



AN ANALYSIS ON THE MINING LAW AND ITS TAX LAW

Understanding the 2014 Mining legislation

This paper analyzes the Mining Law (20/2014 dated 18 August 2014) and the Mining Tax Law (28/2014 of 23 September 2014).

In broad measure, the two laws seek to further enhance the benefits for Mozambique from the mining sector, a trend that has been clear since the passing of the Mega-Projects law. The general approach is also clearly articulated in the Government's 2013 Policy and Strategy for Mineral Resources (*Resolução No 89/2013 de 31 de Dezembro*).

The new legislation was anticipated, given profound changes in the sector in recent years. In fact, draft versions of new laws for both the petroleum and mining sectors have been circulating since early 2012.

There are significant changes between the draft laws as circulated by the government and the final laws as approved by Parliament. Many of the changes were made after the Government submitted the laws to Parliament for their consideration.

I. Mining Sector Law – 21/2014

(Dated 18 August 2014)

The new sector law replaces Law no. 14/2002, of 26 June 2002 and came into effect on the day it was published. Many of the details will only be revealed in the implementing regulations that should be approved and released within 90 days after approval of the law. Companies already

holding mining /concession contracts continued to be governed by the provisions of the 2002 Law, unless they explicitly chose to operate under these new terms (Article 83). Holders of reconnaissance and prospecting licenses however have only 180 days to regularize rights (Article 86).

Transparency and Oversight

Contract Disclosure (Article 8): The new law says that “mining contracts must be published in the National Gazette (*Boletim da República*) within 30 days of their approval by the Administrative Court (*Tribunal Administrativo*). The law indicates that contracts will also be published in newspapers and on the Internet in addition to being sent to the Assembly of the Republic. It is understood here, that will be published the complete contract, including its annexs. However, the right way would be that the law clearly indicate that “all contracts – complete, signed and initialed versions with annexs - will be made available on government websites once approved by the TA”, what would be in line with the international standards of contract transparency.

Revenue Transparency (Article 13): In the new law the government commits to maintain an “inventory of mining operations revenue and publish them disaggregated and periodically.”

Unlike the Petroleum Law, there is no explicit mention of companies publishing their payments to Government. It is unfortunate the new law did not explicitly reference EITI requirements on reconciling payments made by companies to Government and also new requirements to publish data on production volumes and sale prices.

Role of the Assembly of the Republic (Article 23): In contrast to many other resource rich developing countries, there is no specific legal framework for mining sector revenues. The new law simply says that it is for the Assembly of the Republic to ensure the sustainable and transparent management of revenues taking into account the present needs and those of future generations. Unfortunately, the law makes no other mention of the role of Parliament in ensuring good governance and oversight.

Institutional Responsibilities

High Authority for the Extractive Industries (Article 25): The most striking institutional change introduced in the new mining law is the creation of a new audit body directly subordinate to the Council of Ministers (Alta Autoridade da Indústria Extractiva). No details are provided on the mandate of this body beyond its control over both the mining and petroleum sectors. The law simply says that it must be in operation within 12 months. Specific law might be approved to regulate the action of this new institution.

National Mines Institute (Article 26): The Mining Law also creates a new regulatory body (Instituto Nacional de Minas) responsible for the development and supervision of the mining sector including approving project studies and proposals and awarding prospecting and research licenses, and mining concessions. Actually, the law is transforming the present National Mining Department (Direcção Nacional de Minas) into institute.

Enhancing Benefits for Mozambicans

Acquisition of goods and services (Article 22): The mining law strengthens local content obligations.

The acquisition of goods and services, above an unspecified value, must be made by public tender. Preference must be given to local products and services. Foreign service providers must be associated with Mozambican companies.

Promotion of National Entrepreneurship (Article 34): Specific provisions are set out in the new law to expand the benefits of the mining sector for Mozambicans, though these are largely aspirational. The Government calls on itself to create mechanisms for promoting national entrepreneurship in mining projects. The Government plans to intensify its participation (presumably equity ownership) in mining projects, though no targets are identified. And the Government will “promote” entry of mining companies into the Stock Exchange (in contrast to the Petroleum Law where companies are “required” to register). *Domestic Market Obligations (Article 21):* The State may require companies to sell mining products at market prices for use in local industry.

Employment and training of Mozambicans (Article 33): The companies must ensure employment and training for Mozambicans to be able to fulfill the needs of the mining activities. In this regard, the law requires that all employment opportunities are published in the newspaper of largest circulation, or through radio, television and internet, indicating the closest place to submit the applications. The Government should regulate the mining work scheme.

Rights of Communities

Article 32 Involvement of communities (Article 32): Communities must be given “prior notice of the beginning of prospecting” and they must be “consulted” prior to the beginning of mining exploration. Furthermore, the Government commits to creating mechanisms for involvement to ensure participation of the communities in areas of mining projects.

Resettlement and Fair Compensation (Article 30 & 31): Fair compensation must be provided to people needing to be resettled based on a memorandum of understanding between the

Government, the company and the community. This memorandum is one of the requirements for the allocation of mining exploration rights. Resettled communities must be given dignified homes offering better conditions than they previously had.

Local Development (Article 20): A percentage of State revenues generated by mining activities is allocated to the development of the communities where mining activities take place. As is the case with the Petroleum Law, no specific percentage is established. The Law simply states that the rate will be set, and the funds channeled through, the State Budget.

II. Mining Tax Law – Law 28/2014,

(Dated 27 September)

The new Mining Tax Law replaces the existing Laws 11/2007 and 13/2007, of 27 June. It becomes effective on 1 January 2015. The law is applicable to all companies conducting mining activities within Mozambique, but it is not retroactive. Companies that hold existing contracts will be held to those existing terms, unless they explicitly chose to apply the new tax regime.

Production Tax (Article 12): The production tax (royalty) is the only guaranteed source of early government revenue, as it is assessed as a percentage of the value of the minerals produced. The draft law circulating through 2013 suggested that the government was considering significant increases to royalty rates across the mining sector. Comments from industry and donors indicated that significant increases in royalty rates would likely discourage continued inward investment. In the end, the government chose to either leave rates unchanged or to actually decrease them.

The table below shows the royalty rates across four different categories. It provides a comparison of the royalty rate in effect since the 2007 laws were passed, the range of proposed changes in the Government’s draft law and the final results. Coal and precious metals remain the same (3% and 6% respectively), while the rate has dropped for semi-precious metals (5% to 3%) and diamonds (10% to 8%). A reduction of the royalty rate of 50% is allowed when the production of minerals is to be used by the local industry.

Surface Tax (articles 16 to 22): Are subject to this tax the entities that develop mining activities in Mozambique (with or without a title). The surface tax is due annually and focuses on the mining area of the related mining exploration and the rates vary between 17.50 meticals per hectare (MT/ha) and the 25,000, 00MT/ha, depending on the type of license and the years of hold of the license. Clearly, the rates of the surface tax increased and the amount to be paid increases as the years go by, as shown in the table below - table 2.

Corporate Income Tax (Article 23): As is the case with the new Petroleum tax law, the mining tax law does not establish an independent corporate income tax rate, it simply refers to existing obligations under both the corporate income tax law (IRPC) and personal income tax law (IRPS). The tax rate therefore remains unchanged at 32%. There are important changes to the ways in which the IRPC will be applied. Corporate income tax will be assessed at the level of the mining concession. The provision, often known as “ring-fencing,” means that, under future contracts, companies will not be able to claims losses in one concession against profits in another. The Tax Law also sets out specific rules on calculating taxable income, allowable deductions

Table 1

	2007/08 Royalties	Draft Proposals	Final Law
Diamonds	10%	7-12%	8%
Precious Metals	6%	6-10%	6%
Semi Precious Metals	5%	5-10%	3%
Coal	3%	5-10%	3%

Table 2

Description	2007/2008 Surface Tax	Draft Proposal	Final Law
a) Prospecting licenses for all resources			
i. 1st and 2nd year	2,50 MT/ha ¹	300,00 MT/ha	17,50 MT/ha
ii. 3th year	6,25 MT/ha	700,00 MT/ha	43,75 MT/ha
iii. 4th and 5th year	13,00 MT/ha	1.500,00 MT/ha	91,00 MT/ha
iv. 6th year	15,00 MT/ha	2,000,00 MT/ha	105,00 MT/ha
v. 7th and 8th year	20,00 and 25,00 MT/ha	2.500,00 and 3.000,00 MT/ha	210,00 MT/ha
vi. 9th and 10th year	30,00 MT/ha	3.500,00 MT/ha	N/A
b) Mining Concession			
i. For Mineral water	70.000,00 MT/title	80.000,00 MT/title	85.000,00 MT/ha
c) For the other resources			
From 1 st to 5 th year	25,00 MT/ha	3.000,00 MT/ha	30,00 MT/ha
From 6 th year	50,00 MT/ha	5.500,00 MT/ha	60,00 MT/ha
d) Certificado Mineiro	20 -100 hectares10.000,00 MT 101-200 hectares30.000,00MT 201-300 hectares 30.000,00 MT 301-400 hectares 40.000,00 MT 401-500 hectares 50.000,00 MT	20-100 hectares11.000,00MT 100-200 hectares ...22.000,00MT 200-300 hectares ...33.000,00MT 300-400 Hectares ...45.000,00MT 400-500 Hectares ...55.000,00MT	
From 1st to 5th year			17,500,00 MT/ha
From 6th year			25,000,00 MT/ha

and the depreciation of assets. A withholding tax of 10% will be applied to services provided by non-residents.

Capital Gains Tax (Article 39): As previous CIP analysis has documented, the application of a capital gains tax in Mozambique's extractive sector has been highly inconsistent. Changes to the IRPC passed in 2012 and effective from 2014 have clarified that there is no longer a declining rate based on the length of ownership. The IRPC now calls for a straight 32% tax on capital gains and this provision is reproduced in the new Mining Fiscal Law.

Resource Rent Tax (Section IV): The most fundamental change to the fiscal regime for mining is the introduction of a resource rent tax (IRRM). This is a mechanism designed to ensure that the

government share increases when a project becomes highly profitable. An RRT is assessed where the company "internal rate of return" (the ratio of the profit generated relative to the amount of money invested) exceeds a set percentage. The combination of a modest royalty, a 30-35% income tax and a resource rent tax (RRT) is now widely seen as good practice in the mining sector. The draft mining law proposed a direct tax on the net cash flow of a mining project where the rate of return before tax exceeded 12% -18%. The rate of tax proposed was between 40-50%. As with the proposals on royalty rates, the final result is much less onerous on companies with the IRRM being imposed on rates of return over 18% (the high end of the original band) and the tax rate being only 20% (half of the original proposal).

Stabilization (Article 58): Investors seeks clear assurances that fiscal terms agreed at the outset remain unchanged throughout the project. Governments seek flexibility to accommodate changing circumstances. In the past, Mozambique has offered mining companies a guarantee that the terms of their original contract would be honored. Under the terms of the new fiscal law, terms are guaranteed for only the first ten years of production. Fiscal stability can be extended from year 11 through the lifetime of the contract for “payment of additional 2% of Mining Production Tax from the eleventh year of production.”

(Endnotes)

1 The decree 5/2008, of 9 April, which regulates mining-specific taxes established in law number 11/2007, of 27 June, uses the square kilometer (km²) to measure the extent of land concession and the CIP did its conversion into hectares, bearing in mind that 1 square kilometre is equivalent to 100 hectare.

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