

Country Mining Updates

Zambia

On 25 August 2009, Maxwell Mwale, the Minerals Development Minister, said the government would not reintroduce the controversial windfall tax it applied when copper prices rose last year, despite the current rally in metals prices, as it could scare away foreign investors. The Minerals Development Minister said that they realised that windfall tax was an addition to the cost of production and it was discouraging investment.

The introduction of a 25 per cent. windfall tax and other taxes (15 per cent. profit variable tax, an increase from 25 per cent. to 30 per cent. in corporate tax and an increase to 3 per cent. from 0.6 per cent. on mineral royalties) in 2008 was backed by the World Bank to help Zambia raise funds required to build schools, roads and to provide health and education services despite upsetting foreign mining companies. The International Monetary Fund and World Bank are against the abolition of the windfall tax by Zambia.

Two weeks prior to this announcement, Zambia said that it will not refund foreign companies the millions of dollars they paid in taxes when the controversial windfall tax was in force, but could revise existing taxes.

On 28 December 2009, it was reiterated that Zambia would maintain existing mining taxes despite growing internal pressure on authorities to raise them during 2010. Chief government spokesman Ronnie Shikapwasha said Zambia would maintain the existing tax regime as global economy was just starting to recover from recession.

Mongolia

In August 2009, Mongolia's parliament approved changes to four laws, clearing the way for a long-awaited investment agreement on the giant Oyu Tolgoi copper/gold project in the country's South Gobi region. Rio Tinto and Ivanhoe Mines reported that the agreement was signed by the parties in October 2009

The two companies had been trying for more than six years to secure an investment agreement. The amendments approved by parliament included the insertion of a sunset provision to cancel the three-year-old 68 per cent. windfall profits tax on copper and gold, effective from 1 January 2011. As expected, the investment agreement gives the government of Mongolia a shareholding of 34 per cent. in Ivanhoe Mines Mongolia. Rio Tinto who currently owns just under 10 per cent. of Ivanhoe agreed in 2006 to buy another 9.96 per cent. for USD 388m when the investment agreement is finally signed.

Ivanhoe has said that it expects construction of the mine to take 30 months. In fact Ivanhoe indicated in December 2009 that it could get the construction of the initial open pit mine at Oyu Tolgoi completed as soon as 2012. At the moment, production is currently targeted for 2013 with a five-year ramp up to full output. The mine is expected to produce an average of 450,000 tons per year of copper and 330,000 ounces of gold over a 35-year life. The total project cost has been estimated at around USD 4-5bn.

On 6 January 2010 it was reported that Ivanhoe has retained Citi to advise the company on "strategic options" that could include share or debt offerings. Ivanhoe's executive chairperson Robert Friedland said the company will look at a "range" of potential deals, although it is not yet considering any specific transactions."

Vietnam

On 19 January 2009, Decree No. 05/2009/ND-CP providing detailed regulations and guidelines on the amended Ordinance on Royalties, issued by the National Assembly of Vietnam, came into force.

Decree No. 05 defines “royalty payers” as organisations or individuals who exploit natural resources in any form. The natural resources contained within the land, islands, internal waters, sea territory, enclosure economic zones and continental shelf under the sovereignty and jurisdiction of Vietnam are subject to royalties. These royalties are calculated based on quantities of actual commercial output, taxable prices and tax rates.

Under Decree No. 05, the quantity of actual commercial output is the quantity, weight or volume of actual output of resources within the tax period, regardless of the purpose for exploitation. The taxable price is the selling price of each resource unit at the exploitation place. For natural resources exploited within a month and of the same grade and quality, the taxable price is the selling price of such resources at the exploitation place, excluding value added tax. If a natural resource is exploited within a month but there is no turnover generated from its sale, then the taxable price is determined on the basis of the taxable price of such resource in the preceding month.

If the selling price of the resource is not determined on the above basis, the taxable price may be calculated on one of the following basis:

- The average market selling price of a resource of a similar kind with a corresponding value
- The selling price of pure products and the contents of such substances in the exploited resource
- A percentage of the selling price of the product produced or processed from the exploited resource

Decree 05 provides that for natural water used in electricity production, the taxable price is the average selling price of commercial electricity. For timber, the taxable price is the selling price at the timber yard. For crude oil, the taxable price is the weighted average price of crude oil sold at the delivery point in accordance with arm’s length contracts. The Ministry of Finance shall determine the taxable price if crude oil, natural gas and coal gas are not sold through arm’s length contracts.

Royalty tariffs set out in Decree 05 vary with the type, quantity and volume of exploited natural resources.

Royalties are exempted in the following cases:

- Entities exploiting resources who as a result of an unforeseen natural disaster, epidemic or accident suffer a loss of the exploited resource for which they have declared and paid royalties
- Individuals who exploit natural forest products for daily activities (such as timber, tree branches, firewood and bamboo of all kinds)
- Exploitation of natural water used in hydro power production that is not supplied to the national grid
- Exploitation of soil for non-trading purposes, including national security and defence projects, construction works serving agriculture, forestry or fishing, charity or welfare purposes, development of life in mountainous areas and key national works

Entities engaging in deep-sea exploitation of sea products by high-capacity facilities shall be exempted from royalties for five years from the issuance of the exploitation licence, and granted a 50 per cent. reduction for five years thereafter. If after this duration of exemption from and reduction of royalties entities exploiting resources still suffer a loss, further reductions of royalties corresponding to the amount of loss of each year for a period not exceeding five subsequent and consecutive years may be considered.

Brazil

It appears that Brazil’s plan to reform its mining code and potentially raise the royalties paid by mining companies needs to ensure the mineral-rich country can compete with the other resource rich countries pursuant to these reforms.

“The regulatory framework being drafted is intended to replace an obsolete model,” said Edison Lobao, Mines and Energy Minister, at the Exposibram mining conference held that same week.

Highlighting areas of change, he said firms should no longer be able to speculate by sitting for years on mining concessions without developing them. He has previously said the country has “very low” royalties which should be raised. But Brazil’s mining industry disagrees. It says raising royalties could do Brazil more harm than good, making countries with lower taxes more appealing to investors.

Paulo Camillo Penna, chairperson of the industry’s umbrella group Ibram, said the government’s reluctance to talk about its proposals or seek input from the private sector had created a climate of “worry and

uncertainty” for mining firms. “We have great difficulty discussing this with them,” he told Reuters in a recent interview. Penna said that royalties appeared low in Brazil but overall taxation was among “the world’s highest” when other levies were included.

Labao said the reforms would aim to benefit both miners and the estate. In a recent media interview he said the government would not reform the sector to the miners’ detriment but try to make it balanced. He also said that the government wanted to modernize the regulatory body, the Departamento Nacional de Producao Mineral, empowering it to make decisions more quickly and with greater ability, implying shorter waits for decisions on and the granting of concessions to firms.

On 19 October 2009, it was reported that Brazil was considering a tax of up to 5 per cent. on iron exports amid growing tension between the government and mining giant Vale, the world’s largest iron ore producer. Vale has faced criticism in recent months from the government for not investing enough in Brazil, with growing speculation the government is seeking a management shake-up.

It has been reported that the ministries of finance and industry have been discussing the 5 per cent. export tax for two months. It is thought that this would be an alternative to the increase in mining royalties that Labao has tentatively proposed.

On 11 December 2009, it was reported that China’s Wuhan Iron & Steel Group is set to become the second-biggest shareholder in Brazilian iron-ore-miner MMX and has also agreed to set up a steel plant in the South American country in conjunction with the EBX group, which owns most of MMX. The Brazilian miner has also signed an agreement to supply the Chinese steelmaker with iron for 20 years, starting in April 2010. According to reports, Wuhan will buy 21.52 per cent. of MMX for USD 400m. MMX currently has a market value of USD 2.1bn. As a result of the deal, Wuhan will appoint two of the members of the MMX board.

On 5 January 2010, Australian gold explorer Beadell Resources reported the discovery of a “major” gold deposit within its Tartaruga project, in Brazil. The new discovery, called Rio de Ouro, was located 2 km east of the current resource area of Mineiro and Mandiocacal.

Indonesia

Indonesia is unlikely to complete final regulation in relation to a new mining and coal law in 2009, a government official said in September 2009, creating more uncertainty for a sector already struggling to attract new investment.

The government has been drafting regulation on the new mining and coal law passed in December 2008 for presidential approval and had said it should be issued by October when a new administration under President Susilo Bambang Yudhoyono is due to start a second term.

Bambang Gatot Ariyono, director of mining and coal production at the Ministry of Mines and Energy, said ministries including the one for Forestry and Finance with vested interests in the regulations, had yet to respond to the drafts proposed by his office.

Issuing the regulation is seen as crucial to providing more certainty for mining investors in Southeast Asia’s biggest economy. With the delay, the sector is unlikely to see fresh investment in the near future as the government has frozen new mining permits until the regulations are finalised.

One idea being considered by President Yudhoyono is to establish a new co-ordinating minister for resources and also to separate the energy and mining portfolios with the co-ordinating minister overseeing these, as well as agriculture, forestry, and environment.

The Indonesian Mining Association has said mining investment would fall below USD 1bn this year due to uncertainty over the new mining law, although the government says investment from mining – including geothermal – could surpass USD 2bn. A combination of low metal prices and uncertainty over the new mining and coal law has already prompted some companies to shelve their investment plans since last year.

Mexico

Mexico’s congress is considering a 4 per cent. tax on mining output as part of a fiscal reform package meant to boost government revenues during a steep recession. But most major companies in Mexico say the measure will stifle new investment and burden existing projects at a time when metals prices have slumped from record high.

“While Mexico will remain attractive, the decision to levy tax on production and not sales is counterproductive,” said Rodrigo Heredia, a metals analyst at Ixe brokerage. He further said that, “it would seem more appropriate to levy the charges on sales volume and not on production, since otherwise, the tax would be levied on the inventory levels that are indispensable in this cyclical industry.”

Mexico has one of the lowest tax takes in Latin America and President Felipe Calderon is trying to pass a controversial overhaul of the tax system to reduce the country's dependence on waning oil revenues.

Senator Fransico Arroyo, an opposition lawmaker behind the bill whose proposal could win support from Calderon's party has said he is open to debate with miners on the technical issues, but his priority is to ensure more money goes to mining towns, which are often in poor and isolated areas. He said the increase in payments will be partially offset by tax write-offs on profits.

South Africa

On 6 October 2009, Peter Leon, International Bar Association (IBA) mining law committee chairperson, said South Africa should emulate rising stars Ghana and Botswana by removing excessive administrative discretion from its mining laws, which were reducing its mining industry to a 'stunted giant'.

Leon told the international conference that South Africa's laws were resulting in the country being perceived internationally as an uncertain investment destination.

While South Africa had vast mineral resources, uncertainty created by its new mineral regulatory regime has been undermining investor confidence.

While the Mineral and Petroleum Resource Development Act (MPRDA) had opened up South Africa's mining sector and promoted black economic empowerment (BEE), wide administrative discretion under the MPRDA, as well as uncertainty in the regulatory framework and its application, discouraged investment and undermined security of tenure, which resulted in lost BEE opportunity.

The conversion of old-order rights and the granting of new order rights were subject to the fulfilment of many discretionary requirements, and the amended MPRDA empowered the Minister to refuse conversion of an old-order mining right, if the applicant did not provide “documentary proof” as to how effect would be given to the law's empowerment and social and labour objectives.

The Minister's prior written approval was required for the sale of mining rights and letting and rights without the Minister's approval was void.

The Mining Charter aimed to provide the framework for the promotion of BEE, which was generally obligatory for the conversion of old-order mining rights, as well as for the granting of new-order rights.

The independent international Fraser Institute research survey had ranked South Africa 49th out of 71 mining jurisdictions on its policy potential index, down from twenty-seventh in 2002/03. By contrast, Ghana had risen up the ranks to 23rd place and Botswana was ranked higher than several US states, some Australian provinces, most Latin American countries and most minerals-producing European countries.

Commenting ahead of the special IBA on global practice, Leon said that Ghana and Botswana were proving that countries could still have sound social reform and State participation in the mining industry, whilst simultaneously following a regime of limited administrative discretion.

“If you apply for a licence and meet the requirements of the law, you should not be put through 1000 hoops. That's the lesson from Botswana and Ghana and what's interesting about Ghana is that, like Nigeria, they have depoliticised the process,” Leon also said.

On 15 December 2009 it was reported that the ANC Youth League is to officially release a discussion document on its proposal around the nationalisation of South Africa's mines at its Lekgotla (planning meeting) in January.

Addressing the National Press Club, president Julius Malema said the discussion document will state the framework “on how nationalisation of mines will happen in South Africa”.

Sierra Leone

Sierra Leone's parliament has passed a new mining act that raises royalties and increases community benefits despite the opposition walking out. The new Mines and Minerals Act 2009 will hike diamond and gold royalties, give the government the right to take a stake in big mining projects and require companies to contribute to local community funds. The bill aims to remedy the effects of years of mismanagement, corruption and a 1991-2002 civil war that have hamstrung the West African nation's mining potential, leaving it among the world's poorest countries despite vast resources.

Passage came on the eve of the Sierra Leone Trade and Investment Forum in London, which the country hopes will attract a raft of interest in an economy still emerging from civil war.

The law will hike royalty rates to 6.5 per cent. on diamonds up from 5 per cent. and 5 per cent. on gold and other precious metals from 4 per cent.. Companies must now spend 0.1 per cent. of annual gross revenues on community initiatives and new entrants would work under a new non-exclusive "reconnaissance" licence, which will replace the "prospecting" licence and is renewable only once.

Ghana

Ghana plans to double the amount mining companies pay in royalties as part of a broader effort to boost government revenues from the sector, the country's finance minister said on 18 November 2009. The move could dent the profitability of mines in Africa's second biggest gold producer and adds to investor worries stirred earlier this year when the country announced reviews of two major deals involving U.S. oil company Exxon Mobil and UK-based mobile phone company Vodafone.

Ghana Finance Minister Kwabena Duffuor, presenting the nation's 2010 budget to parliament, said the government will double minerals royalties to 6 per cent.. The move comes as Ghana attempts to boost spending in 2010 by more than 20 per cent. to accelerate its economic growth.

In August 2009, thousands of workers at AngloGold's Ghanaian mines went on strike over pay and conditions, an action which the company said reduced underground work to 'minimal' levels. On 1 December 2009, it was reported that gold miner AngloGold Ashanti had agreed a new three-year salary deal with unionised workers in Ghana which it hopes will end strikes at its mines there. The firm raised salaries by 12 per cent. in 2009 and 10 per cent. in both 2010 and 2011, said John Owusu, general manager for Corporate Affairs.

Finland

The Finnish government has proposed an update to the 1965 mining law which as to be submitted to the Parliament in December 2009 with the aim of the new act taking effect no later than 1 January 2011. According to the proposal, the new Mining Act would take account of ecological issues, civil rights, landowners' rights and the municipalities' opportunities to influence decision-making, while ensuring the preconditions for prospecting and mining operations.

There has been criticism of some aspects of the proposed mining law, however, the ministry regards recent discussions as encouraging and reasonable. For example, there has been positive feedback from companies about the proposed extension of exploration licences from 8 to 15 years. Granting permits, supervision and other official tasks under the Mining Act would be centralised with the Safety Technology Authority (Tukes). The ministry has launched a project covering all tasks related to this re-organisation.

No changes are proposed for the scope of application of the Mining Act. Uranium would continue to be a mining mineral subject to a claim. A revision of the Nuclear Energy Act is proposed so that mining and enrichment operations of uranium will be subject to the consent of the municipality intended as the site of the project. Moreover, regulations concerning licensing procedures and rights of appeal in the Nuclear Energy Act would be reconciled with the Mining Act.

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