

TOPIC: CHALLENGES RELATING TO THE PRICING POLICY FOR MINERALS AND VALUATION ISSUES IN MALI

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I. OVERVIEW OF THE MINING SECTOR IN MALI

- ❑ To ensure all Malians benefit from the country's gold resources, some challenges must be met.
- A. First, we will take a look at the characteristics of the mining sector ecosystem in Mali:**
 - ▶ Located at the heart of west Africa, Mali's mining boom began in the mid-1990s;
 - ▶ Gold is the dominant product;
 - ▶ Mali is the fourth-largest producer of gold in Africa behind South Africa, Ghana and Sudan;
 - ▶ Annual industrial gold production is around 50 tonnes (2014-2016);
 - ▶ Production from gold panning is estimated at 3-4 tonnes (unreliable statistics).

B. CONTRIBUTION OF GOLD MINING ACTIVITIES IN 2016

- ▶ Share of GDP: 6%;
- ▶ Share of exports: 55%;
- ▶ Contribution to the Treasury: CFAF 335 billion in exports (source: speech by the Minister of Mines on June 27, 2017, national conference (*états généraux*) on the mining sector in Mali);
- ▶ The mining sector employs 12,000 people, 8,000 subcontractors and 200,000 in gold panning.

C. SECTOR DOMINATED BY MULTINATIONALS

- ▶ Malian mining corporations are normally the subsidiaries of multinationals, including: AngloGold Ashanti, Randgold Resources, Endeavour, B2Gold.
- ▶ Capital ownership: generally speaking, 80% is owned by foreign investors compared to 20% by the Mali government.
- ▶ The following corporations operate in the sector: SOMILO, GOUNGOTO, MORILA, SEMOS, SEMICO, FEKOLA, SOMIKA, YATELA, SOMISY, FEKOLA, SOMISY;
- ▶ Based on this information, intragroup commercial and financial transactions are a salient feature of the mining sector;
- ▶ Absence of a refinery for industrial production in Mali, hence the export of smelted gold (5-10% impurity).
- ▶ **For each shipment, the quantity of pure gold (99.99%) is estimated and may be adjusted at a later date.**

II. TYPES OF MARKETING CHANNELS

- ▶ **THE OFFICIAL CHANNEL:** industrial production with verifiable and traceable statistics. Hereafter, we refer mainly to this channel owing to its organized nature;
- ▶ **THE UNOFFICIAL CHANNEL:** small-scale mining with quantities and prices that are not always available or are estimated. Production is gathered by collectors who deliver it to trading posts for onward sale.

III. SOME METHODS FOR GOLD PRICING POLICY: THE LBMA (London Bullion Market Association) FIXING PRICE, HEDGING, FORWARD SALES

A. THE MARKETING OF INDUSTRIAL GOLD IS DONE MAINLY VIA THE LBMA (LONDON BULLION MARKET ASSOCIATION) FIXING PRICE, BY TWICE-DAILY AUCTION:

- ▶ The LBMA manages supply and demand among its members, including banks (e.g., Goldman Sachs, Merrill Lynch, Société Générale) and mining corporations (Rio Tinto, BHP Billiton, Rio Tinto) or industrial companies. The LBMA is the biggest global market for precious metals, responsible for 80% of global trade.
- ▶ Auctions are held in the morning and afternoon. The prices set by these auctions are known as the London Gold Fixing price and are used as a benchmark. The price is set per ounce (**31.1034 g**) of gold in US dollars.

B. HEDGING

- ▶ **Hedging** is an operation designed to protect a transaction against risks, such as exchange rate fluctuations or changes in commodity prices. It is a risk-hedging technique;
- ▶ It is a price setting method that uses varied and complex stock market techniques;
- ▶ It offers relative protection to mining corporations against falling prices, and enables them to take advantage of price increases.

C. FORWARD SALES

- ▶ These are contracts that enable mining corporations to sell wholly or partially at a price agreed in advance for a specific time period;
- ▶ They protect corporations against falling prices, but do not enable them to take advantage of price increases.

D. CHOICE OF PRICING POLICY METHOD AND LIMITS

- ▶ The choice of pricing policy is a management decision made by mining corporations. However, the choice must not be made to the detriment of the host country's interests.
- ▶ Since the price per ounce is also in US dollars, fluctuations in the dollar exchange rate are worthy of close attention to avoid applying a rate other than that on the day of the sale;
- ▶ Regardless of the method selected, the pricing policy between mining corporations and their customers must comply with the arm's length principle.

IV. CHALLENGES OF MONITORING MINING CORPORATIONS' PRICING POLICIES

❑ A. RISK OF LOWERING THE PRICE

- ▶ As mentioned above, sales are generally between related companies (with legal, economic or de facto ties) and may not be based on arm's length prices, i.e. prices that would be set by independent companies;
- ▶ Sales prices generated in this way are a key factor in the calculation of numerous taxes, duties, and royalties, including corporate income tax (IS) and the special tax on certain products: excise duties (ISCP);
- ▶ Mining corporations' pricing policies must be monitored closely to protect the tax base.

B. ADOPTION OF TRANSFER PRICING LEGISLATION

- ▶ The principle of transfer prices exists in the 1977 General Tax Code. According to Article 197, “For the purposes of assessing the income tax liability of undertakings dependent upon or owning a controlling interest in undertakings located outside of Mali, indirect transfers of profits to the latter by means of increases or decreases in buying and selling prices, or by any other means, shall be added back to the profits shown in the accounts. The same procedure shall apply to undertakings that are dependent upon an undertaking or a group that also owns a controlling interest in undertakings located outside of Mali.

In the absence of specific information to make the adjustments referred to, taxable income shall be determined by comparison with similar companies operating normally”.

C. AMENDMENTS TO THE RELEVANT LEGISLATION

- ▶ The provisions of Article 197 of the General Tax Code were revised and amended under Article 81 of the General Tax Code via Law No.10-014 of May 31, 2010;
- ▶ Transfer price legislation has been supplemented by the 2016 and 2017 Budget Laws through the introduction of a requirement to keep records to facilitate access to information for tax audit purposes.

D. ADJUSTMENTS TO GOLD SELLING PRICES

- ▶ In practice, auditors question lower selling prices if the gold was sold at a rate that does not correspond to the daily rate set;
- ▶ Related products (silver for the specific case of gold) and tailings must be valued since they can be marketed;
- ▶ Thorough audit of sales contracts and the pricing policy of the various corporations;
- ▶ Thorough audit of refinery contracts and refinery reports;
- ▶ Use of shipment data provided by Customs;
- ▶ Close monitoring of offshore accounts where income from sales is deposited. Funds repatriated to Mali must comply with BCEAO regulations.
- ▶ The possibility for price optimization may arise from the quantity of ore shipped (this data [reviewed by reliable experts] must come from the geology department (National Directorate of Geology and Mines or abroad));
- ▶ These audits made it possible to adjust the tax bases for corporate income tax (IS), the tax on securities income (IRVM) and the special tax on certain products (ISCP).

E. OUTLOOK FOR THE PRICING POLICY FOR MINERAL ORES

- ▶ Creation of a small, multidisciplinary taskforce to more closely monitor mining corporations' pricing policies;
- ▶ The taskforce members must follow a training program on problems experienced in Mali and best practices for pricing policy;
- ▶ The team will use information access tools to provide a clearer explanation of the administration's stance in relation to **advance agreements on pricing policy methods**;
- ▶ **These agreements should help to avoid long litigation with an uncertain outcome.**

V. VALUATION ISSUES

- **A. AREAS OF FOCUS FOR MALI'S NEW MINING POLICY STRATEGY 2012-2019:**
 - **Infrastructure;**
 - **Research;**
 - **Transparency;**
 - **Recruitment of qualified staff;**
 - **Local content;**
 - **Protect the rights of local communities;**
 - **Transparency;**
 - **Communication between ministerial departments (ministry of mines, finance, trade, the environment, etc.).**

B. ACTION STEPS FOR IMPLEMENTATION

- ▶ Development of infrastructure (roads, power grids, etc.) to bring about a certain reduction in operating costs;
- ▶ The valuation of gold in Mali will come through the creation of a refinery in Mali that would enable it to offer a finished product in keeping with international standards, and which would offer closer monitoring of the sector;
- ▶ Based on the current rate of production, gold reserves (according to recent discoveries, around **800 tonnes**) will run out by **2034** (in approximately **16 years**):
- ▶ Need to introduce a strategy to discover new gold deposits;
- ▶ Conduct research to diversify mining operations based on the potential for: iron, uranium, copper, bauxite, manganese, and diamonds...to move away from sole production of gold.

ACTION STEPS TO IMPLEMENT VALUATION (CONT.)

- ▶ Technical training and the creation of jobs should be promoted by offering support to vocational and technical training programs to meet the needs of the mining industry;
- ▶ Establish more clearly the role to be played by mining corporations in promoting sustainable and integrated local development;
- ▶ Based on equal technical and financial conditions, the principle of “first come, first served” shall apply. The online publication of mining agreements will increase transparency and establish fair treatment;
- ▶ Better organization of small-scale mining operations to improve working conditions, boost the revenues of small-scale miners and improve taxation of gold panning.
- ▶ Finalize the review of the Mining Code to reconcile attractiveness and a fairer distribution of mining sector revenues.

CONCLUSION

- ▶ The pricing policy for mineral ores is a management decision to be taken by mining corporations, but should not have a negative impact on government revenue.
- ▶ Each time the administration manages to prove that the prices set by a mining corporation do not comply with the arm's length principle, it may adjust them, in accordance with the law, and in line with the rights of the mining corporation.
- ▶ The mining sector's promising future will depend on several factors, including an increase in and diversification of production, an improved legal framework for the sector and its integration in the social and economic environment.

THANK YOU