Brief on Mining Taxes, Duties and Royalties in the Democratic Republic of Congo

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The Mining Code provides for an exhaustive customs and tax regime for mining activities. What are the most important?

The DRC tax system is source based. Taxable income includes all types of income realized or deemed to be realized in the DRC. DRC-source income is generally defined as income relating to activities carried out in the DRC, even if the actual payment takes place outside the DRC. Income realized outside the DRC by a DRC non-resident is not subject to tax in the DRC, unless the income is sourced or deemed to be sourced in the DRC. Services rendered by non-residents are subject to withholding tax of 14%.

The tax and customs regime applicable to DRC mining companies is exhaustively set forth in the 2018 amendments of the Mining Code. The main taxes levied on mining companies include surface taxes and rights, corporate income taxes, royalties, taxes on dividends and interest rates, and taxes on wages.

1. Tax on salaries

o **Personal tax on salary**

Salaries and all benefits in cash or in kind paid to local and expatriate employees are taxable at a maximum rate of 30% after deduction of the employee’s social security contribution. The tax is withheld by the employer who is liable for the payment of the tax.
Family allowances, pensions, annuities, housing, transport allowance and medical expenses are exempted up to the proportion published by the Government.

o **Casual labour.** Casual and consultant salaries are taxable at the rate or 15%. The company is liable for the payment of the tax.

o **Special tax on expatriate salaries**

Companies employing expatriates are subject to the payment of a special tax applied on the basic salary of these employees. The rate is 12.5% for the 10 years of the project and after 25 % for mining companies (and their sub-contractors). This tax is deductible for only mining companies. It is 25% in all other cases.

2. Capital gains tax

There is no special tax on capital gains in the DRC. Capital gains are treated as ordinary income and subject to corporate tax. It should be noted that latent capital gains on business assets are exempted in so far as they are not realized by the taxpayer. The rate is 30% for mining companies.

3. Value-Added Tax (VAT)

VAT has been levied since 1 January 2012, replacing the local turnover tax. Imports and transactions within the DRC are taxed at 16%, while exports are zero rated.

Individuals and companies are subject to VAT. Service providers are, however, VAT Collectors regardless of their turnover.

The following steps, inter alia, have been taken for the implementation of VAT:

· The registration for VAT Collector status is to be requested before the beginning of operations. A VAT number and certificate are to be delivered.

· Companies based outside the DRC, but rendering services to DRC companies, cannot be VAT Collectors. However, their DRC clients or Tax Representatives are required to declare VAT on those invoices issued without VAT;

· Specifically, exporting mining companies, oil producing companies and companies having made significant investments which are in the implementation phase are authorized for their local acquisitions, to be delivered free of VAT, goods and services that they are geared to their operating and investment needs.

To benefit from this dispensation, the interested company has to provide to its supplier an attestation approved by the service of the tax administration of which it is responsible, certifying that the goods and services purchased are intended, as they are or after slight transformation, to the needs of exploitation and investment.

o The importation by new businesses of goods equipment for creative investment, in the conditions determined by regulation, is exempt from VAT.

o Mining companies subject to VAT are required to withhold VAT from public companies where the State holds the entire share capital.

o The law exempts the import and purchase of equipment, materials, reagents and other chemical products intended for prospecting, exploration, research and development and construction of mining and petroleum projects, before the beginning of operations.

4. Tax regime for mining companies

Effective in 2018, the new DRC Mining Code envisages a preferential tax and customs system for mining companies. This system applies to any holder of a mining title or quarry and their subcontractors.:

A mining royalty (i.e. specific mining tax) is owed as from the date of commencement of effective exploitation and are payable at the leaving of the goods from the exploitation or processing site of the project, the rates are:

- 0% for commonly used building materials
- 1% for industrial minerals, solid hydrocarbon and other substances not listed
- 1% for iron or ferrous metals
- 3.5% for non-ferrous metals
- 3.5% for precious metals
- 6% for precious and colored stones
- 10% for strategic substances (cobalt, coltan and germanium)

Other taxes include a professional tax on benefits at the preferential Mining Code rate of 30% is levied on the net profits from exploitation determined in accordance with the accounting and tax legislation in force. A special tax on “super profits” is enforced on income earned when commodity prices increase to 25% above the levels included in a project’s feasibility study.

5. **Exchange controls regulations**

o *The repatriation of earnings in foreign currencies* : During the amortization phase, the exporting holder must repatriate 60% of exportation earnings in the account maintained in the DRC. However, the export holder can keep 40% of these earnings for any foreign debt. As soon as the investment been amortized, the exporting holder must repatriate 100% of any exportation earnings in the DRC.

o *Royalties for exchange* : A royalty in respect of the exchange control must be paid to the Central Bank of Congo as follows:

§ 2‰ on foreign payments (not including the repatriation of earnings) and all operations (credit or debit) made on the principal account except for transfers in favour of foreign debt accounts.

§ 2‰ on all exportation earnings.

o *Repurchasing foreign currencies.* If the national economy requires such, the State and the Central Bank are authorized to repurchase foreign currencies of repatriated earnings at a rate and amount agreed with the holder of the mining rights.