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Mining & Metals

Resource nationalism update

Government ownership

Bolivia

Bolivian President Evo Morales signed a new law increasing the state's expropriation powers over the mining sector: the Law of Mining Rights. It was specifically drafted to target mines deemed by the state as unproductive, inactive or idle. According to President Morales, there are currently 2,454 mining licenses in the hands of private operators in Bolivia. The president said that the new legislation would allow the state to take over 70% of them (1,717 private licenses covering a combined 1.46 million hectares). The president did not mention specifically whether foreign firms would be targeted. However, he did say that those holding licenses were well-known in the country, without naming a specific foreign company. Foreign firms that operate in Bolivia include Sumitomo Corporation, Glencore Xstrata and Coeur d'Alene Mines Corporation. The president said that the Bolivian Government has no plans to compensate those affected. The Government has assigned responsibility of determining whether a concession is idle to the Vice Ministry of Regulation, Auditing and Mining Policy. Mining areas occupied by cooperatives or local groups will not be regarded as idled.[1]

Papua New Guinea

The Papua New Guinea Government has passed legislation through the parliament, giving the state complete ownership of the Ok Tedi copper and gold mine. The previous majority stakeholder was the Papua New Guinea Sustainable Development Program (PNGSDP), a charitable trust registered in Singapore. The PNGSDP was established by mining company BHP Billiton after it withdrew from Papua New Guinea in 2002 as a result of the environmental damage done by the mining operation at Ok Tedi. Prime Minister Peter O'Neill said that the takeover came after negotiations with BHP Billiton had "broken down" and that the state would pay "some" compensation to PNGSDP. The expropriation represents an escalation from the Government's restructuring of state-owned assets in April of this year.[2]

1. "Expropriation risks likely to rise in Bolivian mining sector following passage of new law," *Global Insight*, 19 September 2013.
2. "PNG government takeover of Ok Tedi mine highlights growing regulatory risk," *Global Insight*, 18 September 2013.

Building a better working world

Increases in taxes and royalties

Argentina

The legislature of Santa Cruz in the south of Argentina has approved a new mining tax and flagged the possibility of introducing similar taxes in other provinces. Santa Cruz voted in favor of the new tax of 1% on the proven reserves of mining projects in the province. The revenue generated from the new tax will be used to support the provincial government's social fund.[3]

Democratic Republic of Congo

Katanga, the main mining province of the Democratic Republic of Congo (DRC), has increased its tax on copper and cobalt concentrates from US$60 to US$100 per metric ton as part of the National Government's efforts to increase domestic beneficiation. The tax was enacted in 2010 by Katanga Governor Moise Katumbi to circumvent an attempt by the National Government to ban export of concentrated minerals.

Ghana

The Ghana Government has introduced the National Fiscal Stabilisation Levy Bill that will impose a 5% tax on the profits of mining companies. The levy will be applied for an 18-month period in a bid to lower the budget deficit.[4]

Mexico

In Mexico, a proposed royalty regime has been presented as part of the tax reform bill to Congress. Although the proposed royalty regime is in line with a draft that was approved earlier this year, the applicable royalty rates are significantly increased. The bill proposes to introduce a "special mining right" to holders of mining concessions, at a rate of 7.5%. The bill provides for an additional annual mining royalty of 0.5% applicable to income from the sale of gold, silver and platinum. The rate is applicable to the sales income from these metals, without allowing any deductions. The proposed bill also includes increased penalty payments for the general rights that are currently assessed on concession holders based on the size of the property. These penalties are imposed when a concession is not being developed. Mining companies will be significantly affected by the proposed bill, not only as a result of the proposed mining royalty regime, but also as a result of increased income tax and value added tax burden. The proposed income tax reform, for example, introduces an additional 10% income tax on the distribution of profits to foreign shareholders or individuals. The proposal must be discussed and approved in Congress and Senate before becoming a law.[5]

Please see our most current Mexico Tax Alert for more detail.

Mozambique

Mozambique is reportedly set to introduce a fixed 32% capital gains tax rate on the sale of local assets by foreign companies from January 2014, according to a Mozambican tax official. Rosario Fernandes, the head of the national tax authority has said, "The constitutional issues that delayed the passing of the tax law have been overcome and the president has promulgated the law. Come 1 January, capital gains in all mega projects, including oil and gas, will be taxed according to the new legislation." Originally, the new fixed rate was due to come into effect in January 2013 after the parliament passed a number of amendments in December 2012 relating to both the corporate tax regime and personal income tax. At that time, Mozambican news agency AIM reported that the main change in the company tax rules was the formalization of capital gains tax, which was previously applied more on a case-by-case basis and according to the length of time a company had held the rights. However, promulgation of the law was delayed by President Armando Guebuza, who first sent it to the Constitutional Court for review.[6]

Restriction of imports and exports

Argentina

Argentina's Minister of Industry Debora Giorgi and the pro-government head of Buenos Aires province, Daniel Scioli, have underlined the Government's ongoing support of import substitution policies, backing that strategy "to favour reindustrialization" Their public support of import substitution echoed comments made by Guillermo Moreno, Argentina's Minister of Commerce, that the current policy of

3. "Argentina's key mining province approves new tax," *Global Insight*, 17 June 2013.
4. "Ghana's banking, telecoms, mining sectors face tax increases," *Global Insight*, 5 July 2013.
5. *Mexico's tax reform bill includes introduction of mining royalty*, EY, 11 September 2013.
6. "Mozambique set to apply fixed capital gains tax rate from 2014," *Global Insight*, 3 September 2013.

restricting imports will continue until the end of the current Government's period in office in 2015. According to local media sources, Moreno made his comments to about 100 local business leaders on 27 August, encouraging domestic industry to take advantage of the protection afforded by import barriers during that period to improve their competitiveness. On 7 August, Giorgi said that 33 Argentine small and medium-sized businesses could agree supply contracts with mining companies, including Barrick and Panamerican Silver, which would substitute imports of 161 products worth around US$140m per year. Giorgi previously assessed the total potential value of import substitution in the mining sector at around US$1b.[7]

Gabon

Gabon President Ali Bongo Ondimba has announced that Gabon does not intend to go on exporting raw materials without value-added processing taking place. He said: "No primary resources from the Gabonese soil will be exported without previous processing," and pointed to the example being set by Comilog, a subsidiary of French group Eramet, at its manganese mining facility at Moanda. By the end of the year, Comilog will start operating two processing plants — one to deal with silico-manganese ore and the other with manganese ore. Ondimba said: "For the first time in 52 years of exploitation, some of the manganese produced in Gabon will be transformed in our country."[8]

Tanzania

Tanzanian Energy and Minerals Minister Sospeter Muhongo announced on 30 August that the 13 largest foreign mining companies would need to comply with a new local content regulation, requiring them to procure at least 80% of goods and services from local businesses by 2015. Government figures report that large-scale miners spent US$1.4b on procurement in 2012, although only 38.6% was procured locally. The Government has already drawn up a list of goods and services that can be procured locally, including food supplies, engineering, logistics and legal services. Large mining firms that are likely to be affected include AngloGold Ashanti, Barrick Gold and China National Gold. The new policy and future regulations are an attempt to satisfy growing calls from local MPs for greater revenue to be extracted from mining companies and to apply existing mining laws more stringently. There has been a noticeable increase in such demands from legislators of both the opposition and the ruling Chama Cha Mapinduzi (CCM) party over the past year, a trend that is likely to intensify ahead of the national elections scheduled for 2015.[9]

Venezuela

Venezuela is increasing prices for its metals and minerals exports in an effort to obtain a "fair price" from buyers; but traders warned the move could leave the OPEC nation without any buyers for its most important non-oil exports. President Nicolas Maduro said the system would boost revenue for metals, including iron, steel and aluminum, while reducing costly commissions paid to intermediaries and traders.[10]

Mining reform

Bolivia

Bolivia's Chamber of Deputies has approved a first reading of Law 328, which revokes state mining licenses that are considered unproductive. Mining Minister Mario Virreira said there are mining firms that own idle concessions that generate little benefit to the State. The current draft states that firms that lose their concessions on the grounds of being idle will not be compensated. Other instances where licenses would revert to the State include absence of registration, absence of an implementation plan and the mining company's refusal to migrate contracts to modalities featured in an upcoming mining law.[11]

7. "Mining sector contract risk high in Argentina as government confirms import substitution until 2015," *Global Insight*, 2 September 2013.
8. "Gabonese mining operators face increasing pressure for in-country processing," *Global Insight*, 22 August 2013.
9. "Tanzanian government strengthens local-content regulation for gold mining firms," *Global Insight*, 2 September 2013.
10. "Venezuela seeks 'fair price' for metals exports, traders see problems," *Reuters News*, 27 August 2013.
11. "Bolivian legal reform raises risk of state intervention in idle mining capacity," *Global Insight*, 10 June 2013.

Brazil

The Brazilian Government presented the Congress with a new Brazilian mining legal framework, Bill no. 5807/2013. The proposal aims to set up a new mining governmental structure, create a new mining regime and increase mining royalties (CFEM). The main points of the new mining regime are:

1. The regulatory structure will change with the creation of the Council of National Mining Policy, which will be responsible for defining the general policy for the sector, and the Brazilian Mining Agency, which will be responsible for granting new licenses, mining information management and auditing of the sector.

2. Mining licenses will be granted only to companies duly incorporated in Brazil and with management in Brazil. Licenses can also be granted to cooperatives.

3. Licenses will be granted through a concession agreement that will include research, exploration and production.

4. Licenses will be granted through public tenders or public call.

5. A license term will be 40 years and licenses can be renewed for 20 years.

6. Royalties will be increased to a maximum rate of 4%; but the tax rate will be defined later by the President. The taxable basis will change from net revenue to gross revenue deducted from indirect tax paid.

7. A signature bonus, discovery bonus and participation in the result of the mining activity will be created.[12]

Burundi

Burundi's Parliament has approved a new mining code, which the authorities believe will help foster greater participation by the private sector and boost government revenue. The new code replaces the outdated legislation that had been in effect since 1976. The new law essentially separates the mining sector from that of oil and gas, with the latter continuing to be governed by the old mining and petroleum legislation until a new, separate codification is adopted.[13]

Côte d'Ivoire

The portfolio of Côte d'Ivoire's Ministry of Mining has been awarded to Jean-Claude Brou, who will also retain his role as Industry Minister. Government spokesperson Bruno Koné explained that until recently, mining activity was essentially artisanal and as it has become more industrial, it has shifted to the responsibility of the Ministry for Industry.[14]

Guatemala

The Guatemalan Government is expected to introduce a bill imminently, calling for a moratorium on new mining licenses, following the reopening of Parliament on 1 August. The measures were initially announced on 10 July. The legislative proposal is likely to restrict access into the mining sector for a maximum of two years. If approved, the measure will probably be accompanied by a multi-stakeholder discussion on reform of current mining legislation, increasing the likelihood of tougher conditions for future entrants into the market, including an increase in royalty contributions, greater emphasis on community engagement and the possibility of increased state participation in the sector once the moratorium has ended.[15]

12. *EY Brazil Mining Tax Alert*, EY, 3 July 2013.
13. New code aims to boost foreign investment in Burundi's mining sector, Global Insight, 14 October 2013.
14. "Cote d'Ivoire replaces mining minister to clear way for legislation and contracts," *Global Insight*, 26 July 2013.
15. "Government moratorium and reform plans drive uncertainty for Guatemala's mining sector," *Global Insight*, 5 August 2013.

Kenya

Kenya's new government has revoked all mining licenses issued in the four months prior to 15 May, claiming that they were issued under unclear circumstances. According to a statement by Mining Cabinet Secretary Najib Balala, the Government has revoked all licenses for prospecting, exploration and mining that were issued between 14 January and 15 May, due to "a number of complaints regarding the issuance process." Balala also confirmed the appointment of a task force "to undertake a comprehensive review of all the licenses issued from January 2003 to date." The task force will assess the validity of licenses, draft recommendations and provide a report to the minister to enable him take necessary action within 60 days, according to Balala. Since taking over his responsibilities for the mining sector in May, Balala has ordered a review of Kenya's Mining Bill. According to the mining cabinet secretary, the review process is now complete, with the draft bill set to be forwarded to the cabinet for consideration and approval. Among the reforms being proposed under the new law is the formation of a National Mining Corporation and a National Mineral Certification scheme. Balala also revealed that royalties on minerals have been increased, with effect from 1 August. Under the new plans, royalties on gold are to rise from 2.5% to 5%, and the rate for rare earth metals, niobium and titanium ores, are to rise from 3% to10%. Balala defended the changes being implemented by claiming that they are aimed at ensuring that the Government creates a level playing field in the country's mining industry.[16]

New Zealand

New Zealand's Government has proposed changes to the tax regime for the mining of gold and other "listed industrial minerals." The new rules will apply from the income year beginning 1 April 2014. The major minerals affected include gold, silver and iron sand (but not coal which is subject to different tax rules). The current regime is highly concessionary. It allows an immediate tax deduction for most capital expenditure and, even more generously, a deductible appropriation from taxable profits for expenditure that will be incurred within two years of the tax balance date. The stated objective of the reform is to achieve a neutral regime that is broadly consistent with the general rules applying to other business activities. However, the proposed legislation actually tilts the playing field in favor of the tax collector and is more punitive than that which applies to most taxpayers.[17]

Philippines

The Philippines Government is likely to put forward its amendments for the Mining Act 1995 to the 16th Congress. This comes over a year after President Benigno Aquino signed the landmark Executive Order 79 in July 2012 that imposed a moratorium on new mining permits and signaled the Government's intention to increase revenue from mining taxation. According to the Department of Finance, mining firms pay about US$257m in taxes per year, which the Government believes is unrepresentative of the high risk mining poses to the local environment and indigenous communities.[18]

United States

On 2 July 2013, a US District Court issued a decision rescinding the Securities Exchange Commission (SEC) final rule (the Rule) implementing Section 1504 of the Dodd-Frank Act, which requires extractive industries companies to disclose payments to the US government and foreign governments. The US Chamber of Commerce, American Petroleum Institute, Independent Petroleum Association of America and the National Foreign Trade Council had filed suit in October 2012 to overturn the SEC Rule, arguing that the legislation and the SEC Rule compel speech in violation of the First Amendment of the US Constitution and that the SEC failed to fully consider the competitive effects of the regulation. Their primary concern was that the SEC Rule required the public disclosure of payment information even if such a disclosure would violate local law.

The court sided with the plaintiffs in the lawsuit, remanding the Rule back to the SEC to be redrafted. The court suggested that the SEC's interpretation of two key provisions in the law was "arbitrary and capricious." The SEC must now appeal the decision, redraft the Rule while considering the court's ruling or reissue its Rule in similar form but with greater justification for its position.

The Rule was scheduled to become effective for fiscal years ending after 30 September 2013. It appears likely that the effective date for implementing the disclosure requirement will be pushed back, but mining companies subject to SEC reporting will nonetheless need to consider this disclosure requirement in the future.[19]

16. "Kenya revokes mining licences as seeks to boost sector income," *Global Insight*, 6 August 2013.
17. "Opinion: 'Punitive' proposed mining legislation tilts the playing field in favour of the tax collector," *Interest.co.nz website*, interest.co.nz/, accessed 13 August 2013.
18. "Philippines likely to amend 1995 Mining Act next month," *Global Insight*, 11 June 2013.
19. *EY Mining Tax Alert — United States*, EY, 25 July 2013.

Uruguay

The Uruguayan Chamber of Deputies passed a mining law bill to regulate large-scale mining projects. The bill was previously passed by the Senate and is now awaiting Government approval to enter into effect. Projects with a surface area of more than 400ha or with an investment of more than US$100m will be affected. The bill is not only intended to permit large-scale mineral mining in Uruguay, but will also impose increased taxes and more stringent environmental regulations. The bill will prevent mining firms from benefitting from corporate income tax exemptions, unlike other sectors of the economy, unless the firms industrialize the extracted minerals. Overall, the bill requires large-scale mining projects to pay an annual free and a 25% corporate income tax, and will introduce an additional profit tax linked to international mineral prices, which will range from 0% to 38%. The law will also require mining firms to present closure plans for mining projects once they are exhausted, requiring them to be used as tourist spaces or as reservoirs.[20]

Retreating resource nationalism — return focus to investment attraction

India

India's finance minister does not see a need to reduce the 30% duty on iron ore exports. This is a reversal of the Government's earlier consideration to do this and keeping it at 30% could keep exports lower but help availability for local steel **mills. The** Government had earlier called for the need to find ways to revive iron ore exports, which have plunged over the past two years due to the high duty and a ban on mining in key states. Although it recently said there was a need to maintain the current duty, but did not elaborate. India was once the third-largest exporter of the steel-making raw material, but shipments slumped more than 80% in three years to hit 18mt in the last fiscal year. The Mines Ministry and the Commerce Ministry had recommended cutting the duty to 20% to revive shipments and help narrow the country's current account deficit, although the Steel Ministry wanted to conserve iron ore for local mills.[21]

Ukraine

The Ukrainian State Property Fund published a directive to prepare 45 coal mines that are currently fully state-owned for privatization by the end of the year. Originally, the Government intended to privatize these enterprises in 2015, but falling coal prices and rising budget deficits are forcing it to move faster. The Government is forming a working group to formulate the state's requirements for potential buyers; it will comprise representatives of the State Property Fund, the Ministry for Coal Industry and the powerful trade union of coal miners. The planned sales face several constraints. Notably, a 2012 law on privatizations in the coal mining sector stipulates that buyers must agree to maintain employment and all benefits for the existing workforce, while increasing salaries at privatized entities on a regular basis. Additionally, the firms are loss-making: in January to July 2013, unprofitability of the eight enterprises that manage the 45 coal mines increased by 34.2% year-on-year to a little over US$1b.[22]

Vietnam

Vietnam has reduced its coal export tax from 13% to 10% due to a steep decline in exports. The request was made by the Vietnam National Coal Mineral Industries Group after coal exports sharply fell since the increase was made in July. Vietnam's coal exports in July declined 91% from June levels, according to Vietnam's Industry and Trade Ministry. [23]

20. "New mining law increases taxation and regulatory risks for major projects in Uruguay," *Global Insight*, 5 September 2013.
21. "India to keep iron ore export duty at 30 pct-finance minister," *Reuters News*, 29 September 2013.
22. "Ukraine's government announces plans to privatise 45 coal mines," *Global Insight*, 10 September 2013.
23. Report: Vietnam lowers tax rate on coal exports, SNL Daily Coal Report, 9 September 2013.

EY's Global Mining & Metals Center

With a strong but volatile outlook for the sector, the global mining and metals sector is focused on future growth through expanded production, without losing sight of operational efficiency and cost optimization. The sector is also faced with the increased challenges of changing expectations in the maintenance of its social license to operate, skills shortages, effectively executing capital projects and meeting government revenue expectations.

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