Fair for All? Quebec Raises Mining Taxes

By Steve Suarez and Kevin Bianchini, Borden Ladner Gervais LLP

Mine operators in Quebec face significant tax changes if the provincial government's proposed mining tax regime (set out in the document "A New Mining Tax Regime: Fair for All", released May 6, 2013) is enacted. Already dealing with falling revenues due to decreased mineral prices, mining companies with Quebec projects may soon have to pay a minimum fixed royalty rate on the value of output or progressive royalty tied to profit margins. The government has also included additional measures to foster and promote mining investment and processing activities in Quebec. The Quebec government intends to implement this new regime as of 2014.

A new mining tax regime

Under the proposed regime, mine operators must pay the greater of a minimum mining tax or a progressive royalty tied to profit. The minimum mining tax (MMT) involves a one per cent tax on the first $80 million of annual output value at the shaft head of each mine, and a four per cent tax on any output in excess of $80 million.

> These tax increases are an unwelcome development for the mining industry in Quebec, which is already facing a very challenging environment.

In general terms, the mine output subject to the MMT is determined based on the gross value of annual output, less:

1. Various permitted deductible expenses (e.g., crushing, grinding, handling, and transportation, including related G&A and marketing);
2. A depreciation allowance for property used in mining activities from the first post-extraction accumulation site; and
3. A processing allowance.

The mining tax on profit (MTOP) uses mine profit margin (i.e., mining profit divided by gross value of production) as the base, but imposes a progressive rate significantly higher than the existing 16 per cent rate (see the chart below).

Table 1. Effective Cumulative Royalty Rates Based on Profit Margins

Profit Margin (%)	Effective Cumulative Royalty Rate (%)
< 35	16
42.5	17.1
50	17.8
75	21.2
100	22.9

The MMT is treated as a credit that can be applied against the MTOP, such that the mining company pays the higher of the two. While any excess of the MMT over the MTOP in a year can be carried forward and applied against the MTOP in future years, the rules ensure that corporations always pay at least the MMT. The MMT, therefore, constitutes an incremental burden on mining companies that are not operating at a profit, which are often those in the most precarious financial situation.

Additional measures

As previously mentioned, Quebec has also included a number of measures in its new regime to promote ore processing (i.e. separating commercially valuable minerals from their ores). First, the processing allowance on eligible assets in Quebec, which reduces mining profit by granting a return on processing assets, is being enhanced. When engaging solely in concentration operations, the applicable rate of allowance will increase from seven to 10 per cent, whereas when engaging in processing operations in Quebec, the applicable rate will increase from 13 to 20 per cent.

Moreover, the maximum processing allowance will increase from 55 to 75 per cent of the mine's annual profit. These enhancements complement two important existing tax measures: the 10 year tax holiday for large investment projects and the investment tax credit on manufacturing and processing equipment.

A further measure involves the financing of investments and electricity rates. On one hand, the government has proposed a $750 million budget allowance called the Capital Mines Hydrocarbures fund. Two-thirds of this fund, totaling $500 million, will be invested in the equity interests of corporations mining mineral substances located in a northern territory.

On the other hand, moving forward the government would possibly grant blocks of electricity at the preferential rate and determine electricity rates for projects related to processing activities involving 50 MW or more.

Quebec's new mining tax regime reflects its need to manage its heavy debt load. These tax increases are an unwelcome development for the mining industry in Quebec, which is already facing a very challenging environment. Mine operators in the province must carefully consider the impact of these proposed tax changes. M

Steve Suarez is a partner in the Toronto office of Borden Ladner Gervais LLP (BLG). His tax practice includes a particular focus on the natural resources sector. He can be reached at (416) 367-6702 or ssuarez@blg.com, or online at www.miningtaxcanada.com.

Kevin Bianchini is an associate in the Montreal office of BLG. He advises clients on income tax issues and tax planning. He can be reached at (514) 954-3171 or kbianchini@blg.com.