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**MINISTRY OF FINANCE AND ECONOMIC PLANNING**  
**(GHANA EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE-GHEITI)**



**REPORT**

**ON THE**

**AGGREGATION/RECONCILIATION OF MINING SECTOR  
PAYMENTS AND RECEIPTS: 2004-2008**

**OCTOBER 2010**

**COMPILED BY THE  
GHANA EITI SECRETARIAT  
MINISTRY OF FINANCE AND  
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**List of Abbreviations/Acronyms**

CEPS	Customs Excise and Preventive Service
C. FUND	Consolidated Fund
DA	District Assembly
EITI	Extractive Industries Transparency Initiative
GHEITI	Ghana Extractive Industries Transparency Initiative
IRS	Internal Revenue Service
MDF	Mineral Development Fund
MOFEP	Ministry of Finance and Economic Planning
MLNR	Ministry of Lands and Natural Resources
MUN/DIST ASMBL	Municipal/District Assembly
NTRU	Non -Tax Revenue Unit
OASL	Office of the Administrator of Stool Lands
T.C	Traditional Council.

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## **Extractive Industries Transparency Initiative**

### **Implementation Criteria**

1. Regular publication of all material oil, gas and mining payments by companies to governments ("payments") and all material revenues received by governments from oil, gas and mining companies ("revenues") to a wide audience in a publicly accessible, comprehensive and comprehensible manner.
2. Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.
3. Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator's opinion regarding that reconciliation including discrepancies, should any be identified.
4. This approach is extended to all companies including state-owned enterprises.
5. Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.
6. A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

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## **INTRODUCTION**

The Extractive Industries Transparency Initiative (EITI) was launched at the World Summit on Sustainable Development in Johannesburg, September 2002. It seeks to improve development outcomes from payments made by Extractive Industries to governments by enhancing transparency in the payment, receipt, disbursement and utilization of these benefits. It also aims at stimulating debates on the uses of these benefits amongst various stakeholders.

The initiative encourages governments, extractive companies (Publicly and Privately owned), International Agencies and NGOs to work together to develop a framework to promote transparency in payments in the extractive industries.

To this end, Messrs BOAS and Associates were contracted by the Ministry of Finance and Economic Planning to undertake the aggregation and reconciliation of mining payments and receipts for the years 2004 to 2008.

This report presents a consolidated report of the aggregation and reconciliation of mining benefits paid by mining companies and received by the Government of Ghana for 2004-2008 (i.e. January 2004 – December 2008).

### **1.1 Brief on the Mining Industry in Ghana**

Under the Minerals and Mining Act, 2006, Act 703, every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, water courses throughout the country, the exclusive economic zone and any area covered by territorial sea or continental shelf is the property of the Republic of Ghana and is vested in the President in trust for the people of Ghana.

The Mining Industry in Ghana makes a substantial contribution to the economy. The mining sector accounts for about 11% of fiscal receipts by the Internal Revenue Service (IRS).

Gold mining remains the highest contributor in the sector, with large scale gold mining accounting for over 80% by value of the total income from the sector. The other important minerals are diamond, bauxite, manganese and silver.

## **OBJECTIVES**

The main objectives of this report are:

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The main objectives of this assignment are:

- a) To check if the payments by mining companies have been appropriately made.
- b) To ascertain if all revenues received by government Agencies have been fully accounted for.
- c) To aggregate payments and receipts and reconcile mining companies submissions to government receipts.
- d) Ascertain the correctness of disbursements to the District Assemblies and to the Minerals Development Fund.
- e) Check the utilization of the funds disbursed to the District Assemblies and to the Mineral Development Fund.
- f) To utilize lessons learnt from the reconciliation/aggregation to enhance transparency in the payments, receipts, disbursements and utilization of mining benefits.

### **3.0 TERMS OF REFERENCE (ToR)**

Under the terms of reference for the assignment the obligations of the aggregator shall include the following:

The Aggregator shall perform both process and financial audit.

The Aggregator shall analyze the historical documentation on production, exports and payment of royalties for minerals produced in the country.

In carrying out his mandate the Aggregator shall have access to the company's lease, stability or development agreements with government. More specifically the Aggregator shall undertake the following activities:

1. Aggregator shall check the correctness of the computation of payments in order to determine the appropriateness of the revenues received as mineral royalty, dividends and tax on profit.
2. The aggregator shall also analyze the tax deductions claimed by the companies to ensure that only proper claims are made.
3. Check the disbursements made from the revenues received and ascertain if they are in conformity with legislation.

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4. Scrutinize the payment made to District Assemblies, Traditional Authorities and Stools within the operational areas of mines.
  5. Ascertain the appropriateness of payments made with regards to mineral royalties; ground rent; dividends; taxation on profits and for mineral rights.
  6. Where applicable the aggregator shall check if the declarations of quantities of minerals declared are in conformity with the declarations made to the Mineral Commission and refinery certificates.
  7. Review financial statements for consistency for both companies and institutions. Specifically, for companies the aggregator shall review company capital investments and operating cost.
  8. Review the capital investments in order to assess the actual amount of the investment and to determine if the amortization and depreciation declared is correct and does not improperly reduce the amount of taxable profit of the mining companies.
  9. The aggregator shall check claimed operating costs to ensure that only actual and qualifying operational expenses are claimed.
  10. Review feasibility reports of Mining Companies in order to compare the projected production with the actual production.
  11. Reconcile the data so collected to ascertain if there is any disparity between the governments reported template and the aggregated companies reporting template.
  12. The aggregator shall be expected to report on amounts accruing to the Minerals Development Fund.

#### **4.0 SCOPE OF WORK**

The Aggregator has a wide scope within which to operate. With the exception of infringing on contractual agreements with participating bodies and agencies in the EITI. The Aggregator has the right to demand any explanation and documentation that may assist in the performance of assignment. It was however intimated that the activities of the Aggregator should not unduly interfere in the operations of the entities involved.

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## **4.1 Aggregation/reconciliation**

### **4.1.1 Time period/Accounting basis**

This report contains the aggregated and reconciled benefits for the period January to December 2004 – 2008. These figures were compiled using cash payments and receipts as the basis of accounting in Ghana cedis. Benefits paid by mining companies' and those received by the government for the years 2004, 2005, 2006, 2007 and 2008 are considered for the completion of mining companies and government templates.

### **4.1.2 Reporting period/Expected Output**

The aggregator shall submit the report to the EITI Secretariat. The reports will contain information on the financial flows from mining companies to government, government receipts of payments from companies and District Assemblies receipts and utilization of royalties paid to them by government.

The reports shall also give information on quantity of minerals produced and exported by the mining companies. The report will also describe the status of the audit.

## **5.0 EITI IN GHANA**

The Government of Ghana committed itself to participate in the EITI at the International Conference in London on June 17<sup>th</sup>, 2003.

A Steering Committee (EITI Steering Committee) has been set up, which is under the leadership of a Deputy Minister for Finance and Economic Planning and assisted by the Deputy Minister of Lands and Natural Resources.

The EITI Steering Committee is the governing body of the EITI in Ghana. Various stakeholders in the Extractive Industry are represented on the Committee.

The members of the Committee comprise representatives from the under listed agencies:

Ministry of Finance and Economic Planning.

Ministry of Lands and Natural Resources.

Minerals Commission.

Ghana Chamber of Mines (representing the mining companies).

Office of the Administrator of Stool Lands.

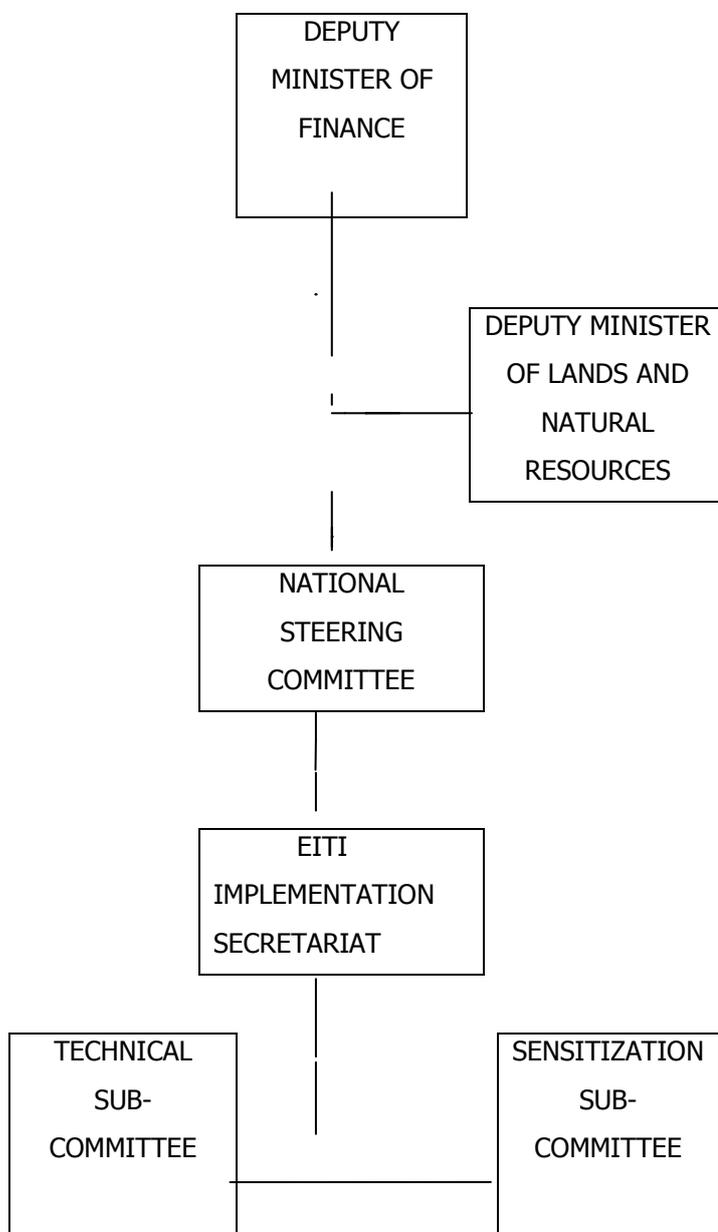
Internal Revenue Service.

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Wassa West District Assembly.  
Civil Society Organizations (led by ISODEC).

The EITI also has an implementation Secretariat at the Ministry of Finance. Two Sub-committees (Technical and Sensitization) complete the implementation regime of the EITI in Ghana.

The diagram below indicates the implementation structure of the EITI in Ghana.



Source: EITI Implementation Secretariat (MoFEP)

### 5.1 Expected Benefits from EITI

The following are the expected benefits to be gained by the country for adopting the Initiative:

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- i) The government will through the Ministry of Finance and Economic Planning have added confidence in the declarations and payments by mining companies.
  - ii) The mining companies would obtain reasonable knowledge of the benefits that emanate from payments made by them.
  - iii) Misunderstandings between mining companies and communities may be easily settled, as communities would become increasingly aware of the benefits of mining.
  - iv) Government and its Agencies, realizing the focus on them shall be prudent in the management of resources from the Extractive Industry.
  - v) The Initiative will encourage better record keeping by Government and its Agencies.
  - vi) Lessons learnt from the findings of the Initiative would be used to formulate recommendations that would enhance the establishment of transparency in payments and disbursements of revenues from the mining sector.

## **5.2 EITI and Aggregation**

In order to promote transparency in the Extractive industry, there is the need to provide information on the payments made by the mining companies to the government within a specified period. Under the EITI guidelines, the task of Aggregation deals with four broad areas:

Statutory payments made by the mining companies.

Revenues received by the Government.

Disbursements made by the Government to the communities affected by mining activities.

Utilization of funds disbursed to the mining communities.

## **5.3 Legal status of EITI**

Even though participation in the EITI project is currently voluntary, the Mining Companies have regulatory compliance to provide information to the Government through the Minerals Commission. The Aggregator, having been appointed by the Government, is therefore entitled to have access to any requisite information and data that would facilitate the performance of the assignment.

However, the Government is seeking to back the EITI project legally to make it mandatory for all mining companies in the country to participate.

#### 5.4 BENEFITS STREAMS AND EITI.

Details of benefit streams to be considered for aggregation for the 2004-2008 aggregated reports are indicated below.

**Table 1: Benefit streams to be considered for aggregation:**

<b>Benefit/Payment</b>	<b>Frequency of payment</b>	<b>Agency responsible for collection</b>	<b>Application of payment/benefit</b>
<b>Reconnaissance fees</b> <b>Prospecting fees</b> <b>Mining Lease</b>	When licence is obtained When licence is obtained When licence is obtained	Minerals Commission	Used internally by the Minerals Commission
<b>Mineral Royalties</b>	Quarterly	Internal Revenue Service (IRS)	C.Fund - 80% OASL - 1% D.A. - 4.95% T. C. - 1.80% Stools - 2.25%
<b>Corporate tax</b>	Annually, if applicable	Internal Revenue Service (IRS)	Consolidated fund
<b>Dividends/dividend tax</b>	After company declaration	NTRU/IRS	Consolidated fund
<b>Property rates</b>	Annually	District Assembly	Used internally by the District Assembly
<b>Ground Rent</b>	Annually	OASL	OASL- 10.0% DA - 49.5% TC -- 18.0% Stools--- 22.5%

Source: **Aggregator's compilations**

#### 6.0 MINISTRIES, DEPARTMENTS AND AGENCIES COVERED UNDER THE GHANA EITI AND PAYMENTS RECEIVED

The Ministries, Agencies and Entities which provided data and information for this assignment for 2004 to 2008 include:

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- i) The Ministry of Finance and Economic Planning (Non-tax Revenue Unit);
  - ii) The Ministry of Lands and Natural Resources;
  - iii) The Minerals Commission;
  - iv) The Mines Department;
  - v) The Internal Revenue Service (IRS);
  - vi) The Office of Administrator of Stool Lands;
  - vii) The Customs, Excise and Preventive Services (CEPS);
  - viii) Mining companies; and
  - ix) The District Assemblies, Traditional Councils and Stools within the area of operations of the mines being considered.

### **6.1 Non-Tax Revenue Unit (Ministry of Finance and Economic Planning)**

This Unit which operates under the Ministry of Finance and Economic Planning receives Government's share of dividends paid by mining entities.

The Republic of Ghana retains a 10% non-contributing shareholding in every mining lease holder. The government's percentage holding (10%) may be altered in circumstances where special agreements exist.

### **6.2 Ministry of Lands and Natural Resources**

The Ministry of Lands and Natural Resources is the Ministry responsible for policy formulation and co-ordination with respect to the minerals sector.

Its functions among others include the following:

- i) Developing and managing sustainable lands, forest, wildlife and mineral resources.
- ii) Facilitating equitable access, benefit sharing from land, forest and mineral resources.
- iii) Promoting and facilitating effective private sector participation in land service delivery, forest, wildlife and mineral resource management and utilization.

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iv) Reviewing, harmonizing as well as consolidating existing legislation and policies affecting land, forest and mineral resources.

### **6.3 Minerals Commission**

The Minerals Commission is the Agency tasked by Government to oversee the minerals sector in the country and is a one-stop-shop for investors.

Its main functions include:

- i) Making recommendations of national policy in respect of exploration and exploitation of mineral resources
- ii) Advising Government on matters relating to minerals
- iii) Monitoring the operation of Government policy relating to minerals and reporting
- iv) Monitoring the operations of all individuals or corporations involved in the minerals industry
- v) Receiving and assessing all public agreements relating to minerals.
- vi) Collating a comprehensive record of the country's minerals resources and the technology of exploration and exploitation.

The main types of payments received by the Minerals Commission include Exemption fees and Licence fees.

#### **6.3.1 Exemption processing fees**

Mining companies do not pay customs duties on items imported into the country which are on the mining list.

The mining list is a list of plant and machinery and other mining specific items which have been approved by the Commissioner of Customs, Excise and Preventive Service on recommendations from the Minerals Commission.

The Minerals Commission is required to authenticate the exemption status of all imports. The fees charged by the Minerals Commission for performing this task, constitutes the exemption fees.

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### **6.3.2 Licensing (fees)**

Mineral rights are vested in the State and granted by the Ministry of Lands and Natural Resources. The licences considered here are those that allow the holder the right to enter the land and perform specific tasks.

There are three sequential categories entitling the holder to conduct reconnaissance of, prospect for or mine certain minerals.

#### **i) Reconnaissance Licence**

A reconnaissance licence which is the first stage in the mining operations entitles the holder to search for specified minerals by geological, geophysical and geochemical means.

In general, reconnaissance licences do not permit drilling, excavation, or other physical activities on the land, except where such activity is specifically mentioned by the licence.

Reconnaissance licence is granted for an initial period of not more than twelve (12) months with a renewable option for another twelve months for land area ranging between one block and five thousand blocks (a block is 21 hectares). Reconnaissance fee for local mining companies is currently pegged at GH¢500 while the fee for foreign companies is pegged at US\$10,000. These fees do not include that for processing.

#### **ii) Prospecting Licence**

Prospecting licence which covers the second stage of mining operations entitles the holder to search for stipulated minerals and to determine their extent and economic value.

The licence is granted for an initial period of three years for a land area not exceeding 750 contiguous blocks. The prospecting licence may be extended for a period not exceeding three (3) years in respect of all or for any number of blocks subject for prospecting. Prospecting licence fees are pegged at GH¢1,000 and US\$15,000 respectively for local and foreign mining companies. Fees quoted do not include that for processing.

#### **iii) Mining Lease**

When a holder of a reconnaissance licence or prospecting licence has established that the mineral(s) indicated in the licence is/are present in commercial quantities, an application for a mining lease may be applied for before the expiration of the current licence.

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The mining lease is granted for an initial period of thirty (30) years or less as may be agreed upon with the applicant and may be renewed for an additional period of thirty (30) years. Mining Lease fee (excluding processing fees) is presently pegged at US\$30,000 for Foreign-controlled entities and GH¢3,000 for Ghanaian-controlled entities.

However, for the purposes of aggregation under the EITI, only the licensing fees are considered.

### **6.3.3 Application of fees collected**

Licensing fees collected by the Commission are treated as Internally Generated Funds and used to support the operations of the Minerals Commission.

## **6.4 Mines Department**

The Mines Department, according to the Mining and Minerals Act 2006 (ACT 703) is now part of the Inspectorate Division of the Minerals Commission.

Its functions include:

Ensuring the maintenance of appropriate documentation for mining operations.

Inspecting the area of mineral operations to ascertain whether a nuisance has been created.

Inspecting the explosive magazine on a mine to direct in what manner an explosive shall be restored.

The Mines Department receives returns on the operations of Mining Companies on following parameters:

- Quantity of ore/waste mined
- Head grade of ore processed
- Tailings grade and other processing details.
- Quantity of explosives used
- Power consumption for specified periods

Payments made by Mining Companies to the Mines Department include the following:

- 
- Mining permit fees that is paid annually by Mining Companies.
  - Prospecting permit, this is paid per applicant/concession.
  - Mercury licence (which allows Mining Companies to use mercury in operations)
  - and other payments that are made as and when the service is required.

For the purposes of the EITI, none of the above payments shall be aggregated.

## **6.5 Customs, Excise and Preventive Service (CEPS)**

The Customs, Excise and Preventive Service (CEPS) is the government agency that collects customs and excise duties. It also oversees all out bound shipments and clears all in bound goods to the country.

As part of the project initiation meeting, the Independent Aggregator interacted with the Commissioner, the Deputy Commissioner for Human Resource, Assistant Commissioners for Western and Ashanti Regions some resident Customs Officials attached to the mines. The involvement of Customs, Excise and Preventive Service in the mining industry may be categorized broadly into two.

Firstly, the Service is involved in the clearing of plant, equipment and other imported items for the mining industry. In this regard, there exists a "Mining List" which refers to items that are mining operations specific. These are machinery, plant and apparatus which have been approved by the Commissioner for Customs, Excise and Preventive Service on the recommendations of Minerals Commission.

Secondly, the Customs, Excise and Preventive Service also have personnel attached to the Mines. These officials possess mining related qualifications e.g. metallurgy or mining engineering. The main task for these personnel is to ensure that mineral won by Mining Companies from their operations are fully accounted for.

To achieve this goal, they perform the following duties:

Observe the smelting process (in the case of gold mining)

Observe and record the weighing process

Responsible for the packaging and sealing of boxes for shipment

Accompany packages to the port or airport for shipment.

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## **6.6 Internal Revenue Service (IRS)**

The IRS is one of the Revenue Agencies of the Government. Its main task is to impose and collect taxes (Income tax, Capital Gains taxes, Gift tax, etc) on behalf of the Government.

The main benefits/payments received by the IRS from the mining companies are Mineral Royalties, Dividend Tax and Corporate Tax.

### **6.6.1 Mineral Royalties**

It is a production based tax which is levied on the basis of Article 25 of the Minerals and Mining Act, 2006; ACT 703 which states that "A holder of a mining lease, restricted mining lease or small scale mining licence shall pay royalty that may be prescribed in respect of minerals obtained from its mining operations to the Republic, except that the rate of royalty shall not be more than 6% or less than 3% of the total revenue of minerals obtained by the holder".

Mining companies are liable to pay royalties immediately they commence mineral production. It is applied based on the profitability of the lease holder's operations, which is ratio between the operating margin and the gross value of minerals extracted. The operating margin is the value of total minerals extracted less the operating cost.

Mining Companies are liable to pay royalties immediately they commence mineral production in the country. Payment of mineral royalties is made quarterly by all Mining Companies.

The Mining Companies submit returns for the quarter under consideration to the IRS. The returns indicate the monthly sales for the quarter, the proceeds from sales, the amount of mineral royalty to be paid for the quarter and the exchange rate for each month.

Mineral Royalties are paid within thirty (30) days after the end of the quarter, at a rate of 3% of the gross value of minerals won. Payments are made on account and scheduled for April, July, October and January.

Within 60 days after the end of the year, every holder of a mining lease shall compute the royalties' payable for the year based on its financial statements, taking note of the operating ratio.

The royalties' payable computed is compared to the total paid on account.

Any difference between the amount payable and the amount paid on account is paid by the holder of the mining lease.

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## **6.6.2 Application of Mineral Royalties received**

Mineral royalties received are paid into designated Accounts for the Government (Consolidated fund). Of the total amount of royalties received the government retains 80% in the consolidated fund. 10% is paid to the Administrator of Stools Lands.

The remaining 10% is paid to Minerals Development Fund to be utilized by mining sector agencies and also for special projects.

Information on mineral royalties collected is sent to the Administrator of Stool lands indicating the details of companies making the payments.

### **Disbursements of Mineral Royalties by the Administrator of Stool Lands.**

Summarized below is the procedure for the disbursement of Mineral Royalties paid by Mining Companies:

The head of collections at the Large Taxpayers Unit at the Internal Revenue Service (IRS) sends a memorandum informing the Director of the Large Taxpayers Unit of mineral royalties collected for the month.

The Memorandum from the head of collections at the Large Taxpayers Unit to the Director at the LTU is copied to the Commissioner of the Internal Revenue Service.

The Memorandum contains details of the Company paying the royalty, the amount paid, the month in which payment is made and the region and district of the related operations.

The Commissioner of the Internal Revenue Service then writes a letter to the Minister of Finance, requesting the Minister to instruct the transfer of funds from the consolidated fund or the specific Internal Revenue Service account with the Bank of Ghana.

The letter from the Commissioner would indicate the amount to be transferred in favour of the Administrator of Stool Lands Account i.e. 10% of the total amount collected.

The Minister writes to the Controller and Accountant General asking him to transfer the amounts indicated into the Administrator of Stool Lands' Account with the Bank of Ghana (Disbursable Revenue Account).

The Controller writes to the Governor of the Bank of Ghana requesting transfer to the Accounts indicated above, copying same to the Administrator of Stool Lands. When funds are transferred to the Administrator of Stool Lands Account, 10% is taken off for administrative purposes.

The remaining 90% is then sent to the regions in the same proportions indicated by the Internal Revenue Service.

The regional offices of the Administrator of Stool Lands then distribute the funds received in the proportion of 55% to the District Assemblies; 25% to the Stools and 20% to the Traditional Authority.

**Table 2: Disbursement of Mineral Royalties**

<b>Beneficiary</b>		<b>Share (%) of Total Amount</b>
Government in Consolidated Fund		80%
Minerals Development Fund		10%
Office of the Administrator of Stool Lands	10% of Total Amount	
The Administrator of Stool Lands takes 10% of the amount received to cover administrative expenses.		1%
The remaining 90% is distributed as follows.		
District Assemblies	55%	4.95%
Stools	25%	2.25%
Traditional Councils	20%	1.80%
Total		100%

**Source:** Administrative fiat of 1991 (letter no. AB.85/156/01)

#### **6.6.4 Corporate Tax**

Corporate tax is currently fixed at 25% of Net Profit. All the mining companies under consideration are on self assessment. Self assessment companies are allowed to forecast their profits for the year and pay some deposits based on their own assessment.

Self-assessment companies are allowed to forecast their profits for the year and pay some deposits based on their own assessment.

Companies on self-assessment are, however, required to submit their yearly returns four months after the end of the accounting year. The revenue accruing to the Government from the payment of corporate taxes by mining companies is little.

This situation arises as a consequence of a) accelerated depreciation and b) the carry forward of losses concessions granted to mining companies operating in the country.

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## **Accelerated Depreciation**

Under the income tax code, mining companies receive higher rates for capital allowances. For the purposes of computing capital allowances for mining entities, the following are considered as Assets.

Mineral Exploration rights

Building, structures and works of a permanent nature which are likely to be of little or no value when the rights are exhausted or the prospecting, exploration, or development ends.

Plant and machinery used in mining operations.

Cost incurred in respect of mineral prospecting, exploration and development (are treated as if they were incurred in securing the acquisition of assets).

## **Carry Forward Losses**

Mining companies are allowed to carry forward losses arising in any year to the next year for offset against the profit. The loss must, however, be deducted within five years following that in which the loss occurred.

### **6.6.5 Dividend Tax**

The IRS is responsible for the collection of Withholding Tax on dividends paid by mining companies. In Ghana dividend tax on mining companies are regulated by the following stipulation:

The Government of Ghana by legislation is entitled to acquire, without financial contribution, 10% interest in the rights and obligations of any mineral operation.

This entitles the government to a 10% share of dividends declared by any mining concern (unless there is a special dispensation resulting from a contractual agreement)

The Income tax code enjoins the payment of a 10% Withholding tax on all dividends paid out to shareholders.

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In practice, this is not done as the total dividend is paid to Non-Tax Revenue Unit of the Ministry of Finance and Economic Planning.

### **6.6.6 Capital Gains Tax**

Capital gains tax is a tax payable by a person on the capital gains accruing to or derived by that person. An asset is realized when the person parts with ownership of the assets.

This may include selling or ceasing to use the asset in such a way that it ceases to be a chargeable asset. Chargeable assets include buildings situated in Ghana, business and business assets of a permanent establishment situated in Ghana, land situated in Ghana and shares of a Ghanaian resident company.

The capital gain is the difference between the realized amount and the original cost of the chargeable asset. (i.e. sales proceeds less original cost and cost of any enhancements). It appears no capital gains tax in respect of mines changing ownership had been recorded.

## **6.7 Office of the Administrator of Stool Lands (OASL)**

The Office of the Administrator of stool Lands is the organization which is mandated to collect and disburse stool lands revenue.

The responsibilities of the Office include:

- i) The collection of ground rent from entities operating on stool lands. The disbursement of ground rent collected is in accordance with the provisions of Section 297(6) of the 1992 Constitution.
- ii) The disbursement of a ceded amount, which is 10% of total mineral royalties collected by the IRS, after deducting 10% as administrative cost.

### **6.7.1 Ground Rent**

It is the annual payment made by mining companies and other companies operating on stool lands in their operating areas.

The amount payable for ground rents depends on the size of the concession. Payments for ground rents by Mining Companies are collected at the District Offices of the OASL and sent to the regional Offices for disbursements to beneficiary Mining Communities. Currently the rate of payment is fixed at GH¢1.00 per acre.

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**Table 3: Disbursement of Ground Rent (Stool Lands Revenue)**

<b>Beneficiary</b>		<b>% Share of Total Amount Collected</b>
<b>Office of the Administrator of Stool Lands</b> <i>The Administrator of Stool Lands Takes 10% to cover administrative cost.</i>		10%
<b>Remaining 90% is Shared as follows:</b>		
<b>Beneficiary</b>	<b>Share %</b>	
District Assemblies	55	49.5
Stools	25	22.5
Traditional Authority	20	18.0
Total		100

### **6.7.2 Mining Benefits**

Mining benefits considered in this report for the period (2004-2008) under reference are:

- (i) Mineral Right Licences;
- (ii) Ground Rent;
- (iii) Property Rate;
- (iv) Mineral Royalties;
- (v) Corporate tax; and
- (vi) Dividends.

## **7.0 APPROACH AND METHODOLOGY.**

The Assignment has been categorised into three (3) phases. These are i) Inception, ii) Aggregation and iii) Framework (Guidelines) development for the enhancement of transparency.

The first two (2) phases were based on activities which are indicated in the work plan. The final phase (development of framework) is based on the feedback of the observations, findings and experiences gathered in the first two stages.

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### **7.0.1 Inception phase**

This is the preliminary information gathering stage. The Aggregator interacted with Mining companies, Government Revenue Agencies, District Assemblies and Traditional Authorities.

### **7.0.2 Aggregation Phase**

This represents the main thrust of the assignment. It involves the collection and analysis of data. It shall also include financial and processing audit.

#### ***Data Collection:***

Data already requested from the Departments and Agencies, selected Mining Companies and the relevant District Assemblies, Traditional Councils and Stools were collated and analysed.

#### ***Analysis***

Activities undertaken at this stage included:

The reconciliation of details from Mining sector Agencies and Revenue Agencies.

Ascertaining the correctness of computations and payments received by each of the agencies.

Comparing payments by Mining Companies to that recorded by Revenue Agencies.

The reconciliation of payments made by the Head Office of the Administrator of Stool Lands with that of its various regional offices.

The reconciliation of technical data from Mining Companies with that of the Mineral Commission.

Data collected from the District Assemblies, Traditional Councils and Stool Lands will also be reconciled with that of the Office of the Administrator of Stool Lands.

The Aggregator will then review the accounts of the District Assemblies and Traditional Council in respect of mineral royalty, property rates and ground rent.

The main objective is to ensure that payments (mineral royalties) made by the Government to District Assemblies are properly accounted for.

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The analysis or audit will include reviewing receipts of mineral royalties, Bank Accounts, Cash Books and disbursements made from Mineral royalty accounts.

Disbursements were then matched against various projects provided by the District Assemblies from the mineral royalty accounts.

### **7.0.3 Framework (Guidelines) Development:**

This is a continuous interactive phase which is aimed at utilizing the findings and experiences acquired from the inception and aggregation phases.

### **7.0.4 Design**

In executing the assignment we considered a design methodology which was used to request for historical data on mining benefits received by Government. In line with this questionnaires were designed right from the Inception phase to elicit responses from Government Agencies, Mining Companies, Traditional Councils and Stools.

A combination of desk and field work was employed in the execution of this assignment. The desktop analysis involved the use of electronic data base management, computer spreadsheets and other software packages.

In order to enable the effective execution of the tasks on schedule, a number of activities were executed concurrently.

We also recognised that building the right partnerships is critical for the assignment, as it will facilitate consensus building on vital elements for the EITI.

### **7.0.5 Document Review**

Documentations made available to the Aggregator were critically reviewed to gain a deeper understanding of the assignment. This information was used to **develop interview guides** to enable the Aggregator engage in detailed discussions with the various institutions covered by the assignment.

Initial documents identified for detail study included the following:

- Reporting Templates
- Mineral and Mining Act, 2006
- Ghana Chamber of Mines Annual Report, 2005
- Feasibility Studies of selected Mining Companies
- Annual reports of selected mining companies

The document review will be an on-going activity throughout the entire length of the assignment.

### 7.0.6 Field Visits and Interviews

Periodic meetings with government institutions and field visits to the Mines, District Assemblies and mining communities will be a continuous feature of the assignment.

### 7.1 Materiality/Mining Companies.

The Ghana EITI National Steering Committee agreed on a list of Mining Companies that would form the basis of the aggregation. These were companies that made substantial payments (over 80% of total receipts) to Government in the years 2004 and 2008. These are presented in the table as follow:

**Table 4: Selected companies for 2004-2008 aggregated/reconciled reports**

<b>MINE/COMPANY</b>	<b>LOCATION</b>	<b>MINERAL MINED</b>
Anglo gold Ashanti	Obuasi, Ashanti Region	Gold
Anglo gold Ashanti	Iduaprim, Western Region	Gold
Abosso Goldfields Ltd	Damang, Western Region	Gold
Central African Gold	Bibiani, Western Region	Gold
Chirano Goldmines	Chirano, Western Region	Gold
Goldfields (Ghana)Ltd	Tarkwa, Western Region	Gold
GSR(Wassa) Ltd	Akyempim, Western Region	Gold
GSR (Prestea/Bogosu)	Prestea/Bogosu, Western Region	Gold
Newmont (Ghana) Ltd	Kenyasi, Brong Ahafo Region	Gold
Ghana Manganese Ltd	Nsuta, Western Region	Manganese
Ghana Bauxite Company	Awaso, Western Region	Bauxite

These companies contributed about 99% of the total mineral royalties received by Government in the years 2004 - 2008. In addition to the selected companies, the following companies were also engaged in mining activities and paid some amount of mineral

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royalties. (See Table 5).

**Table 5: Companies other than selected but paying royalty.**

MINE/COMPANY	LOCATION/REGION	ACTIVITY/MINERAL MINED
Nartey Salt Industries Ltd	Greater Accra	Salt
Kas Products Ltd	Ashanti	Rock (quarrying)
Spiro Jokayem & Sons	Greater Accra	Rock (quarrying)
Kam Quarry Ltd	Greater Accra	Rock (quarrying)
Med Mining	Eastern Region	Gold
Eastern Quarries	Greater Accra	Rock Quarrying
CP Concrete Products	Greater Accra	Rock Quarrying
Taysec Construction Ltd	Brong Ahafo	Rock Quarrying
P.W. Ghana Ltd	Ashanti	Rock Quarrying
Ghacem	Eastern	Limestone
Upper Quarries	Upper East	Rock Quarrying
Bigleb Construction & Crushing	Greater Accra	Rock Quarrying
Songor Salt Project	Greater Accra	Rock Quarrying
Gulf Coast Resources Ltd	Eastern Region	Rock Quarrying
Modern Stone Quarry Ltd	Greater Accra	Rock Quarrying
Koby Quarry Ltd	Greater Accra	Rock Quarrying

## **7.2 Activities/Auditing**

Activities undertaken by the companies include Exploration, Mining, processing/Ore Treatment and Marketing. All the companies had audited Financial Statements for 2004-2008. Government Agencies such as Office of the Administrator of Stool Lands (OASL), the Internal Revenue Service (IRS), and the District Assemblies had been audited by the Auditor General's Dept.

## **7.3 PRODUCTION/MINERAL ROYALTY PAYMENT.**

All the eleven mining companies had their quarterly royalty payments thoroughly scrutinized for possible underpayment. For this determination, refining certificates were obtained and all bullion shipments individually checked for correctness of gross weights, bullion fineness and revenues.

All shipments identified by bullion bars numbers on gold delivery notes were serially checked with those on refining certificates.

Gold content ounces declared at the mine were recalculated and its variance with refinery

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ounces determined for reasonableness.

Silver revenues accounted for by the refineries though relatively small in value were also totaled as part of export proceeds for which royalties are to be paid.

Manganese and ballast sales reports were reviewed for accuracy. Manganese pricing was thoroughly discussed with Ghana Manganese executives for greater transparency in view of the sensitive nature of their product marketing.

Documentation on bauxite shipments for the period (January 2004-December 2008) were examined, and compared with company declarations.

Post recovery monthly bauxite production statistics were also obtained for review against other submissions to government agencies.

Proceeds from sales declared for royalty payments were checked to ascertain if freight, insurance, refinery and other charges were excluded as royalties are paid on gross revenues.

Provisional payments representing 99% of gold exports values were also closely checked for their corresponding balance repatriation since there is usually a delay of about three weeks which time other shipments would have been made and down payments duly received.

For those companies that employ Bank of Ghana cedi exchange rate based on the 20% retention in computing cedi proceeds, each rate applied was checked and its cumulative values for royalty payments determined.

To ascertain whether companies were required to pay more than 3% of their gross revenues as royalties', computations of operational ratios were performed.

For bauxite, sales Ledger account for foreign remittances to determine the actual revenues were also checked.

Returns to mineral commission on production indicating shipping tonnages and revenues for all bauxite exports were also compared with royalty payment computations.

#### **7.4 DECLARATION TO STATE AGENCIES**

Company returns to Minerals Commission on production indicating shipping tonnages and revenues for all bauxite exports were also compared with royalty payment computations. Monthly bauxite production statistics were also reviewed against similar submissions to Minerals Commission.

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Monthly and quarterly submissions to Minerals Commission on mine technical information e.g. tonnages of ore mined and milled, Mill Head Grade and residue grades were duly examined for the entire period 2004 to 2008.

These figures were compared to those reported in the companies' financial statements. Company feasibilities and budgets for medium to long term production were examined.

An audit of the metallurgical processes was carried out i.e. crushing, milling, dewatering, leaching and smelting etc to confirm tonnages and gold content ounces at each stage of the processing route up to the gold room.

Bullion quantities and revenues declared at the Internal Revenue Service (IRS) for the purposes of royalty payment were reconciled with those available at the Minerals Commission. They were also compared with figures in the companies' financial statements.

Export proceeds on the carbon fines were checked to ensure royalties were paid.

## **7.5 Process Audit**

The process audit involved the following three phases:

- Mining and Production Process Audit
- Transportation Process Audit
- Sales and Accounting Process Audit

A walk-through of the various process phases were carried out to gain a better understanding of each of the processes. Process mapping of the various process phases were carried out to define the lower and upper boundaries of each of the three phases. The various activities performed under each of the processes were mapped out to outline the process steps of each of the phases.

### **7.5.1 Mining and Production Process Audit**

In the mining and production process audit, the following processes were audited:

Drilling and blasting of ore which are later hauled to plant site for primary and secondary crushing.

Crushed ores are pumped into agitation tanks for the dissolution of gold.

Crushed ores are later pumped into leaching tanks with carbon to absorb the gold.

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Periodic testing is performed to determine gold content level. At high gold content level the gold is stripped out from the carbon and water is poured on the gold.

The gold is pumped through electrolysis where steel wool captures the actual gold. Cyanide is later added to dissolve the steel wool to leave out the gold.

The gold is further heated to the required temperature to burn out any steel wool in the mixture. At this stage the gold drops like liquid.

The gold is later poured into crucibles (bars) and later cleaned. Samples are taken to determine lab purity.

The gold bars are given codes, weighed and boxed in the presence of resident custom officer and the company's departmental heads.

The resident custom officer finally seals the boxes with custom seals.

### **7.5.2 Transporting/Process Audit**

The gold is packed in bullions and transported to the airport accompanied by company officials and security personnel

At the airport custom officers provide the necessary documentations for airlifting to the designated refinery.

### **7.5.3 Sales and Accounting Process Audit**

Part payment for gold received is transferred into the Mining Company's account by the Refinery which is then entered into the company's accounting books.

Final payment is made by the refinery when submitting final certificate of refinery to the company.

## **7.6 CORPORATE TAXES**

As all the companies were on self assessment, the payment of corporate tax in the years 2004, 2005 and 2006 were mainly related to the 2003, 2004; 2004, 2005 as well as 2005 and 2006 assessment years. Corporate tax payments in the years 2007 and 2008 were also related to the 2006, 2007 and, 2008 self assessments years respectively. Final returns for the years 2003 to 2007 and self assessments for 2004 to 2008 were scrutinized particularly for non-allowable deductions.

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Capital allowance computations were checked against Fixed Asset Schedules in the financial statement to ensure that appropriate rates have been applied for the different classes of Assets.

The rates for capital allowances applied for computers, plant and machinery and mining assets were scrutinized to ensure they conform to the schedules provided in the Internal Revenue Act 2000, ACT 592.

Companies' capital allowances brought forward, utilized /granted and carried forward in the years under consideration were all examined.

Capital investments by the companies for the years, 2004, 2005, 2006 as well as 2007 and 2008 were all scrutinized by analyzing the Asset Registers and the Fixed Asset Schedules of the companies.

## **7.7 DIVIDEND**

The shareholding structure of the companies were obtained from the mining companies and confirmed with the Non Tax Revenue Unit of the Ministry of Finance, with special attention paid to the Government of Ghana's shareholding.

Financial statements and annual reports for the years 2003, 2004, 2005, 2006, 2007 and 2008 were checked for declaration of dividends. Where dividends were declared the amount declared was noted. Government share of the dividend declared were then compared with the amount received by the Non Tax Revenue Unit of the Ministry of Finance.

Further clarifications were sought from companies and Non-Tax Revenue Unit where dividend payments and receipts seemed not to agree with declared dividends in financial statements.

Registrars of shareholders of the various companies (where appropriate) were contacted to ascertain the correctness of the declarations in the financial statements.

## **7.8 OTHER MINING BENEFITS**

### **7.8.1 GROUND RENT**

To assess the ground rent payable:

- a) Details of concessions held by the mining companies were obtained from the Minerals Commission.
- b) The rate of ground rent payments applicable in 2004 - 2008 were obtained and together with the sizes of the concessions, the amounts payable were computed.
- c) Requests were made to the relevant OASL offices to ascertain the amount paid in the

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year.

d) Mining companies were also required to indicate ground rent payments on the templates.

### **7.8.2 MINERAL RIGHTS LICENCES**

Mineral right Licences i.e. Reconnaissance; Prospecting and Mining leases.

To ascertain the licences paid for the period, a request was made to the Minerals Commission for details of mineral right licences granted for the period.

Mining companies were requested to indicate mineral right licences paid during the year.

### **7.8.3 PROPERTY RATES**

To ascertain the property rates payable/paid the following activities were undertaken:

a) Property rates payable for the period by the mining companies were obtained from the District Assemblies.

b) Mining companies were requested to indicate property rates paid on the company template supplied.

### **7.9 STATE AGENCIES RECEIPTS:**

Mineral royalty receipts by the Internal Revenue Service were compared to:

i) The payments made by the mining companies.

ii) The declarations of mineral royalty receipts made by the Internal Revenue Service to the Ministry of Finance and the Office of the Administrator of Stool Lands (OASL)

iii) Corporate tax and dividend payments received by the IRS and NTRU respectively were compared to the payments made by the companies.

iv) Property rates received by the District Assemblies were compared to those paid by the mining entities.

### **8.0 AGGREGATION/RECONCILIATION**

Details of mining benefits received by government agencies were aggregated and consolidated as the Government Template.

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Completed templates of the selected Mining Companies were aggregated and consolidated as a composite Mining Company Template.

The two templates, the Composite Mining Company Template and the Government Template were reviewed/analyzed and reconciled.

## **8.1 DISBURSEMENTS TO BENEFICIARIES**

In Ghana the royalties paid are distributed in a prescribed format. Of the total amount received the central government retains 80%. Of the remaining 20%:

10% is paid to the Administrator of stool lands for disbursement to the district assemblies, the traditional Council and the stool within the mining entity's area of operation, after the Administrator has taken care of administrative expenses.

10% is paid to the Mineral Development Fund to be used by the mining sector agencies for research and for Special Projects.

### **8.0.1 OASL**

The disbursements from the Internal Revenue Service were checked against that received by the OASL (Head Office).

Disbursements from the OASL head office to their regional offices were checked by applying 9% to the sum of royalties received for the related months.

Disbursements to the districts were analyzed by applying the relevant formula or the appropriate percentages to the mineral royalties paid by the mining companies.

Receipts of mineral royalties by District Assemblies were then checked against payments made by the regional OASL.

**MINERAL DEVELOPMENT FUND** - For mining sector agencies/research.

Details of mineral royalty collections from the Internal Revenue Service (IRS) for the periods under consideration were obtained.

Disbursements made into the **Mineral Development Fund** for the year 2006 were obtained from the Minerals Commission.

Disbursements were scrutinized to ensure that they have been made accordingly.

### **8.0.3 UTILISATION**

Where District Assemblies have dedicated Bank accounts for mineral royalty receipts, the accounts were checked for the receipt of transfers from the OASL.

Budgets (where they existed) for the utilization of mineral royalties were assessed. List of projects undertaken during the years 2004 - 2008 were obtained and where possible physically inspected.

List of contractors that worked on the mineral royalty contracts were then matched against executed projects.

Details of projects undertaken with the funds transferred to the Mineral Development Fund (For the mining sector) were obtained from the Minerals Commission.

## 9.0 RESULTS OF AGGREGATION AND RECONCILIATION 2004-2008

### 9.1 AGGREGATION/RECONCILIATION

The payments made by the selected mining companies and the receipts of the government for 2004 to 2008 are provided in Tables 6 and 7 respectively. (See Appendices 1 and 2).

#### 9.0.1 RECONCILIATION

The reconciliation of government payment and receipts was done year by year. The Summary of Company payments and Government receipts are shown below in Tables 8, 9, 10, 11 and 12 for 2004, 2005, 2006, 2007 and 2008 respectively.

**Table 8: Reconciliation of Mining benefits payments and Government receipts- 2004**

<b>MINING BENEFIT Payment/Receipt</b>	<b>Aggregated Payments by Mining Companies (GH¢)- (A)</b>	<b>Aggregated Receipts by Government of Ghana (GH¢) - (B)</b>	<b>Deviation (A-B)</b>
Mineral royalty	20,724,347.31	20,732,270.32	(7,923.01)
Property rate	210,808.50	210,808.50	0
Corporate tax	500,642.54	500,642.54	0
Dividend	3,145,872.46	3,145,872.46	0
	0	0	

Ground Rent			0
Mineral Right Licence	0	0	0
<b>TOTAL</b>	<b>24,581,670.81</b>	<b>24,589,593.82</b>	<b>(7,923.01)</b>

### 9.0.2 RESULTS OF AGGREGATION/RECONCILIATION IN 2004

i) There was a discrepancy of seven thousand, nine hundred and twenty three Ghana cedis, one Ghana pesewa (GH¢7,923.01). This was due to differences in mineral royalties receipt reported by the Internal Revenue Service and payments by AngloGold Ashanti, Obuasi and Bibiani.

Whilst the IRS reported a total receipt of Six million, three hundred ninety six thousand, five hundred and ninety Ghana cedis, thirty-one pesewas (GH¢6,396,590.31), the two companies reported a combined royalty payment of Six million, three hundred and eighty-eight, six hundred and sixty-seven Ghana cedis, thirty Ghana pesewas (GH¢6,388,667.30) respectively.

An amount of seven thousand, five hundred and forty-four Ghana cedis, ninety-five Ghana pesewas (GH¢7,544.95) was received by the IRS on 30<sup>th</sup> July 2004 as payment from Anglo gold Obuasi in settlement for royalty reconciliation for the period 1998-2001.

Similarly, an amount of three hundred and seventy-eight Ghana cedis, seven Ghana pesewas (GH¢378.07) was received from AngloGold, Bibiani as reconciliation settlement for 1999-2001.

During the reconciliation, the respective turnovers stated in the companies' financial statements were used to compute the mineral royalty payable for the specified years. The difference between the computed royalty and the total actually paid constitute the discrepancies noted.

These two receipts by the Internal Revenue Service (IRS) were, however, not corroborated by the companies, hence the discrepancy.

**Table 9: Reconciliation of Government receipts/Company payments of Mining Benefits in 2005.**

MINING BENEFIT	Mining Companies Payments (GH¢)-A	Government Aggregated Receipts (GH¢)-B	Deviation(A-B)
Mineral Royalty	23,293,296	23,293,296	0
Property Rate	253,103	253,103	0
Corporate Tax	9,760,320	10,222,868	(462,548)
Dividends	6,854,002	6,862,456	(8,454)
Ground Rent	4,119	4,002	117
Mineral Right Licence	0	0	0
<b>TOTAL</b>	<b>40,164,840</b>	<b>40,635,725</b>	<b>(470,885)</b>

## 9.2 DISCREPANCIES IN RECEIPTS AND PAYMENTS IN 2005

The deviation of (GH¢470,885), (see Table 9 above) resulted from bookkeeping/exchange rate differences. The detail breakdown of the deviation is as follows.

### 9.2.1 Corporate Tax:

- i) Anglo gold (Bibiani) Ltd could not confirm payment of GH¢130,000 which is stated as receipt by the Internal Revenue Service (IRS).
- ii) Abooso Goldfields did not recognize in its books a payment of GH¢336,237.50 that the Internal Revenue Service claimed was received on the 5<sup>th</sup> of December 2005.
- iii) This discrepancy of GH¢(3,689) resulted from differences in exchange rates used in recording the payment of corporate tax in the books of Goldfields (Ghana) Ltd, Tarkwa, and that used for payment to the IRS.

The company recorded an amount of GH¢5,419,583 corporate tax payment in its books as a result of reporting in the US\$ denomination. However, the actual payment made to the IRS amounted to GH¢5,415,894. This difference for corporate tax has an opposite effect to the two indicated earlier.

## 9.2.2 Dividends

The differences in the dividend figures for government receipts and companies payments resulted mainly from Goldfields Ghana Ltd (Tarkwa) figures for payment to the Non Tax Revenue Unit and recordings in its books. These figures were GH¢2,275,000 and GH¢2,266,545 for payments to the IRS (Government receipt) and recordings in the books respectively.

## 9.2.3 Ground Rent

The discrepancy in the Ground rent figures reported resulted from the inability of the OASL office in Takoradi to confirm the payment of non-concession Ground rent of GH¢117 by the Ghana Bauxite Company Ltd.

**Table 10: Reconciliation of Company payments and Government Receipts in 2006**

<b>Benefit/Payments/Receipts</b>	<b>Company Payments(GH¢)-A</b>	<b>Government Receipts(GH¢)-B</b>	<b>Deviation A-B</b>
Mineral Right Licence	0	0	0
Property Rate	701,393	699,264	2,129
Ground Rent	7,024	7,024.	0
Mineral Royalty	31,869,687	32,191,084	(321,397)
Corporate Tax	20,830,991	20,830,991	0
Dividends	8,025,480	7,194,552	830,928
<b>Total</b>	<b>61,434,575</b>	<b>60,922,915</b>	<b>511,660</b>

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### 9.3 DISCREPANCIES IN RECEIPTS AND PAYMENTS IN 2006

The discrepancy between Government receipts and company payments in 2006 was mainly due to the following:

Receipts of Mineral Royalty of GH¢321,397 by the Internal Revenue Service could not be confirmed by AngloGold Ashanti/Central African Gold. **However, the Large Taxpayer Unit (LTU) of Ghana Revenue Authority has indicated a collection of GH¢851,121.51 Mineral Royalty from AngloGold Bibiani Ltd for 2006 per the GRA's memo of 11<sup>th</sup> November, 2010.**

Dividend payment of GH¢ 830,928.06 by AngloGold Ashanti in March 2006 was not indicated as government receipt by the Non Tax Revenue Unit.

**Table 11: Reconciliation of Company Payments and Government Receipts for 2007**

<b>Benefit/Payments/Receipts</b>	<b>Company Payments(GHc)-A</b>	<b>Government Receipts(GH¢)-B</b>	<b>Deviation A-B</b>
Mineral Right Licence	0	0	0
Property Rate	801,411	884,811	(83,400)
Ground Rent	1,630	1,625	5
Mineral Royalty	42,708,266	40,836,760	1,871,506
Corporate Tax	15,573,250	15,573,250	0
Dividends	4,818,442	3,853,442	965,000
<b>Total</b>	<b>63,902,979</b>	<b>61,149,868</b>	<b>2,753,111</b>

### DISCREPANCIES IN RECEIPTS AND PAYMENTS IN 2007

The discrepancy between Company payments and Government receipts in 2007 amounted to GH¢2,753,111 as indicated in Table 11 above.

The main contributing factor to the discrepancy is the difference between the royalty figures provided by AngloGold Ashanti Obuasi, AngloGold Ashanti- Iduapriem and the Central African Gold Ltd-Bibiani and the receipts from the IRS. The total royalty reported by these companies exceeded that reported by the IRS for the three companies by GH¢1,862,506.

**The GRA's responses to explain the above discrepancies were as follows:**

**Some payments received from the AngloGold Ashanti Group were wrongly credited to different companies within the group. E.g. mineral royalty amount of GH¢785,331.78 for AngloGold Iduapriem Limited in 2007 was wrongly credited to AngloGold Ashanti Ghana Ltd.**

**Also, there was an accounting error during the cedi redenomination exercise in 2007. An amount of GH¢1,663,860.89 was wrongly receipted as GH¢166.39 but correctly credited to LTU Collection at the Bank of Ghana.**

Discrepancy attributed only to mineral royalty amounted to GH¢1,871,506.

There was a discrepancy of GH¢965,000 between the dividends paid by Mining Companies and Government receipts. Dividends reported as paid by Goldfields (Tarkwa) GH¢500,000; and Abooso Goldfields Ltd GH¢465,000 were not accounted for as government receipts.

**Table 12: Reconciliation of Company Payments and Government Receipts in 2008**

<b>Benefit/Payments /Receipts</b>	<b>Company Payments(GHc)-A</b>	<b>Government Receipts(GH)-B</b>	<b>Deviation A-B</b>
Mineral Right Licence	0	0	0
Property Rate	829,234	826,978	2,256
Ground Rent	11,040	11,040	0
Mineral Royalty	62,449,870	61,260,431	1,189,439
Corporate Tax	30,675,205	32,237,579	-1,562,374
Dividends	1,417,128	1,417,128	0

<b>Total</b>	<b>95,382,477</b>	<b>95,753,156</b>	<b>-370,679</b>
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## 9.5 DISCREPANCIES IN RECEIPTS AND PAYMENTS IN 2008

The discrepancy of GH¢-370,679 was mainly contributed to by the following:-

**Corporate Tax:** An amount of GH¢-1,562,374 contributed to the discrepancy, as government (IRS) indicated a corporate tax receipt of GH¢2,052,824 from Abosso Goldfields Ghana Ltd, Damang; whilst the company indicated a payment of GH¢490,450.

**The Ghana Revenue Authority still confirmed its collection of GH¢851,121.51 corporate tax from Abosso Goldfields Ltd. for 2008. An amount of GH¢490,450 was received by the GRA on 30<sup>th</sup> April 2008 whiles GH¢1,562,373.60 was received on 30<sup>th</sup> June 2008 making a total of GH¢2,052,823.60.**

**Mineral Royalty:** Abosso Goldfields Ltd reported a royalty figure of GH¢5,197,251 whilst the IRS reported a royalty amount of GH¢4,084,413. The discrepancy originated from the third quarter royalty payment. The IRS provided a figure of GH¢194,288 whereas Abosso Goldfields Ltd gave an amount of GH¢1,307,125.

There was a discrepancy of GH¢76,601 resulting from the Mineral royalty reported by Central African Gold Ltd. The Internal Revenue Service (IRS) indicated receiving GH¢314,320 for the year 2008.

However, Central African Gold Ltd provided an amount of GH¢390,921 as the amount paid for the year.

**Payments from Central African Gold Limited according to GRA was made both at the Large Taxpayer Unit and the Kimbu District of the Domestic Tax Division of the Ghana Revenue Authority.**

## 9.6 MINING RECEIPTS

The following table and bar Chart in indicated in figure 1 show mining receipts from selected companies for 2004 - 2008. The total benefits received by the government in the year 2004 are represented in Fig 1.

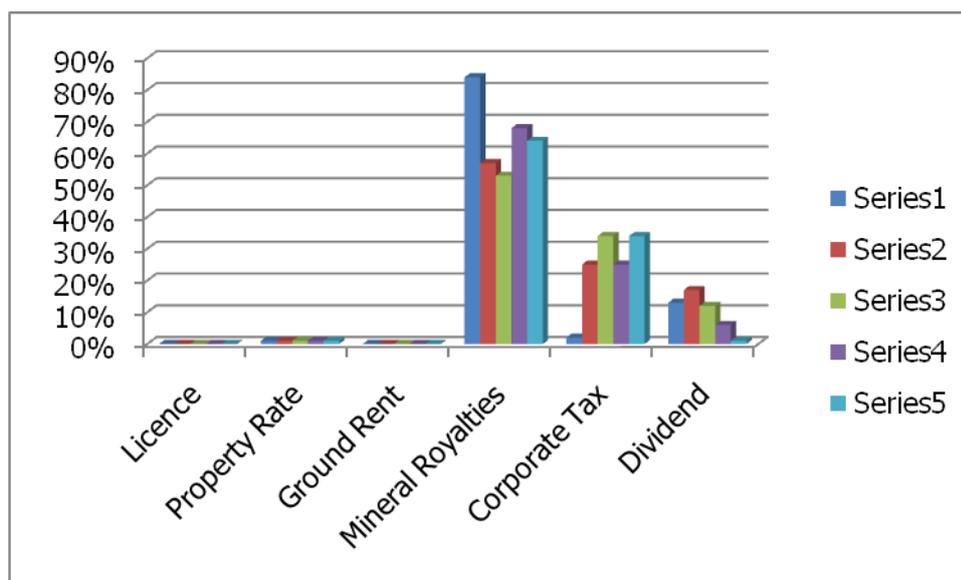
The diagram indicates that mineral royalty receipts represent 84% of total benefits. It (mineral royalty) amounted to Twenty million, seven hundred and thirty two thousand, two hundred and seventy Ghana cedis (GH¢20,732,270.32 ) out of the total receipts of Twenty four million, five hundred and eighty nine thousand, five hundred and ninety three Ghana cedis, eighty-two Ghana pesewas (GH¢ 24,589,593.82).

**Table 13: Contribution of Mining Benefits from Selected Companies for 2004 – 2008**

Year	Mining Benefits (%)						
	Licence	Property Rate	Ground Rent	Mineral Royalties	Corporate Tax	Dividend	Total
2004	0%	1%	0%	84%	2%	13%	100%
2005	0%	1%	0%	57%	25%	17%	100%
2006	0%	1%	0%	53%	34%	12%	100%
2007	0%	1%	0%	68%	25%	6%	100%
2008	0%	1%	0%	64%	34%	1%	100%

Royalty payments formed about 84% in 2004; 57% in 2005; 53% in 2006; 68% in 2007 and 64% in 2008 of total benefits received in those years.

**Fig. 1 shows the benefits paid by mining companies for 2004-2008**



Note: Series 1 – 5 represent the years 2004 – 2008 respectively.

### 9.6.1 Mineral Royalty:

All mining companies paid royalties at the rate of 3% on the gross revenue.

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The **reasons** why mineral royalty was paid at 3% by the mining companies include the following;

- Legislation (LI1349)
- Lack of yearly reconciliation
- Stability Agreement.

**i) Legislation:**

LI 1349 specified a mineral royalty payment range between 3% and 12% based on the profitability of the mining operations of entity.<sup>1</sup>

Profitability is determined by the operating ratio, being the ratio as expressed in terms of percentage which the operating margin bears to the value of minerals won from such mining operations during the yearly period.

For the purpose of determining the operating margin of any mining operation, the operational cost shall be deducted from the total value of minerals from such mining operations.

Operational cost in relation to any period means:

The current expenditure wholly and exclusively incurred by the holder of the mining lease during that period for the purpose of mining, transporting, processing or sale of minerals won; provided that such current expenditure shall not include

any royalty payable under these Regulations.

any income tax or other tax on profit whether imposed in Ghana or elsewhere.

any payment under any agreement between the Republic and any person on the value of, or receipts from, minerals won.

in the case of a company, any expenditure incurred in respect of the management and control of the company which in the opinion of the Commissioner are not directly related to the operations of mining, transporting, processing or sale of the minerals won.

b) Capital allowances for the period deductible under the provisions of section 26 of the Minerals and Mining law, 1986.

Where the operating ratio is thirty percent or less, the rate of royalty is three percent of the value of minerals won.

Where the operating ratio is more than thirty percent but less than seventy percent, then the rate of royalty payments is three percent plus 0.225 of every one percent by which the operating ratio exceeds thirty percent.

Where the operating ratio is seventy percent or more than the rate of royalty payment is

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<sup>1</sup> The Minerals and Mining ACT, 2006 (ACT 703) specifies mineral royalty payment range of 3% to 6%, however LI 1349 has not been repealed.

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twelve percent.

Within 30 days after the expiration of every quarterly period royalties at the rate of 3% shall be paid on account on the gross value of minerals won.

Every holder of a mining lease shall, within sixty days after the expiration of each yearly period compute the royalties payable for the year based on the formula prescribed above, and shall pay to the republic the difference, if , any, between the computation based on the formula prescribed in the schedule and the sum of all royalties paid by the holder in respect of that yearly period.

Where in any yearly period the operational ratio is less than *thirty percentum* then the difference between the actual operational cost and the operational cost that would make the operating ratio exactly equal to thirty per centum shall be added to the operational cost of the following yearly period for the purpose of calculating that period's operating ratio, provided that the difference to be carried forward shall not exceed the permissible capital allowance for the year of account.

### **Capital allowances/Gold Price.**

In the year 2004, the capital allowances granted the companies according to the Internal Revenue Service (IRS) were in the range of 0 to US\$77,927,000.

The computation of the percentage for royalty payment is by the formula  $\frac{\text{Gross Revenue} - \text{Operating Cost}}{\text{Gross Revenue}} = \text{operating margin}$ /gross revenue

As aforementioned the operating cost amount includes capital allowances granted for the year.

The higher the capital allowance the larger the operating cost with a resultant lower operating margin.

The effect of lower operating margin implies that the operating ratio is not likely to exceed 30%, with the effect that royalties are paid at 3%.

Since almost all the companies had relatively higher capital allowances (compared to their operating cost), the operating margin figures for the companies were not substantial enough for the ratio to exceed 30%.( See Appendix 8).

Gold prices in 2004 were relatively low, ranging between US\$373 and US\$452 per oz( Source:Kitco.com)

Lower gold prices have the effect of lowering the operating margin which in turn makes it unlikely that the 30% operational ratio is exceeded to trigger the payment of royalty at more than 3%.

### **Carry forward of operational cost:**

Currently, for the purpose of calculating the operating ratio of a period, the law allows the

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carry forward of the difference between the actual operational cost and the operational cost that would make the operating ratio exactly equal to thirty percent to be added to the operational cost of the following yearly period.

The carry forward amount added to the following year's operational cost will reduce the operating ratio possibly, below the 30% threshold.

**ii) Lack of reconciliation.**

The law states that sixty days after the end of the yearly period, the holder of a mining lease is required to compute the operational ratio and determine whether a rate more than 3% is to be applied. It appears this requirement is not enforced.

The Internal Revenue Service without a dedicated desk for mining may be handicapped in handling the yearly computation and reconciliation required. The result is that the 3% payment on account is left intact.

Details of the computations do not come out clearly in LI1349. For example is interest charge part of the yearly operational cost?

**iii) Stability Agreements:**

Some companies have agreements with the government that entitle them to pay royalty at 3% over a certain period of time

**9.6.2 Licence:**

None of the companies paid any licence fees on the concession under production in the 5 years (i.e. 2004-2008).

**9.6.3 Property Rate:**

Property rate of 1% was paid by the companies in each of the 5 years. Thus, property rate receipt was not significant, accounting for only 1% of the total benefits received for 2004-2008. All the mining companies with the exception of Newmont Ghana Ltd paid property tax to the District Assemblies within their operational area(s). Newmont Gh. Ltd per its Gold's development agreement is exempted from payment of property rate.

**9.6.4 Ground Rent:**

There was no payment of ground rent by the mining companies in 2004 and 2005. Two companies namely Ghana Bauxite Co. Ltd and Chirano Gold Mines Ltd paid the annual ground rent in 2008 on the concession on which production activities are undertaken. The concession ground rents payable by the companies for the years 2004 to 2008 are indicated in Table 14.

**Table 14: Concession Ground Rent -Amount payable in 2004 - 2008**

Mine/Company	Concession size(km) <sup>2</sup>	Amount (GH¢) 2004	Amount (GH¢) 2005	Amount (GH¢) 2006	Amount (GH¢) 2007	Amount (GH¢) 2008
Anglogold Ashanti-Obuasi	334.27	167.54	167.54	167.14	167.14	167.14
Anglogold Ashanti-Bibiani	49.82	24.91	24.91	24.91	24.91	24.91
Anglogold Ashanti-Iduaprim	31.00	15.50	15.50	15.50	15.50	15.50
GSR-Prestea/Bogosu	224.05	112.03	112.03	112.03	112.03	112.03
Gold Fields(Ghana)Ltd-Tarkwa	204.22	102.11	102.11	102.11	102.11	102.11
Abosso Goldfields Ltd	49.00	24.50	24.50	24.50	24.50	24.50
Ghana Manganese Ltd	175.93	87.97	87.97	87.97	87.97	87.97
Ghana Bauxite Co. Ltd	29.39	14.70	14.70	14.70	14.70	14.70
GSR(Wassa)/Wexford	50.00		25.00	25.00	25.00	25.00
Chirano Gold Mines Ltd	36.00				18.00	18.00
Newmont Ghana Gold Ltd	78.60				39.30	39.30
<b>Total</b>		<b>549.24</b>	<b>574.26</b>	<b>574.26</b>	<b>631.56</b>	<b>631.56</b>

\*concession size multiplied by GH¢0.5/sqkm. (Source: Minerals Commission)

### 9.6.5 Corporate Tax:

Two out of the eight companies paid corporate tax in 2004. These companies were Goldfields (Tarkwa) and Ghana Manganese Company Ltd.

The Internal Revenue Service (IRS) received corporate taxes in the year 2005 from four out of the nine selected companies. These were Abosso Goldfields Ltd; Goldfields Ghana Ltd (Tarkwa); Ghana Manganese Company Ltd and Anglo gold (Bibiani) Ltd.

Three (3) companies namely Goldfields Ghana (Tarkwa); Anglogold Ashanti (Iduaprim) and Abosso Goldfields Ltd paid corporate taxes in the year 2006.

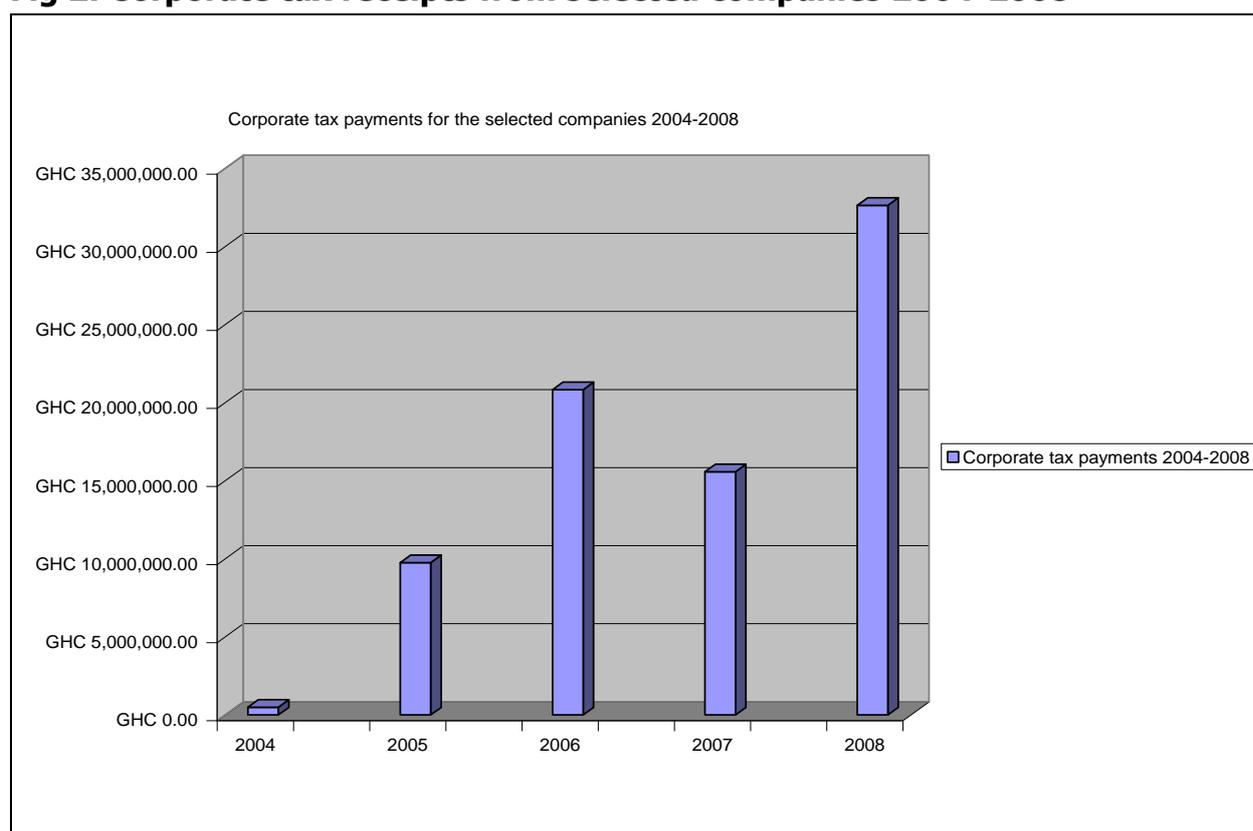
Also, in 2007 three (3) companies; Anglogold Ashanti-Iduapriem, Ghana Manganese Co. Ltd and Goldfields (Ghana).

Three (3) companies: Gold Fields Gh. Ltd, Abooso Goldfields and Ghana Manganese Co. Ltd paid corporate tax in the year 2008.

Corporate tax payment accounted for about 34% of mining receipts in 2008 having dropped to 25% in 2007. It must, however, be noted that with the exception of year 2007, there has been a gradual increase in corporate tax receipts since 2004. The corporate tax receipts from 2004 to 2008 from the selected companies are indicated in Fig. 2.

It indicates the increasing significance of corporate tax receipts as companies mature in production.

**Fig 2: Corporate tax receipts from selected companies 2004-2008**



### 9.6.6 Dividends

Dividends payments for 2004 and 2005 were 13% and 17% of total benefits respectively. However, in 2006 dividend payments constituted 12% of total mining receipts, 6% of total receipts in 2007 and about 1% of total receipts in 2008.

**Table 15: Dividends received by Government from Companies for 2004 – 2008**

Year	2004	2005	2006	2007	2008
Company	i) Ghana Manganese Co. Ltd	i) AngloGold International	i) Ghana Manganese Co. Ltd	i) Ghana Manganese Co. Ltd	i) Ghana Manganese Co. Ltd

ii) Goldfields Gh. Ltd (Tarkwa)	ii) Goldfield Gh. Ltd (Tarkwa)	ii) Goldfields Gh. Ltd (Tarkwa)	ii) AngloGold Ashanti Ltd (International)	ii) AngloGold Ashanti Ltd (International)
iii) AngloGold Ashanti	iii) Ghana Manganese Co. Ltd	iii) Abosso Goldfields Gh. Ltd. iv) AngloGold Ashanti Ltd. (International)		

The payment made by Anglo gold Ashanti in 2004 was in respect of government of Ghana's share in AngloGold Ashanti.

AngloGold International which operated three mines at Obuasi, Iduaprim and Bibiani, paid the highest dividend of GH□4.5m in 2005. The amount represented two payments made up of i) final dividend payment for the year 2004; GH□2.4m and ii) the interim payment for the year 2005; GH□2.1m. Goldfields (Tarkwa) and Ghana Manganese Co. Ltd also paid an amount of GH□2.3m and GH□13,078 respectively as dividend for 2005.

The payment made by Anglo Gold Ashanti in 2006 was in respect of government of Ghana's share in Anglo gold Ashanti international.

According to the Minerals and Mining Act, 2006, ACT 703, where a mineral right is for mining or exploitation, the Government of Ghana shall acquire a ten percent free carried interest in the rights and obligations of mineral operations in respect of which financial contribution shall not be paid by Government. However mining companies with investments over US\$500million may negotiate fiscal instruments including government shareholdings (see Newmont and AngloGold Ashanti –Table 16).

The Government's shareholdings in the selected companies are shown in Table 16 below.

**Table 16: Government shareholding in selected companies.**

Company	GoG Shares %
Goldfields (Abosso)	10
GSR ( Prestea/Bogosu) Goldfields	10
Goldfields (Tarkwa)	10
Ghana Bauxite	20
Ghana Manganese	10

Anglo Gold Ashanti (International)	3.41
GSR(Wassa)	10
Chirano Gold Mine	10
Newmont Ghana Ltd	Nil

**Note:** In 2006 Anglo gold Ashanti operated 3 mines (Iduaprim, Bibiani and Obuasi) in Ghana.

### 10.0 Summary of Government Receipts: 2004 – 2008

	LICENCE	PROPERTY RATE	GROUND RENT	ROYALTY	CORPORATE TAX	DIVIDEND
2004	0	210,808		20,732,270	500,642.54	3,145,872
2005	0	253,103	4,002	23,293,296	10,222,868	6,862,456
2006	0	<b>699,264</b>	<b>7,024</b>	<b>32,191,084</b>	<b>20,830,991</b>	<b>7,194,552</b>
2007	0	<b>884,811</b>	<b>1,625</b>	<b>40,836,760</b>	<b>15,573,250</b>	<b>3,853,422</b>
2008	0	<b>826,978</b>	<b>11,040</b>	<b>61,260,431</b>	<b>32,237,579</b>	<b>1,417,128</b>

### 2006 PRODUCTION AND ROYALTY DATA

Name of Company	Prod (Oz)	Revenue (GH₵)	Royalty (GH₵)
Anglogold Ashanti (Obuasi)	387,093	208,463,282	6,253,961
Anglogold Ashanti Iduaprim	183,534	108,646,580	3,259,430
Gold Fields (GH) Ltd Tarkwa	720,109	397,495,125	11,924,973
Abosso Goldfields Ltd. (Damang)	217,932	119,891,934	3,596,794
Golden Star Res. Bogosu/Prestea	109,651	59,308,374	1,779,269
Golden Star Res. Wassa	105,491	54,262,391	1,627,888
Central African Gold Ltd	43,213	24,052,355	657,862
Chirano Gold Ltd	126,707	56,005,173	1,680,172

Ghana Bauxite Co. Ltd	<sup>TM</sup> 734,323	20,561,061	616,838
Ghana Manganese Company	<sup>TM</sup> 1,757,379	36,904,964	1,107,160

Royalty payments on production for 2006 calendar year (January-December) were used.

<sup>TM</sup>- Production figures quoted for bauxite and manganese are in metric tonnes.

### **2007 REVENUE AND ROYALTY DATA**

<b>Name of Company</b>	<b>Revenue (GH□)</b>	<b>Royalty (GH□)</b>
Anglogold Ashanti (Obuasi)	233,505,932	7,005,248
Anglogold Ashanti Iduaprim	121,893,681	3,656,847
Gold Fields (GH) Ltd Tarkwa	429,140,909	12,874,356
Abosso Goldfields Ltd (Damang)	117,484,192	3,524,561
Golden Star Res. Bogosu/Prestea	85,957,574	2,578,753
Golden Star Res. Wassa	83,424,999	2,502,775
Central African Gold Ltd	15,652,343	469,575
Chirano Gold Ltd	63,779,062	1,913,391
Newmont Ghana Ltd	287,353,126	8,620,680
Ghana Bauxite Co. Ltd	18,354,550	550,642
Ghana Manganese Company	34,720,453	1,041,624

### **2008 REVENUE AND ROYALTY DATA**

<b>Name of Company</b>	<b>Revenue (GH□)</b>	<b>Royalty (GH□)</b>
Anglogold Ashanti (Obuasi)	230,274,898	6,908,316
Anglogold Ashanti Iduaprim	130,593,661	3,917,849
Gold Fields (GH) Ltd Tarkwa	458,728,430	13,761,991
Abosso Goldfields Ltd (Damang)	139,021,527	4,170,688
Golden Star Res. Bogosu/Prestea	118,599,114	3,558,009

Golden Star Res. Wassa	72,078,579	2,162,379
Central Africa Gold Ltd	21,838,672	390,921
Chirano Gold Ltd	87,701,456	2,631,070
Newmont Ghana Ltd	357,755,422	10,732,770
Ghana Bauxite Co. Ltd	10,078,966	302,372
Ghana Manganese Company	32,625,340	978,770

Note: This consolidated report does not capture records of 2007 and 2008 production figures but only revenue and royalty figures from the 2007/2008 audit reports. The production figures for 2007 and 2008 were captured on quarterly basis which included production figures of last quarter of the previous years. Thus, last quarter of 2007 production was captured as first quarter production for 2008.

### **11.0 MINERAL ROYALTY DISBURSEMENT AND UTILISATION AT THE SUB-NATIONAL LEVEL**

A unique feature of the Ghana EITI is the extension of the initiative right from the national level to the sub-national level to ensure that payments and receipts of revenues are tracked along the entire revenue disbursement value chain to promote transparency. In carrying out this mandate, the Aggregator analyzed the historical documentation on production, exports and payment of mineral royalties for minerals produced in the country. For instance, the Aggregator checked the appropriateness of the disbursements and utilization of the revenues received to ascertain if they are in conformity with legislation.

Also, disbursements and utilization of mineral royalties made to District Assemblies, Traditional Authorities and Stools within the operational areas of mines were scrutinized to see if right disbursements and utilization of revenues were done.

The disbursements made to the regions by the OASL for 2004 – 2008 are shown below.

**Table 17a: ASHANTI REGION**

PERIOD	DATE	AMOUNT (GH¢)
JULY-DEC 03	07/06/04	229,870.95
JAN –AUG 04	12/11/04	316,169.56
<b>** Sub-total: 2004</b>		<b>546,040.52</b>
SEP 04-FEB 05	07/06/05	188,340.37
MARCH-MAY 05	23/08/05	94,903.63
JUNE-SEPT 05	29/12/05	111,460.57
<b>** Sub-total: 2005</b>		<b>394,704.57</b>
OCT-DEC 05	08/03/06	104,404.36
JAN-MARCH 06	24/07/06	126,979.29
APRIL-MAY 06	05/10/06	135,560.77

JUNE-AUG 06	29/12/06	160,234.38
<b>** Sub-total :2006</b>		<b>527,178.80</b>
SEP 06-JAN 07	23/05/07	150,065.32
FEB – MAY 07	20/11/07	320,783.22
MARCH – MAY 07	20/08/07	3,597.25
<b>** Sub-total:2007</b>		<b>474,445.79</b>
JUNE – SEPT 07	29/01/08	86,259.93
SEPT –DEC 07	14/05/08	166,974.92
JAN –FEB 08	14/05/08	162,357.48
MAR – MAY 08	17/07/08	215,610.07
JUNE – JULY 08	22/10/08	188,539.58
<b>** Sub-total:2008</b>		<b>819,741.98</b>
<b>GRAND TOTAL</b>		<b>2,762,111.66</b>

**Table 17b: BRONG AHAFO REGION**

PERIOD	DATE	AMOUNT (GH¢)
OCT-DEC 05	08/3/06	980.94
JAN-MAR 06	24/07/06	30,760.93
APRIL-MAY 06	05/10/06	38,757.73
MAR.-AUG 06 (Revised)	29/12/06	1,238.37
<b>** Sub-total:2006</b>		<b>71,737.97</b>
SEPT 06-JAN 07	23/05/07	308,508.21
FEB-MAY 07	20/08/07	205,567.69
<b>** Sub-total:2007</b>		<b>514,075.90</b>
JUN-SEPT 07	06/02/08	206,536.56
SEPT-DEC 07	14/05/08	195,069.83
JAN-FEB 08	14/05/08	173,338.68
MAR-MAY 08	17/07/08	256,173.74
JUN-JULY 08	22/10/08	337,390.26
<b>** Sub-total:2008</b>		<b>1,168,509.07</b>
<b>GRAND TOTAL</b>		<b>1,754,322.94</b>

**Table 17c: WESTERN REGION**

PERIOD	DATE	AMOUNT (GH¢)
JULY-DEC 03	07/06/04	676,183.61
JAN-AUG 04	12/11/04	1,116,756.86
<b>** Sub-total: 2004</b>		<b>1,792,940.47</b>
SEPT 04 –FEB 05	07/06/05	651,870.37
MARCH-MAY 05	23/08/05	417,729.78
JUNE-SEPT 05	29/12/05	452,171.12
<b>** Sub-total: 2005</b>		<b>1,521,771.27</b>
OCT-DEC 05	08/03/06	422,595.33
JAN-MARCH 06	24/07/06	458,846.96
APRIL-MAY 06	05/10/06	537,621.59

APRIL-AUG 06	29/12/06	611,782.81
<b>** Sub-total:2006</b>		<b>2,030,846.69</b>
SEPT 06-JAN 07	23/05/07	1,088,517.05
FEB-MAY 07	20/08/07	650,645.38
<b>** Sub-total:2007</b>		<b>1,739,162.43</b>
JUNE-SEPT 07	29/01/08	455,524.17
SEPT-DEC 07	14/05/08	583,444.40
JAN-FEB 08	14/05/08	678,773.28
MAR-MAY 08	17/07/08	850,972.06
MAY-OCT 07/FEB. 08	09/09/08	225,249.92
JUNE-JULY 08	22/10/08	764,346.23
<b>** Sub-total:2008</b>		<b>3,558,310.06</b>
<b>GRAND TOTAL</b>		<b>10,643,030.92</b>

**11.1 REGIONS TO DISTRICTS:** The District Assemblies within the jurisdiction of the selected mining companies for 2004 to 2008 are shown in Table 18.

Table 18: District Assemblies of selected mines for 2004-2008

No.	Mining Company	District(s) Assemblies.	Municipal/District Capital	Region
1.	Anglogold Ashanti(Obuasi)	Obuasi Municipal; Adansi South; Adansi North; AmansieEast/Bekwai Municipal; Amansie Central	Obuasi New Edubiase Fomena Bekwai Jacobu.	Ashanti " " " " "
2.	Anglogold Ashanti (Iduaprim)	Wassa West	Tarkwa	Western
3.	Abosso Goldfields Ltd	Wassa West	Tarkwa	Western
4.	Goldfields (Tarkwa)	Wassa West	Tarkwa	Western
5.	GSR Wassa Ltd/Wexford	Mpohor Wassa East	Daboase/Akyempim	Western
6.	GSR Prestea/Bogosu	Wassa West	Tarkwa	Western

7.	Ghana Manganese Co.	-	Nsuta	Western
8.	Ghana Bauxite Co.Ltd	Bibiani Ahwiaso	Bibiani	Western
9.	Anglogold Bibiani/Central African Gold	Bibiani Ahwiaso Atwima District	Bibiani	Western
10.	Chirano Gold Mines Ltd	Bibiani/Ahwiaso;	Bibiani	Western
11.	Newmont Gold Ghana Ltd.	Asutifi	Kenyasi	Brong Ahafo

### 11.2 ASHANTI REGION:

Royalties received by the Obuasi Municipal Assembly in 2004 from the OASL office in Kumasi was GH¢228,170. This is equivalent to the total amount due the Assembly out of mineral royalty receipts from Anglogold Ashanti.

Mineral royalties due Bibiani/Ahwiaso/Bekwai District from the 2 disbursements in 2004 amounted to GH¢ 109,756.70.

The sum of payments made out of the 2 disbursements from the Regional OASL to the Bibiani Ahwiaso Assembly amounted to GH¢87,800.00.

The mineral royalties due the Obuasi Municipal Assembly/Adansi West in 2005 amounted to GH¢142,028. Out of this amount, the royalty received by the Obuasi Municipal Assembly amounted to GH¢97,000 while the Adansi West received GH¢45,028 as royalty for 2005.

Disbursements made by OASL in Ashanti resulting from mineral royalty payment by Anglogold Ashanti Ltd for 2006-2008 are indicated below.

Table 19a: Royalty due/received by District Assemblies of Anglogold Ashanti (Obuasi) Area.

Dist/Mun Assembly	Amount due (GH¢) 2006	Amount received (GH¢) 2006	Variance (GH¢)	Amount due (GH¢) 2007	Amount received (GH¢) 2007	Variance (GH¢)	Amount due (GH¢) 2008	Amount received (GH¢) 2008	Variance (GH¢)
Obuasi Munic.	143,825.42	129,119	14,706.42	144,871.4	269,852	(124,980.6)	257,636.40	248,800	8,836.4
Adansi South	40,792.97	38,020	2,772.97	41,392.10	38,020	3,372.1	74,883.36	83,455	(8,571.64)
Adansi North	20,546.49		-	20,696.05	42,708	(22,011.95)	41,953.28	33,990	7,963.28
Amansie East	24,094.24		-	16,944.87		-	36,393.59	44,030	(7,636.41)
Amansie Central	41,945.71	40,500	31,445.71	31,469.56	50,920	(19,450.44)	67,588.96	92,510	(24,921.04)
<b>Total</b>	<b>271,204.83</b>	<b>207,639</b>		<b>255,373.98</b>	<b>401,500</b>		<b>478,455.59</b>	<b>502,785</b>	<b>(24,329.41)</b>

Source: Obuasi Mun. Assembly/Aggregator/OASL

### 11.3 BRONG AHAFO:

Disbursements due the Asutifi District in Brong Ahafo from Newmont Gold's Royalty payment for 2006 to 2008 are as follows:

Table 19b: Disbursements by OASL in B/A from Newmont Ghana Gold Royalty payment

District Assembly	Amount due (GH¢) 2006	Amount received (GH¢) 2006	Variance (GH¢)	Amount due (GH¢) 2007	Amount received (GH¢) 2007	Variance (GH¢)	Amount due (GH¢) 2008	Amount received (GH¢) 2008	Variance (GH¢)
Asutifi District	-	-		281,050.86	283,000	(1,949.14)	641,898.57	639,451.89	2,446.68
<b>Total</b>				<b>281,050.86</b>	<b>283,000</b>	<b>(1,949.14)</b>	<b>641,898.57</b>	<b>639,451.89</b>	<b>2,446.68</b>

Source: Asutifi District Assembly/Aggregator/OASL

Note: It must be indicated that mineral royalty to the Brong Ahafo region in 2006 did not include the payment made by Newmont Ghana Ltd. Newmont Gold Ghana Ltd made its first royalty payment in October 2006.

### 11.4 WESTERN REGION:

For the period July 2003 to August 2004, the royalties paid by Ghana Manganese Co. Ltd, Bogosu Gold Ltd, Goldfields (Tarkwa Ltd), Abosso Goldfields Ltd, AngloGold (Iduaprim) amounted to GH¢16,735,297.12. Using the percentage of 4.95% applicable to District Assemblies, the amount payable to the Wassa West District Assembly (WWDA) out of the year 2004 disbursements amounted to GH¢828,397.21.

The payments made to WWDA by OASL (Western Region) for the 2004 disbursements added up to GH¢722,739.90.

Payment from OASL (Takoradi) to the WWDA from the disbursements made in 2005 amounted to GH¢771,620.54. However, the total mineral royalty receipts by the WWDA in the year 2005 amounted to GH¢390,000. A difference of GH¢381,620.54 existed between the amounts due and received.

Disbursements from royalties paid by Goldfields (Gh) Ltd; Ghana Manganese Co. Ltd; AngloGold Ashanti (Iduaprim); GSR (Prestea/Bogosu) and Abosso Goldfields for 2006-2008. Table 19c: Disbursements resulting from royalty payments by selected companies in Western Region.

Mun./Dis. Assembly	Amount due (GH¢) 2006	Amount received (GH¢) 2006	Variance (GH¢)	Amount due (GH¢) 2007	Amount received (GH¢) 2007	Variance (GH¢)	Amount due (GH¢) 2008	Amount received (GH¢) 2008	Variance (GH¢)
Tarkwa Municip.							1,296,491.43	1,276,304	20,187.43
Prestea Huni Valley							487,150.34	314,000	173,150.34
Mpohor Wassa East							133,461.17	158,543	(25,081.83)
Wassa West	936,482.42	728,638	207,844.42	805,669.69	865,400	(59,730.31)			

<b>Total</b>	<b>936,482.42</b>	<b>728,638</b>	<b>207,844.42</b>	<b>805,669.69</b>	<b>865,400</b>	<b>(59,730.31)</b>	<b>1,917,102.94</b>	<b>1,748,847</b>	<b>168,255.94</b>
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Source: District Assemblies/Aggregator/OASL

Note: Payments due to the Wassa West District Assembly out of disbursements in 2006 is indicated against the total amount received in the year. Tarkwa Nsuem Municipal Assembly was formerly Wassa West District Assembly.

Disbursement made in December 2006 was not received in 2006. The amount due Wassa West District Assembly from the December 2006 release amounted to GH¢ 270,275.64.

## **12.0 UTILIZATION:**

With the exception of Wassa West District and the Obuasi Municipal Assemblies, all the remaining districts applied the Mineral Royalty receipts as internally generated fund (IGF).

These districts did not have dedicated Bank Accounts for mineral royalty receipts. It was, therefore, difficult to monitor the use to which these receipts have been applied.

The Obuasi Municipal and the Wassa West district Assemblies, however, had dedicated Bank Accounts and prepared budgets for the utilization of mineral royalty receipts.

The areas that the districts Assemblies generally utilize their share of mineral royalty receipts include economic, social, administration and service items as follows:

- Provision of scholarship schemes
- Construction/rehabilitation of schools
- Environment/ waste management
- Construction of market pavements/market sheds/stores
- Construction of roads
- Community initiated projects
- Purchase of vehicles and equipment

## **13.0 MINERALS DEVELOPMENT FUND: Lodgments and Payments from MDF Account.**

Total bank lodgments made into MDF account at Bank of Ghana in 2006 was GH¢494,562.42. Withdrawals made from the account amounted to GH¢475,972.34. The expenditure analysis indicates that GH¢7,990 was spent on conferences, GH¢233,968 was spent on refurbishment activities and GH¢234,013 spent on service activities. For 2007, total bank lodgments made into MDF account at BoG was GH¢4.609m. Withdrawals made from the account amounted to GH¢3.67m. The expenditure analysis indicates that GH¢1,738,057 was spent on administrative and legal fees, GH¢787,162 was spent on refurbishment and GH¢1,152,890 spent on construction works.

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Total bank lodgments made into MDF account at BoG in 2008 amounted to GH¢10.116m. Withdrawals made from the account were GH¢14.641m. The expenditure analysis indicates that GH¢11.226m were expenditures for refurbishment works especially at the University of Mines, Tarkwa; GH¢741,734 was expenditure on service activities, GH¢1.623m spent on various payments and GH¢1.050m on miscellaneous.

## **14.0 KEY OBSERVATIONS/FINDINGS:**

### **1. Variations in Exchange rates and Gold pricing**

The issue of companies using varying pricing policies in 2004/05 for their gold sales still recurred. However, some of the companies sold their gold at higher than average prices quoted at the London Exchange (LME).

#### **Customs, Excise and Preventive Service/Length of Stay of Customs Officers**

The Customs, Excise and Preventive Service (CEPS) has its staff at the mines to:

Observe the smelting process (in the case of gold mining).

Observe and record the weighing process.

Package and seal boxes for shipment.

Accompany packages to the port or airport for shipment.

However, it was observed that the Customs Officers do not authenticate the shipment document that gives details of the bullions of gold to be shipped.

Also, the length of stay of certain Customs staff at some mines was too long. For instance, some Customs Officials had stayed in a particular mine for over nine years.

### **3. Lack of inter-sectoral collaboration**

The mining companies are required to submit monthly returns to the Minerals Commission. These returns contain both technical (operations) and some financial information. For the payments of mineral royalty and corporate tax mining companies are required to provide details of computations to the Internal Revenue Service (IRS). Some companies pay mineral royalties without the necessary computations sent to the IRS.

There are no formalized collaborations between the IRS, Minerals Commission and other government agencies on matters relating to payments of mining benefits.

### **4. Capital Gains Tax**

Records available at the IRS indicate that the Service recorded a capital gains tax payment of 14 billion cedis in December 2006 as a result of mineral right transfer. This payment was made by Newmont Lasource. It appears mineral right holders have started to pay capital gain tax on mineral right transfer.

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## **5. Pre-production costs were not approved by the Minerals Commission**

- (i) Two companies namely Newmont and Chirano Gold Mines commenced mining in 2006.
- (ii) The amounts capitalized as pre-production costs were not stated with the advice of the Minerals Commission.

## **6. Mineral Royalty Payment at 3%**

The recommendations made here are two fold and depend on whether the new Legislative Instrument being prepared for the Mining and Minerals Law 2006, ACT 703<sup>2</sup>, will maintain the existing format, vis-à-vis LI1349 or prefers a more simplified approach for royalty payment.

### **A) Maintaining the existing format of applying operating ratio.**

The issue of capital allowance and interest payment should be critically reviewed. If mining lease holders are to pay more than 3% of the value of minerals won, then the inclusion of capital allowances and interest payments in the computation of operating cost should be examined and possibly excluded.

The inclusion of operational cost carried forward should be reviewed. This is to give meaning to the yearly period that is the basis of the computation. In that case the computations would be restricted to the operations within the year under consideration.

The IRS in collaboration with the Minerals Commission must establish for each of the producing mines the cost items that constitute operating cost. This will enhance transparency in the computation of the operating ratio.

The Minerals Commission should request from mining companies full disclosure of cost items that make up the operating cost on monthly basis, as end of year financial statements do not provide enough details for the appropriate computations.

### **B) Price Band Method:**

In order to avoid the complications associated with the computations of the operating ratio, a more simplified method of establishing the royalty percentage may be employed.

Under this method the royalty percentage is tied to the price of the commodity.

For example in the case of gold , if the gold price(average spot price for the quarter) is less or equal to \$300/oz , then 3% may be applied to the gross revenue of minerals won. If the gold price is between \$300/oz and \$400/oz, then a percentage higher than three (3%) may be applied.

Computations using industrial averages for operating costs may be simulated to ensure that figures obtained in these calculations do not differ significantly from the application of the

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<sup>2</sup> A Legislative Instrument to replace LI 1349 and to ensure consistency in the rate of royalty payment of 3% -6% between the ACT and the LI is being drafted.

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operating ratio method.

A similar scheme could be established for Manganese and Bauxite.

### **C) Stability Agreement:**

In reaching stability agreements, cost benefit analysis should be undertaken before agreeing on payment to be made by the mining companies.

Trends in the prices of minerals, the quantity of minerals to be won and the period for the stability should be critically assessed.

### **7. Discrepancy in royalty payment**

(i) In 2007 there was a discrepancy between royalty paid by Central African Gold (CAG) (Bibiani) and government receipts.

(ii) The CAG Ltd indicated that it had made royalty payments totaling six hundred thousand, six hundred and eighty five Ghana cedis (GHC 600,685), the Internal Revenue Service (IRS) indicated receipts of two hundred and seventy thousand, seven hundred and sixty five (GHC 270,765).

(iii) There was also a discrepancy between the royalty payments made by AngloGold Ashanti Obuasi/AngloGold Ashanti-Iduapriem and receipts by the Internal Revenue Service.

(iv) The total payment in 2007 indicated by the company exceeds the receipts by the Internal Revenue Service by GHC 594,310. ie Five hundred and ninety four thousand, three hundred and ten Ghana cedis.

(v) The second quarter royalty receipt of GHC 938,443.58 appears low compared to the quarter's production of 91,662 ounces, average gold price for April 2007- June 2007, of US\$667 and average exchange rate of Cedi 9,250 to a dollar (\$) for the quarter.

(vi) Similarly the payment indicated by Anglo gold Ashanti (Iduapriem) also exceeded the receipts by the IRS by GHC938,277. This amount is the third quarter payment which was not captured by the IRS.

### **8. Payment of Royalties without details**

In general mining companies paid royalties without providing adequate documentation of production and prices outlined. Two companies namely, Central African Gold and Chirano Gold Mines, which qualify as Large Taxpayers, do not pay royalty at the Large Taxpayers Unit (LTU).

### **9. Determination of operating cost**

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The financial statements provided by mining companies do not provide enough details of the operating/production costs.

Where such details are requested from the mining companies, there are challenges in determining the appropriateness of these payments by the staff of the IRS, as most of these items are technical in nature.

This difficulty may affect the determination of taxable profits and ultimately corporate tax payment.

### **10. Corporate Tax Receipt**

Corporate tax receipts in 2007 were lower than that of 2006. This is in spite of the fact that gold prices were higher in 2007 than 2006. Royalty payments were, however, higher in 2007 than 2006.

### **11. Concession Ground Rent**

Most mining companies did not pay anything for concession ground rent. The amount payable is very low at GHC0.50 per square kilometer. Thus, the amounts payable have no significant impact and even if they are paid regularly, they will not have any significant impact on development outcomes. The rates paid are the same for mining companies and other users of land.

### **12. Mineral Development Fund**

(i) There are indications that payments from the account were specifically tailored to lodgments. Therefore, lodgments made find their way out for specific payouts.

(ii) It appears the Minerals Commission, the custodian of the fund, was not involved in the operation of the account in 2008.

(iii) No payment vouchers and cheques were raised on any of the transactions made for 2008 by the Commission. All transactions were handled at the Sector Ministry level.

(iv) It seems the Commission does not self compute royalty due the MDF for the period from royalty payments received from the mining companies. As a result the Commission is not sure of the correctness of royalty transfers and lodgments made into the account. This does not allow the Commission to notice any over/under payments in royalty transfers made into the account by Controller. The Commission indicated that computing royalties due will serve no purpose since the Fund has no legal backing, unlike OASL.

### **13. The OASL does not have information on how much has been paid to the IRS by the mining companies**

The OASL by itself is unable to ascertain the correctness or otherwise of royalty ceded to it.

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The Regional offices of OASL did not provide adequate information on payments of mineral royalties to the District Assemblies.

#### **14. Delays in Disbursement/multiple payments of Royalties to District Assemblies**

There are sometimes delays associated with the disbursements and multiple payments of royalties to the District Assemblies by the regional OASL.

Thus, total amounts due to districts are not fully transferred to the Districts by the regional OASL Offices. The disbursements made to District Assemblies in 2007 were not in tandem with releases from the head office. For example whereas the OASL head office made only two releases in 2007( May and November) of an amount of GH¢ 37,850 due Obuasi Municipal Assembly to the Ashanti Regional OASL office, the Obuasi Municipal Assembly received as many as six(6) payments in the year from the Ashanti regional OASL office .

Also, although there were four disbursements from the Head Office of OASL to the Districts in 2006, the Wassa West District Assembly received payments on seven (7) different occasions in 2006.

#### **15. Formula for the Disbursement of Mineral Royalty at the Community Level is not well known**

In areas where there are more than one District Assembly, Traditional Council or Stool, the method used in apportioning royalty receipts are not well known by the recipients and the public. This is because in such areas in addition to the prescribed formula provided by the Administrative fiat of 1999, the land areas within the jurisdiction of the various stools and districts are also taken into account in the computations.

#### **16. Lack of Dedicated Bank Accounts and Budget for Utilization of Mineral Royalty**

##### **Receipts by District Assemblies**

With the exception of Wassa West District and the Obuasi Municipal Assemblies, district Assemblies receiving mineral royalty did not have dedicated bank accounts and budgets for the utilization of mineral royalty receipts.

#### **14.1 RECOMMENDATIONS:**

##### **1. Variations in Gold pricing**

Policy guidance on applicable exchange rate and pricing of minerals won is required to ensure transparency and uniformity.

#### **Customs, Excise and Preventive Service/Length of Stay of Customs Officers**

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The Customs Officers should be made to authenticate/endorse by signing the bullion specification document released by the mining company.

It is acknowledged that Officers attached to the mines have qualifications and skills peculiar to the mining sector, and that not all Customs Officers can work in a mine. Nevertheless, Officers with such skills could be transferred regularly among the mines. Regular transfer of Officers is needed to avoid excessive familiarity.

### **3. Lack of inter-sectoral collaboration**

There should be established, formalized lines of communication between the IRS, the Minerals Commission, CEPS and other agencies such as Bank of Ghana on matters relating to mineral benefits payments/receipts.

### **4. Capital Gains Tax**

The Minerals Commission should refer all changes in the ownerships of mineral right licences to the Internal Revenue Service for advice on the capital gains tax payment.

### **5. Pre-production costs were not approved by the Minerals Commission**

Pre-production costs according to the Internal Revenue Act, ACT 592, are categorized in the same way as the acquisition of Assets. The capitalized costs qualify for capital allowances which reduce corporate tax payment.

According to Section 28 of the Mining and Minerals Act 2006, ACT 703; the capitalization of pre-production costs should be approved by the Minister of Lands and Natural Resources on the advice of the Minerals Commission. This section should be strictly adhered to, in order to ensure that only qualifying costs are allowed.

### **6. Mineral Royalty Payments**

The Internal Revenue Service should reconcile mineral royalty payments in 2007 with the Central African Gold Ltd.

The Internal Revenue Service, AngloGold Ashanti (Iduapriem) and AngloGold Ashanti Obuasi should reconcile royalty payments and receipts for 2007.

### **7. Payment of Royalties without details**

Mining companies should accompany royalty payment with details of production and revenues obtained for the period under consideration.

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For gold producing companies refinery returns indicating the purity of gold dores and sale prices should be added to royalty payments.

For effective monitoring and easy collation of data, it is recommended that all mining companies that contribute substantially to royalties and other payments such as corporate taxes should make payments at the LTU.

In the absence of a dedicated desk for mining at the LTU, it is necessary to find other means of monitoring the appropriateness of royalty payments.

## **8. Determination of operating cost**

The Internal Revenue Service and the Minerals Commission should conduct studies into the operations of the large mining companies with the aim of establishing benchmark costs. Ore body characteristics should be considered. This information when available should be used by the Internal Revenue Service as a guide in determining appropriate operating cost.

The Internal Revenue Service should conduct further investigations to ascertain the reasons for the lower corporate tax receipts in 2007.

The amount payable as concession ground rent should be reviewed upwards. The Minerals Commission should establish a system whereby mining lease holders would be required to show evidence of ground rent payment annually.

## **9. Minerals Development Fund**

Reconciliation of Mineral Development Fund account with regards to royalty payments and lodgments into the account as well as outflows and purpose of the payouts is required. Computing royalty due for MDF will be good for the purpose of comparison, even if the Commission cannot take any meaningful action on over/short lodgments. It is therefore, recommended that the Commission should, henceforth, compute royalties due from payment data received from the mining companies. Guidelines for the operations of the Fund should be provided.

There is the need to improve communication between the OASL and the mining companies. Most mining communities have OASL offices at the district level. Payments of mineral royalties by mining companies could be communicated to the OASL offices.

## **10. Disbursement of Royalties to District Assemblies**

In order to ensure transparency in disbursements, the regional OASL offices should ensure that payments to District Assemblies follow releases from the Head Office.

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The Regional offices of OASL should be discouraged from splitting the amounts payable to Districts and other beneficiaries. Amount due a community or district should be paid in full on a single cheque and on time.

Regional OASL offices should provide details of payment to the District Assemblies.

The information to be provided should include; i) the Company paying the royalty; ii) the relevant months under consideration; iii) amount paid by the mining companies.

Where the operational area of the mine straddles the jurisdiction of more than one (1) District Assembly, the sharing proportion should also be stated.

### **11. Formula for the disbursement of mineral royalty at the community level**

The formula for the disbursement of mineral royalties to beneficiaries should be published yearly and made available at the relevant regional offices of the OASL.

### **12. Utilization of Mineral Royalties by District Assemblies**

There are neither regulations nor guidelines for the utilization of mineral royalty receipts by District Assemblies and so the Assemblies use their discretion to apply the funds in areas they deemed fit . However, the Obuasi Municipal and Wassa West District Assemblies prepare budgets for the utilization of mineral royalty receipts. They also have special bank accounts for receiving mineral royalty transfers.

Therefore, it is important to develop guidelines for the utilization of mineral royalties by District Assemblies and other beneficiaries.

### **15.0 CONCLUSION**

The submissions of this report indicate the various benefits the Government of Ghana received from key mining entities in the country for 2004 – 2008. Some of the key findings/recommendations of the aggregator contained in the report for the period under consideration include the following:

There were discrepancies of (GH¢7,923.01), (GH¢470,885), GH¢511,660, GH¢2,753,111 and (GH¢370,679) in 2004 – 2008 respectively between payments by companies and government receipts.

All the mining companies paid royalties at 3%.

The major benefit received by the government was mineral royalty, accounting for 65.2% of total benefits in 2004 - 2008. This was followed by Corporate Tax receipt which formed 24% of total benefits received by the government, indicating significant improvement

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in corporate tax receipts over the entire aggregation period from 2004 to 2008. Dividends and property rate accounted for 9.8% and 1% respectively of total mining benefits for 2004 – 2008.

There is the need to reconcile MDF transfers made by IRS to Minerals Commission.

Data capture for payments made by the Mining Companies at IRS should be improved.

To improve transparency at the district levels, disbursements transferred from OASL head office to Regional OASL offices should be communicated to district beneficiaries by sending them copies of disbursement letters.

Efforts should be made to publicize the formulae for disbursements of mineral royalties for each district.

Guidelines for the use of mineral royalties at the District Assembly levels are also required for effective utilization and monitoring.

Mineral royalty remained the major mining benefit in 2007, accounting for about sixty nine percent of all the benefits.

Corporate tax receipts which had seen a steady growth since 2004, however, declined in the year 2007.

Ground rent and mineral right licence receipts were insignificant accounting for about 0% of total mining benefits for the entire period.

Although dividends receipts represented 9.8% of total benefits for 2004 -2008, not much could be deduced as the companies policies could change yearly.

There is the need to put in place mechanisms for verifying the appropriateness of payments made by Mining companies to the Internal Revenue Service.

Mining benefits receipts in 2008 have been an improvement on receipts of earlier years. This has partly been due to increases in gold price in 2008 compared to the earlier years. The increasing significance of corporate tax collections as the companies operate beyond the initial investment recovery years has also been a contributing factor.

Ground rent property rates and mineral right licences receipts have not seen any significant change over the years.

Monitoring of royalty payments especially with regards to compliance and appropriateness appears to have slackened with the dissolution of the mining desk at the Internal Revenue Service.

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Disbursements to District Assemblies have improved with regards to the correctness of the computations. However, payments to District Assemblies do not follow strictly the payments from the OASL Head Office.

Whereas regions such as Ashanti and Western have improved upon information provisions to the Districts, the Brong Ahafo OASL is yet to appreciate the importance of providing details on royalty payments to the District Assemblies.

The Mineral Development Fund requires guidelines for payments in and out, as well as utilization of funds.

## **16.0 GHANA EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE AGGREGATION/RECONCILIATION OF MINING SECTOR PAYMENTS AND RECEIPTS 2006-2008: GHANA REVENUE AUTHORITY RESPONSE TO THE DISCREPANCIES.**

The Ministry of Finance and Economic Planning engaged an aggregator Messrs BOAS and Associates to undertake the aggregation and reconciliation of mining benefits from 2006-2008 as part of the requirements of the Extractive Industries Transparency Initiative (EITI). The Report of the revealed some discrepancies between payments made by the mining companies and Government receipts. This paper seeks to rectify the deviation from the side of the Ghana Revenue Authority. The correction is focused on company receipts for years that showed deviations.

### **REASONS FOR THE DISCREPANCIES**

Some payments received from the AngloGold Ashanti Group were wrongly credited to different companies within the group. E.g. a mineral royalty amount of GH¢785,331.78 for AngloGold Iduapriem Limited in 2007 was wrongly credited to AngloGold Ashanti Ghana Ltd.

Payments from Central African Gold Limited were made both at the Large Taxpayer Unit and the Kimbu District of the Domestic Tax Division of the Ghana Revenue Authority.

There was an accounting error during the redenomination exercise in 2007. An amount of GH¢1,663,860.89 was wrongly receipted as GH¢166.39 but correctly credited to LTU Collection at the Bank of Ghana.

The Ghana Revenue Authority still stands by its collection of GH¢851,121.51 Mineral Royalty from AngloGold Bibiani Ltd for 2006. The receipts are attached for verification.

The Ghana Revenue Authority still stands by its collection of GH¢2,052,824 corporate tax from Abooso Goldfields for 2008. The receipts are attached for verification.

The full list of corrected figures for the various companies is as follows.

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**CORRECTED MINING RECEIPTS FOR EITI  
AGGREGATION/RECONCILIATION FOR 2006-2008**

**MINERAL ROYALTY**

**2006**

**ANGLOGOLD BIBIANI LIMITED**

<b>DATE</b>	<b>AMOUNT GH□</b>	<b>RECEIPT NO.</b>
02/02/06	324,396.42	4520127
30/05/06	231,235.49	4524401
31/08/06	151,003.35	4526478
21/11/06	<u>141,486.25</u>	4529614
TOTAL	<u>851,121.51</u>	

**2007**

**ANGLOGOLD ASHANTI GHANA LIMITED**

<b>DATE</b>	<b>AMOUNT GH□</b>	<b>RECEIPT NO.</b>
05/02/07	1,677,778.50	0651798
27/04/07	1,755,371.14	0652999
31/07/07	1,663,860.89	0657983
31/10/07	<u>1,784,204.87</u>	0619542
TOTAL	<u>6,881,215.40</u>	

**ANGLOGOLD IDUAPRIEM LIMITED**

<b>DATE</b>	<b>AMOUNT GH□</b>	<b>RECEIPT NO.</b>
02/02/07	785,331.76	0651793
27/04/07	571,094.41	0653000
31/07/07	938,277.19	0657982
25/10/07	<u>1,124,509.55</u>	1631715
TOTAL	<u>3,419,212.91</u>	

**CENTRAL AFRICAN GOLD LIMITED**

<b>DATE</b>	<b>AMOUNT GH□</b>	<b>RECEIPT NO.</b>
05/02/07	131,108.38	0651797
30/05/07	134,354.29	0656571
21/08/07	<u>136,410.30</u>	1643383
TOTAL	<u>401,872.97</u>	

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**2008**

**CENTRAL AFRICAN GOLD LIMITED**

<b>DATE</b>	<b>AMOUNT GH□</b>	<b>RECEIPT NO.</b>
04/01/08	94,265.47	1957052
08/02/08	104,546.42	1958918
29/04/08	209,774.30	2683512
05/08/08	<u>181,147.80</u>	3257824
	<u>589,733.99</u>	

**ABOSSO GOLDFIELDS LIMITED**

<b>DATE</b>	<b>AMOUNT GH□</b>	<b>RECEIPT NO.</b>
04/01/08	1,026,562.51	1632970
28/04/08	1,419,313.97	267656
30/07/08	1,444,248.86	3257813
10/10/08	194,288.00	3259915
31/10/08	<u>1,307,125.30</u>	
TOTAL	<u>5,391,538.64</u>	

**CORPORATE TAX**

**ABOSSO GOLDFIELDS LIMITED**

<b>DATE</b>	<b>AMOUNT GH□</b>	<b>RECEIPT NO.</b>
30/04/08	490,450.00	2676634
30/06/08	<u>1,562,373.60</u>	3257541
TOTAL	<u>2,052,823.60</u>	

### Appendix 3A

## WORKPLAN FOR THE AGGREGATION OF BENEFITS RECEIVED FROM MINING COMPANIES UNDER THE EITI-G

### A. PRELIMINARY ACTIVITIES FOR INCEPTION PHASE

ACTIVITIES	2006												2007												
	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1
In-house strategic meeting/ assignment of roles and responsibilities (July 2006)																									
Meeting with EITI Steering Committee.																									
Preliminary Meetings with Ministries, Departments and agencies.																									
Familiarisation visits to the mines/mining companies																									
Initial information gathering from Municipal/District Assemblies, Traditional Council and Stools																									

## WORKPLAN FOR THE AGGREGATION OF BENEFITS RECEIVED FROM MINING COMPANIES UNDER THE EITI-GH

### APPENDIX 3B: AGGREGATION PHASE

ACTIVITIES	2006												2007											
	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	
<b>COLLECTION OF DATA FROM MDA'S-THREAD</b> -Revenues to Govt -Payments from mines -Technical Data from mines operations -Technical data from MC/MD																								
<b>COLLECTION OF DATA FROM MINING COMPANIES.</b> -Payments made to Govt (with supporting documents) -Technical details of operations -Financial statements																								
<b>COLLATION AND ANALYSIS OF MDA'S AND MINES DATA</b> -Reconciliation of details from Mining Sector and Revenue Agencies -Ascertain the correctness of computations on payments -Comparison of payments by mining companies and receipts of revenue Agencies -Reconcile OASL Figures Head/Regions -Reconciliation of technical details of mines and minerals Commission. -Recording data on templates(Aggregation)ETC																								
-Discussion and review of draft templates with MDA'S and Mining Companies. Feedback for framework on transparency.																								
collection of data from district assemblies/traditional councils and stools																								



# **TAX INCENTIVES IN THE MINING SECTOR IN GHANA**

## **INTRODUCTION**

The Mining industry is one of the most important sectors in Ghana. The sector currently contributes about 7% of Ghana's total corporate tax earnings, 41% of total exports, 12% government revenue and 5% of GDP. So in Ghana, like other developing countries, exploitation of mineral resources is an important source of government revenue. However, mining exploration and development projects are major long term capital investments – requiring heavy front-end capital expenditure, detailed expertise, advanced technology and marketing outlets – characterized by long lead times and high risks of failure. Even though resource endowed states like Ghana own the mineral resources, they have neither the technical capacity nor financial stability necessary for such projects. Consequently, many governments are compelled to turn to multinational Mining Companies who hold most of the financial and technical expertise needed for the exploration and exploitation of mineral resources.

In the past 2 (two) decades, governments of most mineral rich countries have been actively competing among themselves to promote their countries as investment locations. They are increasingly striving to create a favourable and enabling climate to attract Foreign Investment as a policy priority by adopting such measures as liberating the laws and regulation for the admission and establishment of Foreign Investment Projects, providing guarantees for repatriation of investment of profits. Tax incentives are also part of these promotional efforts.

In Ghana, from 1986 government took measures to encourage increased investment in the country's natural resources. Similar measures were taken to optimize the nation's returns from such investments. One such measure is the promulgation of the Minerals and Mining Law, 1986 (PNDCL 156) which was later amended by the Minerals and Mining (Amendment) Act, 1994 (ACT 476). These 2 laws have been repealed by the Minerals and Mining Act, 2006 (ACT 703) which is currently the mining law in force. The above laws and regulations together with the Internal Revenue Act, 2000 (ACT 592) made special taxation provisions and very favourable incentives to the mining industry because of its unique features.

## **WHAT IS A TAX INCENTIVE?**

A tax incentive is an aspect of the tax code designed to give incentive, or encourage a certain type of behaviour. For the purpose of this paper a tax incentive can be defined as any incentives that reduce the tax burden of an enterprise in order to induce them to invest in particular projects or sectors. Put simply they are exceptions to the general tax regime. Specific to the mining industry, they are those fiscal elements emplaced by Host Governments that make mining exploration and production more economically

attractive and could include, for example, mechanisms such as tax or royalty holidays or tax abatement etc.

### **OBJECTIVES OF TAX INCENTIVES**

- (i) They are meant to attract, boost and sustain investment in the economy.
- (ii) REGIONAL INVESTMENT - Countries with untested or/and unproven regions, wanting to attract exploration and production to these areas, often employ a mix of incentives to channel investment to these areas. In a petroleum example Nigeria has a regional incentives scheme that gives allowances ranging from 5 to 100% to multinational oil companies that establish operations in areas where little or no exploration work has been carried out. Such incentives also achieve the laudable purpose of encouraging investment in the rural areas to stem the tide of migration to cities and towns.
- (iii) PERFORMANCE ENHANCEMENT: Tax Incentives are a useful way of ensuring that the foreign investor enhances the performance of the industry in a manner desired by the Host Government, whereas a direct requirement may give the impression of hostility to foreign investors. As performance enhancement tools they motivate and encourage the investor. In a non mining example Ghana taxes companies engaged in the export of non-traditional products at a reduced rate of 8% instead of the standard 25%.
- (iv) TRANSFER OF TECHNOLOGY: An important objective of using Tax Incentives to attract investment to the mining industry in developing countries like Ghana is the transfer of technology. Certain types of incentives are designed specifically for this purpose. Some countries such as Malaysia and Singapore) have introduced a specific set of incentives directed toward research and development (R+D) activities including tax exempt technology funds and tax credits for expenditures and R+D. For import of technology, tax incentives provided may take the form of allowing transfer costs of patent rights and import fees etc to come under operating cost, thereby permitting them to be expensed.

### **CLASSIFICATION OF TAX INCENTIVES**

Unlike the actual tax instruments of royalties and income tax which are fairly limited and more or less the same in most countries, the range of tax incentives available to government are quite vast. This is because in order to make a fiscal regime more competitive, governments have a number of options available to adapt a relatively standard set of taxes to suit their needs. Therefore it is worth noting that despite the classification given here, the variety of incentives that can be offered can be far-reaching. It can range from relief from import duties or value-added taxes to flow through shares. There is no clear-cut answer in favour of one or another mechanism. Each has its own inherent advantages and disadvantages. Ultimately the type of Tax Incentive offered will depend on the Host Government's objectives.

We can broadly categorise the main type of tax incentives found in the mining industry into 2 groups.

- (1) Tax Deductions: These are those incentives that serve to give a direct reduction of the actual tax base i.e.  $\text{Final Tax Base} = (\text{Original Tax Base}) - (\text{Tax Deduction})$ . Most Tax Incentives take the form of such deductions for example expensing of costs, capitalization of costs through depreciation and amortization, loss carry forward, enhancement of allowable costs through uplift, reduction of the tax base via tax abatements.
- (2) Tax Reductions: An alternative method would be to provide a Tax Incentive which could serve to reduce or temporarily eliminate the tax rate, i.e. the amount of tax payable - a direct deduction from the amount of tax payable, rather than from the tax base. This can be done through a reduced CIT rate, tax credits and tax holidays.

## **THE GHANAIAN CASE**

Companies investing in the mining sector enjoy specific incentives that are provided in the Minerals and Mining Act, 2006 (ACT 703) and the Internal Revenue Act, 2000 (ACT 592). These incentives which are meant to compensate mining companies for the high risk inherent in the mining industry are as follows:

### **(A) ACCELERATED DEPRECIATION SCHEME**

The Income Tax Code has a very generous depreciation scheme for mining companies. The government having considered the high risk and capital intensive nature of the mining industry has provided a special depreciation rate for the following assets:

- (i) Mineral exploration rights;
- (ii) Buildings, structures and works of a permanent nature which are likely to be of little or no value when the rights are exhausted or the prospecting, exploration, or development ends;
- (iii) Plant and Machinery used in Mining.

Capital Allowance (Depreciation Allowance) is granted at a depreciation rate of 80% of the Cost Base of the asset and 50% on reducing balance in subsequent years.

In addition to the above there is an uplift of 5% of the cost base added to the written down value in the 2<sup>nd</sup> year before any depreciation allowance is granted in that year. The investor effectively recoups 105% of any investment in qualifying mining expenditure and a shorter investment payback period.

Mining companies are continually engaged in yearly re-investments resulting in perpetually huge cost base and by the time they are through with deducting these depreciation allowances there is no state-take in corporate income tax year after year.

(B) **INCOME TAX HOLIDAYS**: These are industry concessions granted whereby incomes from certain activities are exempt from corporate tax over a period of 5 to 10 years. There is **non available** for the mining industry, however expenditure on reconnaissance and prospecting up to the point where there is a commercial find and production commences are capitalized and given special depreciation allowance as (A) above (treated as if they were incurred in the acquisition of an asset)

(C) **CARRY FORWARD LOSSES**

Under the tax legislation, losses arising in any tax year may be carried forward for deduction against income in a subsequent year. The loss must be deducted within 5 years following that in which the loss was incurred and must be deducted in the order in which it was incurred.

(D) **CARRY FORWARD CAPITAL ALLOWANCE**

Unutilized accumulated Capital Allowance up to 2000 is to be spread over 5 years from 2001. However any unutilized capital allowance granted after the 2001 year of assessment is to be carried forward forever until it is utilized by the company.

(E) **TAX FREE ACCOMMODATION FOR MINE EMPLOYEES**

Accommodation provided to an employee by an employer carrying on a mining business at any place or site where the field operation of the mining business is carried on is exempt from tax. This simply means that staffs are exempted from the payment of income tax on furnished accommodation at the mine site.

(F) **OVERTIME EARNINGS OF MINING SECTOR EMPLOYEES**

Prior to 2001 the overtime earnings of employees in the mining sector were exempt from tax. Overtime payment is now made only to Junior employees and attracts a minimum tax. Payment of overtime should not exceed 50% of the mine employees' qualifying employment income for the year. Overtime payment is currently taxed at the following concessionary rates for a qualifying employment income of GH¢9,600.00 per annum.

Up to GH¢120.00	- 2.5%
GH¢120.00 - GH¢400.00	- 10.0%
Exceeding GH¢400.00	- Add to salary and tax @ normal rate.

(G) **CORPORATE TAX**

Mining companies which are not listed on the Ghanaian Stock Exchange pay tax on their Chargeable Incomes at the rate of 25%, while those listed on the stock exchange are required to pay tax at a competitive rate of 22% (since 1994, the rate of corporate tax has been reduced from a high of 45% to a low of 22% - a very big incentive).

(H) **DOUBLE TAXATION RELIEFS**

The major mining companies operating in Ghana are foreign multinational firms operating through their subsidiaries and branches. They are required to pay taxes in Ghana and may have to pay in tax their home countries. This is double taxation. To avoid double taxation the tax code has provided for the relief of double taxation under which countries have signed Double Taxation Relief Treaties with Ghana. Ghana has Double Tax Treaties with France, Germany, the United Kingdom, South Africa, Italy and Belgium.

(I) **OTHER INCENTIVES**

- (i) In addition to the above generous incentives granted to companies in the mining industry by the Tax Code, the Mineral and Mining Act, 2006 (ACT 703) also grants mining companies the following additional benefits but which are not direct tax incentives:
  - (a) Exemption from payment of customs Import Duty in respect of plant, Machinery, equipment and accessories imported specifically and exclusively for the commencement of mineral operations.
  - (b) Immigration quota in respect of the approved number of expatriate personnel.
  - (c) Personnel remittance quota for expatriate personnel from tax imposed by an enactment regulating the transfer of money out of the country.
- (ii) Stability Agreement: A mining company may enter into a stability agreement with the state requiring it not to amend its laws and where the laws are amended that such amendments should not adversely affect the financial positions in the mining agreements viz customs and duties, royalties, taxes, fees, exchange control and transfer of capital. A mining company has the option to stabilize an agreement for a period of 15 (fifteen) years.
- (iii) Foreign exchange account for the transferability of capital: Where the holder of a mining lease earns foreign exchange from its mining operations and the net earnings are in foreign exchange, he may be permitted to open and retain in an account, an amount not less than 25%

of the foreign exchange for

- (a) the acquisition of spare parts, raw materials, and machinery and equipment.
- (b) Debt servicing and dividend payment
- (c) Remittance in respect of quotas for expatriate personnel
- (d) The transfer of capital in the event of sale or liquidation of the mining operations.

(J) **FISCAL CONCESSIONS IN DEED OF WARRANTY**

Some mining companies have been given special incentives in their Deeds of Warranty. For instance, most of the mining companies are not required to withhold any taxes from any payment from their external accounts, of any interest, or costs paid in respect of borrowing by or on behalf of the companies, the emoluments of expatriate personnel of the company or any fee paid to consultants and contractors where such emoluments are payable in foreign currency, or any dividend paid to the shareholders.

**CONCLUSION**

The above are the main tax incentives in the mining sector in Ghana. It is necessary to state that aside from these incentives which are codified in the mining and tax legislations companies can also arrange their own incentives in the mining agreement with government.

B.C.D. OCANSEY  
GHANA REVENUE AUTHORITY  
MEMBER, GHANA NATIONAL STEERING COMMITTEE OF GHANA EITI

## **THE MINERALS AND MINING ACT, 2006 Act 703**

### **Minerals property of Republic**

Every mineral in its natural state in, under or upon land in Ghana, rivers, streams, water-courses throughout the country, the exclusive economic zone and an area covered by the territorial sea or continental shelf is the property of the Republic and is vested in the President in trust for the people of Ghana.

### ***Royalties, rentals and fees***

#### **Application fee**

An applicant for a mineral right shall pay a fee as may be prescribed.

#### **Annual ground rent**

(1) A holder of a mineral right, shall pay an annual ground rent as may be prescribed.

(2) Payment of annual ground rent shall be made to the owner of the land or successors and assigns of the owner except in the case of annual ground rent in respect of mineral rights over stool lands, which shall be paid to the Office of the Administrator of Stool Lands, for application in accordance with the Office of the Administrator of Stool Lands Act 1994 (Act 481).

#### **Annual mineral right fees**

A holder of a mineral right shall pay an annual mineral right fee that may be prescribed and payment of the fee shall be made to the Commission.

#### **Royalties**

A holder of a mining lease, restricted mining lease or small scale mining licence shall pay royalty that may be prescribed in respect of minerals obtained from its mining operations to the Republic, except that the rate of royalty shall not be more than 6% or less than 3% of the total revenue of minerals obtained by the holder.

## **Recovery of debts**

A fee, royalty or other payment which falls due in respect of a mineral right or otherwise under this Act is a debt owed to the Republic and recoverable in the Court.

## ***Dispute resolution***

### **Dispute resolution**

(1) Where a dispute arises between a holder of a mineral right and the Republic in respect of a matter expressly stated under this Act is a matter which shall be referred for resolution, all efforts shall be made through mutual discussion and if agreed between the parties, by reference to alternative dispute resolution procedures, to reach an amicable settlement.

(2) Where a dispute arises between a holder who is a citizen and the Republic in respect of a matter expressly stated under this Act as a matter which shall be referred for resolution, which is not amicably resolved as provided in subsection within thirty days of the dispute arising or a longer period agreed between the parties to the dispute, the dispute may be submitted by a party to the dispute, to arbitration for settlement in accordance with the Arbitration Act, 1961 (Act 38) or any other enactment in force for resolution of disputes.

(3) Where a dispute arises between a holder who is not a citizen and the Republic in respect of a matter expressly stated under this Act as a matter which shall be referred for resolution under this section, which is not amicably resolved as provided under subsection (1) within thirty days of the dispute arising or a longer period agreed between the parties to the dispute, the dispute may, by a party to the dispute giving notice to all other parties, be submitted to arbitration, (a) in accordance with a international machinery for the resolution of investment disputes, as agreed to by the parties, or (b) if the parties do not reach an agreement under paragraph (a) within thirty days, or a longer period agreed between the parties, of the matter being submitted to arbitration, in accordance with (i) firstly, the framework of a bilateral or multilateral agreement on investment protection to which the Republic and the country of which the holder is a national, are parties, or(ii) secondly, if no agreement contemplated by subparagraph (i) exists, the rules of procedure for arbitration of the United Nations Commission on International Trade Law, (UNCTRAL Rules.

(4) Each agreement granting a mineral right shall contain provisions on the method of resolution of disputes that may arise under the agreement. (5) Where a holder has notified the Minister in writing that the holder wishes to refer a dispute for resolution and, but for this subsection, (a) the term of the mineral right would expire, (b) the area the subject of the mineral right, would be reduced, or (c) the rights under the mineral right held at that time would be diminished, the term the area, the right held, as the case may be, shall continue without diminution for the period ending thirty days after the determination of the dispute.

### **Capitalization of expenditure**

The holder of a mining lease is entitled to the capitalization of expenditure on reconnaissance and prospecting approved by the Minister on the advice of the Commission where the holder starts development of a commercial find.

### **Additional benefits**

The holder of a mineral right may be granted the following:

(a) exemption from payment of customs import duty in respect of plant machinery, equipment and accessories imported specifically and exclusively for the mineral operations;

(b) exemption of staff from the payment of income tax on furnished accommodation at the mine site;

(c) immigration quota in respect of the approval number of expatriate personnel; and

(d) personal remittance quota for expatriate personnel free from tax imposed by an enactment regulating the transfer of money out of the country.

### **Transferability of capital**

(1) A holder of a mining lease who earns foreign exchange from mining operations may be permitted by the Bank of Ghana to retain in an account, a portion of the foreign exchange earned, for use in acquiring spare parts and other inputs required for the mining operations, which would otherwise not be readily available without the use of the earnings.

(2) The Minister for Finance, in consultation with the Minister acting on the advice of the Commission may, where the net earnings of a holder of a mining lease from the holder's mining operations are in foreign exchange, permit the

holder of the lease to open and retain in an account, an amount not less than twenty five percent of the foreign exchange for

- (a) the acquisition of spare parts, raw materials, and machinery and equipment,
- (b) debt servicing and dividend payment,
- (c) remittance in respect of quotas for expatriate personnel, and
- (d) the transfer of capital in the event of a sale or liquidation of the mining operations.

(3) An account opened and operated under subsection (2) shall, with the consent of the Bank of Ghana, be held in trust by a trustee appointed by the holder of the lease.

(4) Subject to this Act, a holder of a mining lease shall be guaranteed free transferability of convertible currency

- (a) through the Bank of Ghana, or
- (b) in the case of a net foreign exchange holder, through the account opened under subsection (2).

### **Stability agreement**

48. (1) The Minister may as a part of a mining lease enter into a stability agreement with the holder of the mining lease, to ensure that the holder of the mining lease will not, for a period not exceeding fifteen years from the date of the agreement,

(a) be adversely affected by a new enactment, order instrument or other action made under a new enactment or changes to an enactment, order, instrument that existed at the time of the stability agreement, or other action taken under these that have the effect or purport to have the effect of imposing obligations upon the holder or applicant of the mining lease, and

(b) be adversely affected by subsequent changes to

- (i) the level of and payment of customs or other duties relating to the entry materials, goods, equipment and any other inputs necessary to the mining operations or project,
- (ii) the level of and payment of royalties, taxes, fees and other fiscal imports, and
- (iii) laws relating to exchange control, transfer of capital and dividend remittance

(2) A stability agreement entered into under subsection (1) shall be subject to ratification by Parliament.

### **Development agreement**

49. (1) The Minister on the advice of the Commission may enter into a development

agreement under a mining lease with a person where the proposed investment by the person will exceed US\$ five hundred million.

(2) A development agreement may contain provisions,

(a) relating to the mineral right or operations to be conducted under the mining lease,

(b) relating to the circumstance or manner in which the Minister will exercise a discretion conferred by or under this Act,

(c) on stability terms as provided under section 48,

(d) relating to environmental issues and obligations of the holder to safe-guard the environment in accordance with this Act or another enactment, and

(e) dealing with the settlement of disputes.

(3) A development agreement is subject to ratification by Parliament.

*Surface right and compensation*

## **Surface rights**

72. (1) The holder of a mineral right shall exercise the rights under this Act subject to limitations that relate to surface rights that apply under an enactment and further limitations reasonably determined by the Minister.

(2) In the case of a dispute between a holder of a mining lease and the Minister concerning the limitations determined by the Minister under this subsection, the dispute shall be referred for resolution under section 27.

(3) The lawful occupier of land within an area subject to a mineral right shall retain the right to graze livestock upon or to cultivate the surface of the land if the grazing or cultivation does not interfere with the mineral operations in the area.

(4) In the case of a mining area, the owner or lawful occupier of the land within the mining area shall not erect a building or a structure without the consent of the holder of the mining lease, or if the consent is unreasonably withheld, without the consent of the Minister.

(5) The owner of a mining lease shall, in the presence of the owner or lawful occupier or accredited representative of the owner or lawful occupier of land, the subject of a mining lease and in the presence of an officer of the Government agency responsible for land valuation carry out a survey of the crops and produce a crop identification map for the compensation in the event that mining activities are extended to the areas.

(6) An owner or lawful occupier of land shall not upgrade to a higher value crop without the written consent of the holder of the mining lease, or if the consent is unreasonably withheld, without the consent of the Minister.

**MINERALS (ROYALTIES) REGULATIONS, 1987**

In exercise of the powers conferred on the Secretary responsible for Lands and Natural Resources by sections 22 and 83 of the Minerals and Mining Law, 1986 (P.N.D.C.L.153) these Regulations are made this 29<sup>th</sup> day of July, 1987.

1. Every holder of a mining lease shall be liable to pay royalty to the Republic in respect of his mining operations at the rate specified in the Schedule to these Regulations.
2. (1) The rate of royalty payable under these Regulations shall be based on the profitability of the mining operations.  
  
(2) Such profitability shall be determined by the application of the operating ratio, being the ratio as expressed in terms of percentage which the operating margin bears to the value of the minerals won from the mining operations during the yearly period.  
  
(3) For the purpose of determining the operating margin of any mining operation, the operational cost shall be deducted from the total value of minerals won from such mining operations.
3. Every holder of a mining lease shall within thirty days after the expiration of every quarterly period pay to the Republic on account, royalties at the rate of three *per centum* of the gross value of minerals won in that quarter.
4. (1) Every person engaged in mining operations shall within thirty days after the expiration of every yearly period, submit to the Commissioner returns stating in details the total value of minerals won by him from his mining operations during such yearly period.  
  
(2) Such returns shall contain a signed declaration that the particulars contained in the returns are true and complete.  
  
(3) The Commissioner may give notice in writing to any person engaged in mining operations to furnish him within the period specified in such notice fuller or further information as to any matter furnished in an earlier return or as to any other matter which the Commissioner may consider necessary for the purposes of these Regulations.
5. Every holder of a mining lease shall, within sixty days after the expiration of each yearly period compute the royalties payable for the year based on the formula prescribed in the Schedule to these Regulations and shall pay to the Republic the difference, if any, between the computation based on the formula prescribed in the Schedule and the sum of all royalties paid by the holder in respect of that yearly period.
6. Where in any yearly period the operational ratio is less than thirty *per centum* then the difference between the actual operational cost and the operational cost that would make the operating ratio exactly equal to thirty *per centum* shall be added to the operational cost of the following yearly period for the purpose of calculating that period's operating ratio, provided that the difference to be

carried forward shall not exceed the permissible capital allowance for the year of account.

7. These Regulations shall be administered by the Commissioner of Internal Revenue who shall be responsible for the assessment, collection, recovery of royalties, receipt of return, and issues relating to objections, and may for those purposes apply with such modifications as may be necessary such provisions of the Income Tax Decree, 1975 (S.M.C.D. 5) or any other law generally applicable to the assessment, collection, returns and recovery of income tax.

8. The Commissioner shall pay all royalties collected by him into the Consolidated Fund.

9. (1) Any person who  
(a) Fails or refuse to pay any royalty payable by him under these Regulations,  
(b) Contravenes any of the provisions of these Regulations, commits an

offence and shall be liable to the same punishment for which a person might be liable for failure or refusal to pay income tax or for the contravention of such similar provision under the Income Tax Decree, 1975 (S.M.C.D. 5) or any other law generally applicable to the assessment, collection, returns or recovery of income tax.

(2) Notwithstanding sub-paragraph (1) of this paragraph where a person is found guilty of an offence under these Regulations the Secretary may in addition to any punishment which a Court may impose cancel or suspend the mining lease of such person.

10. In the Regulations unless the context otherwise requires –

“Commissioner” means the Commissioner of Internal Revenue

“Court” includes a tribunal or other adjudicating body having jurisdiction in tax matters;

“mining lease” has the same meaning as in section 84 (1) of the Minerals and Mining Law, 1986 (P.N.D.C.L. 153);

“operational cost” in relation to any period means –

(a) the current expenditure wholly and exclusively incurred by the holder of the mining lease during that period for the purpose of mining, transporting, processing or sale of minerals won; provided that such current expenditure shall not include –

(i) any royalty payable under these Regulations;

- (ii) any income tax or other tax on profit whether imposed in Ghana or elsewhere;
- (iii) any payment under any agreement between the Republic and any person on the value of, or receipts from, minerals won;
- (iv) in the case of a company any expenditure incurred in respect of the management and control of the company which in the opinion of the Commissioner are not directly related to the operations of mining, transporting, processing or sale of the minerals won;

(b) capital allowances for the period deductible under the provisions of section 26 of the Minerals and Mining Law, 1986 (P.N.D.C. 153);

“processing” means the process by which the raw product of the mining operations are subject to any treatment designed to prepare them for use as such raw products;

“quarterly period” means in relation to any mining operation the period of three months immediately following from the commencement of these Regulations and thereafter each of the successive periods of three months or where a person commences mining operations after the commencement of these Regulations the first period of three months starting from the commencement of such mining operations and thereafter each of the successive periods of three months;

“Secretary” means the P.N.D.C. Secretary responsible for Lands and Natural Resources;

“value of minerals won” means the gross price at which such minerals are sold at the time of the sale;

“yearly period” means in relation to any mining operation the period of twelve months immediately following from the commencement of these Regulations and thereafter each of the successive periods of twelve months or where a person commences mining operations after the commencement of these Regulations, the first period of twelve months starting from the commencement of such mining operations and thereafter each of the successive periods of twelve months.

11. The Minerals (Royalties) Regulations, 1986 (L.I. 1340) are hereby revoked.

12. These Regulations shall be deemed to have come into force on the 4<sup>th</sup> day of July 1986.

**SCHEDULE**

<b><i>Operating Ratio</i></b>	<b><i>Rate of Royalty</i></b>
(i) Where the operating ratio is 30% or less	3%
(ii) Where the operating ratio is more than 30% but less than 70%	3% plus 0.225 of every 1% by which the operating ratio exceeds 30%
(iii) Where the operating ratio is 70% or more	12%

**RICHARD KWAME PEPRAH**

*P.N.D.C. Secretary responsible for Lands and Natural Resources*

*Date of Gazette notification: 28<sup>th</sup> August, 1987*



**THE SEVEN HUNDRED AND NINETY-FOURTH  
ACT  
OF THE PARLIAMENT OF THE REPUBLIC  
OF GHANA**

**ENTITLED**

**MINERALS AND MINING (AMENDMENT) ACT, 2010**

AN ACT to amend the Minerals and mining Act, 2006, (Act 703) to provide  
For a flat rate for royalty payment

DATE OF ASSET: *17<sup>th</sup> March, 2010*

PASSED by Parliament and assented to by the President.

Section 25 of Act 703 amended.

1. The Minerals and Mining Act, 2006 (Act 703) is amended by the substitution for section 25 of

**"Royalties**

25. A holder of a mining lease, restricted mining lease or small scale mining license shall pay royalty in respect of minerals obtained from its mining operations to the Republic at the rate of 5% of the total revenue earned from minerals obtained by the holder".

Date of Gazette notification: 19<sup>th</sup> March, 2010.

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## **EXTRACT FROM THE INTERNAL REVENUE ACT, 2000 (ACT 592)**

### **Income from an Employment**

8. (2C) Any provision of accommodation by an employer carrying on a timber, mining, building, construction or farming business to that person at any place or site where the field operation of the business is carried on;

### **DIVISION III: DEDUCTIONS**

#### **Deductions Allowed**

13. Subject to this Act, for the purposes of ascertaining the income of a person for a basis period from any business, employment, or investment there shall be deducted

- (a) All outgoings and expenses wholly, exclusively and necessarily incurred during that period by that person in the production of the income;
- (b) Any other deductions as may be prescribed by Regulations made under section 114.

#### **Interest**

14. Subject to this Act, for the purposes of ascertaining the income of a person for a basis period from any business or investment, there shall be deducted any interest incurred during the period in respect of a borrowing employed by that person in the production of the income.

#### **Rent**

15. For the purposes of ascertaining the income of a person for a basis period from any business or investment, there shall be deducted any rent incurred during the period in respect of a land or building occupied by that person to the extent that the land or building is occupied by that person for the purposes of producing the income.

#### **Repairs**

16. For the purposes of ascertaining the income of a person for a basis period from any business or investment, there shall be deducted any outgoing or expense incurred during the period in respect of

- (a) The repair of any premises, plant, machinery, or fixtures, or
- (b) The renewal, repair, or alteration of any implement, utensil, or article,

to the extent that the premises, plant, machinery, fixtures, implement, utensil, or article is employed by that person in the production of the income.

### **Deductions in Relation to the Rental of Premises**

17, (1) Subject to subsection (2), where an individual receives a rent in respect of residential or commercial premises which is included in ascertaining that individual's income from an investment for a basis period, that individual shall be allowed the following deductions for the period in respect of the premises:

- (a) to the extent to which the premises are used in the production of the rent,
  - (i) the amount of any rates incurred by that individual during the period to any local, urban, city, or district council in respect of the premises; and
  - (ii) a mortgage interest incurred by that individual during the period in respect of a borrowing employed by that individual in constructing or acquiring the premises; and
- (b) a standard allowance equal to thirty per cent of the aggregate rent received by that individual in respect of the premises during the period.

(2) Where, during a basis period, an individual has actually incurred necessary outgoings or expenses, other than those covered by paragraph (a) of subsection (1), in respect of any premises referred to in subsection (1) in excess of the amount of the standard allowance for those premises referred to in paragraph (b) of subsection (1), that individual shall also be allowed a deduction for that excess.

### **Bad Debts**

18. (1) For the purposes of ascertaining the income of a person for a basis period from any business, there shall be deducted any debt claim that has become a bad debt of that person during the period where,

- (a) the amount of the debt claim is included in ascertaining the person's assessable income with respect to any prior basis period; or
- (b) the debt claim is in respect of advances made by that person in the normal course of business other than advances made on capital account.

(2) In this section, "bad debt", in relation to a person, means a debt claim of that person in respect of which that person has taken all reasonable steps to pursue payment and which that person reasonably believes will not be satisfied

## **Research and Development Expenditure**

19. (1) For the purposes of ascertaining the income of a person for a basis period from any business, there shall be deducted research and development expenditure incurred by that person during the period in the production of the income.

(2) In this section, “research and development expenditure” means any outgoing or expense incurred by a person for the purpose of developing that person’s business and improving business products or process but does not include any outgoing or expense incurred for the acquisition of an asset in relation to which that person is entitled to a capital allowance under section 20.

## **Capital Allowances**

20. For the purposes of ascertaining the income of a person for a basis period from any business, there shall be deducted that capital allowances for the business calculated in accordance with the Third Schedule.

## **Foreign Currency Exchange Losses**

21. (1) Subject to this section, for the purpose of ascertaining the income of a person for a basis period from any business, there shall be deducted any foreign currency exchange loss, other than a loss that is capital in nature, incurred in the production of income during the period in respect of any debt claim, debt obligation, or foreign currency holding of that person.

(2) A foreign exchange loss of a capital nature may be capitalized and capital allowance granted under section 20.

(3) A deduction is not allowed to a person for a foreign currency exchange loss incurred unless that person has notified the Commissioner in writing of the existence of the debt claim, debt obligation, or foreign currency holding which gave rise to the loss by the due date for furnishing of that person’s return of income for the year of assessment in which the basis period in which the debt arose or foreign currency was acquired ends, or by a later date which the Commissioner may allow.

(4) Subsection (3) does not apply to a financial institution.

(5) Where,

(a) a person has incurred a foreign currency exchange loss under a transaction,

- (b) a foreign currency exchange gain has accrued to or has been derived by that person or an associate under another transaction, including a hedging contract, and
- (c) either
  - (i) the transaction giving rise to the loss would not have been entered into, or might reasonably be expected not to have been entered into, if the transaction giving rise to the gain had not been entered into, or
  - (ii) the transaction giving rise to the gain would not have been entered into, or might reasonably be expected not to have been entered into, if the transaction giving rise to the loss had not been entered into,

no deduction is allowed to that person where the amount of the loss exceeds that part of the gain included in the assessable income of that person or associate.

(6) For the purpose of paragraph (b) of subsection(5), "hedging contract" means a contract entered into by a person in order to eliminate or reduce the risk of adverse financial consequences which might result for that person under another contract from currency exchange rate fluctuation.

### **Carry Over of Losses**

22. (1) Subject to this Act, for the purpose of ascertaining the income of a person for a basis period from a business,

- (a) there shall be deducted a loss of the previous five basis periods incurred by that person in carrying on that business; and
- (b) where that person has incurred more than one such loss, the losses shall be deducted in the order in which they were incurred.

(2) A loss may only be deducted where the loss has not been deducted in ascertaining the income of that person for a previous basis period.

(3) The loss incurred by a person for a basis period in carrying on a business shall be calculated as the excess of amounts deductible under this Act in ascertaining a profit or gain from the business over the amounts required to be included in ascertaining the profit or gain.

### **Deductions Not Allowed**

23. (1) A person shall not be allowed a deduction for

- person;
- person;
- (a) any domestic or private outgoing or expense incurred by that person;
  - (b) any outgoing or expense of a capital nature incurred by that person;
  - (c) any outgoing or expense incurred by that person during a basis period that is recoverable during the period under any insurance or contract of indemnity;
  - (d) any income tax profits tax, or other similar tax incurred by that person during the year in Ghana or elsewhere other than as provided for by subsection (1) of section 68; or
  - (e) the depreciation of any fixed assets.

(2) For the purposes of paragraph (a) of subsection (1), "domestic or private outgoing or expense" incurred by a person includes outgoings or expenses incurred by that person

- (a) in travelling between that person's home and place of business;
- (b) in the maintenance of that person, or that person's family or home;
- (c) in acquiring clothing worn to work, other than clothing that is not suitable for wearing outside of work; and
- (d) in the education of that person not directly relevant to that person's business, and education leading to a degree, whether or not it is directly relevant to that person's business.

**THIRD SCHEDULE**  
**CAPITAL ALLOWANCE**

**Section 20**

**Capital Allowances Granted**

1. A person shall be granted capital allowances for each year of assessment in respect of depreciable assets owned by the person at the end of a basis period ending within the year and used in carrying on a business during that period.

**Classes of Depreciable Assets**

2. (1) A depreciable asset is an asset to the extent to which it is used in carrying on a business, which asset is likely to lose value because of wear and tear, obsolescence, or the effluxion of time, but does not include trading stock, and depreciable assets are classified as follows:

<b>Class</b>	<b>Assets Included</b>
--------------	------------------------

- |         |   |
|---------|---|
| 1.      | Computers and data handling equipment.  |
| 2.      | (i) automobiles; buses and minibuses, goods vehicles; construction and earth-moving equipment, heavy general purpose or specialized trucks; trailers and trailer-mounted containers; plant and machinery used in manufacturing;                                     |
|         | (ii) Assets referred to in subparagraph (3) in respect of long term crop planting costs.  |
| 3.      | (i) Mineral and petroleum exploration and production rights; assets referred to in subparagraph (4) in respect of mineral and petroleum prospecting, exploration, and development costs;  |
| respect | (ii) Buildings, structures and works of a permanent nature used in respect of assets referred to in item (i) which are likely to be of little or no value when the rights are exhausted or the prospecting, exploration, or development ends, as the case requires; |
|         | (iii) Plant and machinery used in mining or petroleum operations.   |

4. Railroad cars, locomotives, and equipment; vessels, barges, tugs, and similar water transportation equipment; aircraft; specialized public utility plant, equipment, and machinery; office furniture, fixtures, and equipment; any depreciable asset not included in another class;
  5. Buildings, structures, and works of a permanent nature other than those mentioned in class 3;
  6. Intangible assets; other than those mentioned in class 3.
- (2) For the purposes of sub-paragraph (1), an asset is treated as used by the person who owns it in carrying on a business where
- (a) the asset is acquired by the person for the purposes of a business which the person intends to carry on and, subsequently, the asset is first used by the person in that business;
  - (b) the asset has been used in the business but is in temporary disuse;
- or
- (c) the person leases the asset on an operating lease to another person who uses it in carrying on a business of that other person.
- (3) Costs of a capital nature incurred by a person in the production of income from a business which is a timber concern or a large scale rubber, oil palm, or other long term crop plantation in respect of planting vegetation from which timber, rubber, oil palm, or other crops are derived are treated as if they were incurred in securing the acquisition of an asset that is used by the person in that production.
- (4) Costs incurred by a person in the production of income from a business in respect of mineral and petroleum prospecting, exploration, and development are treated as if they were incurred in securing the acquisition of an asset that is used by the person in that production.

### **Class 1, 2, 3, and 4 Depreciable Assets**

3. (1) A person's depreciable assets in classes 1, 2, 3 and 4 shall be placed into separate pools for each class of asset, and a capital allowance granted for each pool for a year of assessment with respect to each basis period of the person ending within the year calculated according to the following formula

**A x B x C/365**

Where,

- A** is the written down value of the pool at the end of a basis period;
- B** is the depreciation rate applicable to the pool; and
- C** is the number of days in the period.

(2) The depreciation rate applicable to the pools of depreciable assets referred to in sub-paragraph (1) are

<b>Class</b>	<b>Rate</b>
1	40%
2	30%
3	80% of the cost base of assets added to the pool during the basis period and 50% of the balance of the pool, if any
4	20%

- (3) The written down value of a pool at the end of a basis period is the total of
- (a) the written down value of the pool at the end of the preceding period after allowing for the capital allowance granted under sub-paragraph (1) with respect to that preceding period;
  - (b) with respect to a pool of Class 3 depreciable assets, 5% of the cost base of assets added to the pool during the preceding basis period; and
  - (c) the cost base of assets added to the pool during the period,

reduced, but not below zero, with respect to each asset from the pool realized during the period by the consideration received from the realization of the asset.

- (4) Where the amount of consideration received by a person from the realization during a basis period of any asset or assets from a pool exceeds the written down value of the pool at the end of the period disregarding that amount, the excess is included in ascertaining the person's income from

the business in which the asset or assets were used for the year of assessment in which the period ends.

- (5) If the written down value of a pool at the end of a basis period, after allowing for the deduction under sub-paragraph (1) in respect of that period, is less than ₱50,000, a capital allowance is granted for the year of assessment in which the period ends for the amount of that written down value and that written down value shall be reduced to zero.
- (6) Where all the assets in a pool are realized before the end of a basis period, a capital allowance is granted for the year of assessment in which the period ends for the amount of the written down value of the pool as at the end of that period.
- (7) The cost base of a depreciable asset is added to a pool in the basis period in which the asset is first used in carrying on the business.
- (8) For the purposes of this Schedule only, the cost base of a road vehicle, other than a commercial vehicle, shall not exceed ₱150 million.
- (9) In this paragraph, "commercial vehicle" means
- (a) a road vehicle designed to carry loads of more than half a tone or more than thirteen passengers; or
  - (b) a vehicle used in a transportation or vehicle rental business.

### **Class 5 and 6 Depreciable Assets**

4. (1) A person shall be granted for a year of assessment a capital allowance for each Class 5 depreciable asset with respect to a basis period ending within the year calculated using the following formula:

$$\mathbf{A \times B \times C / 365}$$

Where,

- A** is the cost base of the asset;  
**B** is the rate of 10%; and  
**C** is the number of days in the basis period.

- (2) A person shall be granted for a year of assessment a capital allowance for each Class 5 depreciable asset with respect to a basis period ending within the year calculated using the following formula

$$\mathbf{A/D \times C/365}$$

Where,

- A** is the cost base of the asset;
- C** is the number of days in the basis period; and
- D** is the useful life of the asset in whole years calculated at the time the asset is acquired by the person.