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Southern Africa Resource Watch

Zimbabwe Fiscal Regime for Platinum

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Hogan Lovells

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Zimbabwe is in the midst of an effort to modernize its minerals laws and policies. Since 2015, Zimbabwe has been pursuing a comprehensive amendment to its existing mineral law, 1963 Mines and Minerals Act, in the form of the Mines and Minerals Amendment Bill (the "MMAB"). In addition, last year Zimbabwe's Ministry of Mines and Development circulated a draft of a Mineral Development Policy (the "Policy"). Both the MMAB and the Policy recognize that "[t]he Mining industry remains one of the country's important pillars, which fosters economic development. As one of the sectors tasked by the government to anchor economic growth and transformation, it is significantly contributing towards vision 2030 of making Zimbabwe a middle-income country."[1]

Platinum mining will be a key component of the future of mining in Zimbabwe. Zimbabwe has the world's third largest platinum reserves, and the government is actively seeking investment in the platinum sector.[2] Zimbabwe has existing platinum production from mines operated by Impala Platinum Holdings Ltd., Sibanye Gold Ltd., and Eurasian Resources Group, and two new projects from a Cypriot consortium and a Russian/Zimbabwe joint venture.[3]

The platinum mining process entails extracting the ore from the ground and crushing it. Zimbabwe platinum mines are relatively shallow, which should give Zimbabwe miners a competitive advantage by lowering overhead costs. The crushed ore is typically processed using a flotation system to separate platinum bearing rock from waste rock. This platinum matte is concentrated, and then sent to a refinery for smelting. Historically, most of Zimbabwe's platinum concentrate was send to South Africa for smelting, but Zimbabwe miners have begun constructing their own smelters. The Government of Zimbabwe would prefer to maximize the amount of processing and beneficiation occurring in country. The first smelter in Zimbabwe opened in 2019 at the Unki Mine.

1. Introduction: Policy Goals of a Fiscal Regime for Mining

In most countries, minerals are owned by the state government, and managed in a manner to benefit the citizens of the country. Some countries decide not to develop their minerals or to do so in a very limited manner. Most of these countries have a well-developed economy, and have the luxury of keeping their minerals in the ground. For countries with developing economies, however, there is a substantial advantage to developing mineral resources as a way to build and expand the country's economy.[4]

As a result, resource rich countries want to develop a fiscal regime that strikes a balance between (i) securing a fair return on making its resources available to investors and (ii) being able to attract investors with the capital and expertise necessary to develop those minerals. A "fiscal regime" has several elements: royalties, bonus payments, annual rentals, income taxes, value added or goods

[1] Policy, Forward

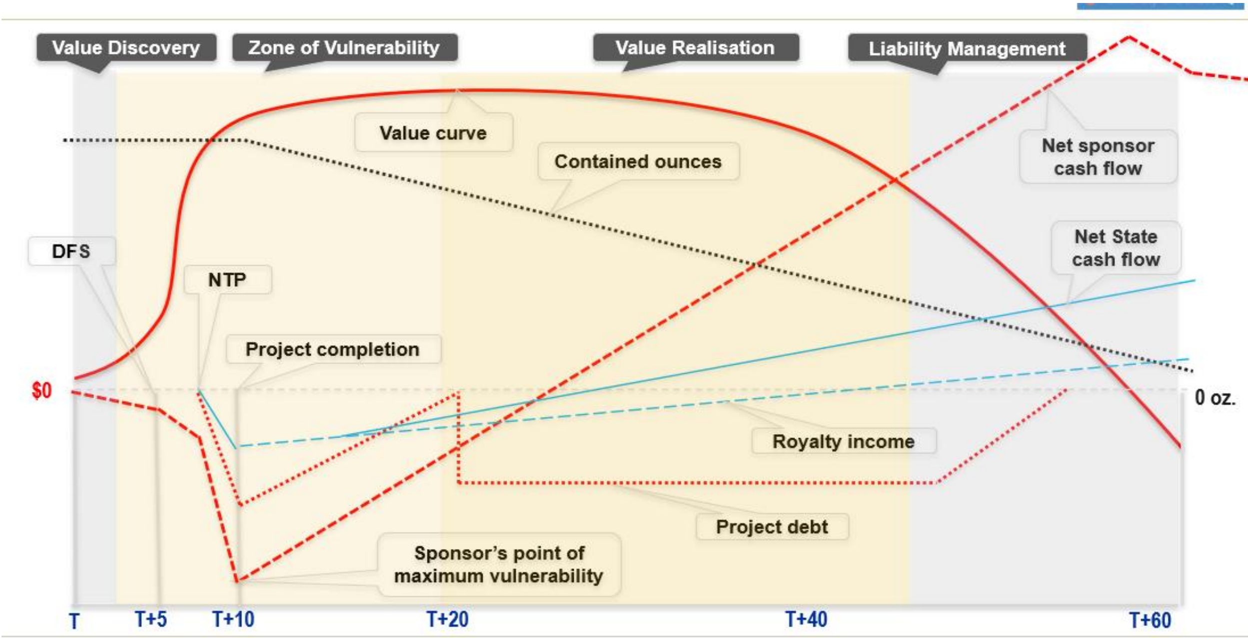
[2] *See* Zimbabwe faces mining asset seizure over canceled joint ventures, Bloomberg News (Dec. 18, 2019).

[3] See Zimbabwe eyes platinum-led revival. Miners see little chance, Bloomberg News (Oct. 30, 2019).

[4] Gary McMahon and Susana Moreira, The Contribution of the Mining Sector to Socioeconomic and Human Development, World Bank Extractive Industries for Development Series #30 (2014).

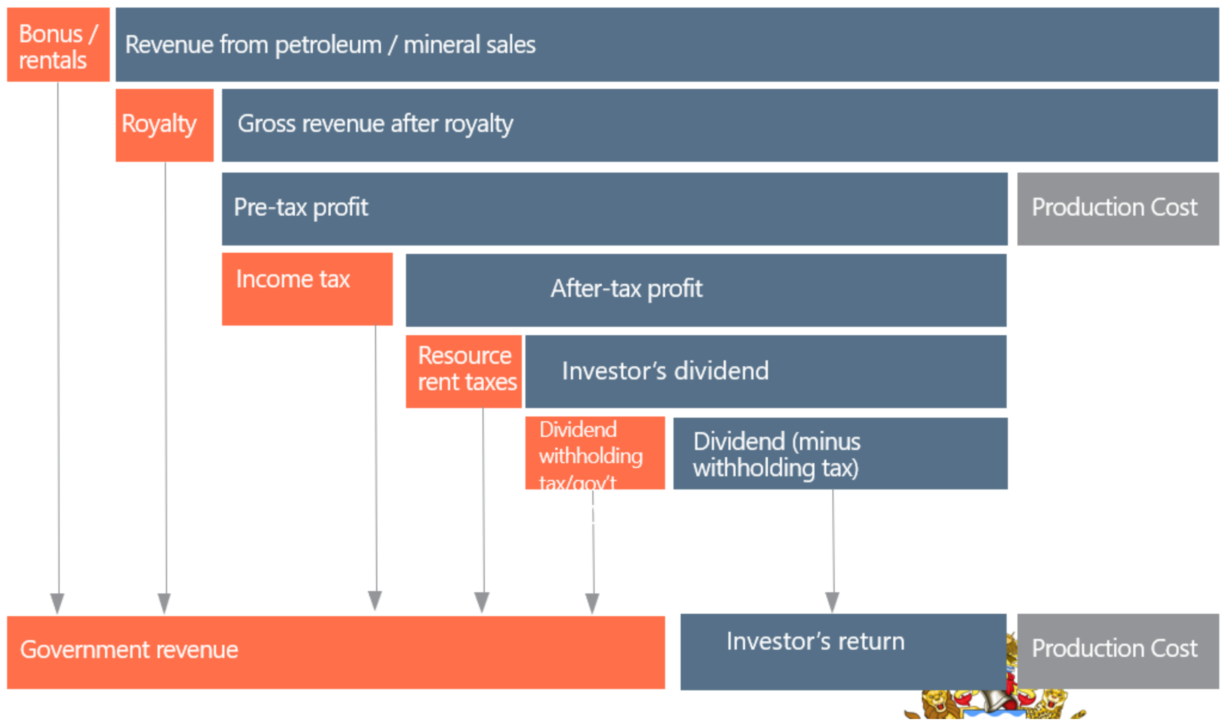
and services taxes, and import and export duties. It is often the case that policy makers and investors focus primarily on royalties, but it is important to look at the entire effect of these costs. A fiscal regime that has a very low royalty rate but requires a high bonus bid or imposes an excessive tax will drive away investment, to the detriment of the country's economy. Finding the right balance between the totality of the elements of a fiscal regime is critical.

This chart provides a schematic representation of the economic life of a mining project:



Focusing on the line labeled "net sponsor cash flow" demonstrates that a project sponsor will invest a substantial amount of capital to bring a mine into operation, going through financial analysis, permitting, and construction. In this chart, the sponsor does not start generating revenue until ten years after initiating the project. Following that line forward, the project sponsor does not recoup its prior investment until the 25th year after initiating the project. Only then does the project start to offer a return on investment. Mining investments are therefore unusual, and a fiscal regime that places too high an economic burden on a mining project, especially in its early years, will make a mining project unattractive.

This chart provides a useful representation of how the burdens and costs of a fiscal regime affect mine economics:



a. Royalty

The word "royalty" derives from the ownership of minerals in England by the crown. These minerals could be extracted and used only by a payment to the crown. Today, a royalty serves the same function. It is meant to represent a payment to the government in return for the right to extract minerals owned by the State.

In some instances, a royalty can be a fixed payment, perhaps in a dollar amount per ton or per ounce. Given the long life of most mining projects, the fixed payment is often tied to some index to allow the fixed price to increase over time to adjust for the effect of inflation.

More commonly, a royalty is a percentage of the value realized from the sale of produced minerals (i.e., an "ad valorem" royalty). Sometimes that value is determined on the total sales price for the mineral – that is, the gross revenue from the sale of the mineral. A gross royalty has the advantage of being easy to calculate. You simply look at the amount received from the sale of the mineral, and apply the royalty percentage. Of course, even this simple approach has its nuances. For example, the gross royalty must specify the point of sale. The gross royalty can be calculate at the sale of ore at the mine site, or perhaps at the sale of processed concentrate, or at the sale of a final refined product. Because the royalty applied to the overall value of the mineral, the percentage of a gross royalty tends to be fairly low.

It is much more common to allow the miner to deduct some costs and expenses from the value of the sold mineral before applying the royalty percentage, creating a net royalty. Royalties applicable to precious metals like platinum are nearly always calculated on a net basis, unless the royalty is being applied to the final sale of a fully refined product. As discussed in more detail below, the deductions can be fairly extensive. The model royalty deed prepared by the Australian mining association AMPLA, for example, includes the following deductions: (i) exploration an feasibility study costs, (ii) cost of mining and processing the mineral, (iii) transportation costs, (iv) handling and assaying costs,

(v) sales and marketing costs, (vi) amortization and depreciation of capital expenditures, (vii) financing costs, (viii) other royalties and taxes, (ix) land maintenance costs; (x) restoration and reclamation costs; (xi) payments to Aboriginal or native peoples, (xii) payments to any sinking fund created for future facility improvements, and (xiii) administrative and general overhead costs.[5] Not every net royalty will have this full set of deductions, but the AMPLA model provides a useful overview of potential deductions. Many net royalties, for example, do not include amortization of capital expenditures as a deduction. Given the availability of deductions, the royalty percentage for net royalties will be higher than the royalty percentage for a gross royalty.

For both gross and net royalties, sometimes royalties are set up to increase or decrease as the price of the metal being sold increases or decreases. This gives the government the opportunities to capture some of the upside of a rising metals market, but also presents some downside risk. There is typically a base royalty level that does not decrease no matter how low the market price of the metal goes.

b. Bonus Payments and Annual Rentals

It is common for governments making minerals available for development to seek a bonus payment upon the award of the right to exploit the mineral estate, and perhaps an annual rental payment as well. A bonus payment is a cash payment at the beginning of the tenure of the mining license or lease or mining agreement. The bonus payment is often a single cash payment, although sometimes the bonus payments are spread out over a number of year. As noted above, a mining project requires substantial investment over a long period of time before it generate revenues. There is a risk, then, of requiring too large a bonus bid. Given the time value of money, a future payment is less onerous that a current payment. Imposing a substantial bonus payment can significantly impair the economics of a project. Again, the goal is to find the optimal value that assures proper compensation to the state while allowing the project developer to make a reasonable return on its investment.

Annual rentals can be a fixed or indexed rental payment per year. More often, the grant of mining rights may include a rental payment per hectare (or other land unit). The annual rentals are usually fairly limited, and are designed to reflect a market based return on land use. The annual rental payment could be used to provide a more substantial return to the government, but that is not the common practice.

c. Income/Corporate Tax

Most governments have a standard income or corporate tax that applies to all companies doing business in that country. An income tax is an income based charge (usually a percent of “profit”) which allows the state to share in profits when they occur. As a result, for the purpose of the income tax, state shares risk with the investor. A mining company will look at the income tax applicable to its project when determining the total burdens on its investment. As discussed below, many countries have special tax provisions applicable to mining project. Some of these provisions can be beneficial to mine economics. It is common, for example, to offer a mine developer a tax holiday, allowing it to be free from the corporate tax for some period of time. Given the fundamental economics of mine development, a tax holiday can be a useful aid to mine investment. Similarly, some governments grant mining companies tax stabilization – a promise that taxes will not be increased for some period of time. Tax stabilization provides more certainty for the investors in a mining project. Note, however,

[5] *See* AMPLA, Model Minerals Royalty Deed.

that tax holidays and tax stabilization need to be thoughtfully implemented. If either approach is too robust, the host country may come to believe that it is not getting a fair return on its mineral estate, which can lead to problems. Other mining specific tax provisions can seek to shift more value to the state. For example, some governments have implemented new taxes that impose very high tax rates on mining projects, such as a windfall profits tax or a resources rent tax. Such taxes are a strong disincentive to mining investment. If a windfall tax is implemented after a mining project has been developed, it creates a risk that the mining company will claim that its project has been expropriated.

d. Value Added Tax/Goods and Services Tax

Many countries have a value added tax (VAT) or goods and services tax (GST) of general applicability to companies doing business in that country. Again, an investor will look at the effect of the VAT or GST on mine economics when assessing whether to invest in a country. A reasonable VAT or GST is usually not an issue, but if these taxes are especially high, or if there are provisions that increase the costs for mining services or equipment, then they can act as a disincentive to mine investment.

e. Import/Export Duties

A mining project will almost certainly import a great deal of equipment and material for mine construction and operation. As a result, the mining company will look at import duties to determine how those cost will affect mine economics. As with the corporate tax, it is common for mining investors to seek some relief from import duties, such as reduced rates for mining equipment, or a holiday or stabilization period for import duties.

Similarly, most mining companies will sell a precious metal like platinum on the global metals market. The mining company will assess any export duties payable on the export of its production. Excessive export duties can impair investment in mining projects.

2. The Zimbabwe Fiscal Regime for Platinum

a. Introduction

Zimbabwe's current mining fiscal regime is largely agreed to be out of date. Much of this law is based on the Mines and Minerals Act of 1961 (the "1961 Mines Act"). Drafted during the colonial era, the 1961 Mines Act lacks provisions to safeguard against opaque licensing procedures and corruption, which can keep taxes and royalties on mining activities from benefitting citizens.[6] Below is a summary of the fiscal regime aspects of the 1961 Mines Act that apply to platinum, which will be followed by a discussion of how this statute interacts with other statutes to make up the current fiscal regime. Note that the fiscal provisions of the 1961 Mines Act are largely the same for precious metals like platinum as they are for ores, precious stones, and other minerals. The following discussion is therefore framed generally, but the provisions apply to platinum and thus inform the larger discussion of this report.

As detailed in this section, the current fiscal regime under the 1961 Mines Act leaves much to the discretion of the Mining Affairs Board (the "Board") and the Minister of Mines ("Minister"). For context, the Board is overseen by the Minister and consists of the Secretary, one Deputy Secretary, an undersecretary or assistant secretary, the Chief Government Mining Engineer, the Director of

[6] CRD_Policy_Analysis_Vol_1.No._1.pdf (africaportal.org).

Metallurgy, the Director of Geological Survey and six other members.[7] Five of these other members will be selected by the Minister—four must be workers from a panel of names submitted by the Chamber of Mines of Zimbabwe, and one is selected from a panel of names from the Commercial Farmers Union of Zimbabwe. The last member must be a publicly practicing chartered accountant.

b. Mining Leases

Any person may apply to the mining commissioner for rights to a mining lease under Part VIII of the 1961 Act for a defined area, all of which must either be "registered as a mining location" under the applicant's name, or else open to prospecting (a "Mining Lease").[8] The mining commissioner for the region in which the prospective mine is located then submits the application to the Board, and may also submit a report on the application to the board in his or her discretion.[9]

The Board, at this point, evaluates whether the mining project has a "reasonable prospect of success" under the criteria set out in Sections 142(3) and 142(5).[10] Section 142(3) requires that the Board, before approving an application, find that (a) the applicant is financially sound and will be able to meet payment obligations; and (b)the applicant is likely to conduct mining operations "of a substantial scale," and for a "considerable period" in the area covered by the application.[11] Section 142(5) allows the Board discretion to approve the application with respect to certain parts of the requested area or otherwise limit the acceptance in any way that is not inconsistent with the rest of the 1961 Act.[12]

If the Board is satisfied that the application meets these criteria, it will then provisionally approve the application, either with respect to the entirety of the geographic area applied for or a portion of it.[13] The mining commissioner will then publish a notice in the Financial Gazette (the "Gazette") and invite the public to lodge objections to the Mining Lease for a period of thirty days.[14]

After evaluating such objections, the mining commissioner submits the application back to the Board along with any objections that have been raised and the commissioner's determination of the merits of such objections.[15] The Board then considers the application, including any objections under Section 139(3). In order to approve of the application, the Board must be satisfied of the following: (a) that the applicant is in a financial position to meet payment obligations as required by Section 334 of the 1961 Mines Act; (b) that the application will likely lead to actual mining operations on a substantial scale and for a considerable time in the area covered by the lease; and (c) that the geographic area for which the lease is sought does not cover any ground that is subject to prospecting.[16]

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[7] Mines and Minerals Act Chapter 21:05 §6(1).
[8] 1961 Mines Act 21:05 §135.
[9] *Id.* at §137(1).
[10] *Id.* at §137(2).
[11] *Id.* at §142(3) and §142(5).
[12] *Id.* at §142(5).
[13] *Id.* at § 137(2).
[14] *Id.* at §138. Objections lodged on the basis that the applicant does not have proper title to the mining location as claimed, such objection will be determined by the mining commissioner. On the other hand, objections alleging that land within the mining location to which the applicant does not claim title are improperly claimed because they are not open to prospecting will be evaluated by the Administrative Court. All other objections will be evaluated by the Board. *Id.* at §139(1-3).
[15] *Id.* at §141.
[16] *Id.* at §142(3).

c. Special Mining Leases

If, in the above-described process, the Board determines that an application does not meet the criteria of Sections 142(3) and 142(5) of the 1961 Mines Act, such application may still be considered for a Special Mining Lease as opposed to being refused outright.[17] A "Special Mining Lease" means a mining lease issued under Part IX of the 1961 Mines Act or, as context requires, the area covered by such a lease.[18] The provisions of Part VIII apply *mutatis mutandis* to Special Mining Leases as well.[19] However, unlike for regular Mining Leases, the Board does not have power to accept or refuse an application for a Special Mining Lease, but instead makes a recommendation to the Minister who has ultimate authority to make the decision.[20]

The Board will consider two potential avenues by which an applicant can qualify [to apply] for a Special Mining Lease: (1) the applicant meets the criteria of Section 159(1)(a) and (b), or (2) the Board determines that it is "desirable in the interests of the development of Zimbabwe's mineral resources" to consider granting a Special Mining Lease.[21]

Section 159(1)(a) provides that Persons holding one or more contiguous registered mining locations may apply for a Special Mining Lease if they can show that investment in the mine will exceed $100 million in U.S. dollars and be entirely or primarily in foreign currency, and that the mine's output is "intended principally for export."[22]

Notably, the Board may make exceptions even to the criteria of Section 159(1) described above. The Board may allow applications for Special Mining Leases from applicants who do not meet the above criteria by evaluating, in their discretion, whether it is "desirable in the interests of the development of Zimbabwe's mineral resources to consider the grant of a Special Mining Lease to the applicant." In making this determination, the Board may consider any relevant circumstances, without explicit limitation.[23] The 1961 Act mentions the following criteria as factors to be considered: (a) the nature and size of the Mineral deposits in the area to which the application pertains; (b) the estimated duration and economic viability of the mining project; (c) the extent of investment to be made in the proposed mine; (d) the proposed method of extraction and treatment of the Minerals; and (e) any other relevant circumstances.[24]

Section 160 of the statute requires the Board to make certain determinations in making its recommendation to the Minister. In addition to meeting the requirements of Section 142(3)] [as described above, the applicant must convince the Board that it meets subsection[159(1)(a) and (b)]or, if those criteria will not be met, the board will consider [the matters referred to in 159 (2)(a-e)], the applicant's proposed mining lease would be "desirable in the interests of the development of Zimbabwe's mineral resources."

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[17] *Id.* at §137(2).
[18] *Id.* at §5.
[19] *Id.* at § 160.
[20] *Id.* at §160(1).
[21] *Id.* at §137(3).
[22] *Id.* at §159(1).
[23] *Id.* at §159(2)(e).
[24] *Id.* at §159(2)(a-d).

Finally, pursuant to his authority as President of Zimbabwe, the President shall consider the application and supporting documents as outlined in Section 162, and may either approve the plan submitted by the Board or propose its own.[25]

d. Royalties

One key factor impacting international mineral investment is the royalty paid to the Zimbabwe government by mining operations. MMA Chapter 21:05 (Pt. XIV) on Royalty applies to holders of regular Mining Leases in any instance, and to Special Mining Leases only to the extent that the terms and conditions of the Mining Lease do not conflict with the statute—that is, as between the statute and the lease, the lease controls.[26] This of course limits the practical applicability of the 1961 Mines Act to the extent the government grants Special Mining Leases, as miners can contract with the government to avoid many provisions of the statute.

The Minister fixes the rate of royalty annually before August 31, applying to the 12 months beginning on January 1 of the subsequent year. The 1961 Statute requires the Minister to consider the following in setting royalty: (a) prices at which the Minerals were sold in the three preceding years; (b) any representations by the Chamber of Mines of Zimbabwe regarding royalties and (c) any other matters as the minister deems fit. The Minister is authorized to fix different royalty rates for different Minerals based on these factors.[27] The royalty is payable on "the disposal" of minerals, which presumably means that the royalty is a gross royalty.[28]

For the purpose of calculating royalty, multiple claims held by the same person and treated at the same milling or reduction plant will be treated as the same party whether or not such claims are contiguous.[29] Miners pay on a monthly basis on the Minerals "disposed of by him or on his behalf" from such property, and at the rate per unit of mass fixed in accordance with Section 245 as described below. The "blocks of claims" described in the first sentence of this paragraph treated as the same property for royalty purposes.[30] There are exceptions from the royalty regime for very small or very low-productivity mines, which are granted full and partial rebates when the Minerals disposed on in one month from a mining location fall beneath $200 or $300 in value.[31]

More importantly for purposes of this report, however, is a full rebate granted for all royalty paid "in respect of all minerals or mineral-bearing products used solely in Zimbabwe.[32] This rebate serves, at least in theory, the purpose of incentivizing miners to refine and sell their products within Zimbabwe.

Further incentive is provided in Section 244(5), which provides a rebate for minerals and mineral-bearing products (together, "Minerals")are sold to and/or treated by an approved beneficiation plant. The rate of such rebate is calculated by the Minister in accordance with Section 247.[33] The miner must also specify to the Minister what "degree of beneficiation" it intends to complete with the

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25 *Id.* at §163.
26 *Id.* at §243.
27 *Id.* at §245 (1-5).
28 *Id.* at §251(1)(a)(i)(B).
29 *Id.* at §246.
30 *Id.* at §244(1).
31 *Id.* at §244(3).
32 *Id.* at §244(4).
33 *Id.* at §244(5)(b).

Minerals at such beneficiation plant.[34] If the mine benefitting from such a rebate fails to carry out its promised degree of beneficiation, however, the owner of the Mineral must pay royalties in the amount of the rebate the mining commissioner of the region where the mine is located.[35]

The 1961 Statute also allows for the President to remit royalty on any Mineral or class thereof, or for any "property" as defined in Section 246.36 The President has broad discretion in remission of royalties—the 1961 Statute stipulates that remission is appropriate whenever the President "deems it expedient…as an inducement to (i) the commencement or continuation of mining operations; (ii) the processing or refining within Zimbabwe of minerals […]; or (iii) the development of any export market."[37]

e. Payments to Local Authorities

The Minister also has broad discretion to require any registered miner or class of miners to make payments to local authorities. The statute provides almost no specific guidance for calculating such amounts, stating only that the Minister should consult with the minister of local government and any other ministers that represent mining interests, and that the Minister may then require any miner or class of miners to "pay a specified sum at specified intervals to any local authority within whose area the registered mining location is situated."[38]

Furthermore, the Minister has discretion to remit the obligation to make the above-described payments, for any miner, class of miners, Mineral, or class of Minerals. Again, the statute does not limit the Minister's discretion except to state that remission is appropriate as an inducement to "(i) the commencement or continuation of mining operations; or (ii) the development of any export market."[39]

3. Zimbabwe Platinum Mining Fiscal Regime

a. Corporate Tax Overview

(i) General Rates

In general, corporations in Zimbabwe are subject to an income tax rate of 24%, plus an AIDS levy of 3% (imposed on top of the basic tax), which creates an effective tax corporate tax rate of 24.72%.[40] This tax applies to the income domestic corporations, as well as branch income, or income of a foreign corporation, which has an extension of its foreign head office in Zimbabwe, where such income has accrued from a source within Zimbabwe.[41] Notably, the income of companies that hold a Special Mining Lease ([discussed below]) is subject to a lesser tax rate of 15%.[42] As such, companies

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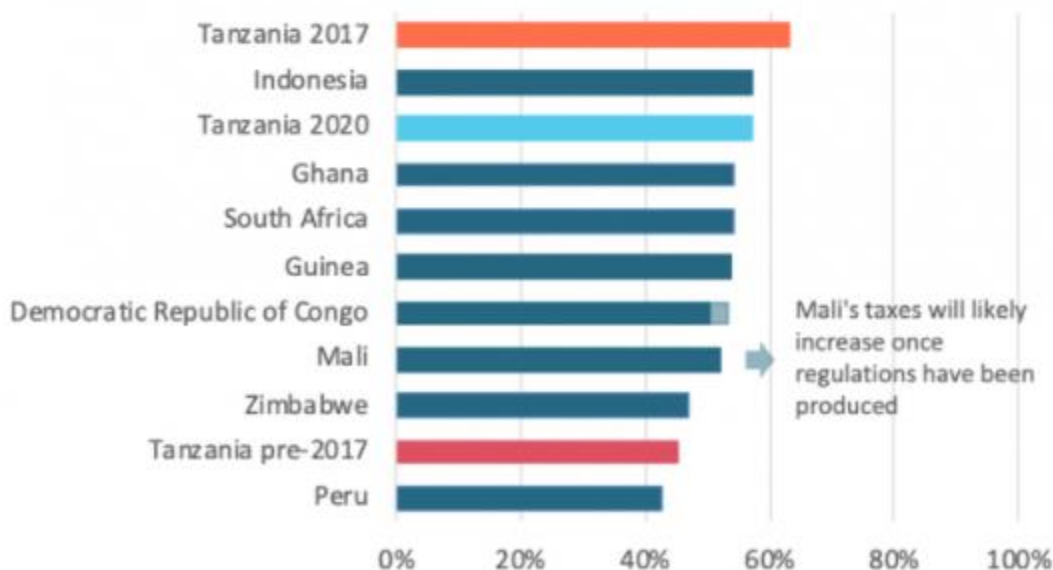
[34] *Id.* at §247(3).
[35] *Id.* at §244(5).
[36] *Id.* at §254(1-2). Section 246 defines "property" for purposes of calculating royalty as follows: "when ore from two or more blocks of claims, whether contiguous or otherwise, owned or held under a tribute agreement by the same person is treated at the same milling or reduction plant, then such blocks of claims shall be deemed as one property." *Id.* at §246 (1).
[37] *Id.* at §254 (2)(ii).
[38] *Id.* at §255 (1).
[39] *Id.* at §257(1).
[40] https://taxsummaries.pwc.com/zimbabwe/corporate/significant-developments
[41] https://taxsummaries.pwc.com/zimbabwe/corporate/branch-income
[42] http://www.mines.gov.zw/?q=mpd/56

in the platinum mining sector would have their corporate income taxed at the standard rate, unless they were the holder of a Special Mining Lease.

Note that the overall Zimbabwe average effective tax rate is not out of line with other mining jurisdictions:



Source: Resource Governance[43] This chart assumes that development in Zimbabwe proceeds under a standard mining license and not under special mining license. Have the effective tax rate (which includes royalty payments,[44] fall somewhere between 40 percent and 60 percent seems to be an equitable range for fiscal burdens, all other factors being equal.

(ii) Depreciation/Expensing/Loss Carryovers

Mining operations in Zimbabwe are subject to multiple depreciation/expensing rules. With respect to depreciation deductions, the cost of machinery, equipment, and other items used by a taxpayer for income generation are depreciated over four years, in four equal annual allowances, i.e. a $100 machine would be allow for four deductions of $25 per year.[45] With regard to actual exploration expenses, such mining exploration expenditures are fully deductible in the first full year of production,

[43] https://resourcegovernance.org/blog/tanzania-strikes-better-balance-mining-fiscal-regime

[44] International Monetary Fund, Fiscal Analysis of Resource Industries (FARI), https://www.imf.org/external/np/fad/fari/

[45] https://taxsummaries.pwc.com/zimbabwe/corporate/deductions

if incurred prior to the commencement of production.[46] Subsequent expenditures are written off in the year incurred.[47] Non-capital Start-up expenses (for a mining company, these would be the expenses unrelated to exploration, equipment, machinery, or capital improvements, i.e. potentially personnel expenses, etc) are similarly deductible if incurred within 18 months of commencement of business.[48] Under this regime, theoretically nothing would stop a company from being able to take depreciation deductions for machinery, full deductions for exploration expenses prior to the first year of production, and deductions for start-up expenses after production starts.

Additionally, Zimbabwe has no restrictions on the carryover of tax losses, which can be carried forward indefinitely.[49] This is particularly significant for mining operations, as tax losses can be taken over and above any other deductible expenditures.

(iii) Withholding

In general, a withholding rate of 15% applies to dividends, royalties and similar payments, and fees declared, paid, or distributed to non-Zimbabwean residents.[50] In many cases, this rate is reduced by treaty. Many of Zimbabwe's bi-lateral tax treaties provide for a 10% or lower withholding rate for dividends. (See id., noting dividend withholding rate of 2.5%-7.5% for China, 10% for Netherlands, Poland, Mauritius, Germany, and others, and 5% for United Kingdom). Similarly, many withholding rates for royalties and fees have also been reduced by treaty to 10% or 5%. (Id.)

Additionally, certain payments to Zimbabwe residents are subject to withholding. Most notably, payments of interest accruing to any person resident in Zimbabwe, including interest payable to a financial institution is subject to a 15% withholding rate, which the financial institution is responsible for withholding. (Id.). This interest withholding does not apply to non-resident investors however, so a loan provided by foreign investors could be structured in a manner as to avoid dealing with withholding tax.

b. Royalties

Zimbabwe's royalties for minerals (and platinum in particular) have varied dramatically over the last few decades, which has complicated investments into the nation given a lack of predictability. Traditionally, the royalty for platinum was 10%, unless it was extracted from a mine under a special mining lease, in which case the royalty was only 2.5%.[51] Predictably, a 75% discrepancy in royalty rates complicated investment into the mining sector, as prospective investors did not wish to be stuck with a significantly higher royalty rate in the event they were not able to secure a Special Mining Lease. In response to this concern, in 2017, all PGM royalties were temporarily reduced to 2.5% to maintain consistency with the rates for Special Mining Leases.[52] This reduction was scheduled to expire in 2019, and currently it is difficult to ascertain what the royalty rate actually is. Some practitioners have

[46] 1961 Mines Act at §257(1)
[47] *Id.*
[48] *Id.*
[49] http://www.mines.gov.zw/?q=mining-taxation-zimbabwe
[50] https://taxsummaries.pwc.com/zimbabwe/corporate/withholding-taxes
[51] 1961 Mines Act at §257
[52] https://www.herald.co.zw/govt-slashes-platinum-royalty/

the rate at 3% for precious metals,[53] while the Ministry of Finance has the rate back at 10% (http://www.mines.gov.zw/?q=mining-taxation-zimbabwe).

While royalty rates have historically fluctuated, the methodology for calculating royalties owed has not. Royalties continue to be calculated based on the royalty rate multiplied by the gross platinum sales. For mining operators, given the potential fluctuation in rates, this could mean paying a substantially larger portion of income in royalties in one year vs. the next.

c. Value Added Tax (VAT)

Zimbabwe's value added tax ("VAT") system was modeled after the New Zealand GST, which is generally accepted as being one of the "best practices" regimes in this realm.[54] However, the actual implementation of this system deviates somewhat from this benchmark. Zimbabwe's VAT generally follows the destination principle, namely that tax should be eventually levied only on the final consumption occurring within the taxing jurisdiction.[55] With this said, when it comes to the mining sectors, Zimbabwe's VAT deviates from some common norms of other destination principle jurisdictions. Notably, Zimbabe charges VAT on certain mining exports at a rate of 15%. This 15% rate is currently applied to unbeneficated platinum, and has applied off-and-on (but is currently suspended) with respect to other PGMs.[56] Ultimately, this has led to reduced platinum exports, and a stockpiling of unbeneficated platinum within Zimbabwe.[57]

While unbeneficated platinum and other PGMs can be subject to VAT, other materials relevant to Zimbabwe's mining sector are zero-rated under Zimbabwe's system. A zero-rating indicates that the ultimate sale of a good isn't taxed, but VAT is nonetheless paid on all inputs necessary for the production of the good. In general, this can result in a reduction of the ultimate price of such good at its final sale, as less capital was needed to get to this point. At the same time, it can mean that the taxing authority is faced with a higher administrative burden, as it has to process credit claims at each input in VAT chain. While a VAT exemption also entails that the ultimate sale of a good isn't taxed, it does not require the taxing authority to process credit claims for each input, which can noticeably reduce the administrative burden of collections.

d. Import/Export

(i) Taxes on imported mining equipment

Zimbabwe generally requires three payments upon importation of goods into the country: import duty, surtax, and VAT. The combination of these charges can range from 10%-60%. In general, finished goods are subject to hire charges than component materials, in an attempt to promote local manufacturing and development.[58]

With this said, Zimbabwe does allow for the suspension of duty (but not necessarily surtax and VAT) for certain goods imported for mine development operations. This allows for imports of items such as sinking shafts, and machinery for installation, construction, and erection of production and

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[53] *See* https://iclg.com/practice-areas/mining-laws-and-regulations/zimbabwe
[54] file:///C:/Users/1088256/Downloads/PMF_2017_02_Madzivanyika.pdf
[55] *See* http://www.taxreformlaw.com/wp-content/uploads/2018/11/Seattle-CPE-Day-The-Increasing-Importance-of-Destination-in-Tax-Regimes-November-7-2018.pdf, defining the destination principle
[56] *See* file:///C:/Users/1088256/Downloads/PMF_2017_02_Madzivanyika%20(1).pdf
[57] 1961 Mines Act at §257
[58] https://www.export.gov/apex/article2?id= Zimbabwe-Import-Tariff

conveyance facilities to be exempt from customs duty.[59] Additionally Zimbabwe does provide for the deferment of some VAT that would otherwise be charged on imported capital equipment, for a period of 90 days. This deferment is subject to conditions set by the ZIMRA Commissioner-General,[60] and as such the benefits granted by this deferment, or the availability of this deferment could change from year-to-year.

(ii) Taxes and charges on mineral exports

Mineral exports in Zimbabwe, namely platinum exports, have been subject to a moving target in terms of export taxes over the past decade. In 2015, the government proposed instituting a 15% export tax on unbeneficated platinum, in an attempt to boost refinement efforts within the country.[61] This proposed export tax was suspended when mining companies, which at the time were facing lower prices and reduced demand for platinum, requested two additional years to set up smelters and refineries.[62] In 2019, Zimbabwe imposed a 5% tax on the export of platinum concentrates to encourage local processing.[63] Additionally, at least by law, platinum is required to be sold to the Zimbabwe Minerals Marketing Corporation, which imposes a marketing commission for its services (which has fluctuated). As of May 27, 2021, this fee began to be collected by ZIMRA, and MMCZ made no deductions from minerals exports.[64] It remains to be seen for how long this will play out in practice.

e. Incentives

Zimbabwe's tax system imposes a number of incentives applicable to the mining sector. Significantly, exporting taxpayers can take an additionally allowance of 100% of the costs incurred in an export country in order to export Zimbabwean goods to such country.[65] Additionally, if a mine is located in a Special Economic Zone, the mining company would be (i) exempt from paying duties on goods and equipment used in the establishment of the business, (ii) tax exempt for the first five years, and (iii) taxed at 15% (instead of 24.72%) thereafter.[66]

Statutory Instrument 43 of 2020 (Mining (General) (Amendment) Regulations) sets out several fees payable by mining operators, including a Zim$ 62,500 fee to export PGM concentrate.

f. Beneficiation

Zimbabwe, like many mineral rich countries, has a strong incentive to promote beneficiation in the country. For platinum, refined platinum will capture four times the value of unbeneficiated platinum.[67] As noted above, the government imposed a 15% tax on unbeneficiated platinum, but in most cases mining companies simply stored ore on the ground, and the tax was eventually

[59] http://www.mines.gov.zw/?q=income-tax-custom-duty
[60] 1961 Mines Act at §257
[61] https://www.reuters.com/article/ozabs-uk-zimbabwe-platinum-tax-idAFKCN0QF 17420150810
[62]https://www.mining.com/zimbabwe-platinum-export-tax-shelved-for-now/#:~:text=The%20government%20of%20Zimbabwe%20has,set%20up%20smelters%20and%20refineries
[63]https://www.spglobal.com/marketintelligence/en/news-insights/blog/the-future-of-risk-management-digitization-in-credit-risk-management
[64] https://www.rbz.co.zw/documents/press/2021/May/Press-Statement----MMCZ-Deductions---27-5-2021-1.pdf
[65] https://taxsummaries.pwc.com/zimbabwe/corporate/tax-credits-and-incentives
[66] *Id.*
[67] Zimbabwe Economic Policy Analysis and Research Unit (ZEPARU), Assessment Of The Scope And Applicability of Beneficiation and Value Addition of Minerals in Zimbabwe at 9 (2017)

suspended.[68] To date, Zimbabwe has not developed an effective approach to incentivizing beneficiation.

g. Minerals Marketing Corporation

Zimbabwe has established the Minerals Marketing Corporation of Zimbabwe (MMCZ) to market all minerals produced from Zimbabwe except gold and silver. According to the MMCZ website, MMCZ is "[t]o act as the sole marketing and selling agent of all minerals produced in Zimbabwe [and] purchase and acquire any minerals for its own account and to sell such minerals."[69] As noted above, it is problematic when the government interposes a parastatal entity between mine production and the market place, whether in the form of a marketing agency or requiring sales to a governmental bank. A lack of access to international markets adversely affects mine economics. MMCZ has been placed on the sanctioned parties list by the United States, which is a severe impediment to its function, and a worse impediment to a functioning mineral industry in Zimbabwe.[70]

h. Ownership Requirements

In 2018, Zimbabwe implemented empowerment rules requiring that 51 percent of diamond and platinum mines be owned by the State.[71] A year later, Zimbabwe dropped that requirement, recognizing that it was an impediment to foreign investment.[72] Foreign investors can now own 100% of platinum mines.[73]

4. Fiscal Regime under Proposed Mining Law Amendment

The platinum fiscal regime could undergo meaningful changes if the MMAB is adopted. Perhaps the most important change to be made in accordance with the MMAB is the unique treatment afforded to certain "strategic minerals" such as platinum group metals. A "strategic mineral" is defined broadly to include any "mineral, declared or designated as strategic…on account of their importance to the economic, social, industrial, and security development" of Zimbabwe.[74] The MMAB hardcodes certain minerals as "strategic minerals" – including platinum group metals[75] -- while also providing the Minister authority, in consultation with the board and with the approval of the President, to designate any other mineral as strategic or to remove any material from the strategic minerals list.[76] In creating a "strategic minerals" designation, the MMAB appears to recognizes the importance of Zimbabwe's resource wealth and attempts to reserve to the government the ability to make use of such wealth for its and the country's own benefit rather than leaseholders.

As an example, mining leases for strategic minerals are treated differently under the MMAB from mining leases that are not related to strategic minerals.[77] Specifically, a lessee in non-strategic

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[68] Eunomix Research, Zimbabwe Beneficiation Policy at 20, 24 (2015)
[69] https://www.mmcz.co.zw/company/
[70] Kudzai Kuwaza, US sanctions cripple Zim mines, The Zimbabwe Independent (June 4, 2021).
[71] https://www.reuters.com/article/us-zimbabwe-mining-indigenisation-idINKCN1NV1XI
[72] https://www.biznews.com/briefs/2019/03/06/zimbabwe-scraps-platinum-indigenisation-rule-to-revive-investment.
[73] https://www.news24.com/fin24/economy/africa/foreign-entities-can-now-fully-own-mines-in-zimbabwe-following-outcry-20210203-2
[74] Mines and Minerals Amendment Bill (MMAB) §5A(1).
[75] MMAB §5A(2)(f).
[76] *Id.* at §5A(4).
[77] *Id.* at §143.

minerals has “the exclusive right of mining, within the vertical limits of the mining lease…”, a lessee in strategic minerals does not.[78] Effectively the government has reserved to itself certain rights with respect to the broad list of strategic minerals. How the government would assert or enforce this right is not delineated in the MMAB, but the signal is strong: the government will not relinquish the benefits of its strategic minerals. However, there appears to be a large, exploitable gap in the MMAB with respect to the newly designated “strategic minerals”.

The special mining lease provisions in Part IX of the 1961 Mines Act Defined Term, described above, are largely untouched by the MMAB. Thus, it could be possible for parties to contract around the MMAB, just as they could around the [1963 Act Defined Term]. The only change to Part IX of the 1961 Mines Act Defined Term is the minor amendment altering the requirement for a Special Mining Lease from the fixed threshold of $100 million U.S. dollars to “such amounts as may be prescribed.”[79] It is not clear whether this will have any material impact on the grant of special mining leases, and it is equally unclear why the MMAB overhauls the entire section on mining leases but leaves intact the provisions on special mining leases – and in fact preserves the special mining lease regime by defining a “mining right” to include a special mining[80] – when much of the MMAB’s focus is tighten governmental controls over its “strategic minerals”.

The MMAB makes sweeping changes, replacing entire parts wholesale, but it also makes more mundane, ministerial changes. For example, in constituting the Board the MMAB removes the Chief Government Mining Engineer and the Director of Metallurgy.[81] The MMAB also authorizes the Board to establish one or more committees to facilitate more efficient functioning.[82] Interestingly, the Explanatory Memorandum states that the MMAB establishes the Mining Affairs Board, but that term does not appear in the MMAB itself (though it is specifically mentioned in the Policy).[83] In any case, whether these changes to governance mechanisms would yield material differences in actual governance remains to be seen. Any such improvements would likely be a function of the personnel holding such positions more than the tinkering at the margins of Board composition and committee structure.

Notwithstanding the preservation of special mining leases, the MMAB overhauls entirely the existing system of regular mining leases. In addition to the special treatment of mining leases in respect of “strategic minerals” described above, the MMAB repeals Part VIII (“Mining Leases”) of the [1963 Act Defined Term] and substitutes a new Part VIII “to provide for the Mining Leases, form, duration, terms, and conditions.”[84] Of relevance to the platinum fiscal regime, this new Part VII calls for (1) the establishment of the Cadastre System and (2) the restrictions on transfer of mining leases.

(1) Cadastre System. The establishment of a mining title system based on the cadastral system is a key component of the MMAB and is also consistent with the Policy. Having an objective to “create a mining titles system that is simple, easy to administer and easy to apply”,[85] the Policy recognizes that updating the title system is necessary to heighten the appeal of investors and facilitate more orderly dispute resolution over competing claims.

[78] *Id.* at §143(b).
[79] MMAB Schedule §54
[80] MMAB §8.
[81] *Id.* at §6(c)(iv).
[82] *See id.* at §6(g).
[83] Policy at 9.1(vii)
[84] *See* Explanatory Memorandum of MMAB (Clause 15) and MMAB §15.
[85] *See* Section 7.2 of Mineral Development Policy 2020.

In our view the new Cadaster Registrar could further entice investors by defining "beneficial ownership" and adding a requirement that the Cadaster Registrar (as defined in the MMAB) include in the Registrar (as defined in the MMAB) the identity of each person who holds beneficial ownership in a holder of a mining title or right.

(2) Restrictions on Transfer. Clause 15 of the MMAB provides that any transfer of a mining lease must be approved by the Board, after consultation with the owner of the ground covered by the lease.[86] There is no explicit criteria on which the Board would have to approve a transfer – it may be entirely discretionary in practice. The lack of clarity on assignability – and the interposition of the Board in any proposed transfer – could deter investment or at least reduce the estimated value of any mining lease. However, this provision restricting transfer appears to apply only to mining leases that are not special mining leases, again leaving open the possibility of circumvention.

As discussed above, royalties are a key element of a fiscal regime. The MMAB updates the royalty regime to increase certainty, in particular with respect to using published, fixed royalty rates. Whereas under the [1963 Act Defined Term], royalties are fixed by the Minister, the MMAB applies royalties in accordance with the fixed amounts show in in the Schedule to Chapter VII of the Finance Act [*Chapter 23:04*].[87] Such schedule shows a 10% royalty for platinum, as a percentage of gross fair market value of mineral produced.[88] The MMAB alters the royalty calculations by deleting "per unit of mass" from section 244 and changing the amount of rebates for low-productivity mines from a $200 threshold to "such amount as may be prescribed".[89] The MMAB retains the full rebate designed to incentivize domestic use of minerals.in 244(4). The beneficiation plant rebate referred to above is retained, but has been renumbered as 307B. Similarly, the provisions on payments to local authorities has been renumbered as section 76.

5. Benchmarking Information

A theme begins to emerge: certain elements of a fiscal regime depend on the mineral being produced; while others apply more generally to extractive industry. Certain elements of a fiscal regime should be considered with respect to *any mineral*, such as establishing a corporate income tax rate and determining the timing of payments. Other components of a fiscal regime may be resource specific. The critical elements of a fiscal regime will correspond to the country's geographical resources.

Countries' varying royalty practices for platinum are instructive. Some countries have established a specific royalty for platinum (as is the cases under Zimbabwe's current regime) while other African countries have a single royalty rate for precious metals. Asian and Pacific jurisdictions tend not to link royalty rates to the mineral produced but instead to the size of the mine.

As described in greater detail below, corporate income tax is typically set without regard to *mining* at all, instead applying generally to all corporate profits. As such it is of minimal importance to

[86] MMAB new section 153.
[87] MMAB §38.
[88] Finance Act file:///C:/Users/1087537/Downloads/Finance%20Act%20Chapter%2023_04_Updated.pdf available at http://www.zimtreasury.gov.zw/index.php?option=com_phocadownload&view=category&id=14:finance-act&Itemid=790
[89] MMAB §37.

the tax component of a potential *platinum* fiscal regime, but is important generally to attracting investment.[90] The more important tax-related considerations relate to what deductions are permissible, whether they apply on an entity basis or "ring-fenced" for a particular mine, or whether to provide an alternative methodology to determine the tax rate on mining taxable income.

Recognizing that corporate income tax is not mining specific, some countries have sought to generate additional revenue from mineral development by levying mineral rent taxes (the difference between the value of production for a stock of minerals at world prices and their total costs of production).[91] Mineral rent taxes can be difficult to establish and administer, though, as it is difficult (if not impossible) to capture only "excess" profits and not deter investment. Royalties are simpler and also more commonly used.[92]

There are limited examples for stabilization and import/export duty relief. As a result, Zimbabwe may wish to consider these elements of the platinum fiscal regime from first principles.

We set forth below in greater detail existing practices in several jurisdictions for each element of the fiscal regime. Our analysis encompasses various minerals (rather than focusing only on platinum) because only a few countries are major platinum producers and, as above, some elements of a fiscal regime are not dependent on the specific mineral.

a. Royalties (Platinum/Precious Minerals)

(i) Royalties are calculated on different bases in different countries. The calculation methods include royalty based on (1) value of the mineral, (2) profit and (3) volume. With respect to copper, cobalt, manganese and nickel, value-based royalties are used in Australia, Brazil, China, the Democratic Republic of the Congo, Indonesia, Jamaica, Japan, Papua New Guinea, the Philippines, Russia and South Africa; profit-based royalties are used in Canada, Chile, and Peru; royalty based on mineral volume is only used in Poland (out of the fifteen countries selected for this study).[93]

(ii) Mozambique has a royalty that has a special rate for precious metals (gold, silver and platinum): The Mozambique production taxes are: 8% for diamonds, 6% for precious metals (gold, silver and platinum), as well as precious stones and semi-precious stone, 3% for base minerals, coal and other mineral products, and 1.5% for sand and stones. Leopoldo de Amaral and Kaina Mussagy, Mining in Mozambique: overview, Practical Law Country Q&A 0-575-3315 (Aug. 2020). Note that Mozambique also has a mineral resource rent tax (MRRT) of 20% once a project achieves an internal rate of return of 18%.[94]

[90] In the context of seabed mining (cobalt, nickel, manganese, and nickel), the corporate income tax "should not be of particular importance" since most countries' tax band are within a "relatively narrow band", Platinum is not discussed in this comparative study, but one may infer the relevance to platinum by analogy. *See* Analysis of Tax Regimes: Comparative Analysis of Tax regimes of Land-Based Mining in 15 Countries p. 7 (October 12, 2020).

[91] *See* World Bank https://datacatalog.worldbank.org/mineral-rents-gdp-1. Note that minerals included in the World Bank's calculation are tin, gold, lead, zinc, iron, copper, nickel, silver, bauxite, and phosphate. Platinum is not included.

[92] *See* Analysis of Tax Regimes: Comparative Analysis of Tax regimes of Land-Based Mining in 15 Countries p. 26 (October 12, 2020).

[93] Comparative Analysis of Tax regimes of Land-Based Mining in 15 Countries, p. 20 (October 12, 2020)

[94] *Id.*

(iii) Similarly, Turkey has a higher royalty rate for gold, silver and platinum. The platinum royalty is determined on a sliding scale based on the London price, from 1% at $500/oz. to 15% above $1800/oz. The sliding scale also applies to gold, silver, copper, lead, zinc, chrome, aluminum and uranium. The Turkish Mining Code, Law Number : 3213, Chart 3. Gold, silver and platinum mines can earn a 40% reduction in royalties where the metals are processed in country. There is an additional 50% deduction for underground mines.[95]

(iv) Otto, et. al. do not provide specific royalty rates for platinum, but analyze royalty regimes for mining operations of different sizes and types. Some African countries, namely Zambia and Ghana, have moved away from setting royalty rates for each mineral and instead use standardized royalty rates for all mineral types. This regime can be problematic because the market price of various minerals fluctuates at different times and to different degrees. Ghana has introduced a sliding scale of 3% to 11% royalty based on profitability to account for this problem. Otto et. al., Mining Royalties: This sliding scale also benefits small-scale and artisanal miners, which tend to operate at lower profit margins. Tanzania and Zambia also use sliding scales of this nature.[96]

(v) Other African countries, however do have different royalty rates—if not for individual minerals like platinum, then at least for precious metals as a category as distinguished from base metals, ores and precious stones. For example, Botswana had an ad valorem royalty rate of 5% as of 2006; Mozambique categorized platinum with "all other minerals" (aside from diamonds, which have their own rate) and charged 3-8% ad valorem royalty, based on negotiation rather than a margin-based sliding scale as described in the previous paragraph with respect to Ghana, Zambia and Tanzania. Namibia, on the other hand, caps royalty at 5% of market value of the mineral.[97]

(vi) Otto et. al.'s analysis of selected Asian and Pacific countries' royalty rates indicates that most do not have a specific royalty rate for precious metals generally, much less for platinum specifically. Myanmar is an exception, providing for an ad valorem rate ranging from 4-5% for precious metals, as compared to its 5-7% rate for gemstones, 1-3% rate for industrial minerals and 3-4% for all other minerals. Otto et. al., Mining Royalties:[98] China, India and Indonesia, on the other hand, have different rates for each mineral that are either unit-based or ad valorem.[99]

(vii) China, Indonesia and the Philippines all vary their royalty rates based on mine size as well. In china, royalties are unit-based and set for each mine individually. In Indonesia, mines operating under [private "contracts-of-work"] are treated differently from those operating under mining law licenses. In the Philippines, small-scale operations are given special treatment.[100]

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[95] Zeynel Tunç, Aslı Kehale Altunyuva and Tuğba Taşçı, Paksoy, Mining in Turkey: overview, Practical Law Country Q&A 4-616-5262 (June 2019).
[96] A Global Study of their Impact on Investors, Government and Civil Society, Mining Royalties, p. 82 (2006).
[97] Otto et. al., Mining Royalties: A Global Study of their Impact on Investors, Government and Civil Society, Mining Royalties, p. 83 (2006).
[98] *Id.* at p. 86.
[99] *Id.*
[100] *Id.* at p. 88.

(viii) In South Africa, royalty rates vary based on various factors, including whether a mineral is refined, with the goal of promoting local downstream beneficiation. The royalty rate on refined minerals ranges from 0.5% to 5%, whereas the royalty rate on unrefined minerals can go higher, with a permissible range of 0.5%-7%.[101]

(ix) As of Otto et. al.'s 2006 study, Venezuela charged royalties of 3 to 4%, with platinum and other precious metals taxed at 3% and the 4% rate reserved for diamonds and precious stones. In Brazil, platinum also falls on the low end of the range of royalties by mineral. Its royalty rates generally range from 0.2-3%. Platinum (and generally "noble metals") are taxed at 0.2%, as compared to gold (1%), iron, fertilizer and coal (2%) and aluminum ore, manganese, salt and phosphorous (3%).[102]

(x) Chile calculates its tax rate for copper based on both volume of production and profit margin. The net operating income of copper mines is subject to taxation, and the royalty rate falls between 0.5 and 14% based on the volume of refined copper produced. RMG Consulting, Analysis of Tax Regimes: Comparative Analysis of Tax regimes of Land-Based Mining in 15 Countries, p. 19 (October 12, 2020). Peru levies separate royalties on operating margin and profit margin, with a combined rate of 3-19.9%.[103]

(xi) Royalty practices for gold in Africa may be informative to a platinum fiscal regime. Among Otto et. al.'s 8 selected African nations, six had some ad valorem royalty for gold,. There are two exceptions to the ad valorem approach: Zimbabwe, which is listed as not having a royalty except in "special cases," and South Africa, which has royalties but which are negotiated within guidelines but not within a band of specific percentages. Global Study of their Impact on Investors, Government and Civil Society, Mining Royalties, p. 84 (2006). Botswana and Namibia both had a fixed rate of 5% based on market value [Botswana using "adjusted gross market value"]. Ghana's rate is negotiable between 3 and 12% ad valorem, and Mozambique between 3 and 8%. Id.

(xii) To encourage new mining development, Ontario exempts new mines from royalties for a period of 3-10 years, dependent on the location of the mine.[104] This approach, while suitable for a developed economy, may be inconsistent with Zimbabwe's needs to realize benefits from new mines earlier inter development cycle.

(xiii) The Philippines have a "basic royalty rate" of 4%, but also requires mining operations to compensate landowners between 1% and 5%.[105]

(xiv) Some countries implement thresholds below which no royalty is owed. Australia's threshold is based on the relevant mineral's value—the first AUD 100,000 is not

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[101] RMG Consulting, Analysis of Tax Regimes: Comparative Analysis of Tax regimes of Land-Based Mining in 15 Countries, p. 20 (October 12, 2020).

[102] Otto et. al., Mining Royalties: A Global Study of their Impact on Investors, Government and Civil Society, Mining Royalties, pp. 91-92 (2006).

[103] *Id.*

[104] RMG Consulting, Analysis of Tax Regimes: Comparative Analysis of Tax regimes of Land-Based Mining in 15 Countries, p. 19 (October 12, 2020).

[105] Comparative Analysis of Tax regimes of Land-Based Mining in 15 Countries, p. 19 (October 12, 2020).

subject to royalty. In Chile, on the other hand, the threshold is based on volume. No royalties are owed on the first 12,000 tons of refined copper.[106]

b. Bonus Payments (front end payments)

One mining convention (the "Mining Convention") among the Democratic Republic of the Congo (the "DRC"), its state-run mining company La Generale des Carriers et des Mines ("Gècamines"), mining company Lundin Holdings Ltd. ("Lundin Holdings") and a joint subsidiary of Gècamines and Lundin, Tenke Fungurume Mining SARL ("T.F.M."), provides for $100 million USD "Transfer Bonus" as consideration for the transfer of the mining property. The Transfer Bonus is paid in installments by Lundin Holdings to Gècamines as follows.[107] $50,000,000 USD in May 1997 in connection with an earlier "Original Convention" between the State, Lundin Holdings and Gècamines;[108] $15,000,000 USD upon the later of the effective date of the Mining Convention and the effective date of the By-Laws of T.F.M.; [109] Similarly, in 2012, Cameroon included a USd $11 million signature bonus for the Cam Iron S.A. and Cameroon, Cam Iron project, and the DRC required a USD $5 million signing bonus for the DBB Resources Corporation Manomin project.[110]

c. Corporate Tax

(i) Corporate tax rates

(a) Corporate Income Taxes ("CIT") for the fifteen countries selected in one study fell within a range of 20% (Russian Federation) to 33.33% (Jamaica). The median among the fifteen countries (Australia, Brazil, Chile, China, DRC, Indonesia, Jamaica, Japan, Papua New Guinea, Peru, the Philippines, Poland, the Russian Federation and South Africa) is 29.7%, and the mean is 28.3%. RMG Consulting, Analysis of Tax Regimes: Comparative Analysis of Tax regimes of Land-Based Mining in 15 Countries, p. 33 (October 12, 2020).

(b) Several countries imposes taxes in addition CIT:

(c) Brazil requires an additional 9% "Social Contribution on Net Profits" making its effective rate 34%, higher than the highest CIT noted above. Similarly, Peru has a base CIT rate of 29.5%, with an additional 8% required to be paid to a "workers' participation" profit share system. The Philippines has a base CIT of 25% with an additional 2% "local business tax" of no more than 2% of gross sales; even with this addition the Philippines is within the band described above. RMG Consulting, Analysis of Tax Regimes: Comparative Analysis of Tax regimes of Land-Based Mining in 15 Countries, p. 34 (October 12, 2020).

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[106] RMG Consulting, Analysis of Tax Regimes: Comparative Analysis of Tax regimes of Land-Based Mining in 15 Countries, p. 19 (October 12, 2020).
[107] Amended and Restated Mining Convention among the Democratic Republic of the Congo, La Generale des Carriers et des Mines ("Gècamines"), Lundin Holdings Ltd. ("Lundin Holdings") and Tenke Fungurume Mining S.A.R.L. ("T.F.M."), dated September 5, 2005 (hereinafter, the "2005 DRC Mining Convention") Article I §1.1(vv) (definition of "Transfer Bonus.")
[108] 2005 DRC Mining Convention Article 4 §(a)
[109] *Id.* at Article 4 §(b)(i-v)
[110] David Kienzler, Perrine Toledano, Sophie Thomashausen, Sam Szoke-Burke, Natural Resource Contracts as a Tool for Managing the Mining Sector, Columbia Law School, Columbia Center on Sustainable Investment, 6-2015.

(d) In addition to its mining concession fees and special mining fees, Mexico imposes an extraordinary mining fee in the form of an additional 0.5% income tax on income from gold, silver and platinum, with no deductions. Jorge Luis Ruiz and Carlos Maass Porras, Mining in Mexico: overview, Practical Law Country Q&A w-020-0351 (Apr. 2019).

(e) The Democratic Republic of the Congo imposes a "supertax" of 50% when the commodity price of a mineral is 25% or more greater than a "base value" price used in the feasibility study [for that mine]. This tax base is calculated from the gross operating surplus of the mine, and corporate income tax does not apply in addition to the supertax, but instead is superseded by it.[111]

(ii) Stabilization

The mining law of Liberia requires mining companies to enter into a mining agreement with the government.[112] In 2013, Liberia entered into an amended and restated mineral concession agreement with Bear Mountain Mining Corporation. This is a concession agreement for gold mining, and provides a useful benchmark for fiscal terms for the mining of precious minerals like platinum.

Under the Bear Mountain Mining Agreement: Bear Mountain is subject to generally applicable taxes, but is granted tax stabilization for 15 years.[113] The stabilization clause fixes its corporate tax rate at 25%.[114] Withholding taxes are stabilized at 5% or 6%, depending on the basis of the withholding. The tax provisions of the Bear Mountain Mining Agreement also provide for deductions for mining related expenses.[115]

d. Annual Rentals

Under the Bear Mountain Mining Agreement, the mining company pays eight cents per acre for land in exploration areas and $2.90 per acre for land in production areas. Bear Mountain Mining Agreement § 23.1. A Philippine gold concession set surface use rentals at the amount determined by regulation by the affected municipality.[116]

e. Import/Export Duty Relief

Under the Bear Mountain Mining Agreement in Liberia, the mining company pays no import or export duties for" use or purchase of goods, equipment, vehicles and supplies (including medical training mid education supplies and housing and office materials, furniture and supplies)" used for mining exploration, development, or production. The company also gets a 50% reduction to fuel import duties.[117]

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[111] RMG Consulting, Analysis of Tax Regimes: Comparative Analysis of Tax regimes of Land-Based Mining in 15 Countries, p. 27 (October 12, 2020).
[112] Liberia Mining Law (2000).
[113] Bear Mountain Mining Agreement § 21.1.
[114] Bear Mountain Mining Agreement § 21.2.
[115] *Id.*
[116] Greenstone Resources Corporation - MPSA No. 184-2002-XIII, 2002
[117] Bear Mountain Mining Agreement § 24.1.

6. Summary of Where Current or Proposed Zimbabwe Platinum Fiscal Regime May Diverge from International Best Practices

(i) Royalty. Under the existing mining law, royalties are set on an annual basis, and the discretionary setting of royalties can be a disincentive to in-bound investment. International investment tends to favor certainty in fiscal terms. That said, in many cases the royalty is set by a mining lease, and that approach does provide some fiscal certainty. A ten percent gross royalty is high, and would also be a disincentive to mineral investment. The use of special leases can mitigate that effective, and a 2.5 percent gross royalty is on the lower end of royalties.

The proposed amendment to the mining law does not modify the overall royalty regime. There is a trend toward adopting a sliding scale royalty for precious minerals. Given the volatility of precious minerals markets, that approach would allow Zimbabwe to promote mineral development in a lower price environment, and also participate in the benefits of a rising precious minerals market.

(ii) Corporate Tax. The corporate tax rate of 24.72%, is within the range of standard corporate taxes. Corporate tax rates tend to fall between 20% and 33.33%. Zimbabwe, however, has generous tax provisions that substantially reduce tax payments. For example, allowing depreciation of mining equipment over a four year period accelerates the tax benefit of that investment. Similarly, allowing deduction of 100% of exploration costs in the first year of production creates an early realization of tax benefits. Coupled with the ability to carry losses forward, a mining company could defer the payment of taxes for quite some time.

(iii) Export Tax and Beneficiation. The 15% export duty/value added tax on unbeneficiated platinum has proven to be problematic. Zimbabwe has adopted several measures to promote beneficiation in-country. This particular imposition, however, seems to have effectively stymied platinum exports.

Promoting beneficiation is difficult. It does seem well established that governmental regulation or financial incentives (or disincentives) by themselves will not result in investment in beneficiation. Successful beneficiation efforts seem to work best where there is a clear vision of the outcome of the project, and a cooperative effort between the government and private parties.[118] There may also be some benefit to pursuing a beneficiation system that is regional, and would allow beneficiation from minerals from more than one country.

(iv) Import exemptions. Import exemptions for mining projects in Zimbabwe are very generous. It is fairly common to have low import duties on mining equipment, or even a complete waiver of import duties. That said, this generous approach to imports should be reviewed in light of the overall fiscal regime.

(v) Mineral Marketing Corporation. The requirement to market minerals through the governmentally owned minerals marketing corporation is a substantial impediment to attracting international investment in the mining sector. Most international mining companies want direct access to the global market.

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[118] Chatham House, Mineral Resources and Beneficiation in Africa: Initiatives and Impacts (June 2014)

(vi) Governmental Ownership. Like marketing through a governmentally owned corporation, requiring governmental ownership of a majority of a mining project is a disincentive to foreign investment. There are very successful governmentally owned mining companies, like CODELCO in Chile.[119] CODELCO originally held 51% of mineral projects, but over time has adopted different levels of ownership. CODELCO is highly regulated and transparent, and reports its fiscal results as if it where a publicly traded company.[120]

(vii) Proposed Amendment to the Mining Law. The proposed amendment to the 1961 Mining Law will designate platinum as a strategic mineral. The implications of this designation remain uncertain, but it will be important to assure that the fiscal and operational rules applicable to investment in the platinum sector are clear and certain.

[119] *See generally*, Diego Brieba, Government Participation in Natural Resource Projects: COLDECO and the Chilean Outlook, 65 Rocky Mt. Min. L. Fdn, (2019)

[120] Id.