

ARGENTINA - TAX IN MINING

Since the 1990s, Argentina's mining industry has experienced a fast-paced development and become one of the leading business sectors in the country. Argentina's mining reserves are comparable to those of Chile, Bolivia and Peru, and offer opportunities in minerals such as gold, silver, copper, molybdenum, uranium, lithium and rare earths. This document summarizes the key tax aspects of the industry.

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I. INTRODUCTION

Since the early 1990s, and as a consequence of a new mining policy adopted in Argentina, foreign companies active in the mining industry have started to consider Argentina as an investment target. This trend has continued to date but with a different degree of intensity due to internal (political, economic and provincial legislation) and external (international metal prices and economic crisis) factors.

Argentina has large areas that have not been explored yet and a wide range of minerals, including metals and industrial minerals, among others. Its mining sector is expected to continue growing and become one of the most relevant sectors for the economy.

II. LEGAL FRAMEWORK

Mining regulations in Argentina are mainly established in the Mining Code, although other rules may also arise from local procedural laws and certain special federal laws. The Mining Code sets forth regulations governing the general extent of permits, technical requirements, permit-holder obligations as well as permit limitations.

Mining natural resources are property of the Provinces. Each province has its own mining procedure laws. Even though provincial laws and regulations cannot alter the rights and obligations established by the Mining Code, the process for obtaining and maintaining exploration permits in effect varies slightly from one province to another.

As owners of the mining property, the Provinces are entitled to the payment of:

- An annual canon, determined according to the category of the substance and the extension of the area. During the first five years of the concession term¹, the concessionaire cannot be subject to any other tax on the mining property or the assets used to exploit it.

Failure to pay the annual canon could enable the mining authorities to terminate the mining concession. However, this is not automatic and prior notice must be given to the concessionaire.

- Royalties: determined by the regulations of the jurisdiction where the mine is located.

In addition to the Mining Code and provincial regulations, Law No. 24,196, as amended (the "Mining Investment Regime"), sets forth a promotional regime for investments in activities such as prospection, exploration, development, extraction and refining of mineral ores. Since its enactment, the Mining Investment Regime has favored significant mining prospecting and exploration activities in Argentina as it provides special benefits that reduce the economic burden and risks of those activities.

III. MINING INVESTMENT REGIME

1. Benefits

The benefits of the Mining Investment Regime relevant to a project's prospecting and exploration stage are the following:

- Income tax benefits such as (i) double deduction of prospecting and exploration expenses upon the income tax assessment; (ii) the option to choose an accelerated depreciation system of fixed

¹ Counted as from the date of registration.

assets and property, land and equipment; and (iii) the exemption of profits arising from mines and mining rights contributed in consideration for the equity holding in the relevant company;

- Option to capitalize 50% of proved mining reserves;
- 3% royalty cap of the mine-mouth value of extracted minerals;
- Reimbursement of the Value Added Tax (“VAT”);
- Exemption from payment of customs duties and customs fees for capital assets used in mining activities;
- Fiscal, foreign exchange and custom stability of the mining project for a 30-year term, as from the filing date of the feasibility study, except for VAT (“Fiscal Stability”).

Fiscal Stability means that the overall tax burden² of the companies comprised within these regulations will not be increased. Instead, the tax burden is capped at the national, provincial or municipal level (provided that the province has adhered to this regime).

The Argentine Supreme Court of Justice (the “SCJ”) has ruled that Fiscal Stability entails the commitment of the national, provincial and municipal governments to limit the total tax burden of a mining project. However, it does not prevent the introduction of new taxes if the total tax burden does not exceed the tax burden established upon the filing of the feasibility study. In order to determine if the Fiscal Stability has been violated, compensations granted by the Argentine State through the suspension or reduction of other taxes must be taken into account to calculate the overall increase of the total tax burden.³

The Tax Reform Act (the “Reform”) published in the Official Gazette on December 29, 2017 could affect the total tax burden of ongoing projects:

- The corporate income tax rate is reduced from 35% to 30% for FY 2018 and 2019, and to 25% starting from FY 2020.
- The “Equalization Tax” has been abrogated since 2018. This tax levies dividends distributed in excess of the company’s accumulated earnings at the end of the previous fiscal year (35% applicable to profits not previously taxed).⁴

As a consequence of this tax reduction, the Argentine State is entitled to introduce a new tax or increase the rate of an existing tax without affecting the total tax burden of the mining project and, therefore, the Fiscal Stability.

2. Obligations

The Mining Investment Regime sets forth the following obligations and formalities to be complied with by its beneficiaries:

² Determined on the date of submission of the feasibility report.

³ *Minera del Altiplano*.

⁴ According to the SCJ in re CERRO VANGUARDIA SA, this should be taken into account by the company to calculate the total tax burden increase.

- Filing of corporate, tax and mining information and documents with the application to become beneficiary, and filing of annual updates thereafter.
- Filing of annual affidavits on forecasted investments; investments made in the expired term; use of double deduction of expenses and accelerated depreciation for the assessment of the income tax.
- Creation of a special accounting provision for the prevention and mitigation of environmental damages and the filing of an annual affidavit reporting this provision.
- Use of equipment subject to any of the above benefits only for mining purposes (i.e.: goods exempted from custom duties when imported, assets over which income-tax double deduction or accelerated depreciation was applied, etc.). However, with the authorization of the National Mining Office, such goods can be transferred to other individuals and legal entities registered in the promotional regime.

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If you have any question or comment regarding the foregoing, do not hesitate to contact us by calling at (54-11) 4326-7386, via fax to (54-11) 4326-7396 or via e-mail addressed to godoy@berettagodoy.com or balzano@berettagodoy.com.