



Spanish mining: Taxation and regulation

Vasili Nicoletopolous* looks at how the regulatory environment is helping to extend Spain's proud mining tradition

Spain's mining industry has long been the beneficiary of significant foreign investment. This can be largely attributed to the highly prospective geology, in particular the rich mineralisation of the Iberian pyrite belt in the Andalusia region in the south, and the recent gold discoveries in the north.

On top of this, Spain boasts a well-developed infrastructure network; the availability of a skilled work force; an extended mining tradition; and a track record of exploration success and mine development.

But apart from its physical endowments, Spain also owes its attractiveness as mining destination to the clear legislative framework and constructive fiscal regime which cover the extraction of natural resources.

Spain's corporate income tax rate stands at an unambiguous 30%, and royalties levied on the extraction and/or sale of ores and minerals are calculated simply as a percentage of the sales of mineral extracted.

In addition to the taxes and royalties that characterise the regulatory backdrop to most of the world's mining industries, Spain also has a diverse system of incentives which offer financial relief under a wide range of criteria.

Incentives and subsidies

Two of the most important aspects of Spain's regulatory regime that help to promote its mining industry are its system of incentives and subsidies.

Spain's central government provides financial aid and tax benefits for activities carried out in certain industries, including mining, which are considered to be priority sectors in view of their growth potential and their impact on the nation's overall economy.

Financial aid includes both non-refundable subsidies and interest relief on loans obtained by companies looking to develop mining projects, or a combination of the two.

These incentives are backed-up by the European Union's (EU) Directorate-General for Energy and Mining, which grants incentives for prospecting,

geological-mining research and non-energy mining activities.

The EU Directorate General's incentives consist mainly of subsidies, the value of which varies according to provisions laid out Article 107.3 of the EU Functioning Treaty. They are usually earmarked for geological and mining research, and for prospecting and environmental projects.

Any subsidies that are awarded for such projects could be specifically for anything from mining risk-prevention and safety in the context of sustainable mining, to geological mining prospecting and investigation, to improving the productivity of non-energy mining activities.

The maximum amount of aid awarded depends on the category:

- For industrial research, which can include aid for geological/mining prospecting and investigation, the maximum amount of aid entitlement is 50% of the eligible cost of the project, which may be increased by 10% for medium-sized enterprises and by 20% for small enterprises.
- For investments in safety and improving productivity, small companies can claim up to 20% of the projected investment in subsidies, while medium-sized enterprises are entitled to 10%.
- For training in mining safety, the subsidy is up to 100% of the approved cost for non-profit institutions; or up to 60% for large businesses; and 70% for small and medium-sized enterprises.

Beneficiaries of this aid may be public or private enterprises, business groups or non-profit institutions, but they must hold the title to the mining area for the project

Additionally, a certain amount of aid deriving from Spain's Mining Safety Plan is granted annually with a view to promoting mining safety and eradicating mining accidents. These subsidies are available to all kinds of mining operation, with the exception of coal mining.

Alternative development

Aid is also available to finance projects designed to reduce the industry's production capacity, and for initiatives aimed at promoting the alternative development in mining areas to prevent the mono-industrialisation of some regions.

The incentives to promote alternative development in mining areas generally consist of nonrefundable subsidies, although the Institute for the Reorganisation of Coal Mining and Alternative Development of Mining Regions may, in future, propose other alternative aid within the framework of both regional reactivation and mining reorganisation.

Other incentives

In addition to the main incentive and subsidy schemes outlined above, there are also tax credits offered for investments in environmental initiatives or research, development and innovation (RDI) programmes, consisting of a deduction of 2% of tax for environmental projects and about 40% for RDI, limited to 25% of a company's total payable tax.

Resource taxes and any other taxes/payments levied on environmental impacts can be relieved if a company submits a restoration plan, the implementation of which must be covered by a bank guarantee.

Yet despite the raft of financial incentives that exist in principle under Spain's mining tax regime, investment subsidies and grants have been very limited in recent years due to budget restrictions.

Depreciation methods

For mining companies producing 'priority minerals', accelerated depreciation of fixed assets can be applied for tax purposes during the first 10 years of a project's life.

Table 1: Main tax types*

In rem taxes	In personam taxes
Royalty; unit based and value based	Corporate income tax
Sales and excise tax	Profit tax on dividends
Payroll tax	Royalty based on profit/income measures
Export duty	Withholding tax on remitted dividends
Import duty	Resources rent tax
VAT	
Application/issuing/registration fees and stamp duty	
Land rents	
Withholding tax on loan interests and services	
Property tax	

*See p33 for explanation of tax types



Table 2: Types of mineral tax incentive

Tax Incentive	Description
Accelerated capital cost allowances	Allows accelerated payback; allows firms a higher level of real discounted profits after tax; shifts risk to governments; could be trade off with higher tax rate.
Resource depletion allowances and general and reinvestment tax credits	A sort of negative royalty; based on an annual extraction rates, tax revenues are reduced by production rather than increased; may be based on cost or volume; sometimes used when exploration allowances are not deductible from revenues in defining the income tax base, or to deliberately encourage risky exploration. Now rarely used. Tax credits sometimes used to encourage local reinvestments of earnings.
Tax holidays	Moratorium on income tax and other payments for a set number of years; a sort of negative royalty
Interest deduction rules*	Considers debt service as operating expenses and thus accommodates debt servicing in the early years of production, reducing the income tax base.
Loss carry forward*	Reallocates risks to governments and shifts tax incidents, same effect as accelerated write-offs but at a later date, important instrument of flexibility.
Loss carry back provision*	Difficult to administer, not found in many developing countries.

*There is disagreement over whether these last three categories should be considered tax incentives. They could also be seen as normal provisions included in most tax legislations in most countries simply allowing companies to offset the cost of doing business.

Companies which, for technical reasons, wish to depreciate their assets at different rates than those fixed by the official tables can seek prior approval from the tax authorities for special depreciation plans. Mining companies may be authorised to depreciate their assets at their discretion in accordance with the special laws regulating each industry.

Special tax systems

Spain has special tax regimes for different economic sectors. The regime which applies to mining companies contains provisions relating mainly to accelerated depreciation of certain assets and reductions in the tax base due what is known as the 'depletion factor' (or *factor de agotamiento*).

A depletion allowance is a special reserve free of taxes, which can only be used by mining companies producing minerals qualified as 'priority minerals' by the Spanish government.

To receive the allowance, a mining company must commit to invest for 10 years in the development of a defined mineral resource, or in the use of a stockpile of mineral waste. The allowance allocated to this special reserve cannot be distributed as dividends until the investments are completed and the assets are fully depreciated.

Mining taxation, tax types, incentives

Mining companies in Spain are subject to different types of taxes, including income taxes, royalties, excise taxes, duty and similar levies and can be typically distinguished according to two categories.

- *In personam*: Charges against revenues accruing to mining companies, net of qualifying costs, and include corporate income tax, profit taxes on

dividends, royalties based on profit or income and withholding taxes on remitting dividends.

- *In rem*: Charges assessed against cash deposits derived from production inputs and services, and include sales and excise taxes, unit-based and ad valorem royalties, import duties, and registration fees.

Tables one and two summarise the main types of mineral taxes and incentives in Spain.

Environmental taxation

In recent years, some EU member states have achieved a relatively large proportion of their total tax revenues from environmental taxes.

As well as maintaining fiscal revenues and improving competitiveness and energy efficiency, the aim of environmental levies is to act as an efficient, market-based instrument to achieve environmental policy objectives and to shift taxation onto environmentally harmful activities within a sound economic framework.

As a member of the EU, Spain is bound by the union's environmental tax and legislative provisions, of which some of the key measures are outlined below.

The EU emissions trading system

The EU emissions trading scheme (ETS) has put a price on carbon and established a market trading system for greenhouse gas emissions. Such has been the persuasiveness of this scheme, that the EU ETS has tempted other countries and regions to launch cap and trade schemes of their own, such as Australia's carbon tax, which came into force in 2012.

However, the ETS is currently facing a growing surplus of allowances, largely because of the economic crisis which has depressed emissions more than anticipated.

In the short term, this surplus risks undermining the orderly functioning of the carbon market; in the longer term it could affect the ability of the EU ETS to meet more demanding emission reduction targets cost-effectively.

Case study: Regulatory approval of EMED Mining's copper project

In June this year, EMED Mining, which is working to restart the Rio Tinto copper mine on the Iberian pyrite belt in Spain's Andalusia region, received the Aguilas Two licence that will permit exploration activities on the project's Valle Redondo and El Villar tenements, located 8km from the company's flagship project.

The company said this was a critical step for it to develop the mine and would potentially result in the Iberian pyrite belt re-emerging as a globally significant metal producer.

In order to restart operations at the Rio Tinto copper mine, EMED had to secure certain regulatory approvals and raise the necessary funds.

The main regulatory approvals required were: the approval by the Junta de Andalucía of the transfer of mineral rights to EMED's subsidiary, EMED Mining Tartessus; and approval of the restart, operating and rehabilitation plans.

The mine plans were based on long-standing and previously approved practices at the Rio Tinto mine, and had been updated as appropriate for the new project.

In April, the Andalusian government had cleared all economic, technical and legal capacities for administrative recognition of the company's mineral rights for the project, except for civil works on the tailings dam.

The permits required to start work at the site included finalising the project's administrative standing and the environmental plan, which in turn was subject to receiving a preliminary report from the national civil works technical review agency, Cedex, supporting the proposed conditions for tailings management.

This report was set to focus on tailings issues such as the restriction of the existing dam to previously permitted heights, the future use of high density tailings to reduce water on the tailings deposit, the method of sealing the surface of tailings deposits and the holding capacity to support production plans.

Investigations for the report were completed during the first quarter of this year; however, environmental approval for the operation was still pending at the time of writing.



The Rio Tinto copper mine is EMED Mining's main project and is located in the Iberian pyrite belt, 65km north-west of Seville, Spain. The open-pit mine and processing facility have been on care and maintenance since mining ceased in 2000 due to low copper prices of less than \$1/lb at the time. EMED Mining acquired the mine in October 2008.

The European Commission has therefore decided to postpone, or 'back-load', the auctioning of some allowances as an immediate measure, while also launching a debate on structural measures.

EU subsidies for renewable energy sources

Having signed up to global agreements to reach ambitious CO2 emissions targets by 2020, the EU and its member states have pursued a policy of subsidising renewable energy sources in order to meet these targets.

One such subsidy is administered by way of feed-in tariffs (FITs), which oblige energy retailers to buy any electricity produced from specified renewable sources at a fixed price, which may be

Key laws and institutions for Spanish mining

The purpose of a mining law is to provide a legal framework to facilitate a prosperous industry sector, a secure energy supply and to secure sufficient protection for health, safety and the environment.

At European Union (EU)-level, there is, at present, no comprehensive mining framework and mining law is to a large extent the responsibility of member states.

Although the European Commission's Directorate General for Enterprise and Industry has a division named Metals, Minerals, Raw Materials, there have so far only been four directives developed specifically for the extractive industry.

In most countries, legislation is historical and does not necessarily reflect the requirements of today's mining industry.

In Spain, the mining regime is regulated by the Mines Act 22/1973, which was modified by Act 54/1980, and by Royal Decree 2857/1978.

According to Article 2 of the Mines Act, all natural deposits and other geological

resources in Spain are assets belonging to the public domain, the investigation and use of which may be undertaken directly by the state or assigned in accordance with the act's rules.

Minerals are owned by the state under an arrangement known as the Regalia Principal. The Mining Law of July 21, 1973 and the Hydrocarbon Law of October 7, 1998, govern the mineral industry of Spain.

The Direction General de Politica Energetica y Minas implements these mineral Laws. Law 20, of June 2006, modified the Finance Regime of the Sociedad Estatal de Participaciones Industriales (SEPI) - a Government-owned holding company that has mining as one sector in its portfolio.

The Instituto Geologico y Minero de Espana is the principal Government mineral-resource agency and offers assistance in the fields of geology and mining to the private and public sectors through the production of maps and scientific publications.

significantly greater than that paid for power from conventional sources.

The rates usually vary for different sources, being greater for solar or offshore wind than they are for biomass-generated electricity, for example.

With renewables, any supply offered must be taken by the grid operator. The difference between the sales proceeds and the FIT paid to various suppliers is compensated by the end consumer through a surcharge applied to utility bills.

EU subsidies for coal

In the EU, coal is subsidised by governments, particularly in Germany's Ruhrgebiet region, north-west Spain, and Romania's Jiu Valley.

There have been proposals to phase out coal subsidies by 2022, reducing them by one quarter

every three years, but some 100,000 jobs are involved in the industry, and the measure is unlikely to be popular.

Nevertheless, subsidising coal is viewed as unsustainable: in 2010, €3.2bn (\$4.2bn**) in coal subsidies were paid out in Germany, Hungary, Poland, Romania, Slovakia and Spain combined.

In view of the bill for propping up coal, and the pressure of internationally recognised emissions targets, national governments in the EU are seeking to shift their subsidy pay-outs to renewable energy projects.

While this policy could help support projects focused on renewable energy minerals such as graphite, lithium and rare earths, it is bad news for Spain's coal industry, which is its biggest mining segment.

In 2010 the European Commission approved a proposal to close by October 2014 all uncompetitive hard coal mines relying on subsidies, and to phase out coal subsidies by 2018.

Under the approved rules, interim operating aid would only be allowed for coal mines with a closure plan in place, otherwise state aid will stop.

*Vasili Nicoletopoulos is the owner of Natural Resources GP Consulting Services and is a member and former president of Euromines. This article is a follow-up of the study 'EU Mining Taxation', performed by Natural Resources GP in February 2013 and of a related article on Australia in IM of July 2013. v.nicoletopoulos@naturalresources.gr www.naturalresources.gr

**Conversion made July 2013

Table 3: Direct support for EU renewable electricity supply. Table with 5 columns: Country, Subsidy €m/year (2001, 2010), Subsidy €/KWh (2001, 2010). Rows include Austria, Belgium, Denmark, France, Germany, Italy, Netherlands, Spain, Sweden, UK.

* using feed-in tariff