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Global mining tax trends 2017

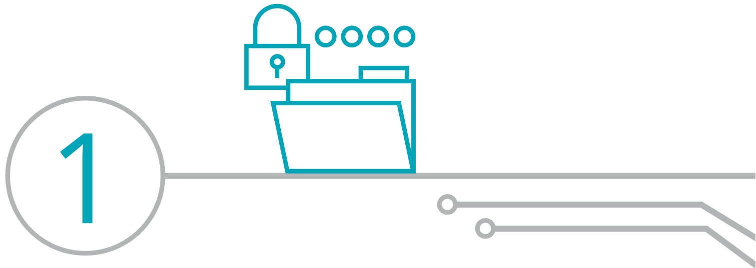
The top 10 tax trends mining companies will face in the coming year

Introduction

Like other multinationals, multinational mining groups are facing a rapidly changing tax environment that creates risk and uncertainty, accompanied by a marked change in the way tax authorities are administering tax laws. To keep pace with the evolving and complex tax environment and mitigate potential risks, mining companies should take steps to identify trends, understand the financial implications of new rules, and assess their operational and corporate structures.

In line with this, we begin by taking note of the Organization for Economic Cooperation and Development's (OECD) project to counteract base erosion and profit shifting (BEPS), before highlighting other trends that move up the agendas of multinational mining groups.

Mining companies will have to come to terms with increased levels of uncertainty in their tax profiles, and will need to consider the impact of all of the changes not only on existing structures, but also on new investments and transactions.



Addressing BEPS

In November 2012, the G20 tasked the OECD with devising an action plan to, amongst other things, counter tax planning strategies which they perceived multinational companies were using to exploit gaps and mismatches between the tax rules of different countries. These strategies include artificially shifting profits to low or no-tax jurisdictions where there is little or no real economic activity.

Thus, the BEPS project was born. More than 60 countries participated in the project, including many of the world's major mining jurisdictions such as Australia, Brazil, Canada, Chile, Colombia, China, India, Mexico, Peru, Russia, South Africa and the US.

During the next three years, the OECD considered, consulted, and concluded upon 15 BEPS Actions (set out in the table below), with its findings under each falling broadly into one of three categories:

- Minimum standards to be adopted by all participating countries;
- Desirable but optional best practices; and
- Recommendations for countries to consider.

BEPS Actions

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<tr><th colspan="4">Action 1: Address the tax challenges of the digital economy</th></tr>
<tr><th>Coherence</th><th colspan="2">Restoring international standards</th><th>Transparency</th></tr>
<tr><td>i. Establishing international coherence of corporate taxation</td><td colspan="2">ii. Restoring the full effects and benefits of international standards</td><td>iii. Ensuring transparency while promoting increased certainty and predictability</td></tr>
<tr><td>Action 2:
Neutralize the effects of hybrid mismatch arrangements</td><td colspan="2">Action 6:
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Establish methodologies to collect and analyze data on BEPS and the actions to address it</td></tr>
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Strengthen controlled foreign company (CFC) rules</td><td colspan="2">Action 7:
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Limit base erosion via interest deductions and other financial payments</td><td rowspan="3">Assure that transfer pricing outcomes are in line with value creation</td><td>Action 8:
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Counter harmful tax practices more effectively, taking into account transparency and substance</td><td>Action 10:
Other high-risk transactions</td><td>Action 14:
Make dispute resolution mechanisms more effective</td></tr>
<tr><th colspan="4">Action 15: Develop a multilateral instrument</th></tr>
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The G20 endorsed the OECD's final BEPS package of deliverables in November 2015. However, some of the measures will require countries to amend their dometic legislation, and the timing of these changes will vary.

Some countries may continue to formulate unilateral measures not directly drawn from the BEPS action plan; others may simply draw upon the directionality of BEPS to interpret their existing tax rules and tax treaties. With such scope for the nature and timing of changes arising from the BEPS project, multinational mining groups may struggle to know which way to turn.

Potential business impact

In reality, mining groups increasingly are focusing on the tangible and the inevitable. Among the more tangible, BEPS Action 4 seeks to counter multinational groups concentrating interest deductions in high tax entities or jurisdictions in a manner disproportionate to the level of activity in that jurisdiction and/or the group's overall external interest burden. In the Action 4 findings, the OECD recommended that countries should amend their domestic tax rules to restrict interest deductions to a certain percentage, suggesting a range of 10-30 percent of earnings before interest, tax, depreciation and amortization (EBITDA) in an entity or jurisdiction.

BEPS Action 6, in relation to countering tax treaty abuse, is arguably more pervasive and most, if not all, multinational mining groups will need to consider its potential implications on their corporate structures. Action 6 seeks to address concerns that some multinationals have engaged in "treaty shopping," that is, arranging their affairs with the specific purpose of obtaining benefits under a tax treaty in a way that was not intended by the treaty partners. The OECD's key recommendation is that treaties should embed one or a combination of "minimum standard" anti-abuse provisions; namely, a limitation of benefits (LOB) test, which broadly requires an entity seeking to access a treaty to have a substantial presence in its territory of residence, or a principal purpose test (PPT) which denies treaty benefits in respect to arrangements where one of the principal purposes is to secure such benefits.

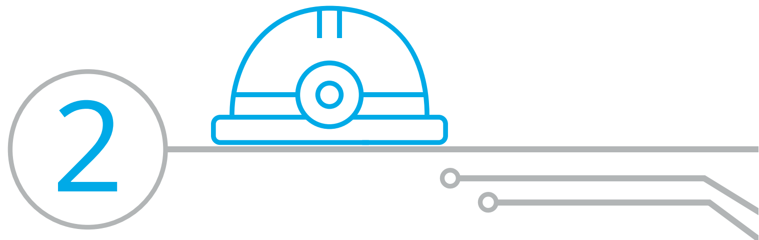
For all countries to amend each of their tax treaties to incorporate such provisions would represent a massive task. To address this issue, a multilateral instrument has been developed under Action 15 of the BEPS project that will allow countries to quickly amend their treaties to implement treaty-related BEPS recommendations. Many participating countries are likely to sign up to the multilateral instrument as from June 2017.

Last but not least, the combined potential impact of Actions 7, 9, and 10 should be on the radar of mining groups, particularly groups operating sales and marketing operations outside of the territories of their main extractive activity. Mining groups may have obvious commercial rationale for focusing marketing activities close to their major customers, for instance, setting up in territories such as Hong Kong or Singapore for access to Chinese consumers. Certain changes to the definition of a permanent establishment (PE) in the OECD model treaty (under Action 7), and revisions to the OECD's transfer pricing guidelines in relation to both the allocation and pricing of risk within groups (Action 9) and the pricing of cross-border commodity transactions (Action 10), pose significant potential risks in terms of where, and in what amount, the sales and marketing profits of a multinational mining group may be subject to taxation, and indeed possible double taxation.

Conclusion

While many mining groups are actively working through the impacts of the BEPS project, the potential for increased levels of uncertainty in their tax profiles should not be underestimated, and groups should dedicate sufficient resources to identifying, analyzing and, where appropriate, restructuring. This is particularly key as many changes are likely to impact the sector in 2017 and beyond.

For additional informaiton relating to BEPS visit our website
https://www2.deloitte.com/global/en/pages/tax/topics/base-erosion-profit-shifting.html



Disclosures all around

The tax transparency agenda is not new, particularly for the mining and wider extractives sector. Understandably, non-governmental organizations (NGOs), local community groups, and other stakeholders have long had a focus on the contribution that mining companies make to developing economies.

Disclosure rules have existed for a number of years under the Extractive Industries Transparency Initiative (EITI), which, since its launch in 2002, has developed rules and an international standard for the public disclosure of government revenues from the extractive sector. The EITI is an initiative that governments have signed up to on a voluntary basis and that has produced a set of reporting requirements that oblige the government to disclose the revenues it receives and extractive companies (in that jurisdiction) to report the payments they make, with independent checks and balances then applied to reconcile the figures. From a mining group's perspective, EITI reporting may not tell the whole story of its economic contribution to developing economies, depending on which governments among the group's countries of operation have signed up to the program. Many mining groups, therefore, have chosen to publish data on their overall economic contribution across their operations on a voluntary basis. This disclosure has evolved, at least among the major international mining groups, from perhaps occupying a page within a corporate social responsibility report to forming a standalone transparency report, covering everything from commentary on global tax strategy and governance frameworks to detailed information on country-by-country payments to governments.

More recently, there has been a shift from voluntary to mandatory reporting. The European Union (EU) was the first to establish mandatory transparency rules for the mining and extractives sectors through the 2013 Accounting Directive 2013/34/EU, with EU member states required to apply the rules to companies in their countries for periods beginning on or after 1 January 2016. The UK implemented the rules for periods from 1 January 2015, and so many mining groups listed on the London stock exchange main market with calendar year-ends submitted their first mandatory disclosures under the rules in 2016.

The rules in the EU directive prescribe the reporting of mainstream corporate income taxes, as well as other classes of payments to governments, such as production entitlements, royalties, certain dividends, discovery and other bonuses, license fees and certain infrastructure improvement payments. In the UK, it quickly became apparent when UK-listed mining groups were collating their information in the first half of 2016, that there were many grey areas in interpreting the rules and significant potential gaps between the payments that fall within the mandatory disclosure rules and the payments groups had become accustomed to declaring on a voluntary basis as their total tax and economic contribution figure. For example, the EU rules require the disclosure of payments to governments only for controlled entities within a group; hence, under a strict interpretation, a mine that is owned 40/40/20 between two joint venture mining groups and a government may not have its burden of taxes, royalties, and other relevant payments disclosed by either of the mining groups. Equally, in their historical voluntary disclosures, many mining groups will have reported certain taxes borne (e.g., employer payroll taxes), but also taxes collected on behalf of others (e.g., employee payroll taxes). Neither of these classes of payment to government are included in the EU rules.

Potential business impact

Given this mismatch between the mandatory and the voluntary reporting, mining groups should be aware of the "gap." Some groups have been proactive in their messaging, already incorporating the EU reporting figure as a stanchion in the numerical bridge to the wider economic contribution figure, which they have been accustomed to reporting on a voluntary basis. In seeking to minimize any potential misunderstanding among readers of the ever-more-detailed disclosures, groups also are commenting on their interpretation of possible grey areas under the mandatory rules and spelling out the basis of preparation underlying the figures. Furthermore, groups increasingly are seeking independent assurance opinions to confirm that their data is in line with the stated basis of preparation.

In addition to the above EU rules, other tax transparency initiatives for the extractives sector have been introduced in some of the world's major mining economies; for example, Canada's extractive sector transparency measures act regime, Australia's voluntary tax transparency code, which is wider in application than the extractives sector, and in the US, the SEC adopted amended extractive industry payment disclosure regulations in June 2016, impacting financial years ending on or after 30 September 2018.

Next on the transparency agenda, as an overlay to all of the regimes specific to the extractives sector, are the country-by-country reporting (CbCR) regimes coming out of the OECD's BEPS Action 13. The CbCR will comprise a standalone document to be prepared by large groups. Generally, financial data relating to revenue, profit before tax, cash taxes paid, current year tax accrued, number of employees, tangible assets and capital and retained earnings must be provided in Figure 1.

Once the CbCR is submitted electronically in the jurisdiction of the parent company, the tax authorities will automatically share the information with other relevant tax authorities, allowing them to run various metrics on the data to highlight potential instances of profit-shifting, for example, through inappropriate transfer pricing.

The OECD proposed that CbCR should apply for years beginning on or after 1 January 2016, with a filing deadline 12 months after that year-end. However, not all participating countries have been able to achieve this timeframe. Calendar year reporters, therefore, will be submitting some CbCRs by 31 December 2017, with tax authorities due to share those first reports within six months, and within three months for subsequent years.

Figure 1

Name of the MNE group: **Fiscal year ended:**	**Tax jurisdiction**	
	Revenues	Unrelated party revenue
		Related party revenue
		Total revenue
	Profit (Loss) before tax	
	Income tax paid (on cash basis)	
	Income tax accrued – Current year	
	Stated capital	
	Accumulated earnings	
	Number of employees	
	Tangible assets other than cash and cash equivalents	

Conclusion

The burden of disclosing tax and other payments to governments in the extractives sector continues to escalate. Equally, however, out of all sectors, extractives groups will be some of the best prepared companies, having long considered their economic contribution to host states to be an intrinsic part of their social license to operate.

Extractive groups hope that the metrics generated by tax authorities will be considered in an appropriate manner; profit per employee within a labor-intensive platinum mine is never going to equate to that in the same mining group's commodity trading operations.

Navigating complexities in mining company stakeholder relationships

Stakeholder relations is a major focus for mining companies, irrespective of the jurisdiction in which operations take place. Stakeholder relations is a broad topic, and for the purpose of this discussion, we focus on the relationship between the mining company and the tax authorities as a specific stakeholder category. There appears to be little doubt that the complexities in managing the relationship with the tax authorities will continue to grow. It also is clear is that the challenges of these relationships are not limited to a particular jurisdiction, and the complexities do not correlate to the size of a mining company's operations. A strategic approach in navigating an increasingly complex relationship is necessary. During 2016, the world was confronted by the release of the Panama and Bahamas papers, and a plethora of related headlines. The information leaks flooded the world with information related to how certain companies and individuals had structured their tax affairs. The release of this information has resulted in increased scrutiny by tax authorities worldwide of tax structures adopted by taxpayers.

Towards the end of 2015, it became aparent that the demand for resources was having a positive impact on the commodity prices and the expectation is that pricing for various commodities will improve over the mid to long term. As mining companies return to profitability, and as capital expenditure projects are rekindled, taxable profits will take some time to return to the levels where mining companies make the type of tax payments that tax authorities were accustomed to before the down-turn. As companies report improved quarterly and annual results during 2017, these announcements likely will result in increased levels of scrutiny from tax authorities seeking to understand where the cash tax contributions are being made.

The evolution of the relationship between mining companies and the tax authorities in the tax environment of 2017 should continue to develop. It is worth reflecting on the evolution of this relationship as we consider how mining companies operating in mining countries such as South America, the African continent or elsewhere around the globe, would have negotiated stability agreements, mining leases, or production sharing agreements during the early 1990s, when it was common for mining companies to approach the authorities in resource-rich jurisdictions during the development of the mine and negotiate favorable fiscal dispensations.

During the past decade, even though these arrangements typically were driven by the desire of jurisdictions to attract foreign investment and aimed at arguably investor-friendly dispensations, the nature of the arrangements has evolved. In many instances, the arrangements negotiated by companies addressed various socio-economic issues. These agreements enabled mining companies to mine, use local labor to build infrastructure and provide governments with profit participation. The actual tax treatment merely provided some degree of stability, without providing significant forms of relief in the form of reduced taxes or special allowances. Mining jurisdictions are less likely to be able to obtain this level of certainty going forward. In fact, many of the resource-rich jurisdictions that had offered attractive tax dispensations no longer are doing so or have made changes to the dispensations they offer to mining dispensations.

Potential business impact

With the sheer volume of changes to tax legislation around the world and increased scrutiny by the tax authorities likely will likely affect how companies approach merger and acquisition activities, mining expansions and even internal restructuring going forward. While mining companies always have had to negotiate with various spheres of government when businesses are sold or acquired, or when mining areas are expanded, it appears they now will be required to more actively manage tax authority relationships when considering these activities. In particular, mining companies likely will need to evaluate shareholder and regulatory communications with a special focus on how the tax authorities will perceive the communication.

Finally, there is a developing trend related to how mining companies are specifically dealing with tax authorities prior to the execution of intra-company transactions in a given jurisdiction. Many mining companies are proactively seeking constructive engagement with the tax authorities where restructuring, expansions or general operational changes that could affect the company's tax profile are contemplated. A strategic approach to these discussions is becoming an integral part of business.

Conclusion

Mining companies are familiar with the complexities of dealing with stakeholders, and the tax authorities are not dissimilar to other stakeholder engagements. Adopting a clear strategy with regard to the policy or protocol for engagement with the tax authorities in an audit situation enables companies to focus on the specific issues. The strategy should aim to develop certainty within the organization as to how these interactions are to be conducted. Fragmented revenue engagements could lead to problematic and potentially embarrassing situations. Companies revisiting their engagement protocols should have distinct advantages in dealing with situations that arise during audit and inquiries.

Companies that have proactive communications with the tax authorities at specific intervals during the year have seen benefits to the broader interactions with the authorities. In some instances, companies have engaged with the tax authorities to provide insights into the nature of the company's operations. These contributions have been helpful in both actual tax payments and in a broader context, and companies have used these opportunities to maintain a constructive and collaborative dialogue with the tax authorities.

4

Group structure management

For some time, global mining groups have taken similar approaches to structuring their investments, mining, and other business activities in foreign jurisdictions. Particular jurisdictions have been considered foreign direct investment gateways to certain resource-rich parts of the world; for example, Mauritius, in the case of many African jurisdictions, and Cyprus and the Netherlands for many CIS member states. Furthermore, many mining groups historically have facilitated their commodity sales in certain geographies through the use of independent agents who may act for several mining groups, but have limited power in terms of concluding an agreement.

An unprecedented rate of change in international tax rules, largely arising from the BEPS project, as well as many unilateral domestic tax rule changes, means that mining groups are revisiting their group structures.

Potential business impact
One area of the BEPS project that has e-commerce in its sights is Action 7 in relation to PEs, which will have wider application.

Action 7 principally focuses on the definition of a PE as defined in Article 5 of the OECD model tax treaty, and aims to prevent the artificial avoidance of PEs where there is significant activity in a country. This objective is first achieved by broadening the concept of an agency PE to instances where an intermediary habitually concludes contracts or plays a principal role in the conclusion of contracts, which are then finished without material modification. Historically, there has been an exemption to creating an agency PE where the intermediary is an independent agent; while this exemption will remain, its definition will be narrowed so that an agent no longer will be regarded as independent where it acts only for one group of companies.

Mining groups that traditionally have used independent agents to facilitate their sales in certain parts of the world will need to consider these changes carefully. One result may be that mining groups decide that it will be too difficult to navigate through new uncertainties in terms of their agency business models and instead set up or bolster their overseas marketing presence into fully-fledged buy/sell intermediaries, where tax risk can be addressed by establishing, and ideally agreeing with local tax authorities, robust transfer pricing methodologies.

As noted above, BEPS Action 6 on treaty abuse likely will require some mining groups to reconsider their corporate group structures, leading to an environment of restructuring and rationalization. Some of the world's major mining jurisdictions have taken proactive measures by introducing domestic rules against perceived tax-motivated corporate structures while waiting for the OECD multilateral instrument to be finalized.

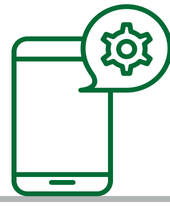
South Africa, for example, has renegotiated key tax treaties, which historically have been favored by mining groups investing in the country; in particular, changes aim to give the South African tax authorities taxing rights over indirect disposals of interests in mining properties in South Africa.

The Russian government has introduced "de-offshorization" legislation aimed at preventing the use of offshore companies for tax purposes. The rules tighten the reporting requirements for offshore income and repatriate Russian companies out of foreign jurisdictions.

The Chilean government passed a major tax reform bill in 2014, subsequently amended in 2016, which introduced significant changes to the corporate tax system. While the reforms were not specifically aimed at the mining sector, it was immediately clear that foreign-parented mining groups with operations in Chile would be among the most impacted. The tax reform measures included an increase in the rate of first category income tax, the introduction of a dual corporate tax system to apply to different types of taxpayers, and various anti-avoidance provisions.

Conclusion

The sheer volume of change in an industry that invests and acts for the long term is difficult to manage. Scenario planning and testing these options based on what may, or may not happen in the future, has become a common approach for many mining groups.



5

Innovation in the mining industry

"Disruption" has become a pervasive theme in mining, a phenomena that is resonating in the shafts, pits, processing plants and corporate offices of mining companies across the globe. Political volatility, mounting regulatory requirements and currency fluctuations continue to create market uncertainty. Commodity prices generally are gaining momentum. While there is cause for optimism in many mining companies, the realities of the volatile global environment are resulting in a measured response from mining company boards and executives. Competition ranging from geological discoveries, to scarce skilled resources and efficient production methods also are reaching unprecedented heights.

These forces challenge the underlying assumptions used to set strategy within the operational environment of mining companies. Despite this, few organizations have changed their strategic approaches. Many companies continue to create mining plans that are outdated before they can be implemented, or where the plans are based on inputs gathered in the absence of information based on real-time market conditions, economic disruptors and consumer demands.

To keep pace with these changes, mining organizations require greater levels of strategic flexibility. Some have tried to achieve this by investing in analytics, digital, block chain, and/or innovation. In essence, they use analytics to access information about real-time market shifts and consumer trends, positioning them to make more informed business decisions. They use digital to automate their responses and empower employees to interact with them whenever and wherever they choose. Innovation is used to reimagine their approach to business so they can respond to existing and emerging disruptors with greater agility.

One of the questions mining companies are facing is how the tax function operating within the company may be impacted by these broader developments. In some respects, this question exists on two levels, the impact of disruptive technology on the tax issues faced by mining companies and at a more granular level, the impact of disruptive technology on the actual tax function and how taxes across the spectrum are managed in a fast moving digital world. This discussion likely will evolve during 2017 as more companies initiate a strategic approach to the reality of disruptive technology. Mining companies starting to consider this question will have the advantage of early adoption.

Potential impact on the tax function

The tax function of a company typically addresses corporate and cross-border tax issues, indirect taxes, such as value added tax (VAT) or harmonized sales tax (HST), customs and excise duties, extractive taxes or royalties; and employees taxes. In addition, tax spans the organization from M&A activities to mine closure. How disruptive technology is applied within the organization will affect the tax function. How mining companies deal with information flows and data is changing, and conversations related to how these changes impact tax should start in earnest.

Considering the real organizational cultural challenges created by the realities of disruptive technology within the operational activities of mining companies, the tax function within a mining company likely will face similar challenges.

The impact of disruptive initiatives cannot be under estimated, and mining company tax functions will have the potential to determine what the future looks like.

Conclusion

The year 2017 should see the start of these initiatives and, in some respects, the tax function is uniquely placed to be early adopters of disruptive technology in the tax environment. In addition, mining company tax functions will be well placed to evaluate the application of disruptive technology within the broader operational model of mining companies.

6

Jurisdictional competitivness for capital investment

Recent years have been volatile for the global mining sector. After a number of years that saw most commodity prices in the doldrums, 2016 saw increasing commodity prices and recovering mining stock valuations. From the dark days of impairments, dividend suspensions, credit rating downgrades, and divestment programs, talk in the sector is turning to more positive topics and investment analysts increasingly are issuing buy recommendations on mining stocks. Some mining groups have managed to preserve a robust balance sheet and are considering additional investments in their projects and acquisitions to secure future production and reserves.

When mining groups are assessing the economic viability of investments, whether through internal organic growth or acquisitions, one key aspect in their modeling will be the tax regime to which a mining project is likely to be subjected to over many years of its operational life. Therefore, the fiscal stability of a jurisdiction will be a key consideration of any investment decision, alongside geological opportunity and broader political stability.

Historically, when governments had looked at their fiscal affairs, they had been alert to the apparent financial health in the mining sector. However, as the mining sector showed a counter cyclical performance a couple of years after the global financial crisis of 2008, the sector witnessed an unprecedented number of governments, both in the world's major established mining territories and in many newly-emerging mining jurisdictions, survey their options for tapping into the wealth of mining companies. New and increased mining royalties, export duties, the renegotiation of tax stability agreements, and indigenization plans, were some of the methods either proposed or implemented by governments.

Potential business impact

International mining investment is increasingly mobile. Global mining companies have choices about where to invest for the future and have expanded their geographical horizons from traditional heartlands into new territories, often crossing borders into countries that previously may have been perceived as among the most risky for foreign investment. Mining groups are not only learning, but pioneering. With the focus on maintaining constant communication and engagement in a spirit of partnership with government authorities and local communities, certain frontier economies may offer some of the most attractive investment prospects for the sector over the next few years.

In many ways, it appears that some of the more traditional mining jurisdictions have struggled to grasp the potential impact of the increasing mobility of mining investments, while in contrast, the governments of some nascent mining economies are making genuine efforts to offer the fiscal stability and partnership approach that mining groups seek in assessing new opportunities.

For example, South Africa, one of the world's most mineral rich countries, historically has been an attractive option for investors in the mining sector. Mineral resources aside, certain tax dispensations awarded to mining companies in South Africa have contributed to the investment case. These include, inter alia, 100 percent upfront deductions for capital expenditure incurred on mining assets and a reduced corporate tax rate for gold mining companies. However, recent challenges of operating in South Africa increasingly could be viewed as outweighing the rewards, such as the requirement by local legislation that a 26 percent shareholding in mining companies be held by historically disadvantaged groups before a mining right will be granted. From around 2012, there was a degree of political uncertainty as to the ownership of mines in the future, with political discussions concerning the possible nationalization of mines, as well as introducing a number of resource rent taxes. However, the draft report issued by the Davis tax committee during 2016 did not recommend any new form of taxes for the mining sector; instead, the committee recommended amendments to the existing legislation to make the rules more effective and improve compliance. However, there is ongoing pressure on mining companies from workers' unions to increase wages and, from the mining communities for mining companies to increase their contribution to the development of mining towns. These demands have influenced the amendments of the new mining charter that is due to be made into law in 2017.

In seeking to attract new mining investments, some of the emerging mining jurisdictions of West and Central Africa have shown that they are willing to proactively engage with mining groups to come to a mutual understanding about certain tax matters. These include the importance of ensuring the security of tax stability agreements and how certain forms of regressive taxation, which may bite disproportionately when a mine has barely commenced production, can prove to be significant disincentives for investors.

For example, there is widespread recognition that the mining code reforms introduced by Côte D'Ivoire in 2014 represented a balanced outcome between securing future tax revenues for the state and preserving a reasonable and stable investment case for mining groups. This followed an active dialogue between those stakeholders based on the early drafts of proposed reforms.

Conclusion

There is a growing sense that governments are understanding that future mining investment will be increasingly mobile and spread across a wider geographical footprint than ever before. Additionally, there is an emerging consensus that open and honest dialogue between mining groups and governments at the outset of investment appraisals, and a sense of an ongoing partnership throughout the ensuing mining projects, should be beneficial to both parties in the long term.

7

Data analytics and the ability to manage taxes

Focusing on managing and minimizing costs continues to be high on the agenda of mining executives. Facing the need to find new ways to reduce overhead expenses, mining companies must look beyond the traditional cost saving methods and start harnessing the power and insights of their data.

Data analytics enables mining companies to analyze information relating to indirect and direct taxes in a proactive manner. In addition to the traditional areas of application, analytics has the potential to become an integral part of how companies monitor the impact of transfer pricing across multiple jurisdictions in real time.

In some respects, analytics has been used effectively in dealing with the challenges related to vendor and indirect tax payments. There also has been an increase in reliance on analytics as a tool used by mining companies to address cost leakages associated with over or underpayments of taxes.

The focus on minimizing costs and spending typically relates to certain categories including: transactional tax payments including VAT, or other indirect tax payments, excise taxes and various mineral severance, accounts payable, and overpayments made to suppliers contrary to vendor contracts. When considering the procure-2-pay (P2P) cycle, companies typically have gaps in the following three areas:

- Overpaying VAT, sales, severance excise and various other ad valorem taxes and levies, and/or not maximizing their ability to claim credits and refunds. This could be due to complexities or gaps in the processes or missed planning opportunities.
- Duplicate payments of invoices from vendors, due to ineffective controls of complex supply chains.
- Paying vendors more than is legally required pursuant to the relevant contract, i.e. while there are myriad reasons for an overpayment, it appears that mining companies sometimes pay contractor charges that are not in compliance with the contract (e.g., labor charges, material charges, and overhead allocations).

The application of advanced cognitive machine learning software and robotic technologies make it possible to identify these leakages before they occur. Mining companies that opt to embed these innovations into their P2P cycle in real time will ensure a cost cutting advantage over others in the sector.

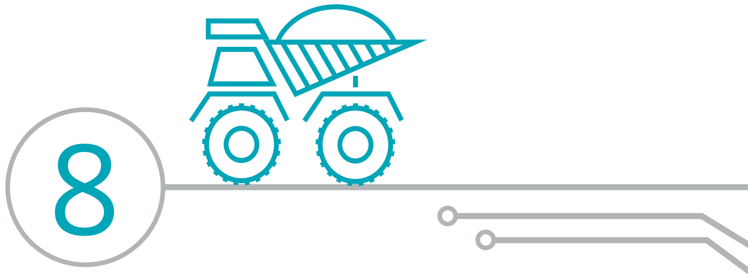
Going forward, analytics will be more broadly used by mining companies to mine data captured in their financial systems and more specifically, the general ledger. In recent years, tax authorities worldwide have increased their requests for specific data information from the general ledger system as part of general compliance reviews or audit enquiries. The tax departments of mining companies usually see this data for the first time following a request by the tax authorities.

With the increasing speed at which transactions are captured and analyzed, the risks associated with capturing mistakes at the source increase.

As the electronic linkages between the tax authorities and companies increase, there is a growing need for tax departments to understand how and what information is captured. Analytics will play an important role in helping to avoid inadvertent mistakes or misallocations and the use of predictive analytics will affect how companies address their tax affairs.

Conclusion

Given the pace of change, companies are likely to encounter the realities of unchecked data distribution sooner rather than later. There is no doubt that tax departments will need to understand what financial information is captured as raw data across enterprise resource planning (ERP) systems. The ability of companies to analyze information that is provided to Revenue Authorities will most certainly enable them to mitigate any unforeseen consequences. In addition to addressing potential issues in a proactive manner, the continued use of analytics to ensure that correct payments or claims are made, enhances the company's compliance abilities.



Reputational risk matters

In recent years, there has been immense media and public attention on whether multinational companies are paying their fair share of taxes in the countries in which they generate profits, across all sectors, not just mining. The tax affairs of many multinationals have appeared in the press, highlighting the fact that some organizations seem to pay very little or, at times, no corporate taxes in the jurisdictions in which they operate.

In November 2015, the International Consortium of Investigative Journalists (ICIJ) reported on more than 300 companies that had been using Luxembourg and Irish tax loopholes to save millions in tax.

Tax loopholes then came into the spotlight again in April 2016 with the Panama Papers, when the ICIJ broke another story that they had been investigating a significant leak of over 11 million legal and financial documents from the law firm Mossack Fonseca in Panama. The leaked files reportedly contain confidential information on over 210,000 offshore companies, as well as information on hundreds of associated corporations and high profile individuals.

These developments have placed the issue of tax governance firmly in the spotlight and specifically the role boards must play in overseeing the executive and upholding ethical business practices and good corporate citizenship. The public interest has served to further enhance the global efforts of governments to take steps to counter tax evasion and aggressive avoidance, and push for greater tax transparency and disclosure.

In the UK, the government recently introduced legislation that requires large businesses to disclose their UK tax strategies publicly on the internet before the end of the first financial year commencing after 15 September 2016. The required disclosure only relates to UK tax, and its impact on a London-listed mining group will, in most cases, be technically limited to commenting on tax governance in relation to any holding, finance and management services companies which exist in the UK. Despite this, it is likely that disclosures may be at least contextualized within the group's global tax strategy encompassing its actual mining operations overseas.

Potential business impact

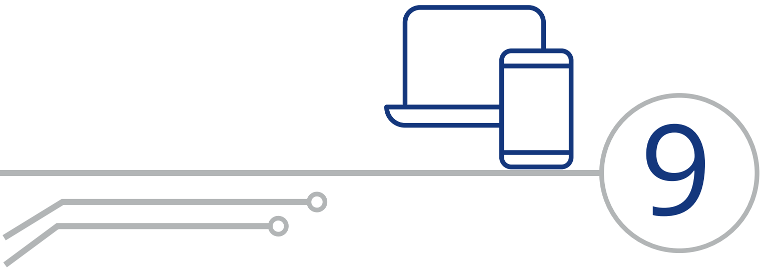
It is fair to say that, as with the new EU requirements to disclose payments to governments, the larger mining groups are ahead of the game in terms of having a track record of making at least some voluntary public disclosure of their tax-related governance frameworks and underlying principles, either as part of their annual report or as a stand-alone statement.

It is interesting to see that some disclosures of the largest mining groups are extensive and candid. For example, the existence of companies in tax havens within their corporate structures might be addressed and explained at length, in some cases setting out the details of each of group's subsidiaries in low-tax jurisdictions and explaining their activity, with many being dormant legacies inherited through historical acquisitions, which play no ongoing role in securing tax benefits. Some groups explain plans to rationalize or redomicile such companies, processes that can require significant attention from management to ensure that no unforeseen commercial, legal, or tax risks materialize.

Conclusion

The detailed information that can be found in various economic contribution or tax transparency reports that are now published by the largest global mining groups shows the growing importance of managing reputational risk in relation to tax in the mining sector. In future years, this is likely to broaden and filter downwards in terms of the scale of mining groups taking part, whether that be on a voluntary or a mandatory basis.

It will be interesting to see if a positive contagion takes hold, when mining groups more expressly demand their own tax governance standards are matched by their major suppliers or subcontractors. The dangers to a company's reputational risk from the actions of suppliers and subcontractors are obvious and well-established in many areas— corruption, fraud, money laundering and sanctions compliance to name but a few. As their own tax strategies become increasingly available for public scrutiny, mining groups may well need to monitor the corporate structures and tax governance arrangements of their closest business partners.



Managing tax controversy in the global environment

Companies operating in the natural resources and extraction industries have been facing a growing array of challenges for many years. In addition to factors such as slow economic growth, increased financial market volatility and low commodity prices, multinational enterprises also must contend with a growing body of tax laws and regulations, particularly in relation to cross-border investments where issues such as transfer pricing clearly are on the radar of the tax authorities.

In addition to strengthening tax laws and closing tax loopholes, many governments have increased the resources available to their tax authorities.

For example, in its most recent budget, the Canadian government put forward an investment of CAD 444 million over five years for the Canada Revenue Agency to hire additional auditors and specialists, develop robust business intelligence infrastructure, increase verification activities, and improve the quality of investigative work that targets tax evaders. This investment has seen effective results indicating that budget increases of this nature, can result in successfully driving more aggressive use of information-gathering powers, resulting in larger assessments supported by more sophisticated analysis.This trend is likely to continue worldwide.

Taxpayers can take steps to address this increasingly challenging environment. The first is simply to be prepared. This means that corporate directors should anticipate any major transactions, cross-border reorganizations or tax initiatives that are likely to be audited, and take steps to prepare for the audit before it is initiated. Tax authorities are more capable than ever of identifying areas of noncompliance and, in some cases, taking aggressive positions to generate and protect tax revenue.

When dealing with any tax sensitive matter, such as a cross-border restructuring or transfer pricing, management should carefully consider records that are being created, and what materials must be retained after the matter has concluded. In terms of best practices, following any transaction or reorganization that has significant tax implications, companies should assemble all of the essential documents an auditor may be expected to request and prepare a memorandum that summarizes the transaction steps and intended tax consequences.

Document management is paramount in relation to transfer pricing and this is bound to increase in importance going forward. Credible and compelling documentation that supports the transfer prices in dealings with nonresident related parties is critical to any subsequent transfer pricing audit. Some companies seem to underestimate the importance of transfer pricing documentation, viewing the requirement to maintain transfer pricing studies as a burden and a necessary administrative step to protect itself from penalties, and lose sight of the general importance of documentation in protecting against a transfer pricing adjustment in the first place. The transfer pricing study generally will be the first document an auditor will review when deciding whether to further investigate and perhaps pursue a transfer pricing adjustment.

One option to consider in the context of transfer pricing is the pursuance of an advance pricing arrangement (APA) with the relevant tax authorities, where available. Under such an APA, applicable transfer pricing methodologies for specific cross-border transactions between non-arm's length parties can be confirmed in advance, thereby reducing the potential for disputes and minimizing future compliance costs. Since APAs generally are negotiated under the mutual agreement procedure article of a tax treaty, there often is the possibility for the type of compromise and flexibility that otherwise is available only in the context of a request for competent authority assistance relating to an existing tax dispute.

Potential business impact

In the event that an unforeseen tax issue does arise, to address risk and the potential for a protracted and costly dispute, it is critical to be aware of all processes and procedures that may be available in a particular jurisdiction.

Record creation and retention protocols can be an excellent front-line defense, especially where local tax authorities have significant information and document-gathering powers. Understanding the nature of the information in a company's own files is the first step to dealing with the flow of information to the tax authorities.

Conclusion

Tax controversy may be an unavoidable reality for some mining companies, and the challenges of dealing with tax disputes in foreign jurisdictions, where tax and political issues often overlap, are well known. Regardless of the circumstances, the current global environment of increased scrutiny by tax authorities means that companies should carefully consider policies that anticipate the potential for tax disputes, rather than waiting for tax disputes to develop.

10

Highly mobile workforces and the talent paradigm

The importance of people in mining cannot be underestimated and as such, people remain one of the cornerstones of the mining industry. Mining companies will continue to experience pressure to attract and retain top talent across all areas within the global mining industry. The competition for skilled talent is set against a backdrop of increased scrutiny from global tax and immigration authorities.

The workforce in the mining sector is highly mobile, due to several factors:

- Location of mines versus the pool of skilled talent;
- Prevalence of fixed term contracts in the industry; and
- Innovation.

Mine sites often are located in remote, under-populated areas that can be difficult to access. Attracting top talent to work at these sites can be challenging, particularly for millennial employees. Employers typically provide the following benefits to encourage employees to accept roles in these locations:

- Competitive salaries;
- Generous relocation and hardship allowances;
- Board and lodging at the mine site;
- On-site fitness and technology resources;
- Flexible travel benefits, for instance the provision of a travel allowance which the employee may use to travel to or from the mine site to their home location or alternative locations throughout the year;

- Shorter rotation schedules to cut down on length periods of time from family or friends; and
- Global rotational graduate programs.

As with most industries, the mining industry is adapting to the needs of a new generation of employees and those that are successful in attracting and retaining such talent will be companies that adapt and continue to introduce flexible and innovative compensation and benefits packages to their employees.

Potential business impact

Addressing the regulatory compliance for a globally mobile workforce in the current tax and labor or immigration law environment can be costly for companies. In this context, the key risk areas that companies should identify, monitor and support include:

- Short-term business travelers who travel to various active or exploration sites for work purposes but are not on active assignments.
- Expat populations in countries with strict domestic labor law and union regulations regarding the use of expat employees on site.
- Global payroll operations that are complex, and remuneration data required for payroll and tax reporting is collected globally across multiple internal and third party sources in various formats and languages.
- Variations in tax and payroll compliance obligations.

Conclusion

A robust mobility compliance process that is centrally managed and locally coordinated can enable organizations to effectively address global compensation and tax reporting objectives while enhancing the employee experience and overall financial transparency of the business.

While compliance with the myriad of employer tax, payroll and immigration laws in locations across the globe can seem costly from an economic and manpower perspective, noncompliance with statutory reporting, visa, and local tax requirements raises a variety of risks for companies including potential fines and penalties, business interruptions, and reputational risk.

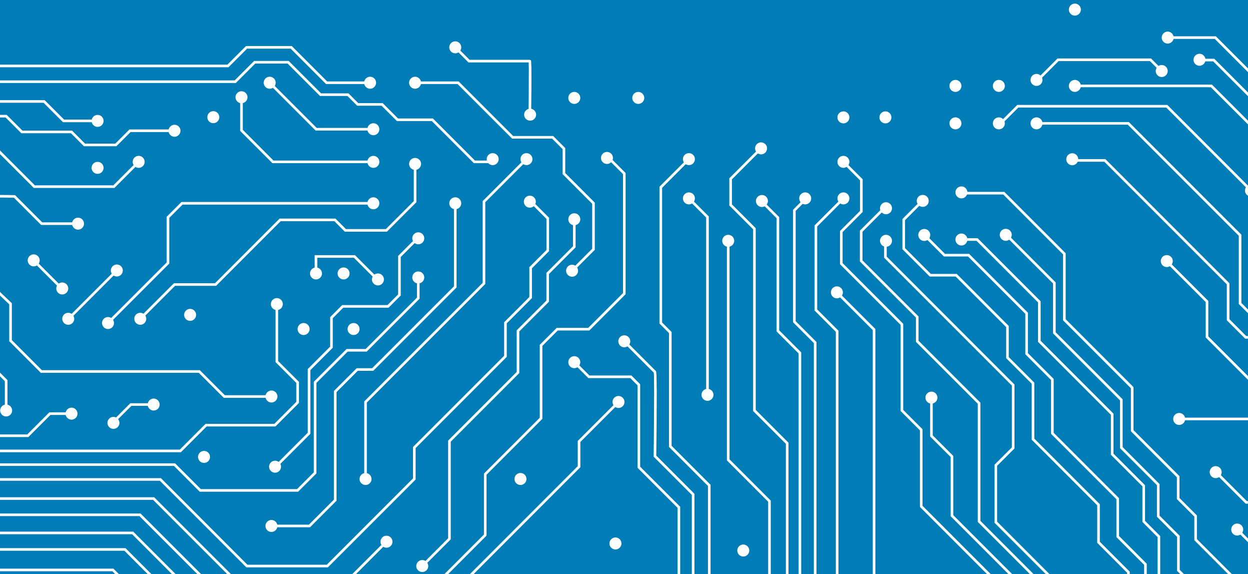
Conclusion

The last several years have seen a marked change in the manner in which tax authorities in developed countries are administering tax laws. By all accounts, these changes primarily are focused on curbing tax avoidance, and represent the efforts of governments to maintain or recoup tax revenues on the heels of a global recession. In general, tax authorities are becoming more efficient and sophisticated with the deployment and allocation of their audit resources, are embracing new protocols for sharing information across national borders and are developing new technologies to enhance their ability to uncover tax compliance issues.

For this reason—and against the backdrop mentioned above where the extractives sector has been at the forefront of the public disclosure of their payments to governments on a voluntary, and now increasingly mandatory, basis—mining companies take reputational matters seriously.

The complexities and issues related to tax matters will continue and mining companies adopting pro-active initiatives to assess, monitor and comply with the rapidly changing environment will be well placed to navigate the complexities.

As new technologies develop to move the mining industry forward, the tax environment will evolve along similar lines and mining companies are well placed to lead the evolution of technology and how tax evolves into uncharted frontiers.



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