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Mining - Tax Landscape - Africa

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Agenda

Mining Tax Regimes: Objectives, types and best practice

African Mining Vision and tax landscape in Africa

Africa Progress Report 2013: Equity in Extractives

“Hot Topics” - Summary

Mining Tax Regimes: Objectives, types, and best practices

What is “mineral taxation”?

Likely answer from Government official:

“income taxes and Government royalties”

Likely answer from Industry representative:

“that portion of the mining project’s total revenues that ends up in the Government’s hands”

Objectives of the mineral taxation regime

Fair participation by state

Stable over time

Transparent and provides even playing field for all

Easy to understand and administer

Internationally competitive

Unique characteristics of mining industry

High risk

Capital intensive

Price taker

Remote locations

Cyclical profits

Restoration and reclamation

Finite life

Reliance on subcontractors

Mining – tax landscape in Africa

Mining in Africa – historical context

Oldest mines in the world to be found in Africa

Mining – integrated into pre-colonial economies, and subsequently (with colonisation) into European economies

60's & 70's - Independence → assertion of national sovereignty and significant / full state ownership of mining enterprises (eg Ghana, Guinea, Zambia)

Late 80's – much of Africa's mining industry in a state of crisis → paradigm shift: deregulation & almost complete withdrawal of the state.

1980's and 90's – Mining reforms in Africa

Radical reform process to attract FDI:

- Privatisation
- New mineral policies, and legal, regulatory and administrative frameworks more favourable to private sector
- Emphasis on security of tenure and strengthening mineral rights
- Reduced taxes and royalties

→ Increased FDI and an influx of mining capital, technology & skills

2000 + *Revision of views*

Questions raised as to:

- Extent of welfare gains and development outcomes
- Extent of compensation for local costs consequent on mining
- Magnitude of special incentives for mining
- Linkages into local, regional and national economies

2009 – African Mining Vision



Drafted by technical taskforce established by the African Union and the UN Economic Commission for Africa in preparation for 1st African Union Conference of Ministers responsible for Mineral Resources Development

Focus: Maximise the development outcomes of mineral resources exploitation



African Mining Vision – quotes relevant to taxation

“Resource rentsAfrican states with weak governance generally fail to impose resources tax regimes that ensure an equitable share of the rents, particularly windfall rents, due either to a lack of state capacity or the subversion of that capacity to produce overly investor friendly outcomes”

“Self-adjusting resources tax regimes, which augment with increasing profitability and thus allow the state to garner windfall rents during commodity booms, are preferable for resources than straight tax as a percentage of profit systems. Such rate-of-return (ROR) or profitability based fiscal regimes, are based on profit as a percentage of turnover or revenue rather than straight profit

Ghana

Year Change introduced

- 2010 Royalty increase to 5% of total revenue earned (previously normally charged at 3% of revenue)
- 2012 • Corporate income tax rate for mining increased to 35% (from general rate of 25%); (dividend withholding tax – unchanged at 8%)
• Tax depreciation reduced – 20% straight line (previously 80% first year allowance , with balance subject to 5% uplift and written off at 50% on reducing balance basis)
• Introduction of ring-fencing by mining area
• New local content requirements
- Other • Revenue questioning customs and VAT waivers (covering plant, machinery, equipment and accessories imported exclusively and specifically for the mineral operations)
• Government challenging stability clauses
• Bill before Parliament for proposed windfall tax - 10% on “cash balance” (calculated based on a prescribed formula)

Ghana (continued)

Ghana delays windfall tax

Accra, Ghana --- 13 September 2012 - The government of Ghana has delayed implementing a windfall tax on mining profits while it considers whether to scrap the proposed levy, according to the head of the country's mining regulator.

Reuters reports that the West African nation, the continent's second-largest source of gold, proposed the 10% windfall tax on mining companies' profits in its 2012 budget as part of measures to boost income to state coffers.

The government also raised the corporate tax rate on miners from 25 to 35% for this year.

"There are areas we need to look at carefully to decide whether the windfall tax is the best way to go. It's a complex tax and we are still weighing the options," Ben Aryee, chief executive of the Minerals Commission told Reuters.

The International Monetary Fund last year recommended that Ghana, which is also the world's number 2 cocoa grower and an oil producer, consider raising taxes or introducing new ones to increase revenues.

The Ghana Mine Workers Union had called for a windfall tax in addition to raising the country's stake in mining projects to enable the economy to benefit from the soaring gold prices. The Chamber of Mines has publicly opposed the windfall tax, however, saying miners are already overburdened with high operational costs particular to the region.

Mining companies welcomed the re-evaluation of the tax.



Ghana - Africa's number two gold producer - may introduce windfall tax

Tanzania

Year Change introduced

- 2009
 - Fuel taxes - removal of exemptions (except existing MDA holders)
 - VAT special relief - limited to exploration and prospecting
- 2010
 - New Mining Act 2010 (replacing Mining Act 1998) providing for:
 - Higher royalty rates, and on gross (rather than net back) value,
 - Government participation (but % not stated)
 - Model Mining Development Agreement (“MDA”)
 - Income Tax ring fencing by mine licence area
 - VAT relief reinstated for existing MDA holders
- 2012
 - Sale of shares of a foreign company with an underlying interest in a Tanzanian company → deemed realisation of Tanzanian assets and liabilities at the moment the underlying ownership of the Tanzanian entity changes by more than 50% as compared with that ownership at any time during the previous three years
 - VAT relief for MDA holders removed (again!)

Zambia

Year Change introduced

- 2008
 - Withholding tax on interest paid by mining companies 15% (previously 0%)
 - Revocation of tax stability clauses in development agreements
- 2009
 - Ring-fencing of non-contiguous mines
 - Variable income tax rate (in addition to fixed rate of 30%); applies where assessable income > 8% of gross sales; maximum rate = 15%. (Withholding tax on dividends paid by person carrying on mining operations – unchanged at 0%.)
- 2012
 - Royalties – 6% of norm value / gross value (previously 3% or 5%)
- Other
 - Windfall tax introduced in 2008 revoked in 2009 (and replaced by variable rate tax).
 - No Government ownership requirement

DRC, Mozambique, South Africa

Year	Change introduced / contemplated
DRC	<u>2002 Mining Code - under revision</u> - little information on possible changes but anticipate increased tax costs
Mozambique	<u>Draft new mining legislation circulated</u> - expected start date: 2014; will condense mining taxation into one piece of legislation; includes ring-fencing by licence area, and new tax depreciation rates; clarifies CGT regime on direct & indirect disposal of mining assets
South Africa	<u>Proposal to refine the Mineral and Petroleum Resources Royalty Act (2008)</u> including: <ul style="list-style-type: none">• Condition of mineral extraction acting as a reference point to calculate the mineral royalty tax base;• Interaction of the royalty regime rate with the income tax calculation; and• Information reporting requirements.

Recent headlinesBurkina, Guinea, Ivory Coast

Burkina to impose 20% tax on mine transfers

Ouagadougou, Burkina Faso --- 31 August 2012 - Impoverished Burkina Faso is considering the introduction of a 20% tax on the sale of mining licenses in a move to raise funds that could hit expansion plans by miners operating in

Ivory Coast plans 19 pct windfall tax on gold miners' profits

Abidjan, Saturday

by Reuters on Friday, also effect for the state." establishes a rate of 13 percent

Spot gold added 0.2 percent to profits in its 2012 budget

DAILY NEWS
17/9/12

Investor cheers fade as Guinea tightens grip on mining

D/NEWS
19/9/12

*Africa Progress Report 2013:
Equity in Extractives
Stewarding Africa's natural resources for all*

Equity in Extractives

Stewarding Africa's natural resources for all



Africa Progress Panellists:

Koffi Annan, Michel Camdessus,
Peter Eigen, Bob Geldof, Grace
Machel, Strive Mawiyiwa,
Olusegun Obasanjo, Linah
Mohohlo, Robert Rubin, Tidjane
Thiam

Foreword by Koffi Annan:

“Building on the Africa Mining
Vision, African governments
should adopttax regimes
that reflect both the real value of
their countries’ natural resource
assets and the need to attract high
quality investment”.

APP2013 Recommendation: Ensure an appropriate legislative framework

Put in place legislation that:

- Establishes clear fiscal policies, contractual arrangements and regulatory regimes,
- Creates a stable climate conducive to long-term investment by extractives companies,
- Avoids the development of “patchwork” regimes based on case-by-case negotiations, and
- Supports wider strategies for inclusive growth and poverty reduction.

***APP2013 recommendation:
Minimise generalised use of tax concessions***

- Avoid generalized use of extensive tax concessions, such as:
 - tax holidays
 - reduced royalty fees
 - waiving of corporation tax
- Tax relief can be provided when projects demand extra capital because they involve high levels of commercial risk or technical difficulties, provided:
 - Limited to the early years
 - Given on a transparent basis with full public disclosure

APP2013 recommendation: Taxes that adjust with higher profitability

- Request renegotiation of tax arrangements under contracts that are out of line with international practice or generate windfall profits as a result of higher-than-expected export prices;
- Continually reassess tax provisions in the light of international market conditions;
- Consider indexing royalty levels to commodity prices as proposed by the African Development Bank; and
- Introduce capital gains or windfall taxation for firms securing excessive profits on concession trading.

APP2013 recommendation: Transfer pricing – a key focus area

- Implement legislation on transfer pricing aimed at enforcing the “arms-length” principle;
- Consider use of administratively determined reference prices when insufficient information is available to assess whether companies are complying with the OECD’s “arm’s length” principles; and
- Establish specialized transfer pricing units to monitor profitability, reported prices on intra-company trade and reporting on profit in other jurisdictions, with an initial focus on companies operating through low-tax havens and offshore centres.

Mining: Tax “Hot Topics”

Mining – Tax - Hot Topics

- **Mining development agreements – fiscal clauses:** (i) extent of stability (ii) need for harmonisation with domestic tax legislation
- **Government shareholding requirement:** increasingly prevalent
- **Impact of Indirect Taxes:** VAT refund claims; Scope of Customs Duty exemptions; impact of fuel & local taxes
- **Royalties:** Impact of higher rates, and move to “gross value”
- **Income Tax:** Lower tax depreciation; variable income tax rates; transfer pricing
- **Overseas share transactions:** now in scope of some jurisdictions
- **Local Community:** How to ensure that benefit appropriately
- **Communication:** Ensure sufficient communication of contribution (EITI, PwC Total Tax Contribution)

“Of all those expensive and uncertain projects, however, which bring bankruptcy upon the greater part of the people who engage in them, there is none perhaps more ruinous than the search after new silver and gold mines”: Adam Smith, The Wealth of Nations, 1776

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