COMPARISON OF MINING POLICIES OF SELECT COUNTRIES

Globally, the mining sectors in most countries were either open to private sector participation throughout their history, or were opened up in the 1980s and 1990s. However, with the exception of a few countries such as the United States, ownership of mineral rights remain vested with the State, and private players have to pay some form of royalty or tax for the privilege of mining specified minerals, and only those entities holding some form of valid lease can legitimately discover and develop such resources.

1. Public/private participation

In the major mining states of the world, private mining companies as well as state owned corporations play roles in the production of minerals. Increasingly, however, there is a trend towards reliance on joint venture arrangements between public and private sector companies or on state minority holdings in otherwise privately-owned companies.

Especially in the case of foreign mining presence, the Government of the host country may participate in equity as a shareholder, or by law acquire a claim on after-tax profits in a joint venture with privately owned companies.

For example, in Ghana, the Government, by law, acquires at no cost a 10% interest in the rights and obligations of any mineral operation carried out pursuant to every mineral right granted under the mining law. It also has the option to acquire an additional 20% interest, on negotiated terms, where any mineral is discovered in commercial quantities. This results in a levy of about 10% on after-tax profits of every mining project. Both Chile and Ghana also have an Additional Profit Tax that is specifically levied on mining companies.

Similarly, in Philippines, the State has a Constitutional right to participate by either directly undertaking the mining activities or by entering into "co-production" – joint venture or production sharing agreements with entities where 60% ownership is by Filipino citizens.[1]

2. Regulation of operating mining companies

i) Taxation and royalty regimes

Most countries have shifted from a flat rate of royalty to one which is calculated on an ad valorem basis. Countries such as China which were till date levying flat rates on a per tonne basis are now piloting a tax rate of 5% of sales value in select regions.

Unlike India, however, a majority of the advanced mining countries calculate royalties on the actual profits of the company or on a fair market value. In India, however, royalties are calculated on a notional “average Pit Mouth Sales Value” as reported by the mining companies themselves. Therefore, while as in India the royalty rate varies between 8-15% of the sales value of iron ore, the tax base differs significantly as it is based on real market prices or on actual profits of the taxed entity.

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[1] Centre for Energy, Petroleum and Mineral Law and Policy, Mirian Kane Omalu et al, “Key issues in mining policy: A brief comparative survey as a background study on the reform of mining law”

For example, in the United States, minerals are taxed at both the county and the state level, on an ad valorem basis. States impose severance taxes on extraction of certain minerals which varies by state law. Percentage depletion deduction varies from 5% to 22%, depending on the mineral mined. In Texas, for example, royalty is levied on a Fair Market Value which is calculated as pro-rata share of the total future recoverable reserves to be produced in the future, discounted to reflect their present worth. In other words, the market value upon which you are assessed county ad valorem tax is the value of the discounted cash flow estimated from future production.

In contrast, countries like South Africa tax mining companies based on the company's earnings before interest and tax and will rise with profitability. Different regimes are then applied on refined and unrefined minerals. Similarly, the Canadian mining tax ratesvaries between 10% to 16% and is in addition to the provincial income rates. Each province imposes its own mining tax and the tax base is typically revenue less most expenses except financing and property acquisition costs.

Even where mineral royalties are based on sales prices, such prices are linked to the international market prices (for example, in Peru, where international market prices minus indirect taxes, insurance, freight, etc. are calculated before taxes are levied), so that a more realistic picture of the actual profits made by a mining company are taken into account when the tax is levied.[2]

ii) Other regulatory mandates

In a number of countries, there are examples of significant effort to create a mining plan that includes reparations for damage to the environment and benefit sharing with the community.

For example, in Canada, all ores and minerals removed from any lands acquired under the Mining Act must be treated and refined in Canada, unless the Lieutenant Governor in Council issues an exemption.[3] This ensures that the basic industries of the country benefit from the natural resources that are found within its territories.

Also common in a number of jurisdictions is the requirement of a closure plan for the rehabilitation of the mining site once the lease has expired. In Ontario, for example, before an advanced exploration or mining can take place, a plan must be submitted which includes a financial assurance for carrying out the rehabilitation work, as well as a public consultation process for notifying and providing information to parties directly or indirectly affected by a mining project. There is also a separate Code concerning Mining Rehabilitation which must be complied with by all mining companies.

3. Current debates on mining policies

While the move towards liberalization resulting in private participation in all the major mining countries in the world, in recent times, debates have once more started up on the public policy in mining so as to ensure the maximum public sharing of benefits derived from the mineral resources of a nation.

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[2] Price Waterhouse Coopers, "Income Taxes, Mining Taxes and Mining Royalties - A Summary of Selected Countries, 2011", available at http://www.pwc.com/en_GX/gx/mining/pdf/global-mining-tax-comparison-Dec2010.pdf

[3] Eva Liedholm Johnson, "Mineral Rights – Legal systems governing exploration and exploitation", Doctoral Thesis available at http://www.kth.se/polopoly_fs/1.131782!/Menu/general/column-content/attachment/FULLTEXT01(2).pdf

In most developed countries this debate has led to the drafting of new policies on community participation and benefit sharing, as well as levying of economic rents that take into account 'windfalls' by mining companies.[4] In Australia, for example, the proposed federal Minerals Resource Rent Tax ("MRRT"), expected in 2012 if the government is reelected would tax super-profits at 40%, since the share of royalty for the government has steadily fallen since 2001.

In a few other States such as Bolivia and South Africa, however, where various policies have proved unsuccessful in ensuring that the benefit of mining is enjoyed by the community, debates are underway about the advantages of nationalizing private mining companies and limiting economic activities that exploit natural resources to State owned entities alone. While there has been considerable opposition to such suggestions in those countries,[5] the existence of these debates and policies indicate an urgent need to address the issue of greater public participation in the economic benefits of natural resources. It remains to be seen whether the draft Mines and Mineral Development and Regulation (MMDR) Bill, 2011 (not yet in the public domain) adequately addresses these issues.

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[4] For more information see report by Centre for Science and Environment titled "Sharing the Wealth of Minerals", available at www.cseindia.org/userfiles/profit_sharing.pdf

[5] See "Bolivian miners stop nationalization plans", *Wall Street Journal*, April 2011.