workings, and may be established to obtain metals, minerals or any other material, such as sand, soil or gravel.

An operation is classified as a quarry, therefore, if it extracts substances from the surface soil, or removes the soil itself for some purpose. There may be room for debate, however, if the surface workings exist in order to gain access to metals or minerals from the ground below.

From a practical point of view the only type of mine which might be confused with a quarry would be an open cut operation. If an open cut is designed to extract coal, it is automatically defined as a mine under the Act. If it is designed to extract a metal the position is less clear, especially if that metal is not obtained from the surface itself.

Most councils will be able to resolve the matter by negotiation, and by taking into account the general view of the industry. On some occasions, however, they may need to seek expert independent advice to determine whether the land in question is used for mining or for quarrying.

LIMIT ON AD VALOREM AMOUNT OF MINING RATE

Regulations may be made - see section 528 (2) of the Act - to ensure that the ad valorem amount of the ordinary rate for mining land is kept to a specified percentage of the amount of the ordinary rate for land categorised under 'business'. No regulation has yet been made for this purpose.

SPECIAL RATES

A council can, if it wishes, levy 'special rates' to cover or help to cover the cost of 'works, services, facilities or activities' on any part of the council's area (see section 495 (1) of the Act). The sole exception is domestic waste management, which is defined in the dictionary at the end of the Act. Special rates can be levied on land which, in the council's opinion, benefits from such facilities, or has access to them. They may also be levied in cases where a particular land use makes the facilities necessary.

This means that the council could levy a special rate on mining land where facilities have been provided to the mining companies involved, or where the mining operations have generated the need for those facilities.

However, there have been arguments in the past over the precise nature of services provided by councils supposedly for the benefit of mining operations in their areas. On occasion this has resulted in legal disputes with mining companies: see *Zinc Corporation v Broken Hill City Council* (1973) 2 NSWLR 539. It will help councils avoid such problems if each special rate is related directly to the particular service or facility provided.

It is also very important that the council takes care when forming its 'opinion' as to the benefit a parcel of land gains from a work or service. If a special rate is levied, it must be levied on all land which does benefit from the council's works or services, and on no land which does not.

It is worth noting that while each council must levy an ordinary rate each year, the application of special rates is entirely at the council's discretion. The "benefits" to landowners arising from special rating is that the revenue raised by the council must be expended solely for the purpose to which the rate relates and only to the benefit of the land which was rateable to that rate.

Under section 565 of the Act, councils can also waive payment of all or part of a special rate if a person pays or agrees to pay a cash contribution towards the cost of the works or services concerned.

It should also be noted that revenue from all special rates (other than water supply or sewerage special rates) is subject to the rate pegging controls of sections 505-510 and therefore increased usage by councils of such rates will generally be offset by reductions in the amounts payable by way of ordinary rates (and vice versa). Councils will not be able to “double-dip” via the introduction of “new” special rates.

CHARGES

Councils can, under section 501 of the Act, make an annual charge for certain specified services such as water supply, sewerage and drainage services. They can also charge for the actual use of these services. Such charges can be made on top of an ordinary rate, and in addition to or instead of a special rate.

The council has a good deal of flexibility in determining the basis for charging (see sections 540-542). Section 539 (2) specifically states that the amount of the charge need not be limited to the cost of the service involved. Nevertheless the amount of the charge still needs to be ‘reasonable’. There have been legal challenges by payers who considered them excessive: see *Savory v Auckland City Corporation* (1932) NZLR 827. The charge must also relate to a service actually provided by the council and not one provided by some other body, such as the RTA.

Again, revenue from charges (other than user pays charges) is generally subject to the rate pegging controls and hence, “double-dipping” is unlikely to occur.

MINING VALUATIONS

The search for an equitable basis for the valuation and rating of mines goes back over 100 years, and has always been problematic. Both the Royal Commission of Inquiry into Rating, Valuation and Local Government Finance (1967) and the Oakes Inquiry of 1990 criticised methods of valuations based on output. The Royal Commission concluded that there was “no more justification for rating a mine on output than for rating a retail shop on sales turnover or a factory on volume of production.”

Thus, while the 1919 Act allowed councils to determine land value for rating purposes on the basis of mine output, the 1993 Act does not. The Valuer-General has developed a new system for valuing coal mines and metalliferous mines.

In future the valuation of mining land for rating purposes will be handled in the same way as the valuation of other land, under section 6A of the Valuation of Land Act, 1916, and provides a uniform basis for rating.

The value of a mine is affected by a number of factors, including the value of the mineral while still in the ground (the 'in situ' value of the mineral). A valuation for a particular mine can be derived by considering for comparison sales of other land bearing the same mineral, or the sale of mineral leases, or - where appropriate - by calculating the capitalisation of future royalties. Clearly, as time goes on and the mineral resource is exhausted, the value of that resource and of the mine which contains it will drop.

Generally the value of the mineral in the ground is such a small percentage of its selling price that it will not be possible to draw fine distinctions between the values of different mines.

Other important factors in valuation are the location of the mine, and especially its proximity to transport links such as rail lines, roads and ports. The long term price history of the mineral concerned and any special features of a particular mine can also be taken into account in the valuation.

Mines will be valued as part of normal council general valuation. If the mine has a short life, say of three to five years, then the Valuer-General will provide annual values on request. Councils should contact their regional office of the Valuer-General's office for clarification.

MINES EXTENDING INTO MORE THAN ONE AREA OR UNDER THE SEA

The relevant sections of the 1919 Act reappear as sections 7I, 7J and 7K of the Valuation of Land Act 1916 and are used as the basis for mine valuation under the 1993 Act.

They state that if a mine extends into two or more local government areas, it is valued as a single mine and, for rating purposes, that value is split between the council areas involved. The split is based on the land and mineral values in each council area, not on the cost of any facilities or services which the councils have provided to support mining operations in their areas.

The Valuer-General's office is able to answer any queries councils may have.

MINE RATING IN THE TRANSITION PERIOD

Special provisions dealing with making and levying rates in the Transition Period of 1 January 1994 to 30 June 1994 are laid out in Part 10 of the Local Government (Savings and Transitional) Regulation 1993. Recovery of rates and charges will generally proceed via the 1993 Act provisions.

Basically, the Regulation provides that during the Transition Period the key rating provisions of the 1919 Act will continue to apply (with some operating in a modified form) in order to produce a rates and charges levy that will be half of what the council would have yielded if the 1919 Act were still in force for the whole of the year which begins 1 January 1994.

It is emphasised that not all of the rating provisions of the 1919 Act will apply to the Transition Period, and for these exceptions see clause 34 of the Regulation. One change detailed in clause 34 is that councils will no longer need to apply to the Minister for approval to make a differential coal mine rate, as was laid down in section 118AAA of the 1919 Act. However the 'advertising' requirements set out in 118AA of the 1919 Act will still apply during the Transition Period.

The Regulation continues to provide councils with a choice to either use output based or non output based land valuations for mine rating during the Transition Period.

However, clause 34B provides that if a council uses a non output-based land valuation for rating, the limitation on the level of the rate arising from section 118A will not apply, whereas section 118A will continue to apply to rates levied on output-based valuations.