After the Gold Rush

a study on mining fiscal regimes in the Asia Pacific

ABOUT THE AUTHOR

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Introduction

The Asia Pacific is one of the most dynamic economic regions globally. A significant amount of mineral resources traded around the world comes from this region. Most of the resource rich countries, however, are also developing countries. Mining fiscal policies in the Asia Pacific must be designed to ensure that each country will be able to realize the full value of its natural resources. It is ideal that revenue from the mining industry contribute to a holistic economic development that outweigh its costs and impacts.

In this report, mining fiscal regimes of selected countries in the Asia Pacific are reviewed and compared, using the Natural Resource Charter Benchmark of the Natural Resource Governance Institute (NRGI) as a framework for assessment.

It is seen that some countries have clear directives for the mining industry while others do not. One of the contributing factors to this is the size of the industry in the country. If the contribution to the economy is not significant, there is no incentive to update and prioritize the strategy and direction of the industry. The laws and institutions governing mining also depend on the political climate. Some countries are still transitioning to a new form of government which may affect the fiscal regimes currently implemented. Transitioning governance structures also pose a challenge for enforcement of fiscal policies. Some countries have more effective tax administration while others do not even when high tax rates are imposed.

The comparison is then focused on looking at the fiscal regimes of other countries vis-à-vis the Philippines. It is clear that the Philippines lacks a national strategy for the industry and generates the least state revenue from mining relative to other Asia Pacific economies in this study. It also has the least GDP contribution form the industry. The Philippines is lagging in the development of a mining fiscal regime that ensures a reasonable return to government.

The paper focuses on the mining fiscal policies of the following countries: Indonesia, Myanmar, Mongolia, Timor-Leste, and the Philippines, looking into; legal basis, government agencies involved, licenses, taxes, and policy directive covering the Large Scale Mining Sector.
The Natural Resource Charter Benchmarking Framework (Precept 4: Taxation and Other Company Payments) will be applied to the comparative analysis of the countries above, as a lens to view the ideal mining fiscal regime. The following criteria and guide questions will be used:

Indicators such as contribution to GDP, Exports, State Revenue, Tax Effort, and Incentives are used to draw out an analysis.

4.1 Setting Fiscal Terms (Does the fiscal regime secure a reasonable return for the government while still attracting sufficient investment?)
4.2 Legal Framework of Fiscal Terms (Does the Legal Framework of fiscal terms provide sufficient accountability of citizens, stability for investors and flexibility to respond to changing circumstances?)
4.3 Tax Administration (Do government authorities collect the full value of taxes and other payments owed to the state?)
4.4 Accountability and Transparency of Fiscal Regime (Is the government held to account for the setting and collecting taxes and other company payments?)

Asia Pacific and the Mining Industry

The Asia Pacific Region has experienced unusually volatile economic trends in the past years. According to International Monetary Fund (IMF) data (2016), majority of the countries in the region experienced decline in GDP and production other than a few countries such as the Philippines.

To strengthen the countries' economies in the region from global risks, policymakers should make structural reforms to increase productivity and create fiscal space while supporting demand as needed (ADB, 2015). There is an opportunity to create fiscal space through reforms in mining fiscal regimes that increases state revenue and ensures proper management of the funds.

Asia Pacific economies are crucial suppliers of mined commodities, collectively producing more than half of the world's iron ore, more than 70% of copper, nickel, silver, lead, zinc, nickel, bauxite and tin, and more than 90% of coal and molybdenum (CRU, 2014).

The significance of mining to countries vary. There are countries in the Asia Pacific where resource extraction significantly contributes to GDP more than others (CRU, 2014). It can be argued that it is either because some countries are not attractive investments due to inefficient ways of doing business hence the size of the industry is relatively small, or if there is a number of mining operations, the fiscal regime is poorly designed and inadequately enforced which may be preventing the country to reap full benefits.

According to the NRGI Natural Resource Charter, tax regimes should enable the government to realize the full value of its resources consistent with attracting necessary investment, and should be robust to changing circumstances. A well-designed fiscal regime also attracts capable investors,

promotes greater resource discovery, controls production costs, and creates competition for resource licenses—which in turn promote greater revenues. The ideal scenario is that it should increase revenue of the industry and the government.

Country Experiences- Mining Fiscal Policies

Indonesia

The Mining Industry

Indonesia's mining industry is significant to the country relative to the other countries included in this report. According to the latest EITI-Indonesia Contextual Report (2016), the entire extractive industries (EI) contributed 11.3% to GDP in 2013, 6.5% of which is from the mining industry. Local economies have a much greater share in some of the resource-rich provinces such as West Papua, East Kalimantan and West Nusa Tenggara (PwC, 2012). Continued growth in the industry has benefited the government of Indonesia as 8.7% of state revenue comes from mining. The sector also contributes 14% to total exports (ibid). The percentage of exported minerals are still high despite policy directives to discourage exporting of raw minerals (PWC, 2016). This recent policy shift aims to develop Indonesia's downstream industries. According to Gaurnaut (2015), the resource boom of Indonesia started from high demand of raw minerals from other countries. The state, however, realized they may benefit more by developing their downstream industries.

Due to the long history of the country with the extractive sector, they are carefully crafting policy to promote equal sharing of benefits with the industry. The Mining Law 1967 was designed to encourage domestic investors while the current mining laws treat both domestic and foreign investors equally.

Fiscal policy framework

Legal Basis

There was a shift from a highly centralized form of government to decentralized systems that affected the regulatory framework of the mining industry in Indonesia. (Prayogo et al., 2013)
The constitution crafted in 1945, when Indonesia became independent states that:

> *The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people* (Article 33.3 –1945 Constitution of the Republic of Indonesia)

Currently, the Mineral Coal and Mining Law 4/2009 is the principal legislation that governs the mining sector, replacing its 1967 predecessor. The main triggers of this change were due to the introduction of regional autonomy in Indonesia and the introduction of equal treatment principle to foreign and domestic investors as mandated by 2007 Investments Law. (Garnaut, 2015)

It is stated under Article 3 of Law 4/2009 that the industry shall "support the sustainable national development and management of mineral coal". The Government, after consulting the House of Representatives, sets a mineral and/or coal policy which gives priority to domestic interest. The government also has authority to set annual production of each commodity for each province.

Indonesia is veering towards gaining higher value from mining by developing their downstream industries. Based on the MEMR Ministerial Regulation 7/2012, Indonesia has announced its policy to ban raw material exports by 2014. Companies are then required to develop downstream refining and processing industries. There is also a specification for a 20% export duty on certain minerals which is seen an alternative to an outright ban (Magno, 2015). MEMR Regulation 7/2012, however, has been revoked by MEMR 1/2014 in 2017. It was decided to continue the ban on raw minerals with the exemption of nickel, bauxite, and anode slime with strict conditions on their business permits.

Government Institutions

As mentioned, there was a shift from highly centralized governance to devolving authority to regional governments. Article 4 of the Mining Law 4/2009 states: "the control of mineral and coal by the state shall be realized by the Government and/or provincial governments. There is one national governing agency for the mineral resources of Indonesia; the Ministry of Energy and Natural Resources (MoEMR). The agency is in charge of formulating and implementing oversight policy to ensure energy and mineral security. It is also responsible for the evaluation of the performance of the sector (Indonesia EITI, 2016). The MoEMR has four (4) main directorates, one of which is the Directorate General of Minerals and Coal. It is in charge of 1) increasing national mineral and coal supply to secure availability 2) promote economic price for coal 3) develop national capabilities to process minerals 4) enhance mineral value (Indonesia EITI, 2016).

The provincial and regional governments have their own responsibilities in regulating the industry which will be discussed in the next sections on licenses and taxes.

Licenses

Under the Law 4/2009 the following are the licenses issued for mining operations:

Current mining licences and their role Type of License	Role	Issuing Agency
Mining business license or *Ijin Usaha Pertambangan* (IUP)	A general licence to conduct mining activities in a commercial mining area that is reserved for large-scale mining	Governor/ Minister

Special mining business license or *Ijin Usaha Pertambangan Khusus* (IUPK)	A specific license to conduct mining activities in specific state reserve areas for a national strategic interest	Minister/ to Indonesian corporate bodies, namely state-owned companies, regional government-owned companies and private companies
People's mining license or *Ijin Pertambangan Rakyat* (IPR)	A license for mining in an area of limited potential that is served for small-scale mining. This category is available only to domestic investors	Governor

Source: Prayogo, 2013 and Mining Law 4/2009

Izin Usaha Pertambangan (IUP) - Mining Business License

Mining Law 4/2009 states that there are two kinds of IUPs. First is the IUP for exploration which covers general inspection, exploration, and feasibility study. Second is the IUP for operational production which covers the construction, mining, processing and purification as well as transportation.

Article 37 states that the IUP shall be issued by:

- Governor if WIUP is located in more than 1 (one) regencies/municipalities in 1 (one) province after receiving recommendations from the relevant regents/mayors in accordance with the legislation; and
- The Minister if WIUP is located in more than 1 (one) province after receiving recommendations from the relevant governors and regent/mayors in accordance with the legislation

Ijin Usaha Pertambangan Khusus (IUPK) - Special Mining Business License

Article 74 of Law 4/2009 states that one (1) IUPK shall be issued by the Minister. The IUPK is issued to Indonesian corporate bodies, namely state-owned companies, regional government-owned companies and private companies (Article 75).

Article 86 explains that corporate bodies that will be issued special mining permits must meet administrative, technical, environmental, and financial requirements. Further provision is to be provided from government regulation.

Ijin Pertambangan Rakyat (IPR)- People's mining license

Article 67of Law 4/2009 states that regents/mayors shall issue IPR particularly to local population, namely individuals, groups of individuals and/ or cooperative. Regents/mayors can delegate the granting of IPR as referred to sub-district heads in accordance with the legislation. Applicants shall file application to the relevant Provincial Government to obtain IPR.

In article 68 the area of the Peoples Mining License is described as follows: for an individual (maximum 1 hectare), a group of individuals (maximum of 5 hectares), a cooperative (maximum of 10 hectares). There is a disclaimer in article 119 stating that the IUP or IUPK can be revoked by the Minister, governor, or regent/mayor according to their respective authority under certain situations.

Foreign Investors

The Contract of Work (CoW) schemes were privy to foreign investors prior to the Mining Law 4/2009. There was issues around government and companies doing closed door negotiations, given relaxed regulations (Garnaut, 2015). The CoW framework for foreign investors is now replaced by a single area-based licensing system that is applicable to both foreigners and local investors. This means that the arrangement of the previous contract-based system (between the investors and the central government) was abolished. For previous CoW, there were a series of negotiation processes between the central government and the concession holders (Prayogo, 2013). The mining Law of 4/2009 established the IUP licences as discussed above, the designation of mining areas, recognition of the 100 per cent foreign investment (with its divestment policy, discussed in later sections); a tender process; the utilisation of local content; as well as a ban on raw material exports and its value added policy.

Taxes

The Mining Law defines the sharing of national and sub-national government from the mining sector. Article 128 distinguishes responsibilities for state and regional revenues:

1. The holder of IUP and IUPK shall pay state revenues and regional revenues
2. The tax revenues as referred to in paragraph (2) shall consist of: a) taxes that become the authority of the government b) import dues and excises
3. The non-tax state revenues as referred to in paragraph (2) shall consist of: a) regular fees; exploration fees; production fees; d) compensation for data and information
4. The regional revenues as referred to in paragraph (1) shall consist of: a) regional taxes b) regional levels c) other legal revenues based on the legislation

Consequently, the holder of IUPK for operational production of metal and mineral and coal mining shall pay 4% and 6% of net profit earned since it starts production to the Government and regional governments respectively (Article 129, Mining Law 4/2009).

- 1% for provincial government
- 2.5% for producing regency/ municipal government
- 2.5% for other regency municipal government located in the same province

The 2015 EITI Report lists the significant tax policies for the mining industry as follows:

Tax	Description
Income Tax	1. IUP- 25% of taxable income and 5% deduction for listed companies 2. CoW/CCoW- Income tax tariff follows applicable tax regulation at the time of contract signing
Value Added Tax	10% on all manufactured goods
Royalty	Exploration of Production Fee-- is charged on mining commodities of holders of Exploration IUP or Production IUP. This fee applies for each commodity sold (transaction/ shipment). The amount of royalty is calculated using a certain tariff multiplied with sales volume and selling price. 1. Nickel Per tonne- 5% of sale price 2. Tin per tonne- 3% 3. Copper per tonne- 4% of sale price 4. Bauxite per tonne- 3.75% 5. Gold per kilogram- 3.75% 6. Silver per kilogram- 3.25%

Source: Indonesia EITI Report, 2015, p. 60

Policy directives

The 2008 Presidential Regulation on National Industrial Policy has set a long-term industrial development vision for Indonesia to be a strong industrialized nation by 2025 (ADB, 2014). This plan identifies 35 priority industrial clusters, mining forms part of the materials industry. The main policy target is to increase non-oil revenue from 24% to 30%. However according to ADB this policy needs more specifications and better coordination among the agencies.

One of the policies that compliments this vision in the GR No.23/2010 mandates foreign investors to divest at least 20% of their shares to Indonesian entities after five years of production (PWC, 2016). The limit of national ownership increases gradually to 51% on the 10th year of production (its starts at 20% ownership up to the 6th year of production, 30% on the 7th year, 37% on the 8th year, 44% on the 9th year, and finally 51% on the 10th). This strikes a balance between domestic benefits, and having a fair investment climate for foreign companies.

Indonesia is certainly trying to bank on development in the mining industry. They are doing this through creating and implementing policies that will increase revenues for national and regional governments that would further stimulate economic development. This is realized from the long history of Indonesia with the industry. Indonesia wants to ensure their income from the industry is more stable and not to depend on the demand of other countries for their raw minerals.

Myanmar

The entire extractive sector significantly contributes to the economy, it comprises of 6% of countries GDP, 23% of government revenue, 38% of total exports, and 2nd largest sources of FDI (Moore and Stephens, 2015). Comparatively Indonesia's EI still has a greater contribution to the economy.

According to the Myanmar EITI Report (2015), the mining sector is not as developed as the oil and gas industry, however 90% of the supply of rubies comes from this country, and copper is a largely exported mineral as well. Myanmar is a major source of gem stones globally, according to UN trade data, nearly USD 12.3 billion in precious stones were exported from Myanmar to China alone in 2014. (NRGI, 2016) Global Witness valued gross jade production in Myanmar at roughly USD 31 billion. (Bauer et al., 2016) Policies that regulate the gem industry is important to the country because of its contribution to the economy.

There is a shift in government since the 2010 elections, where Myanmar is beginning to implement major political and economic reforms as it transitions from military rule to a civilian state. (Lynn et al, 2014) Careful consideration is needed for setting new policy agenda for mining that balances economic growth, environmental, and social protection using transparent and accountable processes. (NRGI, 2016)

Myanmar has a new constitution officially signed only in 2008. The recent elections in 2014 formed the current government, which implies that governance structures are still developing including regulation on the mining sector. Similar to other countries in the region that has recently been liberated from authoritarian rule, government and fiscal decentralization is the trend. This includes giving authority to manage natural resources in the regional level. It can be presupposed that the mining fiscal regime of Myanmar is not as developed, or has not had as much experience as compared to other countries in the Asia Pacific i.e. Indonesia. However, this serves as an opportunity for Myanmar as they are building on their government, and crafting policies to ensure that a fair share is given to the nation from the Mining Industry.

Fiscal policy framework

Legal Basis

The unique characteristics of laws that regulate mining in Myanmar is that there are separate regulations for minerals and gems because the gem industry is managed differently compared to metallic minerals. There is also the presence of state owned enterprises which are classified according to each mineral sector. The general law governing mining is the Myanmar Mines Law of

1994 and the Gemstone Law of 1995 (Moore & Stephen, 2015). These set the responsibilities of the relevant government agency, establish criteria for giving permits, and set the tax rates particularly in doing business in the gem stone industry.

Mining Law of 1994

The directives of the Mining Law of 1994 are to implement the Mineral Resources Policy of the Government and fulfil the domestic requirements and to increase export by producing more mineral products. Opening the market to develop the mineral industry is seen as a trend in Myanmar. The law also promotes local and foreign investments and supervises applications for mineral prospecting, exploration, and production. There are also stipulations on environmental conservation and protection.

The other sections of the law specifying the licensing and taxing responsibilities will be discussed in later sections.

The Gemstone Law of 1996

The Gemstone law of 1996 supersede the mining law of 1994 (Bauer et al., 2016). The objectives of the law are : a) to establish and develop a hundred percent gemstone and jewellery market within the country in respect of gemstone produced in Myanmar; b) to permit companies and co-operative to produce and market gemstone in accordance with the market oriented economic system; c) to open and maintain gem markets in order to sell gemstone and jewelleries freely at all times; d) to eradicate illegal production of gemstone within the country and to prevent and suppress taking out unlawfully and sale of gemstone abroad.

According to the Myanmar EITI Report (2015), the Energy Policy of Myanmar is more advanced than the National Mineral Policies, however the Ministry of Mines is setting a policy direction to encourage more investments from the private sector, and slowly divest government investments.

Government Institutions

According to Myanmar Law, naturally occurring minerals is owned by the state (Bauer, 2016). The Ministry of Mines (MOM) is the umbrella agency responsible for issuing permits and implementing policies on Mining. Under the MOM is the Department of Geological Survey and Mineral Exploration (DGSE) who is responsible for country wide geological mapping and exploration activities while the Department of Mines (DOM) on the other hand is responsible for administering mineral policies, mineral legislation, and is chief inspector of mines responsible for granting permits (Myanmar EITI, 2015).

There are 4 state owned enterprises under the MOM, each is assigned for specific commodities:

- *State owned no. 1 mining enterprise*: antimony, lead, zinc, silver, iron, nickel and copper ores
- *State owned no. 2 mining enterprise*: gold, platinum, tin, tungsten, molybdenum, niobium, columbium, heavy mineral and gold ores
- *State owned no. 3 mining enterprise*: bauxite, bentonite, gypsum, limestone, dolomite, clay, manganese and coals
- *Myanmar Gem Enterprise (MGE)*: various precious gemstones and Jade
- *Myanmar Salt and Chemical Marine Enterprise*: salt, marine chemical, and soda ash

State owned enterprises enter into Production Sharing Contracts (PSC) with private companies. In this arrangement 100% of the investments is from the private entity, and profits are shared between the two (average 30% to government and 70% to private contractor). There is also a 3% royalty levy, 5% commercial tax, and 2% income tax (Myanmar Investment Commission, 2013). According to the 2015 EITI report, selection of SOE and technical criteria was not disclosed. Myanmar EITI also reports that all mines now have Joint Venture agreements or are privatized. State owned enterprises are not involved in mining operations anymore.

The responsibilities of different ministries, however, are sometimes unclear and agencies are generally insufficiently resourced to carry out their mandates (Bauer et al., 2016). Slow licensing process and miscommunication between ministries reduce regulatory effectiveness.

Licences

The Ministry of Mines (MOM) is responsible for overseeing mining permits under the *Mines Law 1994*. The Mining law divides the operations into large scale and small scale categories, with a proposal to include medium scale mining (Lynn et al, 2014). Large scale mines are given Joint-Venture or Production-Sharing Contracts between relevant mining enterprises and private mining companies, according to Bauer's et al. study, these contracts vary on a case to case basis.

Under the Mining Law of 1994, Chapter III, Applications and Granting of Permits: the Ministry may grant permits, with the approval of the government, for prospecting, exploration, large scale production or small scale production of gemstone, metallic mineral, industrial mineral or stone involving foreign investment as well as small scale production of gemstones and/or minerals with local investments.

The following criteria are used for the assessment of the application for a production permit:

- Relevant data on exploration;
- Minimum investment capital for the production stage depending on the commodity;
- Infrastructure plan for the production;
- Process to be used for extraction and processing;
- Agreement on the Production split Company/SOEs (small scale other minerals 70/30 – Tin 67/33 –Gold 50/50);
- The amount of the signature bonus: 2% of the total investment with some deviation based on the negotiation
- Bank guarantee of 2% of the total investment.

Source: Myanmar EITI Report, 2015

The Department of Geological Survey and Exploration (DGSE) on the other hand works with the MOM to do countrywide geological mapping, mineral prospecting and exploration using geological, geochemical, geophysical and exploratory drilling techniques (NRGI, 2016). According to the Chapter III, Section 9, of the 1994 Mines Law, the Department may, with the approval of the Ministry, grant permit for any of the following operations: a) prospecting, exploration or small scale production of industrial mineral with local investment; b) prospecting, exploration or small scale production of stone with local investment.

The Ministry of Mines is also responsible for issuing Gemstone Production Permits to companies under the Gemstone Law of 1996. The ministry shall: a) determine the tenure of a permit for each gemstone block designate; b) determine the floor price for each gemstone block for which tenure of a permit has been determined; c) invite competitive bids in accordance with bidding terms for the gemstone blocks for which the floor price has been determined.

According to the law the ministry has the right to submit bids for one or more gemstone blocks in accordance with the stipulations when competitive bids for the issuance of a permit are invited by the Ministry of Mines. The issuance of permits for Myanmar is still highly centralized with the lack of established processes and standards.

The types of permits issues are summarized in the table below:

Type of Mining Permit	Description	Issuing Agency
Prospecting Permit	This is issued to a person or organisation desirous of carrying out prospecting operations of metallic minerals, industrial minerals or stones. The total area of land for which the permit is attributed must not exceed 4,200 square km2	MOM

Minerals Exploration Permit	This is issued to a person or an organisation desirous of carrying out exploration of metallic minerals, industrial minerals or stones. The total area of land for which the permit is attributed must not exceed 3,150 square km2	MOM
Large Scale Minerals Production Permit	This is issued to a person or an organisation desirous of carrying out large scale production of metallic minerals, industrial minerals or stones.	MOM
Small Scale Mineral Production Permit	This is issued to a person or an organisation desirous of carrying out small scale production operation of metallic minerals, industrial minerals or stones. The total area of land for which the permit is attributed must not exceed 1 km2	MOM
Subsistence Mineral Production Permit	This is issued to a person desirous of carrying out subsistence mineral production operation of metallic minerals, industrial minerals or stones.	MOM
Integrated Permits	This is issued to a person or an organisation desirous of obtaining an integrated permit for more than one operations out of the three operations of mineral prospecting, mineral exploration, large scale production or small scale production of metallic mineral, industrial mineral or stones involving foreign or local investment.	MOM

Source: Moore & Stephens, 2015

Foreign Investment

Foreign companies entering into joint venture(s) with the state or a state-owned enterprise must obtain a special permit from the Myanmar Investment Commission (MIC) as articulated in the *Foreign Investment Law (2012*). MIC has the authority to set minimum equity participation for partners in joint venture agreements (JVAs) (Bauer 2016). Most stakeholders pointed out very serious issues related to enforcement, giving examples of companies who register to mine one commodity and then mine another, or mine beyond the demarcated limits of the extraction site, and of projects where extraction continues after the expiration of the license. (ibid)

Taxes

In chapter VI in the Mining Law 1994. the holder of mineral production permit shall pay royalty on the value of the mineral sold when the sale is affected on the mineral produced, the rates are enumerated in the table below. When calculating the value of mineral sold under section 18, the Department shall calculate in the prescribed manner based upon the prevailing international price of that mineral at the time of the sale.

Corporate Income Tax applies to companies incorporated in Myanmar and established under the Foreign Investment Law are treated as residents and their income taxed at a rate of 25%. A registered branch of a foreign entity that is not entitled to the incentives under the Foreign Investment Law is subject to an income tax rate of 35%. (Myanmar Investment Commission, 2014)

Under the Gems Law of 1996, Chapter IX, it is stated that: a holding a permit shall: a) after registering the raw gemstone produced and based on the value assessed by the Valuation Body under section 26 sub-section; b) pay royalty in Myanmar currency according to the following rate of percentage:

(i) 20 per cent in the case of ruby, sapphire, jade and diamond;

(ii) 10 per cent in the case of gemstone other than gemstones mentioned in clause

In section 28 it is stated if a company holding a permit sells raw gemstone on its own in foreign currency after payment of royalty under section 27, 10% royalty shall be paid in foreign currency on the actual sale value. If a company holding a permit sells in foreign currency processed gemstone or jewelry derived from the raw gemstone on which royalty has already been paid under section, 10% royalty shall be paid in foreign currency on the actual sale value.

Small-scale mining companies apply to the Ministry of Mines for licenses and pay fees up front. Before mining begins, the Ministry of Mines collects application fees and land rental fees known as 'dead rent' according to the acreage of the mine site. Ministry of Mines Officials states that all incoming taxes and fees are collected by the relevant department and paid on an ongoing basis by the Ministry of Mines to the Ministry of Finance account. (ADB, 2016)

There is room for improvement in how the Myanmar government sets and enforces taxation criteria and how it accounts for price fluctuations and market volatility. A fiscal regime consisting of royalties, production sharing, profit sharing, corporate taxes, and so on are all clearly specified in MOGE and MOM's summary tax forms. Still, enforcement of the tax code remains uneven (Garnaut, 2016).

A table is presented below to give the listing of different major taxes:

Tax	Description
Commercial tax	Corporate Income Tax is applies to companies incorporated in Myanmar and established under the Foreign Investment Law are treated as residents and their income taxed at a rate of 25%. A registered branch of a foreign entity that is not entitled to the incentives under the Foreign Investment Law is subject to an income tax rate of 35%
Production Split	Production is shared between the parties. The percentage of the SOE and the percentage of each partner are mentioned in the PSC. The Ministry of Mines share can be increased if production increases
Royalties	Metallic minerals: 3-4 % Precious metallic minerals: 4-5% Industrial minerals (including coal): 1-3% Ruby, sapphire, jade, and diamond: 20% Other gems: 10%

Policy directives

The Myanmar government's 12-point Economic Policy accentuates the strategic role of EITI in the reform process, specifically in natural resource governance (EITI, 2017).

Contracts in Myanmar's extractive sector have generally been approved without robust legislative or administrative frameworks in place to ensure compliance (Bauer et al., 2016). Due processes and regulations that must be followed when applying for, and complying with the terms of, prospecting, exploration and production permits are expected to be modified by amendments to the mining law currently under parliamentary review, and new mining rules that will be drafted following its passage (NRGI, 2016).

The country scores poorly on the World Bank's rule of law measure in its *Ease of Doing Business: Enforcing Contracts* (2015), and the *Framework for Economic and Social Reforms* acknowledges that the government must address the "questionable enforceability of contracts" in order to increase investment and productivity. Developments such as The Foreign Investment Law (Number 21/2012), however, was enacted in November 2012 and demonstrates the government's commitment to creating a more liberal economy and encouraging foreign investment. The law seeks to provide rights and guarantees for land use and investments, as well as simplifying the process of registration and licensing and offering a significant number of incentives and tax reliefs (Myanmar Investment Guide 2014). The Myanmar Special Economic Zones Law (No. 1/2014) was passed in January 2014 and stipulates the following tax incentives for investors in SEZs: (tax exemption first 7 years, 50% tax reduction for the next 5 years and so on. (Lynn et al, 2014)

The mining sector needs further development considering Myanmar's gem and jade industry is a major supplier in the international market. The EITI report states there are material discrepancies in macroeconomic indicators such as exports and production value for the minerals industry. This may be an offshoot of a government still transitioning. The fiscal regime of Myanmar is still facing many challenges with payments from extractive industries often go unrealized. Although estimates vary widely, it seems clear that many resource rents are absorbed by local elites, are diverted to military enterprises, or escape taxation altogether through illicit markets (Bauer et al, 2013).

Revenue collection is particularly challenging in the opaque mining sector, with much of the trade in jade and other precious minerals unaccounted for according to civil society estimates (Bauer et al, 2016). Since many ministries lack a systematic approach for identifying taxpayers, it is difficult to access information and reliably account for government revenues.

There are still exemptions from state monitoring such as the military affiliated company Myanmar Economic Cooperation (MEC). This further shows that systems of accountability still need to be established. In the absence of careful controls there is considerably less certainty for tax administration.

New amendments are aimed at encouraging more overseas and local investment in Myanmar and also implementing environmental controls on mining companies. For many years, due to sanctions imposed by the US, EU and other Western countries, China has been the primary investor and buyer in the minerals sector. This has left Myanmar little in the way of flexibility, with no room to exert leverage across the sector (Lynn et al, 2014).

There is much room for development in terms of the fiscal policies governing the mining industry in Myanmar. Notably the transitioning of the fairly new government would entail adjustments in the country's political structures and policies. The issuance of permits and other rules governing the sector is still highly dependent on the central government through the Ministry of Mines, even if there are efforts to decentralize. The country has yet to establish a strong organized regulatory system, whilst establishing that the fiscal regime ensures share fair to its countrymen.

Mongolia

The extractive sector is a major contributor of the economy of Mongolia. The mining industry comprises of 19% of GDP, 92% of total exports, and 70% state revenue (NRGI, 2013). The government also has shareholdings in mining companies. For instance, government owns 34% of the Oyu Tolgoi Gold and Copper Mine. According to the Mongolia EITI Country Report (2016), mining dominates foreign direct investment in the country at a total of 71%. Among the two countries discussed in earlier sections of this report, Mongolia has the highest contribution to state revenue and GDP from mining.

Mongolia is another country that is going through transition of political regimes. The economy had to adjust after the fall of the Soviet Union in the early 1990s causing most expenditures in socials services such as health and education drastically reduced. Unemployment rose from 1.3% in 1989 to 20% in 1994 (Lander, 2013).

According to a study of the Centre for Policy Research in Mongolia (2008), it is ideal to invest in the natural resources of the country. Some of the factors considered are its proximity to China, democratic governance structures and more liberal policies being adopted making it an attractive prospect for mining companies. This external foreign interest coincided with the policy expectation

that the exploitation of natural resources would be Mongolia's main vehicle for development (Lander, 2013).

Oyu Tolgoi is seen as driver for economic growth and development for Mongolia. The IMF estimate that this operation will singlehandedly boost Mongolia's GDP by 35% in 2021. In 2007, Mongolia introduced a new development strategy that integrates more exploration and development of mines such as the Oyu Tolgoi. The strategies' main goal is to achieve middle income status with an industrialized based economy in 2021 (Lander, 2013). Consequently, the presence of state owned enterprises are prevalent because the state hinged an entire development strategy on the mining industry.

Fiscal Policy Framework

Legal Basis

Mining has been part of Mongolia since the 1913 (Hart Nurse Ltd, 2016). Currently, the prevalent law governing the industry is the Minerals Law of 2006 which has been amended eighteen times since its enactment. (ibid)

The Minerals Law of 2006 covers the operations with respect to exploration, prospecting and mining of minerals, petroleum, natural gas, and radio-active minerals (Landers, 2013). Section 3.1 of Article 3 discuss the scope of the law, including regulating artisan mining and exploration. In the EITI Report it states that Article 5 defines the ownership of minerals is solely property of the State. The percentage of State's share in minerals deposit shall be established by an agreement, which the state may participate up to 50% jointly with a private legal person where state funded exploration was used to determine reserves. Still under Article 5, the state may own up to 34% of shares of an investment to be made by a license holder. While a legal person holding mining license for a mineral deposit shall sell no less than 10% of its shares through the Mongolian Stock Exchange. This clearly established that the benefit from the mining sector should go back to the state.

Additional processes for the implementing rules and regulations was discussed to further strengthen the regulation in the industry. An ad-hoc council composed of investors, professional associations, NGOs, and members of the public was established to advise the state on the implementation of mineral policies. Additional requirements are mandated such as rehabilitation and closure of a mine plan, increase in monetary liability if Minerals Law is breached, additional power to government agency in charge of mining.

Foreign Direct Investments

The growth of Mongolia's mining industry started with the huge mine in Oyo Tolgoi. The beginning of the Mining Fiscal Regime of Mongolia incentivized foreign investors to come in by having low barriers to explore and operate in the country. This led to increase of mineral exploration activities from 2001-2006. After this saw the rapid development of regulations surrounding the industry. Investing companies are also guaranteed stable agreements so that changes in national laws do not affect investments (Lander, 2013). According to Arnold (2004), the Minerals Law of 2006 indicates a shift towards more regulation of the industry contrary to prior practices. The creation of the law was followed by the National Development Strategy which includes capturing most revenue for Mongolia to diversify its economy.

Government Agency

The primary government agencies governing mining in Mongolia are the Ministry of Mining (MOM), and the Mineral Resource Authority (MRA). The former focuses on the economic aspect, while the latter focuses on the processes such as issuing permits and licenses.

According to the Mongolia EITI Report (2016), the goal of the Ministry of Mining is to increase the Mineral Resource Fund through development of a transparent and responsible industry. Its main duties are to create and implement laws, policies, and medium and long-term strategies aimed at supporting the development of investments. The Mineral Resource Authority, on the other hand, is responsible for supporting the government in formulating and administrating policies necessary for a favorable business environment.

State Owned Enterprises

There are several state-owned enterprises in Mongolia. According to the Authority for State Property Policy and Management, a total of 89 enterprises and legal entities with state ownership was registered. Law on State and Local Properties stipulated that a state-owned enterprise may be privatized by reorganizing into the company and selling its shares of the stock. The pertinent decision shall be issued by the central authority in charge of state property policy and management (Hart Nurse Ltd, 2016).

Licenses

The Mineral Resource Agency is examining 577 mining licenses to implement changes in the Minerals law. Seventy-three (73) licenses have so far been terminated while 241 licenses are under review.

The different permits companies can apply for are listed in the table below:

License Type	Description	Issuing Government Agency
Licence to explore and prospect radio-active minerals	Related to obtain newly, extend the valid period, suspend, terminate, transfer to others, keep as loan warrant of others and obtain a licence again.	Ministry of Mining
Licence to mine radio-active minerals		
Licence to import, export, transport radio-active minerals, bury their wastes and licence to reclaim land after mining of radio-active minerals		
Exploration licence	Related to obtain newly, extend the valid period, suspend, terminate, transfer to others, keep as loan warrant of others and obtain a licence again.	Mineral Resource Agency
Licence to mine minerals		

Source: Hart Nurse Ltd, 2016

Article 7 under the Minerals law of 2006 lists down the general requirements for mining license holders; specifying who can apply and the limits of the permit that will be issued. One significant part of the legislation is section 9.1.11, where it states that the Government is permitted to allocate mineral licenses over an area not exceeding 19.9% of total Mongolian territory. At the end of the first quarter 2016, licenses awarded has surpassed 9.5% of Mongolian land.

Taxes

Revenue from mining is divided into tax revenue and non-tax budget revenue. Both state and local governments collect profit and property taxes, mineral resource royalties, fees on natural resources, and environmental taxes.

Tax	Description
Tax revenues	
Exploration Fees	US$ 0.5 for each of the second and third years of the term of the exploration license; US$ 1.00 for each of the fourth to sixth years of the term of the exploration license; US$ 1.50 for each of the seventh to ninth years of the term of the exploration license
License Fees	The amount of the license fee shall be calculated on the basis of the measurements of the license area as registered in the registry of licenses and the amount of the fee shall not change for that particular year.
Corporate Income Tax	Up to MNT 3 billion, a marginal rate of 10% applies, above MNT 3 billion, a marginal rate of 25% applies
Mineral Royalty	Royalties for domestically sold coal for energy and common mineral recourses shall be two and one-half (2.5%) of the sales value of all products extracted from the mining claim which are sold, shipped for sale, or used
Non-tax budget revenues	
Dividend	Properties of the companies with state participation, interest, fines, rent, own income of the budget organizations and other non-tax revenues

Source: Hart Nurse Ltd, 2016

Under the Minerals Law of 2006, Article 33 stipulates the minimum cost of exploration on a per hectare basis. This is where the computation of the exploration fee is derived from. Article 34 specifies the process and payment of license fees while Article 47 lists down a lengthy specification of royalties to be paid based on sales value.

The following is used to determine the value of the royalty: export products fees are based on international market prices fees for products sold in the domestic market are based on sales value declared by the license holder.

Policy Directives

The policy directive of Mongolia is to further invest and develop in the Mining industry. The country is banking on the development of the Oyu Tolgoi Mine, which is seen as a trigger for economic development (Landers, 2013). The government is continuing to improve existing fiscal regimes and regulatory mechanisms.

National Development Strategy- State policy until 2025 for mining sector

The State policy to adopt for the mining sector is directed to develop transparent and responsible mining relying on private sector, to create the balanced structure with numerous supporting pillars for economy within short term and middle terms for the major national interests. The objectives of the State policy are for the mining sector to create a stable business environment for investments and support innovations that are friendly to the environment to improve the quality of exploration, mining, and processing of minerals. The state's mining policy is also coordinated with the policies of other sectors (Hart Nurse Ltd, 2016).

Action Plan for Mongolia's Government 2016-2020

The general objective of the Action Plan of Government is to create a favorable business environment for investments of geological and mining. Some of its salient features are to increase the study of geological mapping in the country, build a national geological division, create favorable legal environment and implement mutually profitable projects, improve cadastral registration and systems of allocating licenses, improve legal regulation in the small-scale mining sector, and work on long-term planning to develop mining infrastructure such as metal processing plants (Hart Nurse Ldt, 2016).

Although the policy amendment of the government is veering towards a competitive market based environment, the state is also tightening regulations upon realizing that they need to be able to sustain the growth derived from this sector. The country is slowly developing the industry to provide equal benefits for companies and the state.

One issue the state has to look at is trickling down the benefits derived from this sector. Mongolia is unique in a way that it is composed of vast arid lands and populated by a significant number of communities. The fiscal regime of Mongolia compared to other countries seemingly is advanced. It gets most from the industry because it is heavily dependent on it. The Value-Added Tax Law was amended at 9th of July 2015 by Mongolian Parliament. In accordance with the new law, electronic payment recording system was implemented from 1st of January 2016.

Democratic Republic Timor-Leste

The mining sector is not significant to date in the Democratic Republic of Timor-Leste (RDTL). The sector is comprised mostly of non-metallic minerals as seen in the latest Timor-Leste EITI report of 2015. Total government revenue from mining is only 0.001%. In the EITI website, the entire extractive industries contributed 76% to GDP, 78% of total exports, and 97% to state revenue. Only eight mining companies were included in the report – all are non-metallic. As a result, the mining sector was not included in the reconciliation in 2015 as it is considered immaterial. There are untapped minerals, however, such as: manganese, gold, silver, copper, and other non-metallic minerals.

The petroleum sector is a major contributor to the. An ADB study (2016) states that "taxes and royalties from petroleum production provided 57% of government revenues in 2014". The 2015 budget estimated that the Petroleum Fund could sustain annual withdrawals of $638.5 million without losing value in real terms. In another article by Marx (2016), Timor-Leste is the second highest oil dependent country with 90% of government revenue coming from the industry. Lower oil prices, however, will likely cut the estimated sustainable income to less than $600 million—significantly below planned withdrawals of $1.3 billion in 2015 and $1.7 billion in 2016. (ibid)

Timor-Leste has recently declared independence only in 2002 and changed their names to the Democratic Republic of Timor-Leste (RDTL). Timor-Leste has progressed in setting up their fiscal regime particularly from the money derived from the Petroleum Fund. The 2014 budget introduced new regulations to improve the quality of public spending including limits on single-source procurement, conditions linking withdrawals from the Petroleum Fund to timely budget for execution and control advance payments (Fong-Sam, 2012). The dependence of the RDTL government to the Petroleum sector and the need to properly manage revenues from the industry is apparent.

Mining Fiscal Policy

Legal Basis

In 2008, there were interested parties to invest in the mining industry hence creation the Ministerial Diploma 1/2008. According to the TL-EITI Report (2015), this policy provides specific rules on licensing of mining and quarrying of mineral resources. A mining license only lasts one year and is subject to renewal thereafter. The policy also encompasses "micro-scale mining" which employs manual labor to large scale mining defined as using heavy equipment and fixed installations.

Government acknowledged the need to develop a fiscal regime for mining when a draft Mining Code was crafted. This includes a comprehensive regulation of all activities pertaining to the carrying out of mining operation and the prospecting, exploring, evaluating, processing, mining and marketing of minerals. One of the stipulations in the draft code is certain penalties such as a USD 1 million fee for operating without valid mineral title (Silva & Veiga, 2016).

It took five years before the first draft of the Countries Mining Code was finally approved in August 2016 but has yet to be finalized and approved by parliament.

Government Institutions

The Ministry of Petroleum and Mineral Resources is the central government body responsible for the design and execution of the energy policy and management of mineral resources, including oil and other strategic minerals, as approved by the Council of Ministers (TL-EITI, 2015). The ministry is also in charge of licensing and regulation of extractive activities. The agency is both policy oversight and implementing agency.

East Timor also has a state-owned enterprise called the Timor Gap with the aim of managing the Tasi Main project. As mentioned, much focus is given to the oil and gas industry. The company is part of the Multi-stakeholder group of EITI Timor Leste.

Licenses

According to the 2015 TL-EITI Report, there are four mining categories stated in article 7 of the ministerial diploma namely: micro scale unit, petty scale unit, scale media unit, and large scale unit. The licensing process differs depending on the size of the mining unit. Article 10 and 11 stipulate the requirements to apply for a license and the process of approval. Each license granted has a duration of one (1) year, subject to renewal, there is no stringent requirement of technical review to obtain and renew these licenses.

A simple licensing process of filing the application is approved by the Secretary of State for Natural Resources. It is illustrated that either the application meets the requirements or not. There was no criteria or technical review discussed in processing the license.

Taxes

Major revenue schemes included in the policy are royalties and fees to the national directorate of minerals at the beginning of the contract. In the TL-EITI (2015) report, only two fees are disclosed for mining companies: 1) license fee which goes from USD 100 to 1,000 and 2) fees per ton produced (for sand and grit USD 1.5, limestone USD 2, marble USD 10).

In August of 2016 a Draft Mining Code was approved which seeks to have better regulation of untapped minerals "with its 20 sections, 148 articles and 3 annexes, the Code covers all phases of mining activities and includes provisions on Health and Safety, Environmental Protection, inclusion of Local Content, the Labor Scheme, applicable Offences and Penalties, Mining Registry, Transparency and Good Practices." (Government of Timor-Leste, 2016)

A royalty and a surface fee are expected to apply under the new Mining Code. According to sources in the government, the rate of the royalty may range from 2% to 20%, or from US$0.50-$10/t depending on the mineral resource in question. The surface fee is expected to start at US$ 25/sq.km. These amounts, however, may change in the final version of the code. (Silva & Veiga, 2016)

Of the countries in the Asia Pacific previously discussed, Timor Leste has the least developed policies when it comes to mining owing to its small contribution. The oil and gas industry, however, is much more advanced in terms of fiscal regimes. There is a sovereign wealth fund for the industry as well as a national plan for petroleum.

Policy Directives

Between 2015 and 2017, the government will start developing the mining industry by approving the mining code and transforming the National Petroleum Authority (ANP) into the National Petroleum and Mining Authority (ANPM). This will in turn create the National Mining Company – MINAS DE TIMOR (MdT) (Ministry of Petroleum Timor-Leste, 2016).

One of the strategies the country may take to develop the mining industry it to create more SOEs to manage the mineral extractions. There needs to be transparent policies first coupled with strengthening institutional capacity before Timor Leste can move forward (Doraisami, 2009).

Philippines

The Mining Industry

The Philippines is known to have a significant wealth of natural resources. The contribution of the industry to the national economy, however, has remained insignificant. In 2015, total contribution of mining to GDP is 0.6% (EITI, 2017), total contribution to exports is 4.8% (ibid), and contribution to government revenue is only 1% (PWC, 2016).

There is a glaring discrepancy comparing these numbers to other countries in this study. Government revenue is only at 1%, while contribution to exports is relatively higher. Similar to its neighboring countries, the country has gone through devolution of political and fiscal responsibilities in recent decades. There is also a long-standing interest of companies to invest in the extraction of mineral resources of the country. Due to lack of a clear developed fiscal regime and weak regulatory framework, however, the Philippines failed to bring in investments in the sector.

Fiscal policy framework

Legal Basis

The main law governing the mining industry is the Mining Act of 1995. The policy on mining in the Philippines is not as updated as in Indonesia or Mongolia where strategic direction is constantly set. Regulation is further reinforced by the creation of the Mining Industry Coordination Council (MICC) and the establishment of the Philippine Extractive Industries Transparency Initiative (PH-EITI).

Mining Act of 1995

The Philippine Mining Act of 1995 (RA No. 7942) enumerates the requirements for the exploration, development, and utilization of mineral resources. The Act promotes mining to spur national growth in a way that safeguards the environment and protects the rights of communities. Together with its implementing rules and regulations (IRR), the Mining Act defines the agreements for mineral resources development, provides the requirements for acquiring mining rights, and outlines the responsibilities of each party.

Department Administrative Order (DAO) No. 2010-21, provides for most recent revised Implementing Rules and Regulations for the Mining Act of 1995. It gives specific responsibilities of the Department of Environment and Natural Resources and the Mines and Geosciences Bureau over the mining industry. It also discusses delineation of areas of operation, and concerns such as overlaps in protected areas or ancestral domain. It further specifies licenses and permits, which will be discussed in the next sections.

Local Government Code of 1991

The Local Government Code is a crucial piece of legislation because it gave authority to Regional, Provincial, City/Municipal, and Barangays to establish their own fees relevant to their area pertaining to mining operations. The mining operations are also subject to local codes and policies which they must comply with on top of the national regulations. Another important stipulation in the LGC is the situs in taxation, establishing the sharing from excise tax between the national and local government.

Government Institutions

The Department of Natural Resources- Mines and Geosciences Bureau (DENR-MGB) is the primary government agency responsible for the conservation, management, development, and proper use of the country's mineral resources including those in reservations, watershed areas, and lands of the public domain (PWC, 2016).

The MGB is also in charge of delineation of mining areas, ensuring that it does not overlap with other land use areas such as agriculture, protected areas, watershed, and/or ancestral domain. If there is an overlap the operations or exploration is either terminated or particular fees apply.
In each region, the MGB has an office who is responsible for monitoring and collecting royalties and fees applicable to mining operations in their area.

Licenses

The licences for large-scale mining operations are the following: Mineral Production Sharing Agreement (MPSA), Co-production Agreement (CA), as stated in Section 2 of the Philippine Mining Act. In the 1987 Philippine Constitution it is stated for these arrangements, corporations must have at least 60% of its capital owned by Filipinos.
The 1987 Philippine Constitution and the Philippine Mining Act of 1995 also authorise the national government to enter into Financial or Technical Assistance Agreements (FTAAs) with any qualified person, including foreign-owned corporations, with technical and financial capability to undertake large-scale exploration, development, and utilization of mineral resources. Unlike mineral agreements, FTAA allows for 100% foreign equity ownership.

The table below summarizes the licenses for mining, its description and the issuing agency.

License	Role/description	Issuing Agency
Mineral Production Sharing Agreement (MPSA)	Mineral production sharing agreement - is an agreement where the Government grants to the contractor the exclusive right to conduct mining	DENR-MGB

	operations within a contract area and shares in the gross output. The contractor shall provide the financing, technology, management and personnel necessary for the implementation of this agreement.	
Co-production Agreement	Co-production agreement - is an agreement between the Government and the contractor wherein the Government shall provide inputs to the mining operations other than the mineral resource.	DENR-MGB
Financial or Technical Assistance Agreement (FTAA)	Any qualified person with technical and financial capability to undertake large-scale exploration, development, and utilization of mineral resources in the Philippines may enter into a financial or technical assistance agreement directly with the Government through the Department.	DENR-MGB

Source: PWC 2016 and Mining Act 1995

State Owned Enterprises

The Philippine Mining Development Corporation (PMDC) is a government owned corporation aimed at promoting mining projects classified into; mineral reservation, privatization management assets, and cancelled tenements. PMDC is attached to the DENR and has mineral processing operations in the south of the Philippines. According to the PH-EITI report (2016), PMDC derives its revenue from commitment fees from awarded mining tenements and royalties.

Taxes

The PH-EITI Country Report (2016) summarizes the income derived by the national government from these mineral agreements and a revenue-sharing scheme.

Tax	Description
Excise Tax on Minerals	The Tax Code imposes an excise tax on all metallic minerals, a tax of 2% based on the actual market value of the gross output thereof at the time of removal, in the case of those locally extracted or produced; or the value used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, in the case of importation.
Royalties on mineral reservation	The Contractors/Permit Holders/Lessees shall pay royalties, which shall not be less than 5% of the market value of the gross output of the minerals/mineral products extracted or produced from the mineral reservations exclusive of all other taxes.

Royalties for IPs	The Contractors/Permit Holders/Lessees shall agree on a royalty payment with the concerned indigenous cultural community(ies) which may not be less than 1% of the gross output.
Mine Waste and Tailings Fees	The basic fees are P0.05/MT of mine waste produced and P0.10/MT of mill tailings generated from the mining operations, except where such mine waste and mill tailings were utilized in specific manners identified by MGB per DENR Administrative Order (DAO) No. 2005-07.
Mine Rehabilitation Fund	This comes in two forms: (a) Monitoring Trust Fund - amount to be determined by the MRF Committee which shall not be less than PHP150,000 cash. (b) Rehabilitation Cash Fund - shall be equivalent to 10% of the total amount needed to implement the EPEP or PHP5,000,000, whichever is lower.

Source: PH-EITI Country Report 2016

For contracts under the FTAA, the stipulations are revenue-sharing in nature and consist of a Basic Government Share and an Additional Government Share, where the latter is the amount to be paid by the Contractor when the Basic Government Share is less than 50% of the Net Mining Revenue. The Basic Government Share consist of all direct taxes, royalties, fees and related payments required by existing laws, rules and regulations to be paid by the Contractor.

Policy directives

Acknowledging the Philippines to be a natural resource country, the mining industry is going through tougher regulations under the newly elected administration. The first act of the new DENR Secretary – DENR Memorandum Order No. 2016-01 signed in July 2016, sets out the audit of all operating mines and a moratorium on the approval of new mining projects, including the acceptance, processing and/or approval of mining applications and/or new mining projects for all metallic and non-metallic minerals (PWC, 2016).

Through the PH-EITI, initiatives aimed at encouraging transparent tax collections from the sector were established such as the Environment and Natural Resources Data Management Tool (ENRDMT). The Secretary of Finance issued Department Order No. 049-2016 on 5 September 2016 mandating that the data requirements be a part of the PH-EITI and the Philippine Poverty-Environment Initiative annual reports to be a part of the quarterly electronic Statement of Receipts and Expenditures (eSRE). These reports are submitted by local treasurers to report (1) the payments made by extractive companies locally and (2) detailed account of the share in national wealth.

There is a proposed Alternative Minerals Management Bill in the Senate and House of Representatives of the Philippines. It stipulates that the state shall formulate a National Industrialization Program pursuant to the principles of agricultural modernization, development

industrial and manufacturing industries, and rational, sustainable, and equitable development of the national economy. Pursuant to the foregoing, the state shall implement a Mineral Management Plan that provides the utilization and management of the country mineral resources, which will address the needs of the domestic economy and upholds the right.

The Department of Finance together with the Department of Budget and Management allocated Php 50M to have an independent review of mining contracts nationwide. No specifications or criteria of the review was discussed. This is to have checks and balance of the mining audits conducted by the Department of Environment and Natural Resources (Department of Finance, 2017).

In the Philippine Development Plan 2017-2022, institutionalizing EITI is part of the legislative agenda. There is no industrial policy specific for mining. Rather, it takes a backward-looking approach at reviewing existing operations and ensuring they comply with regulations. (NEDA, 2017)

Analysis

The table below draws key points from the discussion of the mining fiscal regimes in the selected countries in the Asia Pacific. It aims to assist comparing the state of the situation of the countries, where the NRGI benchmarking framework is used as a tool for analysis on determining the ideal structure of for fiscal regimes.

	Indonesia	Myanmar	Mongolia	Timor-Leste	Philippines
Legal Basis	Mineral and Coal Mining No. 4/2009	Myanmar Mines Law 1994 Myanmar Gemstone Law 1995	Minerals Law 2006	Ministerial Diploma 1/2008	Philippine Mining Act 1995
Governing Bodies	Ministry of Energy and Mineral Resources (MoEMR)	Ministry Of Mines (MOM)	Ministry of Mining (MOM) Mineral Resource Authority (MRA)	The Ministry of Petroleum and Mineral Resources (but a new body is proposed in the mining act including having a SOE)	Department of Environment and Natural Resources- Mines and Geoscience Bureau (DENR-MGB)
Major Taxes					
Mineral Royalty ****basis of computation***	Nickel Per tonne- 5% of sale price Tin per tonne- 3% Copper per tonne- 4% of sale price Bauxite per tonne- 3.75%	Metallic minerals: 3-4 % Precious metallic minerals: 4-5% Industrial minerals (including coal): 1-3% Ruby, sapphire,	Domestically sold coal- 2.5% Extracted products other than those set forth in Article 47.3.1- 5% of the sales value[3] *sales value	2%-20%[4]	5% of the market value of the gross output of the minerals/mineral products extracted or produced *gross output (applies only to mineral reservation areas)

[3] Section 47.3 (Minerals Law 2016) Royalties are payable of sale of minerals within Mongolia and abroad- the amount is based on standard flat rate and may include surtax depending on the commodity (MMRE determines the reference price to be applied): *Source: Country Tax Profile: Mongolia (2016). KPMG Asia Pacific Tax Centre*

[4] Proposed Royalty Rate: Silva, Ricardo Alves & Veiga, Ricardo da Mota. (2016). *A New Mining Code for Timor Leste*

	Indonesia	Myanmar	Mongolia	Timor-Leste	Philippines
	Gold per kilogram- 3.75% Silver per kilogram- 3.25%[1] *per tonne/kg produced	jade, and diamond: 20% Other gems: 10%[2] *on actual sale			
CIT	25%	25% and 35%[5]	10% and 25%[6]	10%[7]	30%[8]
Contribution of Mining to GDP[9]	6.5%**	*6% ****	19%*	*76%****	0.6%***
Contribution of Mining to Exports	14%***	*38%****	92%*	*98%****	4.8%***
Contribution of Mining to State Revenue	8.7%**	*23%****	70%*	*97%****	1%**
Tax Effort Index[10]	0.9		1.35		0.91
Tax on Exports[11]	Export Duty and Article 22 Income Tax on Export		N/A		N/A

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[1] EITI Indonesia Report

[2] Lynn, Thet Aung, Oye, Marie. (2014). *Natural Resource and Subnational Governments in Myanmar: Key considerations for wealth sharing*

[5] Foreign Investment Law are treated as residents and their income taxed at a rate of 25% registered branch of a foreign entity that is not entitled to the **incentives** under the
Foreign Investment Law is subject to an income tax rate of 35%: GIZ (2014) Myanmar Investment Guide

[6] Up to MNT 3 billion, a marginal rate of 10% applies, above MNT 3 billion, a marginal rate of 25% applies

[7] National Directorate of Domestic Tax, Democratic Republic of Timor-Leste, Version 01.12.09

[8] (PWC taxes and royalties)

[9] Source: EITI Country Reports and EITI website

[10] World Bank: Narrowing the tax gap (average 1994-2009): Tax effort is the ratio of actual taxes to the tax capacity of the country; of which the value of 1 is the benchmark

[11] PWC; Comparing Mining Taxes

	Indonesia	Myanmar	Mongolia	Timor-Leste	Philippines
Incentives	Yes[12]	Yes[13]	Yes[14]	Yes	No[15]
Fiscal Transparency Efforts	EITI member since 2010 currently being assessed	EITI member since 2014 currently being assessed	EITI member since 2007 currently status: meaningful progress	EITI member since 2007 currently is suspended	EITI member since 2013 currently being assessed

**2013 **2014 ***2015*

Contribution to the economy of the entire Extractive Industries, no disaggregation for mining

[12] Indonesia has tax incentives for specific mining activities such as basic iron and steel manufacturing, gold and silver processing, certain brass, aluminium, zinc and nickel processing activities and quarrying of certain metal and non-metal ores. The Indonesia incentives consist of a 30% investment credit, accelerated depreciation, reduced withholding tax on dividends and increased tax loss carry forward period from 5 years to a maximum of 10 years. Indonesia has a new tax holiday regime available to the base metals industry which can provide an exemption from tax for a period up to 10 years and which is only applicable to large projects (e.g. IDR 1 trillion). The tax holiday is not available in conjunction with the previously mentioned Indonesian tax incentives. (PWC, 2012)

[13] SEZ (income tax exemption first 7 years) (Khandewal et al, 2016) and 10% from CIT (GIZ)

[14] 10% tax credit on key sectors such as mining (export.gov, 2016)

[15] Incentives were not issued after 2012

Using the table above looking into the Natural Resource Governance Benchmarking Framework, the fiscal regimes of Indonesia, Myanmar, Mongolia, Timor-Leste, and the Philippines are analyzed:

4.1 Setting Fiscal Term. Some countries have clear policy directions for the mining industry that provides an attractive climate for investment while maintaining a reasonable return for government. For instance, Mongolia, and to some extent Indonesia and Myanmar have clear policy goals for the mining industry. These countries have in place an industrialization plan, and mid-term and long term strategies for the industry. With clear directives in place, these countries are able to give incentives to companies without disrupting the fiscal space of the government. Even if there are, or there will be lapses in enforcement and regulation, the numbers show that state revenue is highest in countries that have strategic goals for the mining industry.

4.2 Legal Framework of Fiscal Terms

Legal framework on fiscal terms set the formal rules on how to govern industries. The political climate highly affects the fiscal framework governing the mining sector. Countries such as Myanmar is going through a recent transition of government regime which means there is ongoing changes with the rules as they transition. While an established legal framework is not sufficient to ensure accountability and stability for the sector it is a start. In countries like Indonesia and Mongolia where mining has a major contribution to the economy, policies are regularly updated and strictly monitored if enforced, which is not the case for other countries with less dependence in mining such as the Philippines.

Indonesia, however, also sets an example of the importance of the political climate to mining policies. In January 2017, there were policy shifts to ease the ban on nickel ore and bauxite. There is a new elected president who is under a lot of pressure and his administration decided to relax the ban on mineral ore. These shifts can happen even if the policies and laws are in place.

4.3 Tax Administration

Tax administration is as important as the rules set in laws and policies. Even if taxes are relatively high there are cases that government revenue from the sector remain low.

Another lens that can be used to look at tax administration is comparing the percentage of exports with that of total revenue generated from the industry. The general trend is

that total exports from mining is higher than that of state revenue from the sector in the five countries. This might be because it is cheaper to export and do the processing of minerals in a different country. Because the minerals are being exported, there is a lost opportunity to process the minerals within the country and to use them for domestic consumption. Further, some countries such as the Myanmar, Timor Leste, and the Philippine have no direct export tax on minerals. (PWC, 2016)[16]

4.4 Accountability and Transparency of Fiscal Regime

Transparency and accountability mechanisms are important in such a contested sector. The countries selected in this review are all part of the Extractive Industries Transparency Imitative which is an indicator of commitment to achieving good governance for mining. This analysis can be expounded using other indicators.

Policy Issues and Recommendations:

Comparing the mining fiscal regimes of Indonesia, Myanmar, Mongolia and Timor Leste, to the Philippines the following policy issues and recommendations are identified:

Issues

1. The Philippines has no clear strategy for the mining industry (mid-term or long term plans) unlike Indonesia and Mongolia. The current actions taken by the government is to review existing policies and ensure the industries are complying with them.
2. There is minimal impact of mining to the economy. The mining sector in the Philippines is only contributing 1.10% to GDP and 1% to state revenue.
3. The percentage of exports significant while contribution to GDP remains low which may be a strong indicator of minerals being exported mostly raw.

Recommendations

1. Decide on a clear and long-term strategy on mining. Other countries such as Mongolia and Indonesia have clear mining strategies that are regularly updated. If the decision of the government is to keep mining, policy reviews should be on how to sustainably share the benefits from the industry through effectively earning a fair share from taxes. If the direction is to shut down the industry, then there must be clear alternatives in localities where they are dependent on revenue from mining.

[16] http://www.pwc.com/gx/en/industries/energy-utilities-mining/mining/tax/data-tool.html

2. Assess the structure of the fiscal regime. Complicated tax regimes imposed in the Philippines need to be reviewed because it may be out of date. Royalty from mineral reservation areas, for instance, is measured by gross outputs (applicable only to mineral reservation areas) while in other countries royalties are measured by actual sale or value.

Long bureaucratic systems in tax administration also hinders more contribution from the sector. Take the case of the downloading local government shares in national wealth. It is collected by the Bureau of Internal Revenue (BIR), certified by the Bureau of Treasury (BTR), and released by the Department of Budget and Management (DBM). If there are discrepancies between the BIR and the BTR, the share will be withheld until the discrepancy is reconciled which is often at the detriment of local governments. Simpler streamlined tax regimes will certainly benefit companies and the government.

4. Explore the possibility of developing the downstream industry in the Philippines. A downstream industry will create more jobs and bring in more government revenue from the industry. The Philippines may choose to adopt Indonesia's policy on imposing strict regulation or banning of exports of strategic raw minerals to encourage local processing. In comparison, the non-metallic industry does a significant amount of local processing because it is strategically tied with construction and infrastructure. A similar model may be adopted with other strategic minerals.

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