Fiscal Policy Notes on Mining in Mozambique 2023

TAX JUSTICE NETWORK AFRICA


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Africa Mining Vision African Minerals Governance Framework Assessment

August 2023

Attribution
Please cite the work as follows: "Tax Justice Network Africa. 2023. Fiscal Policy Notes on Mining in Mozambique © Tax Justice Network Africa."
The report reflects validated findings of research data compiled before August 2023.

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Acknowledgements
This report was produced by Tax Justice Network Africa with support from SOMO. The authors wish to recognize the editorial reviews of Fred Mandi.

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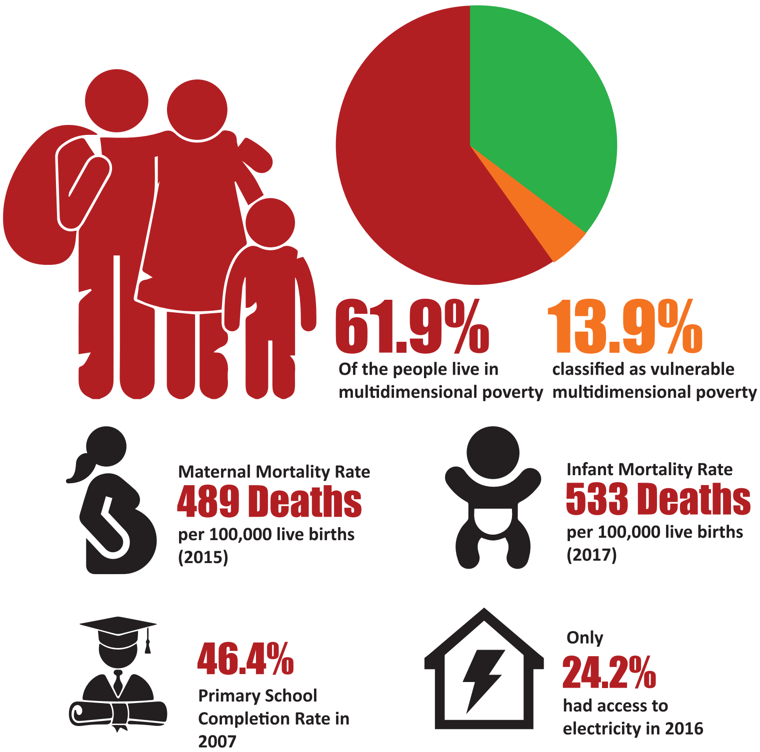
Acronyms

AEOI	Automatic Exchange of Information
AG	Auditor General
AMGF	African Minerals Governance Framework
AMV	African Mining Vision
ASYCUDA	Automated System for Customs Data
AUCPCC	African Union Convention on Preventing and Combating Corruption
BEPS	Base Erosion and Profit Shifting
BIT	Bilateral Investment Treaty
CGT	Capital Gains Tax
CIT	Corporate Income Tax
CMV	Country Mining Vision
DTA	Double Tax Agreement
EITI	Extractive Industries Transparency Initiative
EOIR	Exchange of Information on Request
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FATF	Financial Action Task Force's
GDP	Gross Domestic Product
ICE	Imposto sobre Consumos Específicos
IFF	Illicit Financial Flows
IMF	International Monitory Fund
INE	National Institute of Statistics
IPM	Imposto sobre a Produção Mineira
IRMM	Imposto sobre a Renda de Recurso Mineiro
IRPC	Imposto sobre o Rendimento de Pessoas Coletivas
IRPS	Imposto sobre o Rendimento de Pessoas Singulares
ISS	Imposto sobre a Superfície
MEITI	Mozambique Extractive Industries Transparency Initiative
OECD	Organization for Economic Co-operation and Development
PAYE	Pay as You Earn
PIT	Personal Income Tax
TJNA	Tax Justice Network Africa
UAE	United Arab Emirates
UNCTAD	United Nations Conference on Trade and Development
VAT	Value Added Tax
WT	Windfall Tax

A Introduction

Mozambique presents a case study of the resource curse, wherein a diverse resource base has yet to translate into significant socio-economic development, leading to persistent extreme poverty and inequalities. Recently surveyed data suggests that 61.9% of people in Mozambique live in multidimensional poverty, with an additional 13.9% classified as vulnerable to multidimensional poverty. Other basic welfare measures such as maternal mortality (489 deaths per 100,000 live births in 2015), infant mortality (533 deaths per 1000 live births in 2017), primary school completion rates (46.4% in 2007) or access to electricity (24.2% of the population in 2016) also remain problematic and below regional averages, despite the significant investments that have been made in social sectors during the last two decades.



The abundant mineral resources in Mozambique, such as coal, natural gas, oil, gold, titanium, copper, iron, bauxite, and gemstones, attracted considerable investments from major extractive corporations. Nevertheless, the country has struggled to effectively harness these resources to drive meaningful socio-economic progress for its citizens.

To evaluate Mozambique's fiscal regimes related to mineral resources, the Africa Minerals Governance Framework (AMGF) is utilized, employing a traffic light evaluation system. This system employs different colour codes to signify the level of progress achieved by the country in specific assessment areas. The colour codes used are as follows:

Red
Signifying insignificant progress

Yellow
Signifying slight progress

Light green
Signifying satisfactory progress

Dark green
Signifying extremely satisfactory progress

Data used for this assessment is derived from country studies available until August 2022, and the interpretations presented are subject to adjustment as legislation and policies change or when provisions in the current laws are implemented. It is crucial to continuously review and adapt these assessments to reflect any updates in the regulatory landscape.

Based on the assessment, Mozambique is advised to establish a clear Minerals Policy to guide the mining sector and taxation. This policy should bring transparency to legislative changes and offer investor confidence. Although taxes on surface rights were introduced to encourage efficient mining practices, the existing rates lack impact and require adjustment, especially concerning exploration versus active extraction. Strengthening monitoring mechanisms is crucial, as reported failures in auditing extractive costs need rectification to ensure revenue accuracy. Despite the Income Tax on Excess Revenue (IRRM) mechanism, audits are limited, rendering it less effective. Regular comprehensive reports on revenue, expenses, and incentives are necessary. A comprehensive tax expenditure report should be published, evaluating the alignment of incentives with goals. Mozambique must also develop standardized templates for Bilateral Investment Treaties (BIT) and Double Taxation Agreements (DTA) to ensure consistent and fair agreements. Leveraging technology like XRF machines for mineral assessment at exit points is essential. Finally, enacting a Beneficial Ownership law is vital, distinguishing legal beneficiaries from beneficial owners to enhance transparency and accountability.

Different XRF Machines

B Assessment of Mozambique fiscal regimes against the Africa Minerals Governance Framework (AMGF)

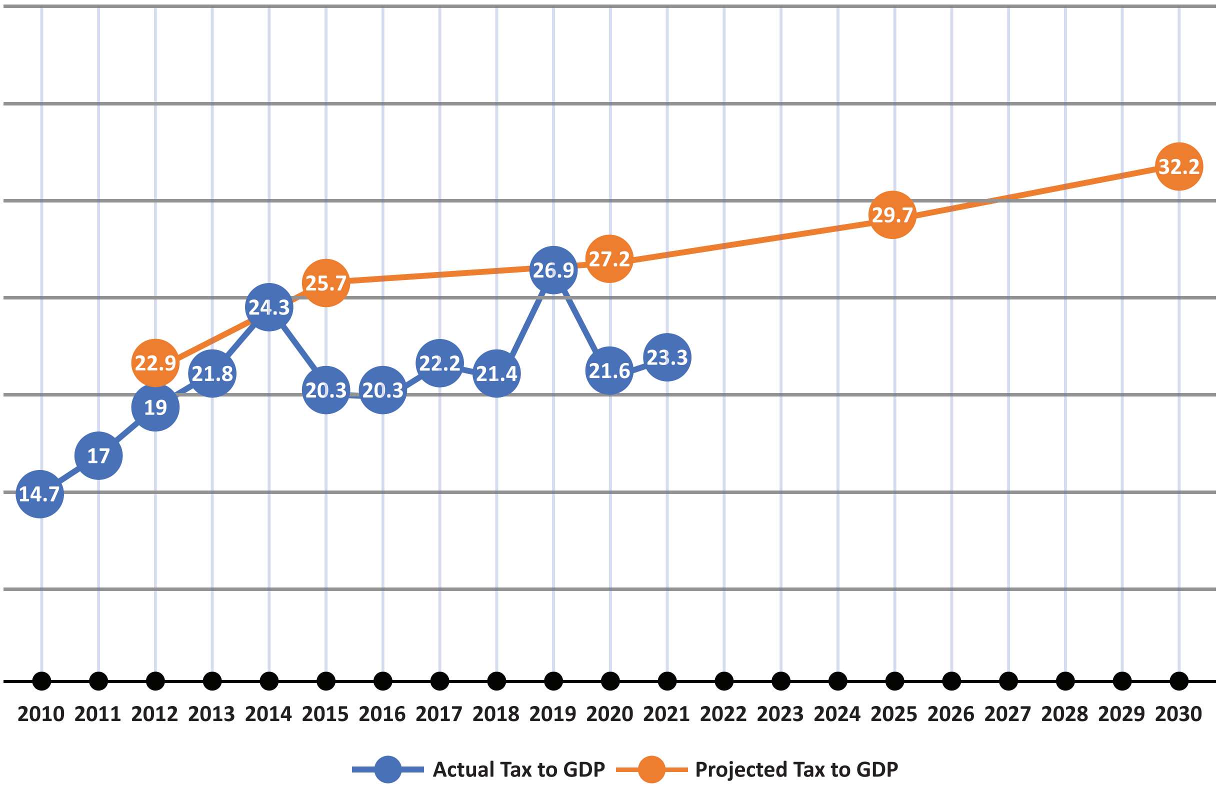
(i) Assessment of Fiscal Regimes:

Table 1: Assessment Questions - Fiscal Regime

No.	Assessment Questions - Fiscal Regime	Assessment Grade
1	What are the policy objectives of the country’s fiscal regime?	
2	What are the policy objectives of the country’s fiscal regime for the mineral sector?	
3	Do the legislation and regulations provide for the mineral sector’s fiscal regime?	
4&6	What are the mechanisms or tools of the mineral sector’s fiscal regime?	
5	How flexible and progressive is the mineral sector’s fiscal regime?	

1. **In Mozambique, fiscal policy as outlined National Development Strategy of 2015-2025 aims at raising domestic revenue to an average of 32.2 per cent of Gross Domestic Product (GDP) for the period 2026-2030**. This is accompanied by the ambition to average external resources to 10.9 per cent of the GDP.

Tax to GDP Projections versus Actualized Tax to GDP



The fiscal policy objectives of the country are consistent with best practices in Domestic Revenue Mobilization (DRM) of increasing the share of production that is taxed.

As shown in the figure above, Mozambique's tax-to-GDP rate is on an upward trend, increasing from 14.7% in 2010 to reaching a high of 26.9% in 2019. **With an average tax/GDP ratio of 25% over the last decade, Mozambique is performing well above the African average of 16%.**

However, as argued by the International Monetary Fund (IMF), Mozambique's tax-to-GDP ratio may be overstated as it has a large informal sector potentially contributing 40% to the GDP, which is not adequately captured in the National Institute of Statistics (INE). However, even though it might be overstated, the adjustment toward the close estimate of tax to GDP is 4% points, which is approximately 21% and above the average tax to GDP rate.

2. **Mozambique does not have an explicit minerals policy nor stated fiscal policy objectives for the mining sector. However, as hinted by its legal framework, Mozambique's vision for the mining industry revolves around a streamlined fiscal structure. This structure encompasses both the stipulated tax payment rates and the associated benefits.**

Enshrined within Law No. 28/2014, ratified on September 23, 2014, and enacted on January 1, 2015, is the objective of introducing new and specific taxation guidelines for all mining activities. Simultaneously, the law aims to confer tax incentives pertinent to this sector. The legal framework additionally seeks to establish a single governance framework of governing the extractive sector and further govern the taxation and tax benefits applicable to the mining sector.

The aspiration of the African Mining Vision (AMV) for fiscal regimes is for a country to balance between ensuring an optimal share of revenues while being able to return investments in the extractive sector. The legal framework does not state this intent but outlines the taxes due from the sector and the applicable incentives.

3. **Mozambique comprehensively provides for the country's fiscal regime for the mining sector. The Mining Law (Law 20/2014, dated August 18, 2014) forms the bedrock of the legal structure governing mineral resource exploration.** It outlines the essential administrative protocols for granting licenses, their respective durations, and the specific investor frameworks applicable to each mining entitlement. Additionally, a suite of legal provisions exists for the taxation of the mining sector, which encompasses:

- Mining Regulations (Decree 31/2015, dated December 31, 2015): These regulations detail the precise stipulations for each license type, encompassing the necessary administrative procedures for license holders. The regulations define validity, renewal periods, as well as procedures for license assignment and cancellation. These were later modified by Decree 34/2019, dated May 2, 2019. The law is necessary for the calculation of payable and applicable surface rights.

- Law on the Taxation and Fiscal Benefits of Mining Operations (Law 28/2014, dated September 23, 2014): This law delineates the tax structure applicable to the mining sector. It covers tax rates, exemptions, and other related aspects. The law underwent amendments through Law 15/2017, dated December 28, 2017.

- Regulations on the Taxation and Fiscal Benefits of Mining Operations (Decree 28/2015, dated December 28, 2015): These regulations elucidate the assessment procedures for mining production tax and surface tax.

- Environmental Regulations for Mining Activities (Decree 26/2004, dated August 20, 2004): This decree lays down guidelines for mitigating and preventing the environmental impacts of mining undertakings.

- Regulations on Marketing of Mineral Products (Decree 20/2011, dated June 1, 2011): These regulations establish frameworks for marketing and licensing procedures concerning the trade of mining products. Amendments were introduced by Decree 25/2015, dated November 20, 2015, and Decree 34/2019, dated May 2, 2019.

- Regulations on Marketing of Diamonds, Precious Metals, and Gems (Decree 63/202021), Which revolted the Decree 25/2015: These regulations outline rules governing the marketing, import, export, and transit of rough diamonds, precious metals, and gems. Establishing the conditions for the exercise of activities such as the import, export, transportation, and commercialization of such products

- VAT Refund Regulations (Decree 78/2017, dated December 28, 2017): These regulations establish a distinct value-added tax (VAT) framework for mining companies operating in the production stage.

4. **Mozambique's tools for the Mining Sectors Fiscal Regime are provided for in Law No. 28/2014; the tools are a mix of production and profit-based taxes. Law No. 28/2014, which has been operational since January 1, 2015, applies uniformly to both individuals and legal entities involved in mining** within the nation, regardless of their residency status. These entities are subject to the overarching general taxation regulations and, concurrently, the specialized taxation rules established by amendments brought about by Act No. 15/2017 on December 28. As outlined in the Mozambique Extractive Industries Transparency (MEITI) report, the specialized taxation framework comprises the following key elements:

- **Tax on Mining Production** (Imposto sobre a Produção Mineira/IPM): This tax is levied on mining production activities.
- **Surface Tax** (Imposto sobre a Superfície/ISS): An imposition on the surface area utilized for mining operations.
- **Tax on Income Derived from Mineral Sources** (Imposto sobre a Renda de Recurso Mineiro/IRRM): This tax is applied to income generated from mineral-related sources.

- **Special Rules for Calculating Taxable Income** under IRPS (Imposto sobre o Rendimento de Pessoas Singulares) and IRPC (Imposto sobre o Rendimento de Pessoas Coletivas): These rules dictate the determination of taxable income for both individual and corporate entities.

Mining Production Tax

(Imposto sobre a Produção Mineira)

The Mining Production Tax (royalties) is due monthly. These taxes are paid by natural or legal persons who own mining titles or not, and it is levied on the value of the mining product extracted, concentrates, and mineral water. Individuals or companies developing mining activities must pay a production tax (royalty) that is calculated based on the value of the mineral extracted, as follows:

Diamonds: 8%

Precious metals, precious and semi-precious stones, and heavy sand: 6%

Base minerals, coal, ornamental rocks, and other mineral products: 3%

Sands & Stone: 1.5%

This value results from the sale price of the previous consignment of the respective mineral or, if the mineral has never been sold, its market value. Production tax is to be paid at the end of the month during which the mineral was extracted. A 50 per cent reduction is foreseen in the law for mining products used in the development of local industry.

Surface tax
(Imposto sobre a Superfície/IIS)

The surface is payable annually and is levied on the area subject to a prospecting and exploration license, mining concession, or mining certificate measured in square kilometres or hectares; in the case of mineral water, it shall be levied on each mining title. Holders of prospecting and exploration licenses, mining concessions, and mining certificates are required to pay surface tax calculated in accordance with the fixed amount per hectare of land included in the mining title.

For exploration licenses, the rates are as follows:

- MZN17.5 per hectare for the first and second year;
- MZN43.75 per hectare for the third year;
- MZN91 per hectare for the fourth and fifth year;
- MZN105 per hectare for the sixth year; and
- MZN210 per hectare for the seventh and eighth year.

For mining concessions for mineral resources (except mineral water), the rates are as follows:

- MZN30 per hectare from the first to the fifth year, and
- MZN60 per hectare from the sixth year onwards.

For mining licenses, the rates are as follows:

- From 1^{st} to 5^{th} years, MZN 17.5/ha.
- From the 6^{th} year, 25 MZN/ha.

IRPC (Imposto sobre o Rendimento de Pessoas Coletivas) alias Corporate Income Tax (CIT)

CIT is directly charged on income obtained during the relevant tax period (usually the calendar year). The generally applicable rate of corporate income tax is 32%. Corporate income tax is payable even when the income is obtained unlawfully. Corporate income tax may be payable only if the taxpayer is resident in Mozambique (that is if the taxpayer has headquarters or effective management in Mozambique and those taxpayers are taxed on their worldwide income).

Tax on Income Derived from Mineral Sources (Imposto sobre a Renda de Recurso Mineiro/IRRM

Mining concessions or mining certificates with a pre-corporate income tax net return in excess of 18 per cent are subject to a windfall profits tax levied on the accumulated net cash flow (before CIT). The statutory rate of the windfall profits tax is set at 20 per cent. In particular, accumulated net cash flows should be calculated at the beginning of the fiscal year when the mining concession/certificate is granted and for each fiscal year thereafter.

5. **Mozambique's mining fiscal regimes are generally designed for upward progressivity; through the IRPC, the Government of Mozambique levies windfall profit tax on mining concession and certificates that have pre-corporate income tax net return in excess of 18 percent**. These are subject to a 20% windfall profit tax.
Although the country has hardly been able to collect the IRPC from the mining sector since its introduction in 2014, over the past decade, as shown in the evidence provided in the Mozambique Extractive Industries Transparency Initiative (EITI) report, CIT, which is fairly high at 32%, remains Mozambique's leading contributor to extractive industries revenue. The CIT regime is, however, backed by a number of tax incentives.

i) Assessment of Fiscal Regime and Revenue Maximization:

Table 2: Assessment questions - Revenue Maximization

NO	Table 2. Assessment questions – Revenue Maximization	Assessment Grade
6	What are the various revenue collection streams in the mineral sector (e.g., tax and royalties)?	
7	Do these streams allow for optimal and maximum revenue collection?	
8	What are the gaps in the fiscal instruments that undermine revenue maximization?	
9	What are the institutionalized processes, procedures, and policy measures to identify and tackle the gaps in the fiscal instruments that undermine revenue maximization?	
10	Are there any ring-fencing provisions for tax liabilities?	

6. **Responses to this question have been included in the assessment of question 4.**

7. **As argued in the assessment of 5, Mozambique relies on profit taxation to ensure optimal benefits are realized from the mining sector through a high CIT rate of 32% and a windfall tax on mining concession and certificates with pre-corporate income tax net return in excess of 18 per cent.**

The growth in the Tax-to-GDP ratio can be attributed to CIT mainly through record high collections of capital gains tax (CGT) on transfer of interest in mining and petroleum concessions as well as withholding taxes on payments to non-resident service and finance providers in the extractive sector.

Mozambique relies heavily on direct taxation. The levels of direct taxation are observed in more developed countries (e.g., the European Union (EU) average is around 13 per cent of GDP, with only 2.5 per cent of it raised in CIT).

In 2020, Mozambique lost about
21.866 million
meticais due to tax incentives.

8. **In 2020, Mozambique lost about 21.866 million meticais due to tax incentives. Mozambique's corporate income tax rate of 32 per cent is high and exceeds the regional standards. At the same time, owing to widespread tax incentives, the effective tax rate is half the nominal.** CIT payments are high but could be more, more so if the windfall tax is collected on some mining certificates.

In Mozambique, revenue maximization is potentially humped by the vulnerability of CIT, although high, due to cost inflation/manipulation, the provision of incentives on tax instruments, abuse of tax treaties, inability to adequately monitor declared production and verify sales, corruption, and broader administrative capacity gaps.

The Administrative Court, the entity responsible for auditing extractive contracts and all operations related to revenues, which plays the role of the auditor general, recently and publicly declared that the Mozambican government has limited capacity to supervise the operations of the extractive industries companies.

The Administrative Court has regularly reported the failure of the government supervisory institutions to audit and certify extractive industry recoverable costs. As the fiscal legislation allows companies to recover part of the costs of their investments, and they have not been properly certified, the companies can easily inflate them, hence reducing the revenues to be collected.

9. **Within the Mozambique Revenue Authority (MRA), there is the Extractive Industry Taxation Unit,** which was established in 2017. Its overall objective is to reduce the tax losses that the country incurred due to mining and hydrocarbon activities, through the training of specialists and inspectors who would integrate this unit.

The Extractive Industry Taxation Unit was set up to undertake risk analysis, inspections, and specialized audits, participate in proposal design for law and regulation review with impact in the extractive industry, provide clarification and ensure the uniform enforcement of specific legislation and prevent and fight tax evasion in the extractive sector.

10. **Mozambique, Law No. 28/2014, of September 23, provides for ring-fencing against tax liabilities**.

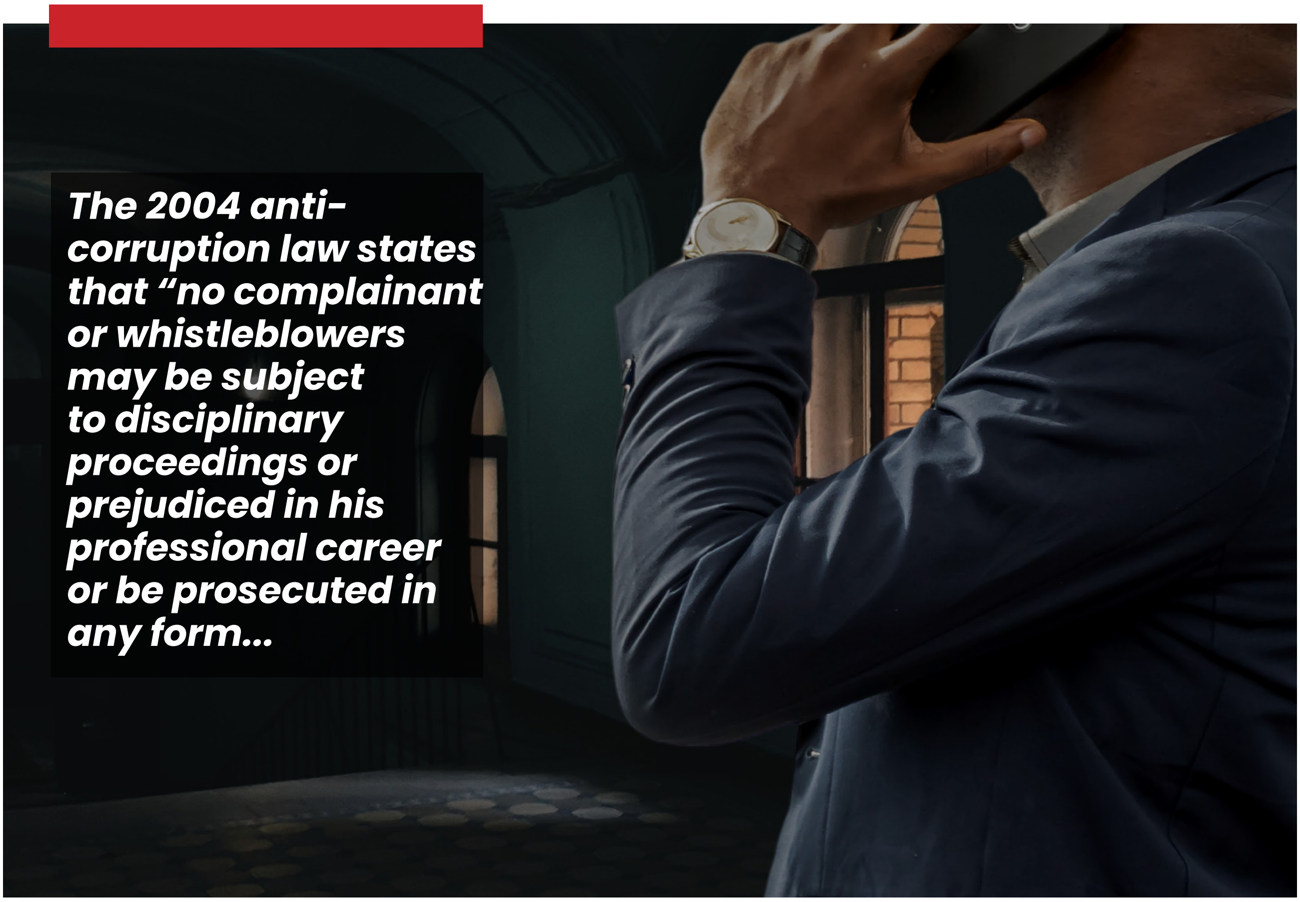
ii) **<u>Corruption and Revenue Maximization</u>:**

Table 3: Assessment question - Corruption and Revenue Maximization

No	Table 3: Assessment questions – Corruption and Revenue Maximization	Assessment Grade
11	Does the country have policies, laws, and institutions to combat corruption in the mineral sector? If so, how effective are they?	
12	Are there dedicated institutions to expedite corruption cases relating to the mining industry?	
13	Are there laws and systems to protect whistle-blowers?	
14	Are there mechanisms for the cross-border harmonization of anti-corruption policies, laws, and systems?	

11. **Although not specific to the mining sector, the anti-corruption law from 2004 (Law No. 6/2004) criminalizes both passive and active corruption; however, practices such as embezzlement of public funds and illicit enrichment are not included.** In addition to the anti-corruption law, the new Mozambican penal code (Law 35/2014 of 31 December 2014), which entered into force on 1 July 2015, defines active and passive bribery, graft, embezzlement, deviation of public funds and assets, illicit enrichment, influence-trading and fraud as criminal acts.

Several institutions are responsible for preventing, detecting and curbing corruption in the country. The Central Office for Combating Corruption (GCCC) was established within the Attorney General's Office in 2005, replacing the anticorruption unit created in 2003. The agency is responsible for awareness-raising activities and investigating corruption-related complaints ex officio or based on information from the public. The agency does not, however, have the mandate to prosecute corruption, and cases have to be referred to the public prosecutor's office. The Prosecutor General's Office plays a vital role in the fight against corruption. In addition to following up on the investigations of the GCCC and conducting its own, since 2013, the office has also been tasked with receiving and overseeing asset declarations submitted by senior public officials.



12. **Mozambique does not have a dedicated agency to expedite corruption in the mining sector.**

13. **The 2004 anti-corruption law states that "no complainant or whistleblowers may be subject to disciplinary proceedings or prejudiced in his professional career or be prosecuted in any form because of the complaint against or denunciation of the crimes envisaged in the present law" (Article 13, Law No. 6/2004).**

In 2012, as part of the anti-corruption package, a dedicated law on witness protection was approved (Law No. 15/2012) and came into force in November 2012. The law aims at protecting victims, plaintiffs, regular witnesses and expert witnesses who testify on or flag corrupt practices from physical, social and economic retaliation. The law also foresees the establishment of a High Authority on the Protection of Victims, though this is yet to be set up.

14. **Mozambique has ratified the United Nations Convention against Corruption, the African Union Convention against Corruption, and the Southern African Development Community Protocol against Corruption. Although the latter is not legally binding, Mozambique has yet to ratify the OECD Anti-Bribery Convention.**

While Mozambique has a range of statutes that meet the de jure requirements of international anti-corruption conventions, there are considerable deficiencies in the enforcement of these provisions due to a lack of capacity (limited budget, under-staffing), corruption in the legal branch itself and insufficient autonomy of the judiciary.

iii) Harmonization of tax instruments:

Table 4: Assessment questions - Harmonization of tax instruments

No	Table 4: Assessment questions – Harmonization of tax instruments	Assessment Grade
15	Are there policy and legal instruments that provide for a uniform tax foundation?	
16	Are there policy or legislative reasons for the existence or the lack of a uniform tax foundation?	Not applicable
17	Are there discrepancies between local and central government tax regimes?	

15. **As noted in 2, Mozambique, Law No. 28/2014, of September 23, which was published and came into force on January 1, 2015, aims at establishing, on the one hand, new specific rules on taxation of all mining activities.**

16. Not applicable as there exists a uniform tax foundation.

17**. The Mozambican Tax System is decentralized and allows for both local and central government tax collection.** As discussed in the 2019 EITI report, Mozambique has a structure comparable to the more modern tax systems, with a tripartite structure through which wealth, income and consumption are taxed separately, integrating national and municipal tax.

The national taxes are classified as direct taxes (tax levied directly on income or wealth) and indirect taxes (tax levied on expenditure). The Municipal Tax System in force in Mozambique is defined in Law No. 1/2008 of 16 January. It was created by the need to reformulate this system, harmonize it with the Basic Law of the Tax System, and introduce changes to comply with the Law on the State Financial Administration System. The main taxes and fees that make up the Municipal Tax System applicable to the mining sector are Personal Municipality Tax (IPA), Property Tax (IPRA), SISA Municipal Tax, Vehicle Municipal Tax (IAV), and Improvement Contribution.

iv) Fiscal Regimes and Investment:

Table 5: Assessment Questions - Fiscal Regimes and Investment

NO	Table 5: Assessment Questions – Fiscal Regimes and Investment	Assessment Grade
18	How does the design of fiscal regimes encourage investment?	
19	What types of incentives are offered to (foreign and local) investors and why?	
20	Which laws provide for these incentives, if any?	
21	How do fiscal incentives for investment in the minerals sector support national development?	Inconclusive
22	Are there any economic analyses, including a cost-benefit analysis of mineral sector investment and incentives? How frequent are these analyses carried out?	
23	Do the benefits of these incentives outweigh the costs and, if so, how?	Inconclusive
24	Does the country have templates for the negotiation of bilateral investment treaties and double taxation agreements?	
25	Has the country signed and/or revised any bilateral investment treaties with fiscal provisions?	
26	What are these fiscal provisions and how do they enhance/erode the tax base of the country?	
27	What are the key tax provisions in these bilateral investment treaties and double taxation agreements?	Included in 26

18. **To encourage investments, Mozambique uses tax incentives for the mining sector.** Mining projects are exempt (for a period of five years after the start of mining activities) from some taxes, these are described in 19 below.

19. To encourage investments in Mozambique, **mining projects are exempt (for a period of five years after the start of mining activities) from:**

- **Customs duties payable on imported equipment** (for both the prospecting and exploration and mining or production phases) classified under the Customs Schedule;
- **Customs duties payable on imported equipment not expressly classified under the Customs Schedule** but which is considered equivalent to it (a comprehensive list of which can be found annexed to the Law on the Taxation of Mineral Operations); and
- **Mining companies - at the production stage** - are allowed to settle their invoices without VAT provided that, among other requirements, their exports exceed 75 per cent of the annual turnover of the preceding year.

Mozambique also has a fiscal stabilization regime that can be negotiated between the government and the holders of mineral rights, as established in Article 58 of the Law on the Taxation of Mineral Operations. This stabilization period has a maximum duration of 10 years, which may be extended until the term of the concession in return for a 2 per cent annual increase in the production tax rate.

The Mega-Projects Regulations establish that the Mozambican state reserves the right to negotiate free participation of no less than 5 per cent during any phase of a mining project as consideration for its awarding of exploitation rights over natural resources.

On 30 December 2022, the Government of Mozambique Gazette Decree No. 76/2022, introduced changes to the Regulation of the Specific Regime of Taxation and Tax Benefits for Mining Activities. Significant amendments included:

- Repealing the 50% reduced rate of Mining Production Tax ("MPT") for mineral products used for the development of local industry;
- Introducing a requirement to provide the specifications of ore extracted along with a monthly production report when submitting MPT returns;
- Requiring all sales or large disposals of mining products to be made through auctions or via the free market to be communicated to the Tax Administration within 30 days before the expected date of sale;
- Requiring that entities carrying out mining activities under a concession contract have their financial statements certified by an independent authorized auditor;
- Allowing operators of mining title to have their accounting records in United States Dollars (USD) upon approval of the Minister of Finance;
- Requiring the reference exchange rate published by the Mozambique Central Bank to be used for the conversion of accounting records from local currency to USD; and
- Requiring taxpayers with more than one mining title to create separate legal entities and have different tax numbers and accounting records for each prospecting and research license, mining concession and mining certificate.

20. **Incentives are provided in Mozambique, Law No. 28/2014, of September 23, and Decree No. 76/2022,** which introduced changes to the Regulation of the Specific Regime of Taxation and Tax Benefits for Mining Activities. However, some incentives are specified in development agreements/contracts and stability agreements.

21. In Mozambique, it's inconclusive if fiscal incentives for investment in the minerals sector support national development as there are no direct efforts by the government to track the extent to which development can be attributed to the provision of the set incentives. However, the rationale behind providing incentives in the country is to attract investments and stimulate job creation.

22. **Mozambique does not publish the amount of total revenue lost under tax incentives granted to the extractive sector, preventing a proper examination and evaluation of the impact of these incentives on the economy and their fiscal sustainability.**

23. **This is inconclusive as there are no cost-benefit analyses conducted or that exist.**

24. **Mozambique does not have a model for BIT and DTA negotiations.**

25. **Mozambique has signed bilateral investment treaties** with the United Arab Emirates, Turkey, Singapore, Angola, Brazil, Japan, Vietnam, Belgium-Luxenbourge Economic Union, Finland, United Kingdom, Switzerland, France, Denmark, Germany, Netherlands, Sweden, Cuba, China, Indonesia, Italy, Algeria, Egypt, United States of America, South Africa, Mauritius, Portugal and Zimbabwe. Mozambique also has double tax agreements with Botswana, India, Italy, Macao, Mauritius, Portugal, South Africa, the United Arab Emirates and Vietnam.

26. **DTAs reduce stated Withholding Tax rates and Capital Gains Taxes to as little as 0%.** In Mozambique, ideally withholding taxes apply to companies on specific payments, including royalties, interest, dividends, and management fees. According to the Mozambique Tax Code, there is a withholding tax of 20 % on royalties, interest and dividends paid to foreign companies. For management fees paid to foreign companies, the withholding rate is 32 %, however withholding taxes are subject to reduction or exemption per the DTAs in force between Mozambique and other countries. This, together with other elements of the DTAs, bring about significant tax losses to Mozambique.

It is estimated that the DTAs with just two tax havens, Mauritius and the United Arab Emirates, costed Mozambique 315 million USD in withholding taxes on interest payments and dividends in 2021, which is equivalent to 7.4% of the country's total tax revenue.

As of 2023, Mozambique has DTAs in force with the countries shown in the table below:

Table 3: Mozambique's signed DTAs

Container	WHT (%)			CIT (%)
	Dividends	Interest	Royalties	Capital gains on shares
Non-treaty	20	20	20	32
Botswana	0 12	10	10	0
India	7.5	10	10	32(1)[1]
Italy	15	10	10	0
Macao	10	10	10	0
Mauritius	8 15[2]	8	5	0
Portugal	10	10	10	32(1)
South Africa	8 15[3]	8	5	32(1)
United Arab Emirates	0	0	5	32(1)
Vietnam	10	10	10	32(1)

Source: Pwc (2023). Corporate - Withholding taxes

27. **The key provisions are discussed in 26.**

v) Customs, Duties, and Tariffs

Table 6: Assessment questions - Customs, Duties, and Tariffs

No	Table 6: Assessment questions – Customs, Duties, and Tariffs	Assessment Grade
28	Are there adequate policies and regulations that will enable customs and excise duty agencies maximize revenue collection from the mining sector?	

1 (1) Gains are only taxed in the other state if assets of the entity sold are composed of more than 50% immovable assets. In the case of Vietnam, the threshold is 30%.

2 DTAs may feature varying WHT rates for qualified dividends and portfolio dividends. For Mozambique, its agreements with Botswana, Mauritius, and South Africa impose a higher WHT rate for portfolio dividends. In situations where an investor holds only a limited amount of shares in a company (with a threshold of 25% in the aforementioned treaties), the dividend payouts are classified as portfolio dividends.

3 Ibid

29	Are the customs and excise duty agencies equipped to efficiently and effectively assess and collect tariffs from the mining sector?	
30	What technology does the customs use in the assessment and collection of duties or tariffs?	
31	Is there a mechanism for cross-border cooperation on customs?	

28. **Although the country has adequate and comprehensive customs and exercise laws necessary for its mineral resource endowments the boarders are very porous.** The Mozambican customs system includes the following special customs mechanisms, defined as a set of specific customs procedures applicable to merchandise, means of transport and other goods by the customs authorities: (i) temporary import; (ii) temporary export; (iii) reimport; (iv) re-export; (v) customs transit; (vi) transfer; (vii) bonded warehouses; (viii) special economic zones; (ix) free zones; and (x) duty free shops.

Excise Duty (Imposto sobre Consumos Específicos/ICE) is levied on the production and import of certain products or goods such as gems. The tax base is broad and includes not only the selling price (for imported products, the base is the customs value), but also any legal charges that may be imposed on such goods, including levies and taxes.

Exemption from tax is granted to raw materials and finished or intermediate products, either imported or locally produced, which are intended for use in the activity of national industries or for incorporation in items produced by the latter. ICE levied on goods produced in Mozambique.

However, Mozambique has very porous borders. For example, the main Malawian road is, for a long stretch, the divide between Mozambique and Malawi. There is no natural obstacle separating the two countries. Maputo is about one-hour drive from South Africa and Swaziland. So, there are good conditions for cross-border shopping and, unless customs administration is very efficient, for smuggling. In such circumstances, the only way to avoid smuggling is to have similar prices on the two sides of the border, which require, among other measures, some degree of tax coordination.

Although, the authorities had introduced a Kimberly Process Unit, there were reports of precious stones still being smuggled and the proceeds from the sales being brought back to Mozambique and laundered.

29. From the assessment, we **learn that Mozambique lags behind in ensuring efficiency in executing duties and tariffs due to the mining sector by physically monitoring elements essential to the evaluation of the tax rates due**. This is because of the lack of adequate infrastructure such as XRF machines which would ensure that minerals undergo the Fluorescence XRF X-ray scans before exiting Mozambique.

30. **Mozambique makes use of the Automated System for Customs Data (ASYCUDA) which is a computerized system designed by the United Nations Conference on Trade and Development (UNCTAD) to administer a country's customs.**

31. Mozambique belongs to the 21-member Common Market for Eastern and Southern Africa (COMESA), which allows for preferential tariff duties among member States. Mozambique also belongs to the 16-member Southern African Development Community (SADC), which established a Free Trade Area in 2008. Mozambique is a member African Continental Free Trade Agreement (AfCFTA), which entered into force on 30 May 2019. Mozambique signed the AfCFTA but has yet ratify it.

vi) Fiscal Administration:

Table 7: Assessment questions - Fiscal Administration

No	Table 7: Assessment questions – Fiscal Administration	Assessment Grade
32	Are there dedicated national and local units/agencies/departments to assess and collect revenue from the mineral sector?	
33	Do the national and local tax agencies have adequate operational capacity (e.g., staff, training, legal mandate, and financial resources)?	
34	Are there mechanisms for assessing capacity gaps in the assessment and collection of taxes?	
35	What mechanisms are in place for validation of the tax liability of minerals companies?	
36	Are there any reviews of tax terms provided in contracts/permits/ licences that are subject to legislative approval?	
37	Is there an effective tax tribunal with the capacity to handle tax-related disputes?	

32. **All extractive sector taxes are classified as national taxes and, therefore, are collected by the MRA**, which has an Extractive Industry Taxation Unit, which was created in 2017 with the aim of reducing the tax losses that the country incurred due to mining and hydrocarbon activities, through the training of specialists and inspectors who would integrate this unit As discussed in 9 the Extractive Industry Taxation Unit engages in regular risk assessments, conducts inspections and specialized audits, collaborates in the formulation of proposals for the review of laws and regulations affecting the extractive industry, offers clarifications, ensures consistent enforcement of pertinent legislation, and actively combats instances of tax evasion within the extractive sector.

33. **Mozambique falls short of having the adequate operational capacity to effectively monitor the extractive industries**. As argued in 8, The Administrative Court which plays the role of the auditor general, recently and publicly declared that the Mozambican government has limited capacity to supervise the operations of the extractive industries companies. The Administrative Court has regularly reported the failure of the government supervisory institutions to audit and certify extractive industry recoverable costs. As the fiscal legislation allows companies to recover part of the costs of their investments, and they have not been properly certified, the companies can easily inflate them, hence reducing the revenues to be collected.

34. **Mozambique is currently using the Tax Administrative Diagnostic Assessment Tool (TADAT) to assess their capacity to assess and collect taxes. Although the last assessment was done in 2015, the same diagnostic finding persist**.

TADAT is a diagnostic tool developed by the IMF to assess the appropriateness of key components of tax administration. Mozambique was also one of the first countries in the world to assess its tax administration system using the TADAT, in 2015. Despite the progress achieved in modernizing revenue collection, the assessment showed that the basis for a solid system is not yet in place: the taxpayer register is incomplete and inaccurate, on-time filing and payment rates of core tax returns are low, and there is no consolidated compliance and institutional risk management strategy.

35. In Mozambique, the legal framework allows the revenue authority to verify the tax liability due to the mining company. **The validation of tax liabilities is performed at the point of payment of taxes by mining companies**. Taxes are only audited if authorities sense any misinformation. In some instances, this may entail auditing the mining project.

36. **In Mozambique, changes to fiscal terms in contracts/permits/, and licenses are subject to parliamentary approval.**

37. **The Administrative Court is the superior in the administrative, fiscal and customs court hierarchy.** It also oversees the constitutionality and legitimacy of administrative decisions issued by the public administration, administrative contracts and enforces administrative decisions.

vii) Fiscal Regime and Illicit Financial Flows:

Table 8: Assessment questions - Fiscal Regime and Illicit Financial Flows

No	Table 8: Assessment questions – Fiscal Regime and Illicit Financial Flows	Assessment Grade
38	Does the country have a definition of illicit financial flows?	
39	Does the country have the capacity to identify and assess illicit financial flows?	
40	What policy and legal measures has the country implemented aimed at combating illicit financial flows?	
41	Are there arm's-length provisions on transfer pricing in the mineral sector?	
42	Are there dedicated units or departments to monitor transfer pricing and other forms of illicit financial flows within the national tax administration?	
43	If not, do authorities have the skills and capacities needed to deal with the intricacies of transfer pricing?	Not applicable
44	How does the country assess its progress in combating illicit financial flows?	
45	Is the country a member of any regional/international forum to combat illicit financial flows from the mineral sector?	
46	How has the country's membership of these forums been helpful in combating illicit financial flows from the mineral sector?	
47	Are there regulations on thin capitalization? If any, how effective are they?	
48	Does the law provide a declaration of beneficial ownership of a mineral's entity?	

38. Mozambique does not have a national definition of what constitutes illicit financial flows.

39. **Mozambique has been making active use of Global Finance Integrity and Mbeki Panel data as reference to IFFs status**. Mozambique's Attorney General's Office (PGR) has also estimated that the fraudulent use of the financial system to conceal or disguise IFFs cost the Mozambican state US$26.4 million in 2016 alone (APA News 2017). However it remains unclear how the estimate was generated and what constitutes of the classification of the IFFs reported.

40. **The government of Mozambique introduced a new anti-money laundering law to comply with the revised standards issued by the FATF**. Article 4 of the Law on Capital Laundering (Law 14/2013) explicitly prohibits the conversion or transfer of property or any attempt to disguise or conceal its illicit origin, true nature, source, location, acquisition, possession or use of the property knowing that it is the proceeds of crime. Article 7 includes in its list of related crimes criminal association, which is dealt with independently of the main crime of capital laundering. Although this law is the foundation for deterring the laundering of the proceeds of crime and introduces important reforms, the promulgation of regulations that will allow its full implementation is still pending. In terms of other relevant legislation that could potentially help detect IFFs:

- The Witness and Protection Act allows for the protection of whistleblowers and introduces a witness protection programme that also provides for a new identity and relocation for witnesses.
- The law on asset disclosure makes it compulsory for all government members, their spouses, and legal dependents to disclose their assets, and any breach would engender fines. Compliance is, however, deemed limited and information on declarations is not made public.

41. **In Mozambique, the transfer pricing regime applies to taxpayers, including Stable establishments, subject to Corporate Income Tax and Income Tax of Singular Persons, who are domiciled within Mozambican territory and have an annual turnover equal to or exceeding MZM 2,500,000.00.** This regime applies explicitly to transactions conducted with related parties. Moreover, these regulations extend to taxpayers engaged in transactions with entities incorporated in a country with a low tax jurisdiction or a privileged tax regime.

The implementation of the transfer pricing tax rules, as defined in Decree No. 70/2017 of 6 December, commenced in 2018. This decree lays down the guidelines governing relationships between related entities, stipulates requirements concerning documentation, and allows the tax authorities to adjust the taxable profit.

The Mozambican Transfer Pricing Regime aligns with the provisions outlined in the Corporate Income Tax Code (IRPC Code), particularly in Article 65 of the IRPC Code.

Essentially, taxpayers subject to the Transfer Pricing regime under IRC, must maintain well-organized information and documentation regarding the policy adopted to determine transfer prices. Additionally, the interquartile range is established to assess whether transactions between related entities adhere to the principles governing transactions between independent entities. This assessment ensures compliance with the rules of fair competition.

42. **Mozambique has both a Large Tax Payer Unit and an Extractive Industry Taxation Unit. They were set up to undertake risk analysis inspections and carry out specialised audits**, participate in proposal design for law and regulation review with impact on the extractive industry; provide clarification and ensure the uniform enforcement of specific legislation and prevent and fight tax evasion in the extractive sector.

43. N/A

44. **Mozambique relies on the peer review report through the Financial Action Task Force** (which primarily focuses on money laundering and terrorist financing) to evaluate progress against laid recommendations. Mozambique also benefits from Eastern and Southern Africa Anti Money Laundering Group peer reviews on recommendations to combat IFFs.

45. **Mozambique is not a signatory of the various key international instruments aiming to promote transparency and cooperation in tax matters and combating tax abuse.** Mozambique is not a member of the Global Forum on Transparency and Exchange of Information, not a signatory of the Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention),[4] and it is not involved in the Automatic Exchange of Information (AEOI) initiative[5].

Likewise, the country is also not part of the IF (Inclusive Framework)[6] nor the MLI (Multilateral Convention to implement tax treaty-related measures to prevent BEPS). In brief, this means that cooperation with other jurisdictions is minimal, leaving the country more vulnerable to international tax abuse and undermining Domestic Resource Mobilization (DRM efforts).

Not being a signatory to Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) means that the country can only exchange information with other tax administrations if there is a bilateral treaty in place between both countries. Mozambique is currently a signatory to eight tax treaties that include provisions for mutual administrative assistance - including the exchange of information. However, there is no indication that Mozambique has provided or requested information from its jurisdictional partners.

46. **Membership to the East and Southern Africa Anti Money Laundering Group has helped expose Mozambique's weakness.** For instance, the 2021 report showed that the mining sector is weakened by inadequate controls. Although the authorities had introduced a Kimberly Process Unit, there were reports of precious stones still being smuggled and the proceeds from the sales being brought back to Mozambique and laundered.

The predominant use of cash and a high unbanked population makes tracing of most transactions impossible, providing an opportunity for the laundering of proceeds of crime to thrive. Most foreign proceeds derived from corruption and smuggling also end up in the informal sector, which is still quite large and plays a huge role in the country's economy.

47. **Mozambique's thin capitalization rules are structured around the 'safe harbour' approach,** which aims to regulate

4 OECD. (2023). Jurisdictions participating in the convention on mutual administrative assistance in tax matters: Status – 30 January 2023. https://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf

5 OECD. (2023). Automatic Exchange of Information (AEOI): Status of Commitments. https://www.oecd.org/tax/transparency/documents/AEOI-Commitments.pdf

6 Inclusive Framework on Base Erosion and Profit Shifting – https://www.oecd.org/tax/beps

the tax-deductible interest on debts. However, the current tax form also does not contain sufficient information on debt or interest expense to allow for a meaningful analysis of company leverage.

The allowable debt-to-equity ratio stands at 2:1. Interest accrued on debts that surpass this defined ratio becomes ineligible for tax deduction. Essentially, interest in those conditions will be excessive whenever the amounts lent by related non-resident entities exceed more than twice the value of a resident borrower's equity.

Several conditions govern the application of these rules:

- The creditor of the interest must be a non-tax resident entity in Mozambique.
- A special relationship between the debtor and the creditor, as defined by the CIT Code, must exist. The special relationship between lender and borrower will occur when the former owns, directly or indirectly, more than 25% of the latter's share capital, exercises a significant influence over its management, or has the same parent company. However, excessive indebtedness will not be presumed if a Mozambican borrower proves that, in the same conditions, it could have obtained the same level of indebtedness from an independent party, by presenting such proof within 30 days of the end of the tax year concerned.
- The debtor of the interest is required to demonstrate that obtaining a similar level of indebtedness and comparable terms and conditions would not have been possible if they were to obtain the loan from an independent third party.

By adopting this 'safe harbour' approach, Mozambique seeks to regulate intercompany debt transactions, ensuring that they are conducted on fair and arm's length terms and preventing tax avoidance practices.

48. **Mozambique has made a commitment to beneficial ownership transparency as part of accessing funds through the IMF Rapid Financing Instrument.** As an Extractives Industry Transparency Initiative (EITI) member, Mozambique has committed to beneficial ownership transparency for the extractives sector. **Despite the commitment, there is no specific law regulating the disclosure of Beneficial Owners in Mozambique.**

In accordance with Article 246 of the Commercial Code governing companies incorporated in Mozambique, entities are mandated to disclose specific elements in number 4 of Article 247. These elements include the date of registration, single legal entity number, date of incorporation, business name, registration office, share capital, form of distribution of share capital among shareholders (identifying the latter and their unique tax identification numbers), form of administration, and the identification of the members of the administration. Compliance with this requirement entails the disclosure of legal beneficiaries, whose information is made publicly available at any registry of legal entities in the country. However, public limited companies are an exception, with their information limited to company directors only.

It is essential to note that this obligation was introduced in 2018 through Degree Law No 1/2018, dated 4 May. As a result, the rule is solely applicable to companies incorporated after the regulation's enforcement.
It is worth clarifying that legal beneficiaries are individuals listed as partners or owners in the company's registration documents and legally exert control over the company. This is distinct from beneficial owners, who ultimately own or control the company, regardless of their legal appearance in the registration documents.

C Recommendations and Lessons Learned

49. From the assessment of as per AMGF criteria, it is recommended that,

i. Mozambique should proactively formulate a comprehensive Minerals Policy that articulates its vision for the mining sector with utmost clarity. This policy must encompass the nation's specific intentions regarding taxation within the mining industry. Crafting such a lucid policy serves a dual purpose: not only does it provide a structured framework for legislative reviews, but it also furnishes investors with a sense of assurance regarding forthcoming reforms within the mining sector.

ii. The introduction of taxes on surface rights is rooted in the rationale of curbing land-intensive mining practices while encouraging more land-efficient mining methodologies. However, the prevailing tax rates designed to fulfill this purpose remain disproportionately low and easily counterbalanced. Moreover, the nominal disparity between tax rates applicable to exploration companies and those engaged in active extraction is noteworthy. Revisiting the rates associated with the Surface Tax is imperative, alongside a subsequent reevaluation of the corresponding tax obligations.

iii. There is a need to invest in strengthening monitoring and verification mechanisms: As noted by the administrative court on the failure by government supervisory institutions to audit and certify extractive industry recoverable costs, it is imperative that for purposes of optimal revenue collection that there are oversight and monitoring capabilities of government supervisory institutions responsible for auditing extractive industry operations. In the context of Mozambique, it includes bolstering the capacity to physically verify declared production, validate sales figures, and ensure that recoverable costs claimed by companies are accurate.

iv. Despite the establishment of a mechanism intended to capture windfall gains through the Income Tax on Excess Revenue (IRRM), the efficacy of this tax instrument is potentially compromised due to the limited scope of assessments and audits conducted on mining operations. While Mozambique has consistently garnered Corporate Income Tax (CIT) revenue from the extractive sector over the years, the financial returns generated through the IRRM remain conspicuously absent from the Mozambique Extractive Industries Transparency Initiative (MEITI) reports. This will require publishing regular, comprehensive reports detailing revenue streams, expenditures, and any incentives granted to extractive industry companies.

v. Mozambique should contemplate releasing a comprehensive tax expenditure report and thoroughly evaluate whether the provided tax incentives align with their intended objectives. Before introducing an investment-friendly framework, it is of paramount importance for the nation to undertake a simulation of the potential advantages. This process enables a critical assessment of the incentives' effectiveness. Regrettably, this practice remains unexplored and unreported within the context of Mozambique.

vi. Mozambique should contemplate creating a standardized template for negotiating Bilateral Investment Treaties (BIT) and Double Taxation Agreements (DTA). Such an initiative would foster equitable and mutually advantageous accords. As highlighted in the evaluation, Mozambique's current DTAs exhibit significant inconsistencies and leave the nation susceptible to the risks associated with treaty shopping.

vii. To bridge the gap in efficiency within the execution of duties and tariffs related to the mining sector, Mozambique should take significant strides in leveraging technological advancements. Currently, progress has been achieved through physical monitoring of crucial elements that factor into tax rate evaluation. However, the absence of sufficient infrastructure, notably the absence of XRF (X-ray Fluorescence) machines, hampers the nation's ability to comprehensively assess minerals before their exit from Mozambique. Mozambique needs to prioritise the acquisition and deployment of XRF machines at key exit points for minerals. By incorporating such advanced technology, these devices would empower Mozambique's customs and regulatory authorities to conduct rapid and accurate X-ray scans of minerals.

viii. Mozambique needs to enact a law on Beneficial Ownership as committed in the EITI report; it is worth clarifying that legal beneficiaries are individuals who are listed as partners or owners in the company's registration documents and legally exert control over the company. This is distinct from beneficial owners, who are individuals ultimately owning or controlling the company, regardless of their legal appearance in the registration documents.

In evaluating Mozambique's fiscal regime in light of the AMV several important observations emerge. While Mozambique has designed its fiscal framework with the intention of optimizing revenue generation, it's crucial to acknowledge the existing susceptibility to cost manipulation due to infrequent audits. Although the fiscal regime aims to maximize revenue, potential vulnerabilities arise from factors such as inflated costs, the application of tax incentives, exploitation of tax agreements, insufficient monitoring of production declarations and sales, corruption, and broader administrative shortcomings.

The Administrative Court, entrusted with the critical task of auditing extractive contracts and revenue-related operations, has openly acknowledged the limited capacity of the Mozambican government to effectively oversee extractive industry companies.

This assessment underscores the significance of robust institutions, proactive monitoring mechanisms, and investments in specialized human capital. It reveals that even with the pursuit of straightforward fiscal instruments, the path to effective revenue collection demands a foundation of strong governance structures, vigilant oversight, and skilled personnel dedicated to maintaining fiscal integrity. As countries strive for optimal revenue outcomes, these factors remain indispensable for navigating the complex landscape of resource management.

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