

# Considerations for Taxing Myanmar's Large-scale Mining Companies

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## Key messages

- Myanmar's geology means that the country could attract more large-scale mining companies and generate far higher government revenues than it currently does.
- Myanmar's government should design a tax regime that attracts mining companies while optimizing revenue for the country.
- The government should consider: developing a robust model contract and publishing contracts negotiated with companies, strengthening ministerial capacity, and improving coordination between government ministries.

In this briefing we present the challenges the Myanmar government has faced and set out considerations for designing an effective tax regime for the mining sector. We recommend reforms that could attract greater investment and allow the people of Myanmar to maximize benefits from the potentially significant mineral wealth of their country. The briefing is informed by the Natural Resource Governance Institute's support to Myanmar's Ministry of Natural Resources and Environmental Conservation (MONREC), which is helping the ministry implement strategic reforms.

## CONTEXT

Myanmar's minerals sector (in this case meaning all mining except for that of gemstones) generates little government revenue. In the fiscal year of April 2016 - March 2017, minerals mining made up only 0.6 percent of total government revenues.<sup>1</sup> (See figure 1.) Small and medium-scale companies dominate the sector, which has attracted few large-scale investors to date.

1 The extractive industries in total made up 15 percent of total government revenues in FY 2016/17, with minerals mining accounting for four percent of this contribution. Myanmar Extractive Industries Transparency Initiative (MEITI). *The Fourth Myanmar EITI Report for the Period 1 April 2016 to 31 March 2017* (2019), 8-11. [eiti.org/sites/default/files/documents/4th\\_meiti\\_report\\_30\\_march\\_2019.pdf](http://eiti.org/sites/default/files/documents/4th_meiti_report_30_march_2019.pdf).

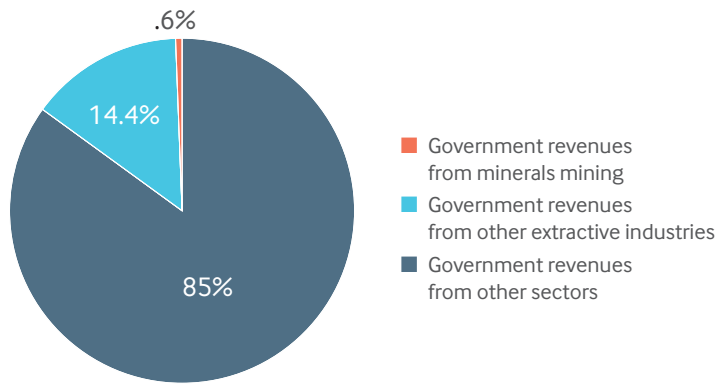


Figure 1. Contribution of mineral mining to total government revenues in FY 2016/17<sup>2</sup>

However, the sector could yield much more revenue for the government in the future. Many mining companies view the country’s geology favorably, so that developing even a small number of high-quality deposits could transform the role of mining revenues in government finances.<sup>3</sup> The value of production at the Bawdwin lead-silver mine in eastern Shan State alone—which is the largest new investment on the horizon—could almost be equivalent to all existing mineral mines combined. (See figure 2.)

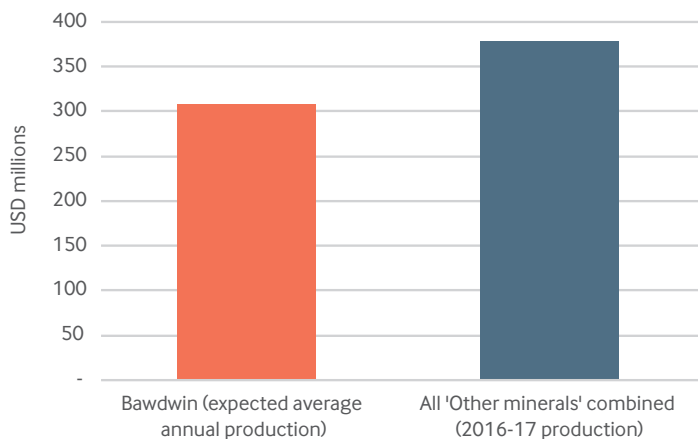


Figure 2. Production value per year for entire mineral sector and estimated production value of Bawdwin mine<sup>4</sup>

2 *Ibid.*

3 Three quarters of survey respondents said that Myanmar’s geology encouraged or at least did not deter investment in the country. Fraser Institute. *Annual Survey of Mining Companies* (2016), 19. [www.fraserinstitute.org/sites/default/files/survey-of-mining-companies-2016.pdf](http://www.fraserinstitute.org/sites/default/files/survey-of-mining-companies-2016.pdf).

4 *Myanmar Metals. Equity Raising Investor Presentation (5 June 2018)*; Myanmar EITI, *Myanmar 2016-17 EITI Report* (2019); and authors’ calculations.



Photo by Lauren De Cicca for NRGi

## CHALLENGES TO TAXING MINING COMPANIES

In dealing with investments like Bawdwin and in seeking to attract further large mines in future, the government must strike a balance between offering tax terms that are attractive to companies, while also optimizing revenue for the country. This has been a challenge for Myanmar and continues to challenge governments around the world.

### **High taxes may deter companies from investing in Myanmar**

Myanmar’s mining tax regime relies heavily on collecting royalties and a share of production from companies. These two taxes are based on the value and volume of production. In Myanmar, the levels of these types of taxes—as set out in the model large-scale mining contract published by MONREC—are extremely high by international standards.<sup>5</sup> (See figure 3.)

Companies are resistant to paying such a high production share and similar taxes, because they are still liable for payment even if they fail to make a profit. In extreme cases, this can force mines to close, resulting in lost government revenue and lost jobs.

The negotiated terms at specific mines may be far lower than those stated in the model contract (e.g., the Tagaung Taung production sharing contract as shown in figure 3). Companies’ tax planning techniques may further erode the actual amount that they pay, which we describe next. However, investors not yet established in Myanmar may assume they will face the more onerous tax terms in the model contract and invest elsewhere or try to bargain with government officials for a better deal.

<sup>5</sup> Ministry of Natural Resources and Environmental Conservation. *Production Sharing Contract for Large-scale Mining* (2018). [www.mining.gov.mm/DM\\_mm/default.asp?page=2](http://www.mining.gov.mm/DM_mm/default.asp?page=2). (Available in Myanmar language only)

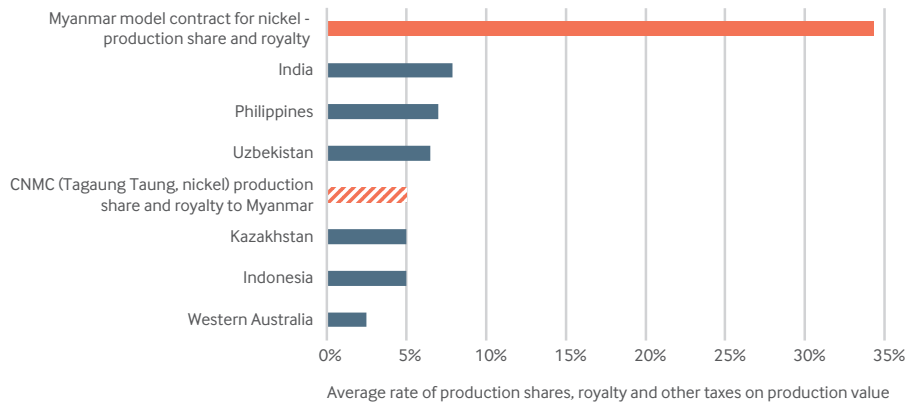


Figure 3. Rates of mineral royalty and similar taxes on minerals in selected countries<sup>6</sup>

### Reforming taxes to satisfy companies may create large tax loopholes

Instead of paying a share of their production, companies would rather pay taxes on their profit. But levying taxes on profits creates another challenge. Some companies try to avoid paying profit taxes (such as corporate income tax) by inflating their costs and claiming to be unprofitable. It is difficult for many governments to accurately verify this. While the Ministry of Planning and Finance (MOPF) is working hard to improve its capacity to do so, a risk remains that companies avoid paying profit-based taxes.<sup>7</sup>



Photo by Andre Malerba for NRGi

6 Holman Fenwick Willan. *A guide to investing in a mining project: An overview of four of Asia Pacific’s key mining areas: Indonesia, Mongolia, Vietnam and Western Australia* (2012). [www.hfw.com/A-Guide-to-Investing-in-a-Mining-Project-Oct-2012](http://www.hfw.com/A-Guide-to-Investing-in-a-Mining-Project-Oct-2012); “Mining Laws and Regulation 2019”, International Comparative Legal Guides. Accessed 2 August 2019, [iclg.com/practice-areas/mining-laws-and-regulations](http://iclg.com/practice-areas/mining-laws-and-regulations). Ministry of Natural Resources and Environmental Conservation. *Production Sharing Contract for Large-scale Mining*. Ye Myint Swe, Ministry of Natural Resources and Environmental Conservation. *Disclosures to the Amyotha Hluttaw (Myanmar’s upper house) in response to information request from U Saw Moe Myint, National Party* (7 February 2019).

7 Myanmar’s Framework for Economic and Social Reform identifies tax reform as a government priority. The World Bank, International Monetary Fund, US Treasury and the International Tax and Investment Center are supporting these reforms. Measures include establishment of the Large Taxpayer Office, the modernization of assessment processes and the introduction of tech-based tax management systems. Ministry of Planning and Finance, *IRD Tax Reform*. [www.mopf.gov.mm/en/content/internal-revenue-news](http://www.mopf.gov.mm/en/content/internal-revenue-news).



Photo by Minzayar Oo for NRGi

Offering tax incentives is another common tactic governments use to attract investment. At Tagaung Taung, the government gave China Non-Ferrous Metal Mining (CNMC) a five-year corporate income tax holiday.<sup>8</sup> However, if poorly chosen, tax holidays are some of the least effective means of attracting investment and can erode tax revenues.<sup>9</sup>

#### **Tax agreements have been frequently renegotiated but not disclosed**

The handful of large mining companies that have invested in Myanmar have negotiated bespoke agreements that deviate significantly from the standard terms set out in MONREC's model contract, while the ministry has not disclosed the negotiated contracts. This creates risks—negotiators may make unjustified and inconsistent concessions, which then must be rectified in subsequent renegotiations.

At Tagaung Taung, the company and MONREC agreed on the initial production sharing arrangement at a time of exceptionally high nickel prices. When prices fell, officials realized the government would not receive enough tax revenue. In subsequent renegotiations the ministry tried to correct this mistake, but the parliament continues to scrutinize Tagaung Taung due to perceptions that the government's share is too low.

Ideally, tax arrangements need to be acceptable to the government and companies both when prices are high and when they are low. Frequent changes to contracts deter investment and create opportunities for mistakes that can cost the country billions of kyat.

8 Dr Ye Myint Swe, Ministry of Natural Resources and Environmental Conservation. *Disclosures to the Amyotha Hluttaw*.

9 Alexandra Readhead. *Tax Incentives in Mining: Minimising Risks to Revenue* (IGF-OECD, 2019), 15. [www.oecd.org/tax/beps/tax-incentives-in-mining-minimising-risks-to-revenue-oecd-igf.pdf](http://www.oecd.org/tax/beps/tax-incentives-in-mining-minimising-risks-to-revenue-oecd-igf.pdf).

## CONSIDERATIONS

The Myanmar government needs to levy taxes that are flexible to changing prices and costs; simple to administer; and not susceptible to renegotiation. Governments around the world struggle to fulfil these objectives, so Myanmar's troubles are not exceptional. The following considerations could help the government to meet the objectives:

### **Develop a good model contract—and stick to it as much as possible**

MONREC should develop a model contract that works for the government and companies. This would have a suitable balance of taxes that are flexible to changing profits and simple to administer. Officials should write it after consulting with government entities, including MONREC departments and state-owned enterprises, departments within MOPF such as budget, treasury and internal revenue, and the Myanmar Investment Commission. Drafters should also draw on input from companies, civil society and other experts.<sup>10</sup> Following this process is likely to lead to a better designed, more credible and more attractive tax regime.

MONREC should publish this model contract and stick to it as much as possible—rather than negotiating complex, bespoke agreements with each new company as has been the case with the most significant mining investments in Myanmar to date. There could still be scope to negotiate specific terms, however this scope should be limited and be clearly defined. This will help avoid the current situation where negotiated terms bear virtually no relation to MONREC's model contract.

Crucially, MONREC should disclose contracts negotiated with companies. Disclosure helps to build trust with other government ministries, companies and the public because any deviations from the model terms will be known by all and need to be justified. This creates an incentive for the government and companies to negotiate better, more stable deals. From 2021 onwards, disclosing contracts will be required by the Extractive Industries Transparency Initiative, of which Myanmar is a member country.<sup>11</sup> Once the Myanmar government has determined on the right balance of tax terms for the country, it could enshrine the key aspects of the tax regime in legislation, as is common practice in more mature producing countries.

### **Strengthen government capacity to negotiate with companies**

In designing a good model contract and in subsequent negotiations with companies, the government must make difficult trade-offs and understand the complex financial arrangements of companies. To do so effectively, government ministries could build their internal capacity and seek external expert support in the interim. A central element should be that specialist teams within MONREC and MOPF can use and scrutinize financial models of mines to support the government negotiators. These skills could be built by developing a team that works alongside and learns from external experts.<sup>12</sup>

10 MOPF recently convened an expert committee to review extractive sector production sharing contracts. This could serve as the basis for the development of more robust model contracts in the mining sector.

11 Sebastian Sahla, Hosana Chay and Rob Pitman. *How and Why the Myanmar Government Should Publish Petroleum and Mining Contracts* (Natural Resource Governance Institute, 2019). [resourcegovernance.org/analysis-tools/publications/how-and-why-myanmar-government-should-publish-petroleum-and-mining](https://resourcegovernance.org/analysis-tools/publications/how-and-why-myanmar-government-should-publish-petroleum-and-mining).

12 For more detailed advice, see African Development Bank and OpenOil, *Running the Numbers: How African governments model extractive projects* (2018).

### **Coordinate across government agencies to collect revenue**

Coordination between government entities is essential for revenue collection. Different agencies have information on mining companies and their operations, but often do not share it. This makes setting effective taxes and administering them difficult. Sharing information will ensure better terms are negotiated and that companies do not avoid paying.

All relevant government agencies need to know the terms under which companies are operating. This includes MOPF understanding the exact production sharing arrangements agreed to by MONREC and any tax incentives offered by the Myanmar Investment Commission. Beyond this, MONREC and its state-owned enterprises need to proactively share project information (e.g., production volumes, ore grades and production costs) with each other and with MOPF. One means of achieving this would be to require state-owned enterprises to publish comprehensive financial and annual reports, including project-by-project data on revenues and costs.<sup>13</sup> This sort of public disclosure would ensure all government agencies (and the public) have access to key pieces of project information. This allows them to follow up with relevant departments or state-owned enterprises, and to better understand and appreciate the difficult decisions taken by MONREC.

13 Andrew Bauer, Arkar Hein, Khin Saw Htay, Matthew Hamilton and Paul Shortell. *State-owned Economic Enterprise Reform in Myanmar: The Case of Natural Resource Enterprises* (Natural Resource Governance Institute, 2018), 110 and 115. [resourcegovernance.org/sites/default/files/documents/state-owned-economic-enterprise-reform-in-myanmar\\_0.pdf](https://resourcegovernance.org/sites/default/files/documents/state-owned-economic-enterprise-reform-in-myanmar_0.pdf).

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