

# Tax Issues-Mining

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# Mining (Coal and Mineral) sector

## a) Mining is stirring!!

- i) First new mineral CoWs for 10 years (Rio, BHPB, Indomines, Southern Arc)
- ii) Some G6/7 CoWs now moving (e.g. Herald (Zinc/Lead), Oxiana (Gold/Silver))
- iii) Some G3 CCoWs also (e.g. Maruwai and Tuhup)
- iv) KPs/Coal considerable interest. Massive churn.
- v) Long forgotten “new mine” issues now resurfacing
  - treatment of pre-incorporation/pre-production costs – DGT audits
  - treatment of mine infrastructure (inside/outside CoW area)
  - financing including interest –free lending during exploration/debt forgiveness
  - farm-ins – how to structure?
  - Masterlist facilities
  - Regional taxes
- vi) Mining Law-will this stimulate further?

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## b) KP Investment

- i) 4 or 5 structures emerging (used by foreign investors)
  - Simple nominee holding
  - Production or profit sharing/co-operation
  - Mining service
  - IDX listing
- ii) None are “road tested” by the DGT. No known rulings, no known accepted approach
- iii) Title is the key. Is there a sale or a service? Consistency of documentation, tax returns, contracts, etc.
- iv) Considerable risk!!

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### c) CoW/CCoW lex specialis principle

- i) How healthy is it?
- ii) In some cases, the DGT is still consistently challenging, especially VAT registration entitlement (gold and coal) and the right to VAT refunds
- iii) Unclear how robust this will be in new CoWs
- iv) Withholding tax regime on third party payments
- v) General tax procedures and administration

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## d) New Mining Law

- i) Has been outstanding for several years
- ii) IUP/Mining license system
- iii) No CoW/CCoW, but Mining Agreement for State Reserve Area
- iv) In-country processing
- v) Transitional clause-CoW/CCoW to comply?
- vi) Will this be attractive?

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- e) New Company Law (No.40/2007), Investment Law (No.25/2007), and investment facilities (GR 1/2007)
  - i) CSR obligations-how and deductibility?
  - ii) Capital investment facilities-who qualifies and how to obtain?
  - iii) Nominee arrangements are prohibited
  - iv) Do mining projects attract incentives under GR 1/2007? Downstream processing?

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## f) Forestry Issue

- i) GR 2/2008 – who is eligible?
- ii) Pressure/criticism from public/NGOs

## g) Tax Audit Issues

- i) Transfer pricing, especially coal trading
- ii) CoW/CCoW lex specialis principle-VAT refunds
- iii) Sub-contractor fuel “back charges”

# Thank you

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