INTERGOVERNMENTAL FORUM on Mining, Minerals, Metals and Sustainable Development

AFRICAN TAX ADMINISTRATION FORUM
FORUM SUR L'ADMINISTRATION FISCALE AFRICAINE

MINING TAX POLICY RESPONSES TO COVID-19

1. COVID-19 Pandemic

The COVID-19 pandemic is first and foremost a humanitarian crisis. Efforts to contain the virus and support those directly impacted are of utmost importance. Around the world, governments are taking unprecedented actions to limit the spread of the virus—adopting measures aimed at protecting the livelihood of their populations and the viability of entire economic sectors.

Members of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) and the African Tax Administration Forum (ATAF) who are designing economic stimulus packages to respond to the immediate impact of the pandemic and its aftermath will need to consider what support they should provide, if any, to the mining sector. Direct government payments to mine workers or distressed mining companies may only be an option for richer countries where the government has the fiscal space to do so. For many developing countries, tax policy may offer a more readily available tool. Whichever approach, policy-makers must recognize that protecting public health and putting people back to work go hand-in-hand.[1]

2. This Guide

With developing countries already struggling to mobilize adequate domestic revenues, it is critical that they carefully evaluate options for business tax relief. The level and type of relief required will vary by sector, and company, which is why IGF and ATAF have prepared this guide for resource-rich developing countries specifically.

The guide is structured as follows: Section 3 provides an overview of some of the impacts on the mining sector of COVID-19 and the associated economic crisis; Section 4 suggests how to evaluate whether tax relief is required; Section 5 proposes short-term tax policy options for industrial mining, including smaller- and medium-sized mines as well as both domestically owned and foreign-owned operations;[2] Section 6 highlights measures to avoid; and Section 7 outlines the support available to IGF and ATAF members.

3. Implications for the Mining Sector

The pandemic is affecting lives and our interlinked economies in myriad ways. The mining sector is not immune and will be impacted differently depending on the countries, minerals, and modes of operation. Below are some of the main impacts identified so far. Because the spread of the virus is unpredictable and new measures are introduced weekly, this list will evolve in the coming months. This list is also focused on short-term impact. The longer-term impact of the health crisis on the world economy—and its consequences for the mining sector—is still uncertain. The longer the supply and demand disruptions last, the more severe the economic crisis will be.

Several mines placed in quarantine worldwide. Many governments have taken drastic measures to stop the spread of coronavirus, such as lockdown orders that have led to temporary suspensions in mining operations. Some examples include Rio Tinto's Oyu Tolgoi copper mine in Mongolia, Anglo American's Quellaveco in Peru,[3] the San Cristobal silver-zinc-lead mine in Bolivia, and the Ambatovy nickel mine in Madagascar owned by Japan's Sumitomo Corp.

Some countries have exempted mines from quarantine measures. In Colombia,[4] for example, mining companies may still decide to slow down or stop operations given restrictions on logistics or growing community tensions that make it difficult to ensure safe operations.[5] This has been the case for Glencore's Prodeco open pit coal mine, which has transitioned to care and maintenance.[6] Closing mines could affect entire economies; in South Africa, it could mean an 8% cut in GDP this year.[7]

Mineworkers deemed essential to COVID-19 response. Some governments, such as the United States, have listed mine workers and commodity traders as essential to the efforts against COVID-19 as they are necessary to produce critical materials and their associated supply chains.[8] On the contrary, Mexico has considered mining a non-essential activity to be suspended.[9] To keep mines operational, some companies are asking workers to spend weeks on site to limit the risk of coronavirus spread.[10] While several companies have committed to take measures to ensure employee health and safety,[11] there are no international guidelines that governments could enforce to keep operations safe. The health and well-being of workers should be the main priority for companies and governments during this period.

Demand (and prices) for some commodities fall. With global manufacturing on pause and a marked slowdown in the global economy, demand for minerals such as copper, nickel, and platinum has dropped, along with prices.[12] This puts producers under duress.[13] The decrease in mineral prices also puts pressure on national economies. In Chile and Peru, for instance, a 10% drop in commodity prices could cost more than 1% in GDP growth.[14]

Short supply of some commodities. Some minerals could be more vulnerable to supply disruptions, especially if they are concentrated in a handful of countries. Australia and Brazil make up more than 76% of seaborne iron ore trade—both countries are experiencing lockdown restrictions, disrupting supply—although demand has dropped further than supply so far.[15,16] Uranium production is highly concentrated, and the risk to supply has led prices to rise by 14% in the last two weeks of March.[17]

Increased demand for some precious metals. When the economy spirals downwards and markets are volatile, investors tend to buy and hold on to gold. Since the start of the coronavirus pandemic, the demand for precious metals has grown consistently as evidenced by an increase in sales of gold bars, coins, and other gold pieces, as well as silver.[18] For gold miners that are able to maintain operations, this could be a potential bright spot.

Suppliers suspend operations. Weak demand from mining companies, potential supply constraints, and government restrictions are causing some manufacturers to suspend operations, which is likely to have a knock-on effect on mining activities. Worldwide supplier Caterpillar is suspending operations at specific facilities.[19] Small and medium-sized suppliers are also affected, with their employees impacted even more. Without support from the government or their major clients, many of the smaller suppliers might struggle to keep afloat. Iron ore company Vale has said it would advance payments to these companies in Brazil for services or materials already delivered.[20]

State-owned companies under pressure. Governments need funds to finance measures to prevent the spread of COVID-19 and avoid an economic collapse. Some are turning to their state-owned companies for help. The Chilean finance ministry, for example, has required CODELCO to pay taxes monthly rather than yearly and to advance payments of its export tax.[21]

4. Factors to Consider When Assessing Mining Tax Policy Relief

As governments develop stimulus packages, they should aim for efficiency: obtain the best results with limited resources. The direct health emergency will require substantial financial resources, making it even more important for cash-strapped developing countries to provide targeted support to their economies.

In this section, we identify some of the main considerations for governments in providing economic relief to the mining sector through accommodating tax policy. As always, each country's ideal economic policy will depend on circumstances, case-by-case evaluation, and should be publicly disclosed to encourage accountability.

4.1 Sector-Wide or Company-Specific Measures

Context should dictate whether tax policy measures should be granted to the whole mining sector or only to the most affected companies. Some of the factors to consider include the following:

- Whether mining is uniformly affected by the crisis, or if some commodities or companies are faring better than others.
- Some mining and commodity trading companies could actually make more profit during the crisis and should not benefit from state aid.
- Governments could also limit any relief to companies currently under development or production, which employ a significant workforce.
- The priority for tax relief should be on existing mines, not on new and uncertain investments.
- Any tax relief should go to the locally incorporated and licensed company, not a foreign entity or parent company in another jurisdiction.

4.2 How to Identify a Mine That May Require Government Support

In times of crisis, all companies will try to access tax relief from the government, but some of them may need it more than others and others not at all. With limited resources, governments should screen companies and provide specific tax relief only to those that can reliably demonstrate that they are in severe financial distress and may have to lay off their workforce and close their operations. Screening factors to consider could include the following:

- The mine's project cash flows are currently negative and could be for more than a year.
- There is a sharp drop in the publicly quoted market price pertaining to the mineral production.
- The mine lacks the funds to pay its tax obligations by the due date.
- The mine is closed for quarantine.
- The mine is at risk of having to lay off a substantial number of workers and close operations due to temporary economic factors.
- The mine cannot meet its debt obligations and is at risk of default—see the mine's net debt to earnings before income tax, depreciation, and amortization (EBITDA) ratio.
- The parent company of the mine lacks the financial strength to step in and support the mine to meet its debt obligations in the event of financial difficulty—see the mining group's net debt-to-EBITDA ratio.
- Any mine or its parent company paying dividends in 2020 disqualifies it for relief.

4.3 Conditions for State Support

If governments provide important financial relief to their mining sector, whether directly or through tax exemptions, it should come with certain conditions attached. For instance, during the period that companies benefit from state aid, governments could require them to:

- Retain all workers, or at a minimum an agreed percentage of workers, at regular salaries.
- Withhold bonuses, and salary increases for company executives and potentially defer payment.
- Cancel dividend payments to shareholders except those connected to the government's equity stake.
- Abandon all artificial tax avoidance arrangements (e.g., treaty shopping, BEPS, tax havens). Governments could do this by requiring companies to adopt the B-team principles on responsible tax and become an EITI supporting company. They could also require company directors to sign a public pledge making them personally liable for aggressive tax planning, and subject to corresponding penalties.
- Adopt modern, transparent, and fair transfer pricing practices.
- Adopt transparent pricing for all mineral sales, based on international benchmark prices.