A. At a glance

Fiscal regime

The fiscal regime that applies in Botswana to the mining and metals industry consists of a combination of corporate income and royalty based taxation:

<table>
<thead>
<tr>
<th>Income tax rate&lt;sup&gt;1&lt;/sup&gt;</th>
<th>22% to 55%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Royalties&lt;sup&gt;2&lt;/sup&gt;</td>
<td>Varies from 3% to 10%</td>
</tr>
<tr>
<td>Investment incentives</td>
<td>Loss carryforward indefinitely</td>
</tr>
<tr>
<td>Capital allowances</td>
<td>100%, including exploration costs write-offs</td>
</tr>
</tbody>
</table>

<sup>1</sup> Depending on the type of mineral or metal.

<sup>2</sup> Rate for other mining companies (excluding diamond mining companies) ranges from 22% to 55%.

B. Fiscal regime

The fiscal regime that applies in Botswana to the mining and metals industry is a combination of corporate income tax and royalty-based taxation.

Corporate tax

Mining companies that derive or are deemed to derive income from a source within Botswana (other than diamond mining companies) are subject to income tax on this income at a rate determined by the following formula:

- 70% · (1500%/X) where “X” is the profitability ratio

There are no circumstances where the corporate tax rate will fall below 22%. “X” is the profitability ratio and is calculated as taxable income as a percentage of gross income.
The tax rate should not be less than the corporate rate, which is currently 22%. Based on a company's maximum profitability ratio of 100%, the maximum tax rate is therefore 55%.

Diamond mining companies can negotiate with the government of Botswana to agree on a tax rate to be used in taxing profits derived from diamond mining operations.

The gross income of mining companies includes the following:

- Amounts accruing from mining and prospecting operations
- Amounts accruing from processing, marketing, servicing, financial or administrative operations that are carried on in or outside Botswana to the extent that the Mining Commissioner is of the opinion that the amounts are related to the mining operations
- Royalties, premiums or other considerations for the right to extract minerals from land situated in Botswana
- Amounts accruing in relation to the disposal of any share or interest in the capital or income of a company holding mineral rights over land situated in Botswana
- Amounts accruing in relation to the disposal of interest in mineral rights or any mining or prospecting information or any mining or prospecting rights over land situated in Botswana
- The excess of disposal value of assets sold during the year on which mining capital allowances have been allowed

Corporate income tax is levied on taxable income. Taxable income or assessable income is calculated by deducting allowable deductions from income (i.e., gross income less exempt income). Expenses are allowed to the extent to which they are wholly, exclusively and necessarily incurred in the production of assessable income. However, an expenditure of a capital nature is not tax deductible unless it falls under the definition of a mining capital expenditure, which is allowed in full on acquisition of assets used in mining operations in place of depreciation for accounting purposes (see below). Exploration costs incurred before the company commences mining operations are allowed in the year in which the expenses are incurred.

Profits from mining activities undertaken by a Botswana resident company in a foreign country are generally not taxable in Botswana except where:

- The profits from the mining operations carried on outside Botswana are repatriated into Botswana
- The income is from processing, marketing, servicing, financial or administrative operations carried on outside Botswana to the extent that the Mining Commissioner is of the opinion that the amounts are related to the mining operations

Losses from independent and distinct mining operations carried on in mines that are not contiguous are ring fenced (i.e., the loss from one mine cannot be offset against the profit of the other except if the loss is as a result of expenditure on a license or lease that has been relinquished by the mining company).

**Capital gains**

Gains derived by resident and non-resident mining companies from disposal of immovable property are generally subject to capital gains tax at 22%. However, if the immovable property falls within the definition of mining capital expenditure (see the definition under capital allowances below), the disposal gains are exempt from capital gains tax. However, they are still subject to corporate tax at the tax rate determined by the corporate tax formula (see corporate tax above) for other companies and at the agreed rate for diamond mining companies.

Gains from the disposal of shares or interest in the capital of a company holding mineral rights over land situated in Botswana are exempt from capital gains tax but are subject to corporate tax as stated above. Gains on the disposal of the following assets by mining companies are also exempt from capital gains tax but are subject to corporate tax:

- Any interest in mineral rights or any mining or prospecting rights (i.e., mining or prospecting licenses) over land situated in Botswana

Capital gains or losses on the disposal of immovable property are determined by deducting the following:

- The cost of acquiring the property, including any expenditure incurred in the acquisition or construction of the property
- The cost of any improvements to the property
- Any expenditure wholly, exclusively and necessarily incurred for the disposal
- The indexed inflation amount on the cost of the property and any improvements
The gains on the disposal of shares (other than shares of a company holding mineral rights) and other property that is not immovable property are subject to capital gains tax at 22%, and only 75% of the gain is taxable. The effective tax rate for capital gains tax on shares (other than shares of a company holding mineral rights) is therefore 16.50%.

Capital losses can be offset only against other capital gains and not against other business taxable income. The capital loss can be carried forward for one year.

**Functional currency**

Taxpayers are required to calculate their taxable income in Botswana Pula (BWP) for tax purposes.

**Transfer pricing**

Botswana's tax law has no specific transfer pricing provision, but the revenue authorities will apply the general anti-avoidance rules to challenge non-arm's-length transactions. The deductibility of head office expenses and interest incurred by mining entities is limited as follows:

- Head office expenses allowed as a deduction are limited to 1.5% of the gross income, and any excess of such expenses above the limit will be treated as a dividend

Where a foreign-based company grants a loan to an affiliated mining company resident in Botswana at an interest rate the Mining Commissioner considers to be in excess of the market rate (i.e., the rate at which a borrower dealing at arm's length with a lender would pay for that type and currency of loan), that part of the interest payment that exceeds the market rate shall be disallowed as a deduction and the amount of interest so disallowed shall be treated and taxed as a dividend.

**Dividends**

Withholding tax is payable on dividends payable to both resident and non-resident shareholders at 7.5%. The withholding tax rate may vary where there is a Double Taxation Avoidance Agreement (DTAA) between the shareholder's country of residence and Botswana. The withholding tax is a final tax and does not form part of assessable income.

**Tax year**

The tax year runs from 1 July to 30 June of each year. It is, however, possible to apply for a different accounting period for financial reporting purposes. The accounting period is then aligned to the tax year.

**Royalty regimes**

**Mineral royalties**

The holder of a mineral concession is liable to pay royalties to the government of Botswana on any mineral obtained in the course of exercising the rights. The royalties are calculated on the gross market value as follows:

- Precious stones 10%
- Precious metals 5%
- Other minerals and mineral products 3%

Gross market value is the sale value receivable at the mine gate in an arm's-length transaction without discounts, commissions or deductions for the mineral or mineral product on disposal. The royalty is payable on receipt of payment or other consideration for such mineral or mineral product.

The minister responsible for mines and minerals may, on application, defer payment of any royalty for such period and subject to such conditions as he or she may determine.

**Petroleum royalties**

The holder of a development licence is liable to pay a royalty in accordance with the conditions of the licence.

The minister responsible for mines and minerals may, on application, defer payment of any royalty for such period and subject to such conditions as he or she may determine.

The mineral and petroleum royalties are tax deductible. The royalties are still deductible even if they have been deferred.
C. Capital allowances

In ascertaining the assessable income of any mining company for any tax year, the company is allowed a deduction of 100% of the mining capital expenditure incurred during the tax year with an unlimited carry forward of losses.

Mining capital expenditure is defined to include not only ongoing mining capital expenditures once mining commences but also any pre-production expenditure incurred on development, general administration and management (including interest and other charges) prior to the commencement of production (i.e., during the exploration stage). These pre-production expenses are accumulated and may be carried forward indefinitely to be used against mining income.

Mining capital expenditure includes the following expenditures:

► The acquisition of mineral, mining or prospecting rights or mining or prospecting information from another person
► The preparation of a site for mining operations
► Buildings, structures or works of a permanent nature, such as plant and equipment
► Providing or contributing to the cost of providing water, light or power for use on the site of mining operations
► Residential accommodation and welfare facilities for employees
► General administration and management. This includes any interest payable on any loan for the time being utilized to finance such mining operations, incurred prior to the commencement of carrying on a business of mining or during any period when such business of mining is not being carried on

D. Incentives

Exploration

Expenditure on exploration is deductible for income tax purposes in the tax year in which the expenditure is incurred.

Tax losses

Income tax losses can be carried forward indefinitely. Tax losses may not be carried back.

Research and development

Expenditure on research incurred during the tax year will be allowed as a deduction on the following:

► Scientific research undertaken by the company for the development of the company's business
► Contributions to any association, institution or university by the company, where the contribution will be used in scientific research relating to the company's business

E. Withholding taxes

Dividends

Dividends paid to residents and non-residents are subject to 7.5% withholding tax. The withholding tax is a final tax.

Interest

Interest paid to non-residents is subject to a final withholding tax of 15%, and interest paid to residents is subject to a 10% provisional tax. The provisional tax is credited against tax payable on assessment.

Royalties

A 15% withholding tax applies to royalties paid to non-residents. A royalty is any amount payable for the use of or the right to use:

► Any copyright of literary, artistic or scientific work (including cinematograph films and films or tapes for radio or television broadcasting)
► Patent, trademark, design or model, plan, secret formula or process
Industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience

Management/consultancy fees
A 15% withholding tax applies to management or consultancy fees paid to non-residents. A management or consultancy fee is any amount payable for administrative, managerial, technical or consultative services or any similar services, whether such services are of a professional nature or not.

Rent
A 5% withholding tax is deducted from rent payments. The withholding tax is deducted from rent payments to a resident or a non-resident for the use of any land or building or both under an agreement or arrangement only to the extent that the rent will be claimed as a business expense. The provision does not apply where the amount paid is less than BWP36,000 per annum or the payment is in relation to accommodation in a hotel, motel, lodge or guesthouse.

Commission
A 10% withholding tax is deducted from payments of any commission or brokerage fee paid for the procurement of any goods or services. The provision does not apply where the amount paid is less than BWP36,000 per annum.

Mine rehabilitation
A 10% withholding tax applies to any amount paid by a mine rehabilitation fund not expended for the rehabilitation of the mine.

Construction operations
A 3% withholding tax is deducted from payments made to contractors for construction operations. Construction operations include activities such as erection, demolition, installation/assembly, site preparation, drilling, road works or laying pipes.

Branch remittance tax
There is no branch remittance tax in Botswana.

F. Financing considerations
Any financial assistance granted to a Botswana resident mining company from an offshore connected person will be subject to restrictions on the deductibility of the interest due to:

► Excessive interest charged at a rate more than the market rate (see transfer pricing above)
► Excess debt-to-equity ratio

Excess interest charged
As noted above, where a loan is granted to a Botswana resident mining entity by a foreign affiliated company, the interest in excess of the market rate charged by the affiliated entity is disallowed as a tax deduction. The interest must reflect an arm's-length rate that is chargeable to any person independent of that foreign affiliated entity.

Thin capitalization
Where a foreign-based company grants a loan to a Botswana resident mining company, the deduction of interest is restricted to a three-to-one debt-to-equity ratio. Any interest charged in excess of the three-to-one ratio will be disallowed as a deduction from income of the Botswana mining company. The disallowable interest will constitute a deemed dividend for withholding tax purposes, and the rate of 15% will be payable on the quantum of the adjustment passed.
Deductibility of expenses in relation to foreign services

Deduction of expenditure relating to management or consultancy fees, interest, commercial royalty or entertainment fees paid to a non-resident is only allowed if withholding tax has been deducted and paid to the revenue authority.

G. Transactions

Not applicable.

H. Indirect taxes

Value added tax (VAT)

VAT was introduced in Botswana on 1 July 2002. VAT is levied on:

- The taxable supplies of goods and services
- Importation of goods
- Importation of services by a non-registered person or by a registered person for the purposes of making exempt or non-taxable supplies

The registration threshold for VAT is an annual taxable turnover of BWP500,000 (US$73,000). The VAT rates are 12% and 0%.

Both resident and non-resident entities engaged in the mining and metals industries are subject to VAT on the goods and services supplied. All taxable supplies within Botswana are subject to VAT at 12%, and export sales from Botswana are subject to VAT at 0%. Almost all commercial transactions have a VAT impact, and this should be considered prior to entering into any negotiation or arrangement.

The importation of mining equipment into Botswana is subject to VAT at 12%. The VAT is payable at the point of entry into Botswana at the time of importation and in a similar manner to the payment of customs duty (see below). Customs may not release goods until such a time as the VAT has been paid.

To alleviate the cash flow impact that may arise, entities may apply for a VAT deferral account. VAT on a deferral account is only payable 25 days after the end of the month in which the goods were imported. The VAT paid is claimed as input tax. This scheme allows for the payment date of VAT on importation of goods to be deferred by a month to coincide with the VAT return filing for that month and possible recovery of the VAT on importation.

Import duties

All goods that enter Botswana are subject to customs import duties, except goods imported from the Southern Africa Customs Union (SACU) area (i.e., South Africa, Namibia, Lesotho and Swaziland). The rates of customs duty on the importation of goods into Botswana are provided for in the customs and excise tariff schedules.

Export duties

There are no duties applied to goods exported from Botswana.

Excise duties

There are no excise duties on mining- and metals-related products.

Stamp duty

There are no stamp duties in Botswana.
I. Other

Local participation

Upon issue of the mining licence, the Government has an option to acquire up to a 15% working interest participation in the proposed mine. The Government will, on issuing the licence, inform the applicant as to whether or not it is exercising this option and of the working interest percentage it wishes to take.

Foreign exchange controls

There are no foreign exchange controls in Botswana.
How EY’s Global Mining & Metals Network can help your business

With a volatile outlook for mining and metals, the global mining and metals sector is focused on margin and productivity improvements, while poised for value-based growth opportunities as they arise. The sector also faces the increased challenges of maintaining its social license to operate, balancing its talent requirements, effectively managing its capital projects and engaging with government around revenue expectations.

EY’s Global Mining & Metals Network is where people and ideas come together to help mining and metals companies meet the issues of today and anticipate those of tomorrow by developing solutions to meet these challenges. It brings together a worldwide team of professionals to help you succeed – a team with deep technical experience in providing assurance, tax, transactions and advisory services to the mining and metals sector. Ultimately it enables us to help you meet your goals and compete more effectively.

Area contacts

Global Mining & Metals Leader
Miguel Zweig
Tel: +55 11 2573 3363
miguel.zweig@br.ey.com

Oceania
Scott Grimley
Tel: +61 3 9655 2509
scott.grimley@au.ey.com

China and Mongolia
Peter Markey
Tel: +86 21 2228 2616
peter.markey@cn.ey.com

Japan
Andrew Cowell
Tel: +81 3 3503 3435
cowell-nrsw@shinnihon.or.jp

Africa
Wickus Botha
Tel: +27 11 772 3386
wickus.botha@za.ey.com

Commonwealth of Independent States
Evgeni Khrustalev
Tel: +7 495 648 9624
evgeni.khrustalev@ru.ey.com

France, Luxemburg, Maghreb, MENA
Christian Mion
Tel: +33 1 46 93 65 47
christian.mion@fr.ey.com

India
Anjani Agrawal
Tel: +91 22 6192 0150
anjani.agrawal@in.ey.com

United States
Andy Miller
Tel: +1 314 290 1205
andy.miller@ey.com

Canada
Bruce Sprague
Tel: +1 604 891 8415
bruce.f.sprague@ca.ey.com

Brazil
Carlos Assis
Tel: +55 21 3263 7212
carlos.assis@br.ey.com

Chile
María Javiera Contreras
Tel: +562 2676 1492
Maria.Javiera.Contreras@cl.ey.com

Service line contacts

Global Advisory Leader
Paul Mitchell
Tel: +61 2 9248 5110
paul.mitchell@au.ey.com

Global Assurance Leader
Alexei Ivanov
Tel: +7 495 228 3661
Alexei.Ivanov@ru.ey.com

Global IFRS Leader
Tracey Waring
Tel: +61 3 9288 8638
tracey.waring@au.ey.com

Global Tax Leader
Andy Miller
Tel: +1 314 290 1205
andy.miller@ey.com

Global Transactions Leader
Lee Downham
Tel: +44 20 7951 2178
ldownham@uk.ey.com

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2015 EYGM Limited.
All Rights Reserved.
EYG no. ER0229
CSG/GSC2013/XXXXX
ED MMYY

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com/miningmetals