

# 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.<sup>1</sup>

## 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;<sup>2</sup> 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,<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> This has been the case for Glencore's Prodeco open pit coal mine, which has transitioned to care and maintenance.<sup>6</sup> Closing mines could affect entire economies; in South Africa, it could mean an 8% cut in GDP this year.<sup>7</sup>

**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.<sup>8</sup> On the contrary, Mexico has considered mining a non-essential activity to be suspended.<sup>9</sup> To keep mines operational, some companies are asking workers to spend weeks on site to limit the risk of coronavirus spread.<sup>10</sup> While several companies have committed to take measures to ensure employee health and safety,<sup>11</sup> 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.<sup>12</sup> This puts producers under duress.<sup>13</sup> 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.<sup>14</sup>

**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.<sup>15,16</sup> Uranium production is highly concentrated, and the risk to supply has led prices to rise by 14% in the last two weeks of March.<sup>17</sup>

**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.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup>

**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.<sup>21</sup>

## 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.



Governments could also take this as an opportunity to strengthen their fiscal regime and ensure that in the future companies pay their fair share of taxes and help rebuild government finances. In addition to some of the above, this could also include the following:

- Introduce an excess profit tax that kicks in once companies make substantial levels of profits.
- As described below for royalties, consider some forms of state aid as a capital injection in the mine, giving government the right to additional equity or repayment in future mineral production.

#### **4.4 Government Monitoring of Tax Relief**

Governments should also be mindful that mining companies may change their behaviour in response to such tax measures to maximize the relief beyond what was intended. See this [IGF-OECD Practice Note](#) for more information. Careful targeting of tax measures is critical to overcoming this risk. Governments should also include a clawback provision that would require mining companies to pay back any tax relief, plus interest, and penalties, if they are found to have abused the system.

## **5. Short-Term Tax Relief Options**

### **5.1 General Design Issues**

Any type of tax relief for the mining sector should follow the following principles:

- Measures should be clearly defined.
- There should be clear eligibility criteria and procedures for application.
- There should be time limits, including options for review.
- Tax relief measures should end and be removed post-recovery from COVID-19.

### **5.2 Specific Tax Relief Measures**

#### **a) Defer Payroll Taxes**

One of the main objectives of governments in the economic response to the crisis is protecting employment. Deferral or temporary exemptions of payroll taxes for companies that keep their workers on payroll during temporary mine closures or limited activity are a tax policy tool that should thus be given serious consideration. Many developed countries have chosen to defer or extend the deadline for payroll taxes. In the mining sector, where payroll taxes are often a significant proportion of total payments to government (in Zambia, payroll taxes represented 14.6% of total government revenues in 2017<sup>22</sup>), countries may want to consider deferring payments for a set period, excluding penalties or interest. For mines in severe financial distress, a temporary exemption of payroll taxes may be an option, while taking care to ensure that employees are exempted from any resulting future liabilities should they arise.

#### **b) Value-Added Tax Relief**

Countries that apply a value-added tax (VAT) to the mining sector should speed up the payment of VAT refunds to reduce pressure on company cash flows and protect against



exchange rate depreciation which would erode the value of the refunds due.

Alternatively, if countries cannot speed up payment of input VAT refunds, there are three policy options:

1. Exempt goods and services typically supplied to the extractive industries.
2. Zero-rate goods and services supplied to the mining sector.
3. Allow companies to offset VAT credits against other tax liabilities.

The most immediate risk arising from these approaches is that the scheme will be used for goods and services not specific to extractives and be abused to avoid taxes overall. This risk can be mitigated through careful definition of eligible goods and services, and close monitoring by the customs authorities. Other issues include economic distortion and increased administrative and compliance burdens. In normal circumstances, these would potentially outweigh the benefits of resolving the refund problem.<sup>23</sup>

### **c) Import Duty Relief**

Most mines require at least some imported goods to construct and operate. The most obvious items to exempt from import duties would be all supplies required to fight the spread of the virus, protect and treat employees and their families, addressed next below. But mining activities that depend on imports might benefit from a short-term exemption of import duties. These could include those on, for example, fuel or explosives to operate the mine, critical chemicals necessary for treatment and processing (such as caustic soda required for transforming bauxite into alumina), or reagents like sulphuric acid for processing of metal concentrates if they cannot be sourced locally. Any import relief should be assessed based on the specific value chain of the minerals and each country's ability to produce inputs domestically.

### **d) Immediate Deduction or Tax Credit for Health-Related Expenditure**

In addition to exempting customs duty for imported items required to fight COVID-19, governments could grant companies an immediate deduction for capital costs incurred in protecting the health of workers, affected mining communities, and host countries more broadly. Some mining companies have already identified providing enhanced health benefits for workers and host communities through addressing gaps in public health infrastructure as a priority.<sup>24</sup> In some cases, especially for more remote areas, mining companies may simply have the most logistical capacity to help local workers and communities. By allowing them to expense, as opposed to depreciate, related capital purchases, other companies with the financial capacity may be more likely to follow suit. An even stronger incentive would be to allow companies to offset these temporary health-related expenditures at the local level against royalty or tax payments. Governments in Peru and Colombia already have such schemes in place, called “public works in lieu of taxes,” that could be a template for such measures.

### **e) Deferral or Waiver of Mineral Royalties**

Royalties are a fixed cost that mining companies incur as soon as production starts, irrespective of their profitability. For mines that can continue to operate during this period, deferral or waiver of royalties could mean the difference between staying open and being forced to close the mine. At the same time, mineral royalties are payment for the right to extract a non-renewable resource as well as a reliable source of revenue for resource-rich



developing countries. If countries consider that royalty relief is necessary, the following options are available:

- Extend the payment date for royalties (e.g., three to six months).
- Reduce royalty rates in 2020.
- Waive royalty payments in 2020: this should be treated as a last resort.

In many jurisdictions, payment of royalties is a key condition for maintaining a mining license. Therefore, any temporary relief would also need to include relief from sanctions for late or non-payment, such as charging interest on outstanding payments, fines, forfeiture of mining titles, and jail time.

### Compensation for Granting Royalty Relief

Ideally, waivers or reduced royalty rates should only be considered if there is a high likelihood that the operation will become cash-flow positive in the foreseeable future; otherwise, the government may forego revenue unnecessarily. However, this may be particularly difficult for governments to verify under the current circumstances. There are two options:

1. To consider the waived royalty amounts as a capital injection by the government into the mine and increase the level of government equity in the mine accordingly. Once the economy recovers and the mine is profitable, governments can then either generate revenue through dividend payments or by divesting their shares.
2. As an alternative to state equity, waived royalty amounts could be considered a government loan, to be paid later in cash or in kind, including interest, through a share of mineral production.

## 6. What to Avoid

**Income Tax Holidays:** An income tax holiday is only relevant if a mining company is profitable, and in a tax-paying position, in which case it should not be requesting tax relief under the current circumstances. A lower corporate tax rate could be considered, although, in general, partial or complete tax holidays are an inefficient and ineffective form of relief for mining. This is because mining is location-specific, and marginal mines (those more at risk of going under) benefit less from tax holidays than profitable mines. The risk of tax abuse is also high.

**Withholding Tax Relief:** Withholding tax requires the local taxpayer to withhold some income tax on payments made abroad (e.g., service charges, shareholder dividends, and interest expense on foreign loans). While withholding tax is a cost for the foreign companies receiving the payments, it is also relatively easy for governments to collect, which is important for developing countries as they have even more limited human and financial resources. Governments should maintain withholding taxes, although exceptions could be



made for arms-length third-party debt, where there is limited risk of abuse.

## 7. IGF and ATAF are Available to Assist Member Countries

- **Evaluate requests for specific tax relief from mining companies**
  - Cost-benefit analysis
  - Modelling the fiscal cost
- **Design comprehensive tax measures to support the mining sector through the crisis**
  - Drawing on examples of mining tax policy responses from other resource-rich countries
  - Modelling alternative fiscal regimes
- **Strengthen mining tax policy and administration to rebuild government finances post-recovery**
  - Quantitative and qualitative assessment of mining fiscal regimes
  - Advice on drafting and implementing mining tax laws, including concession agreements
  - Capacity building on mining tax policy and administration





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- <sup>2</sup> Depending on the fiscal regime for artisanal mining, distinct tax policy measures may be required.
- <sup>3</sup> Moore, P. (2020). COVID-19 slows work at globally important copper projects Quellaveco & Oyu Tolgoi. *International Mining*. <https://bit.ly/2R34iYW>
- <sup>4</sup> Republic of Colombia. (2020). *Article 3.30 and Article 4 of Decree 457 of 22nd March of 2020*. <https://coronaviruscolombia.gov.co/Covid19/docs/decretos/presidencia/82-decreto-457.pdf>
- <sup>5</sup> Colombia mining companies to reduce operations due to coronavirus. (2020). *Reuters*. <https://www.reuters.com/article/health-coronavirus-colombia-mining/colombia-mining-companies-to-reduce-operations-due-to-coronavirus-idUSL1N2BH1Q8>
- <sup>6</sup> Glencore: Update on COVID-19. (2020). *Glencore News*. <https://www.glencore.com/media-and-insights/news/update-on-covid-19-20200326>
- <sup>7</sup> Stoddard, E. (2020). Seismic Covid-19 shock set to hit mining industry. *Business Maverick*. <https://www.dailymaverick.co.za/article/2020-03-18-seismic-covid-19-shock-set-to-hit-mining-industry/>
- <sup>8</sup> The United States considers essential those workers supporting the mining, processing, manufacturing, construction, logistics, transportation, permitting, operation/maintenance, security, waste disposal and storage, and monitoring of support for resources. Energy/commodity trading/scheduling/marketing functions, who can't perform their duties remotely are also included. See Hall, M. (2020). Miners deemed essential to US Covid 19 response. *Mining Technology*. <https://www.mining-technology.com/news/miners-deemed-essential-to-us-covid-19-response/>. See also Krebs, C. (2020). Memorandum on identification of essential critical infrastructure workers during Covid-19 response. <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>
- <sup>9</sup> Harris, P. (2020). Mexico mining suspension to hit silver supply. *Mining Journal*. <https://bit.ly/2X1yMhJ>
- <sup>10</sup> Australian's iron ore giants push workers to stay at mine sites to escape coronavirus. *Reuters*. <https://www.straitstimes.com/asia/australians-australias-iron-ore-giants-push-workers-to-stay-at-mine-sites-to-escape-coronavirus>
- <sup>11</sup> For example, Teranga Gold has implemented some health and safety measures in its mines located in Burkina Faso and Senegal. Teranga Gold announces Q1 2020 production estimate and company-wide response to COVID-19. *Junior Mining Network*. <https://www.juniorminingnetwork.com/junior-miner-news/press-releases/1043-tsx/tgz/74805-teranga-gold-announces-q1-2020-production-estimate-and-company-wide-response-to-covid-19.html>
- <sup>12</sup> The spot price for platinum fell 46% from its peak earlier in 2020. See Russell, C. (2020). Coronavirus supply disruptions are the next worry for metals: Russell. *Reuters*. <https://www.reuters.com/article/column-russell-health-coronavirus-mining/rpt-column-coronavirus-supply-disruptions-are-the-next-worry-for-metals-russell-idUSL4N2BH1S4>
- <sup>13</sup> Harris, P. (2020). Nevada Copper agrees financial package. *Mining Journal*. <https://bit.ly/3bDh5Jb>
- <sup>14</sup> Commodity Economies face their own reckoning due to covid-19. (2020). *The Economist*. <https://www.economist.com/finance-and-economics/2020/03/05/commodity-economies-face-their-own-reckoning-due-to-covid-19>
- <sup>15</sup> Statista. (2020). Distribution of global iron ore exports in 2017. <https://www.statista.com/statistics/300328/top-exporting-countries-of-iron-ore/>
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- <sup>22</sup> Zambia Extractive Industries Transparency Initiative. (2019). *10th Zambia EITI Report*, p. 75. [https://eiti.org/files/documents/2017\\_zambia\\_eiti\\_report.pdf](https://eiti.org/files/documents/2017_zambia_eiti_report.pdf)
- <sup>23</sup> For a comprehensive overview of VAT policies for the extractive sector see United Nations. (2017). *United Nations handbook on selected issues for taxation of the extractive industries by developing countries*, Ch. 9. [https://www.un.org/esa/ffd/wp-content/uploads/2018/05/Extractives-Handbook\\_2017.pdf](https://www.un.org/esa/ffd/wp-content/uploads/2018/05/Extractives-Handbook_2017.pdf)
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