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AN UNCERTAIN OUTLOOK

Quebec's mining taxation regime continues to perplex and deter investors in the province

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Once hailed as one of the most attractive jurisdictions for mining investment in the world, Quebec has suffered from changes to its taxation regime in recent years that have contributed to the province losing its investor appeal and dropping 11 places in the oft-watched Fraser Institute survey since 2009/10.

Since 2010, Quebec has introduced two significant changes to its mining taxation regime. The province increased mining duty rates by 4% to 16% of annual profits, and introduced a mine-by-mine approach which uses profits from individual mines rather than across operations held by a single owner.

Although Quebec's new minority Parti Québécois (PQ) government, which came into power in September 2012, conceded to water down its proposed sweeping changes to the province's mining taxation regime, in May 2013 finance minister Nicolas Marceau put forward several amendments that would require mining operators in the province to pay the higher of a new minimum mining tax applied to the value of the ore at the mine-shaft head and a progressive tax on excess profits.

The plot thickened further when, on November 12, 2013, Marceau presented Bill 55 – *An Act to amend the Mining Tax Act* – before the Quebec Legislative Assembly. The 28-page bill proposed a new method for calculating mining tax and was due to come into effect on January 1, 2014.

However, since Quebec has a minority government, it was never guaranteed that the bill would become law. In light of the preliminary exchanges between the PQ and the opposition parties, miners in the province have had no choice but to look on with dismay as another period of uncertainty threatens to engulf the sector and deter investment.

Bill 55

In fact, in tabling Bill 55, the PQ met with some resistance from the opposing parties who would not vote in favour of Bill 55 without any additional consultations – more specifically, by hearing the Quebec Municipality Union, the Quebec Chamber of Commerce Federation and the Quebec Mining Exploration Association, to name but a few.

The principal opposing parties mentioned that Bill 55 could have major financial repercussions for Quebec's economic future and consequently, the key stakeholders will have to be heard, once again.

If the Quebec legislature passes Bill 55 in its current form, it would add a minimum and progressive royalty of 1% on the first C$80 million (US$73 million) of the value at the mine-shaft head, as well as 4% of the total value at the mine-shaft head above that threshold (minimum tax).

Unlike the concept of gross value of output, the notion of value at the mine-shaft head does not include value-added activities related to processing, transportation, handling, storage and marketing of the mineral substance or value-added activities related to treatment of ore tailings.

In fact, the value at the mine-shaft head – which can never be less than 10% of the gross value of output – is the value of the mineral substance once extracted from Quebec ground, but before any other activity has taken place.

Under the proposed bill, the mine-by-mine approach introduced in 2010 (mining tax on profit) would also be subject to several changes, including enhancement of the processing allowance in Quebec.

Perhaps even more importantly, it will migrate to a royalty tax on profit with progressive rates ranging from the existing 16-28% of annual profits depending on the profit margin of the operator (see table on next page).

In this context, the profit margin would be defined as the annual profit, computed in accordance with the *Mining Tax Act*, divided by the gross value of output for all mines operated.

Insignificant impact?
Nevertheless, this royalty regime could have fewer harmful effects than expected for certain operators due to three main reasons:

- The operator will only pay the higher of the minimum tax and the mining tax on profit;
- If the minimum tax exceeds the mining tax on profit, excess may be carried forward to future years and deducted from the mining tax on profit in future years when the tax will be higher than the minimum tax; and
- The operator may deduct from the minimum tax a certain amount with respect to annual losses incurred.

On the other hand, the minimum tax will unfortunately affect those operators who are and will remain unprofitable. For some others, even though it could be viewed as just a cash-flow timing issue, such tax remains a non-negligible impediment to their growth.

As regards the mining tax on profit, hopefully operators carrying out significant processing in Quebec will succeed in maintaining their profit margin under the critical threshold of 35%.

Mining tax

Profit margin	Mining Tax on Profit
Up to 35%	16%
From 35 to 50%	22%
From 50% to 100%	28%

The existing regime has resulted in a significant increase in royalties and the current government does not seem inclined to wait and see the full impact of these changes.

Some companies are still not paying royalties due to amortisation of their assets, yet they are spending billions of dollars investing in Quebec. It seems fair to say that, before starting to pay royalties, these companies should at least be able to pay back some of their investments.

Ultimately, investors are the driving force behind such ventures. Changing the mining tax regime to constantly take into account the vagaries of the economic environment, market reality and resources, among other things, would likely make the mining tax regime unfair, inefficient and unpredictable.

However, it is clear that a fiscal measure must be adopted sooner or later and must be supported by a law. If that law is never adopted then the measure has no effect. With the growing likelihood of a provincial election in April, the uncertainty seems likely to continue.

The current Quebec mining tax regime may remain unchanged, may be amended retroactively consistent with Bill 55 or may even be the subject of very minor amendments steering away from Bill 55.

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