

# Senegal

## Mining Tax Alert

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## Senegal adopts a new mining law

Senegal has implemented a new mining legal framework through the adoption of the Law N° 2016-32, dated 8 November 2016. This law abrogates the provisions of the former Mining Law N° 2003-36, dated 24 November 2003.

The new mining law is consistent with the law N° 2012-31, dated 31 December 2012, which moved all derogatory tax provisions previously included in the 2003 Mining Law into the General Tax Code. The code aims to maintain attractiveness of the mining sector and undertakes to rebalance mining revenues.

### New contractual framework

A possibility for the mining operator to opt for a Production Sharing Contract (PSC), as used in the oil and gas sector, instead of an Operation Permit has been introduced. The purpose of the PSC is to set the rights and obligations of both the Government of Senegal and the mining operator during the whole period of mining operations, including both exploration and operation phases.

Mining holders opting for a PSC during the operation phase should not account for a mining royalty (the so-called "redevance minière").

Establishment of a single generic mining operation permit (no distinction between "Operation Permit" and "Mining Concession" titles anymore) is valid between 5 and 20 years. The Mining Operation Permit should be held by a company incorporated under the Senegalese Corporate Law.

### Additional funding and fee obligations

An obligation for mining operators to contribute to a local development fund based on annual financial engagements has been put into effect. During the operation phase, the contribution is set at 0.5% of their net annual turnover; during exploration phase, the contribution is negotiated and indicated in the relevant mining agreements.

The fixed fee payable for renewal, extension and transfer of mining titles has been increased. Under the previous mining regulation, the fixed fees were set as follows:

- ▶ Exploration permit = XOF500,000 (approximately US\$1,000)
- ▶ Mining Concession = XOF7,500,000 (approximately US\$15,000)
- ▶ Other operation mining titles = XOF1,500,000 (approximately US\$3,000)

The above fixed fee has been revised in a more detailed manner by the new Mining Code under the following proportions:

- ▶ Exploration permit = XOF2,500,000 (approximately US\$5,000)
- ▶ Operation permit = XOF10,000,000 (approximately US\$20,000)
- ▶ Permanent quarry = XOF2,500,000 (approximately US\$5,000)
- ▶ Temporary quarry = XOF1,000,000 (approximately US\$2,000)
- ▶ Small mine = XOF2,500,000 (approximately US\$5,000)
- ▶ Semi-mechanized mining exploitation = XOF1,500,000 (approximately US\$3,000)
- ▶ Craft mining exploitation = XOF50,000 (approximately US\$100)

The new Mining Law also reintroduces the surface royalty amount, which varies depending on the nature of each mining title. The tariffs of the surface royalty range are as follows:

- ▶ Exploration permit upon granting and on each renewal
  - ▶ Initial validity period = XOF5,000 (approximately US\$10)/square kilometer/year
  - ▶ Initial renewal = XOF6,500 (approximately US\$13)/square kilometer/year
  - ▶ Second renewal = XOF8,000 (approximately US\$16)/square kilometer/year
- ▶ Mining operation permit upon granting and on each renewal = XOF250,000 (approximately US\$500)/square kilometer/year
- ▶ Authorization for operation of a small mine upon granting and on each renewal = XOF50,000 (approximately US\$100)/hectare/year
- ▶ Authorization for operation of a permanent quarry upon granting and on each renewal = XOF50,000 (approximately US\$100)/hectare/year
- ▶ Authorization for operation of semi-mechanized mining exploitation upon granting and on each renewal = XOF50,000 (approximately US\$100)/hectare/year
- ▶ Reinforcement of social and environmental obligations

Comprehensive social and environmental obligations have also been introduced to be respected by mining companies.

### **Stabilization provisions: transitional period**

Lastly, the new mining code provides for specific stabilization clauses. Mining titles granted before the enacting of the new mining code are subject to the laws applicable at the moment of their entry into force. Mining holders are, however, entitled to opt for the provisions of the new mining code, provided they file an application to the Minister of Mining within 12 months from the entry into force of the mining code.

Mining holder agreements relating to a mining title granted before the entry into force of the new mining code remain subject to the stipulations of such agreements throughout their duration of validity.

## How EY's Global Mining & Metals Network can help your business

With a volatile outlook for the sector, the global mining and metals industry is focused on how to maintain a strong and flexible balance sheet while preparing for future growth. The sector is also faced with the increased challenges of improving productivity, access to capital, dealing with increased transparency, maintaining license to operate and cybersecurity.

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.

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