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Technical Assistance On Mining Sector Governance for the Government of the Philippines

Project Overview

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Mining Philippines International Conference and Exhibition

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Jason Doupe

Team Lead

Profile

Jason Doupe has over 27 of experience as a technical specialist and project leader in environmental assessment and regulatory permitting. As a vice president within Stantec, he leads mineral sector and hydrocarbon project assessment activities in North America and in developing countries around the world.

He has managed a wide variety of projects ranging from mines and resource processing facilities, oil and gas exploration, production, processing, pipeline and storage, water use and storage facilities, carbon capture and storage projects, LNG facilities, upgraders and refineries, petrochemical facilities and gas-fired power generation. Mr. Doupe also has extensive experience working in environmentally sensitive and bio-diverse regions, including in Northern Canada, the United Kingdom, Western Europe, Southeast Asia, South Africa, the Middle East, Georgia and the Caspian Sea region and Eastern Russia.

In 2022, he served as the Team Lead for the Technical Assistance On Mining Sector Governance for the Government of the Philippines, providing technical assistance to the Philippines Department of Environment and Natural Resources (DENR) to strengthen the international competitiveness of the country's mining sector.

Education & Certifications

- M. Eng. in Environmental Engineering, University of Calgary, Canada
- B.A., Geography, University of Saskatchewan, Canada

Program Overview

U.S. Department of the Interior - International Technical Assistance Program

Under the Department of the Interior (DOI) International Technical Assistance Program (ITAP), the United States Government is seeking to promote resilient and diverse renewable energy supply chains, with an emphasis on developing robust, transparent, and competitive critical mineral markets.

To achieve this objective, resource rich countries must be enabled to:

- Attract leading private sector investors,
- Encourage stakeholder participation via transparent Environmental, Social and Governance (ESG) requirements, and
- Promote appropriate working conditions through effective regulation and capacity building initiatives.

DOI ITAP promotes this shift through the sharing of leading governance principles, mining practices, and encouraging a level playing field for investors.

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Provide ***technical assistance*** to the Department of Environment and Natural Resources (DENR) to strengthen the Government of the Philippine's ability to provide ***effective oversight of the mining sector*** and help to:

- Incentivize mining sector investment under equitable and mutually beneficial terms;
- Build capacity for regulatory enforcement and sound governance; and
- Ensure environmentally friendly and socially responsible development.

The Deloitte team provided support in these areas:

- Environmental management and capacity building
- Mining fiscal regimes and benchmarking
- Mineral resource data assessment

Project Overview
Mining Fiscal Regimes and Benchmarking Report

The Deloitte team produced a report evaluating the current mining fiscal system's suitability to attracting investors and providing balanced returns to investors and the government.

In this report, the Deloitte team:

1. Examined the Philippine mining sector fiscal system
2. Analyzed the taxation of large-scale metallic mines regulated by the national government
3. Used a questionnaire to acquire information about the mining fiscal and revenue allocation systems
4. Benchmarked Philippine fiscal system attributes against those in comparable countries
5. Modeled the Philippine fiscal system to analyze investment and fiscal returns under the current system and different scenarios
6. Provided recommendations to amend the Philippines mining fiscal regime to improve its international competitiveness

Mine Taxation in the Philippines and Comparator Nations

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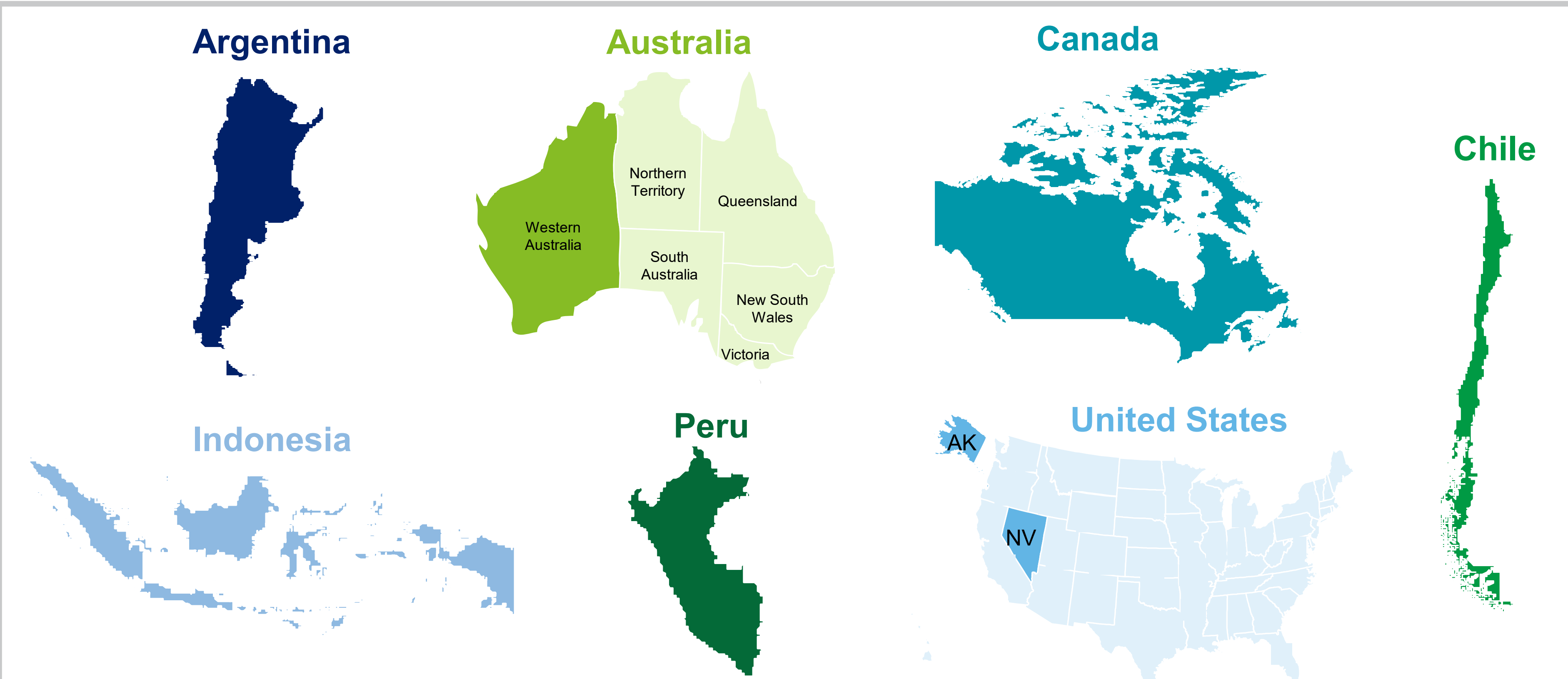
Nations used to benchmark competitiveness

Criteria used to select benchmarking countries:

- Similar resource endowment (i.e. nickel, copper & gold production and resources)
- Significant foreign investment
- Demonstration of alternative fiscal approaches

Countries selected for benchmarking:



Mine Taxation in the Philippines and Comparator Nations

Philippine Mining Fiscal System Overview

Income Tax

Key Observations

- ***Income tax rate is comparable*** to that in benchmarked nations.
- ***Accelerated depreciation is available*** like in most benchmarked nations.
- ***The time period to carry forward a loss is more restrictive*** than in the benchmarked nations.
- ***Special deductions and credits to encourage an activity are not offered*** or are discretionary unlike some ***benchmark nations*** where they ***are generally automatic*** and not subject to a discretionary approval.

Recommendations

- Continue to apply the same income tax rates to mines that apply to other taxpayers.
- Consider not providing a depletion allowance, similar to other nations with state-owned minerals, and amend National Internal Revenue Code of 1997 (NIRC) Section 34(G) accordingly.
- Consider not granting income tax holidays to mining taxpayers and update section 83 of the Mining Act, and Sections 39, 217, and 227 of the mining regulations.

Mine Taxation in the Philippines and its Competitor Nations
Royalty and Excise

Unlike most nations, the Philippines imposes both royalty and excise taxes:

5% — **Royalty Tax**
- Only levied in a mineral reserve area

4% — **Excise Tax**
- No benchmark nations charged excise tax on mineral sale

2% — **Local Government Tax**
- Maximum of 2%

+ 1% — **Royalty Tax to Indigenous People**
- Minimum of 1%

12% Total Taxes

Key Observations:
- ***Royalty rates exceed*** those in benchmark nations.
- ***Combined rate is one of the highest in the world.***

Key Recommendations:
- Consider imposing a single royalty.
- Consider subjecting all mines to a 5 to 14 percent sliding scale royalty based on net operating ratio applied to net income, like the royalty system in Chile.

Summary of Recommendations for Reform

Summary of Recommendations for Reform

Key Recommendations

Consider discontinuing royalty imposed on mines within a mineral reservation and zero-rate mineral sales for excise tax; instead, impose a new tax based on the Chilean approach of an operating margin-based royalty

The current approach imposes a high combined ad-valorem royalty.

- A new royalty approach could include:
  - Existing 1% royalty on mines in ancestral lands, existing 2% two percent local business tax, and a new sliding scale operating margin-based royalty.
- Benefits of a sliding scale operating-margin (annual profitability) royalty:
  - Progressive (higher profit mines are taxed more heavily than lower profit mines).
  - More marginal operations should be built, enhancing tax base potential.
  - Automatically adjusts for price cycles (allows the government to capture additional revenue when commodity prices are high without placing a large economic burden on mining companies when prices are low).
  - Well tested in major mining nations Chile and Peru.

Summary of Recommendations for Reform

Key Recommendations

Consider adopting non-discretionary exemptions, deductions, and discontinuing the current system whereby investors apply for various fiscal incentives.

Discretionary Strategic Investment Priority Plan (SIPP) approach doesn't suit mining.

- Deductions/exemptions/incentives are unstable, unpredictable, ad hoc, and discretionary.
- The SIPP is revised every 3 years.
- The tax approach can be standardized in the National Internal Revenue Code (NIRC), eliminating the need for SIPP.
- Investors consider predictability and consistency in fiscal regimes to be of high importance when evaluating where to invest.

Consider making the fiscal systems for Financial or Technical Assistance Agreements (FTAAs) and Mineral Production Sharing Agreement (MPSAs) identical.

Current approach imposes different fiscal systems on FTAAs and MPSAs.

- The need for two tax approaches resulted from historic Constitutional concerns that have since been addressed by Supreme Court decisions.
- FTAA approach includes an Additional Government Share that is not conducive to attracting investors.
- A single system would be administratively easier to regulate and monitor.
  - Facilitate standardized tax matters set out in the NIRC, negating the need to include them in MPSA and FTAA agreements, resulting in simpler agreements.

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