

Briefing

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Romania: mining taxation system revised

Background

Romania's current fiscal regime for exploitation of mineral and hydro-mineral resources was established in 2003 by the Mining Law no. 85/2003 (**Mining Law**) and subsequently updated several times (in 2007, 2009, 2013, 2014 and 2015). In a nutshell, Romania applies a system of royalties for mineral and hydro-mineral resources payable by the titleholders of mining licenses to the Romanian State on a quarterly basis. The royalties are calculated in accordance with a methodology established by the National Agency for Mineral Resources (**NAMR**) based on either specific rates ranging between 4% and 6% of the production value or fixed amounts ranging between EUR 0.4375 and EUR 4 per unit of production, depending on the type of mineral and hydro-mineral. Repeated failure to pay the royalty may lead to termination of the mining licenses.

A revision of this system has been expected by industry players who have complained about unpredictability and excessive increase of the royalties' rates. The need for stability clauses was also highlighted. Signals from the market indicate that a revision of the mining royalties' system could jump start the mining industry (which has been steadily declining in the past years) by facilitating new bidding rounds for granting mining perimeters.

Finally, a draft of the highly anticipated legislation on mining royalties was published by the Ministry of Economy on 23 October 2017 (**Draft Royalties Law**) (the full text may be accessed here: <http://economie.gov.ro/images/transparenta-decizionala/Lege%20redevente/Proiect%20Legea%20redeventelor%20%20minerale%2C%20hidrominerale%20si%20petroliere.docx>). The Draft Royalties Law covers royalties applied for petroleum resources as well, but this note will focus on the provisions dealing with the fiscal regime applicable to mineral and hydro-mineral resources only.

In addition to the mining royalties, titleholders are currently subject to payment of annual taxes for mining activities, as follows: (i) for prospecting - approx. EUR 74 / square kilometre; (ii) for exploration - approx. EUR 297 / square kilometre (the tax is doubled after the first two years and multiplied by five after four years); and (iii) for exploitation - approx. EUR 7,430 / square kilometre. The Draft Royalties Law does not amend these taxes for mining activities.

Key provisions of the Draft Royalties Law

Royalties for mineral resources

The current applicable royalties' rates for the exploitation of minerals set out in the Mining Law are changed by the Draft Royalties Law, as follows:

Type of Minerals	Proposed Royalty	Current Royalty
iron ores, non-iron ores, aluminium ores and aluminium rocks, radioactive ores, rare and disperse soils, precious and semiprecious gemstones, residual mining products, bituminous rocks, therapeutic mud and peat	quota of 5% of the production value (depending on the unit of mining product and its corresponding unit value)	quota of 5% of the production value
noble metals	quota of 6% of the production value (depending on the unit of mining product and its corresponding unit value)	quota of 6% of the production value
inferior coals (lignite, brown coal)	EUR 0.5 / tonne	quota of 4% of the production value
superior coals (black coal, anthracite)	EUR 2.5 / tonne	quota of 4% of the production value
peat	EUR 100 / tonne	
non-metallic substances	EUR 1 / unit of production	EUR 0.875 / unit of production
magmatic rocks, metamorphic rocks, industrial and construction limestone, dolomite, sandstone	EUR 0.5 / tonne	EUR 0.4375 / unit of production

and industrial tuffs,		
clays, marlstone, loess, sand and gravel, sand and kaolinite rocks	EUR 0.5 / tonne	EUR 0.5 / unit of production
industrial alabaster, pumice stone, nepheline syenites, gypsum, chalk, silicate sand, bentonite, kaolinite sand, slate and diatomite	EUR 1 / tonne	EUR 0.6875 / unit of production
ornamental basalt, ornamental dacite, ornamental andesite, ornamental granite and ornamental granodiorite	EUR 2.5 / cubic meter (according to product standards)	EUR 2.5 / unit of production
ornamental alabaster, ornamental aragonite and ornamental silicate	EUR 3.5 / cubic meter	EUR 3.125 / unit of production
marble, ornamental limestone, ornamental sandstone, travertine and ornamental tuffs	EUR 4 / cubic meter (according to product standards)	EUR 3.75 / unit of production
halide salts	EUR 1 / tonne	EUR 1 / unit of production

The base, reference price and methodology for calculation of the mineral royalties are established by NAMR through technical instructions, approved through order of the President of NAMR.

Royalties for hydro-mineral resources

The current applicable royalties' rates for the exploitation of hydro-minerals set out in the Mining Law are changed by the Draft Royalties Law, as follows:

Type of Hydro-Minerals	Proposed Royalty	Current Royalty
natural mineral waters	EUR 4 / cubic meter	EUR 4 / cubic meter
medicinal mineral waters	EUR 3 / cubic meter	-
therapeutic mineral waters	EUR 2 / cubic meter	quota of 5% of the production value
geothermal waters	EUR 1 / cubic meter	quota of 5% of the production value
spring waters from underground deposits	EUR 4 / cubic meter	quota of 5% of the production value
table water	EUR 4 / cubic meter	-

The base, reference price and methodology for calculation of the hydro-mineral royalties are established by NAMR through technical instructions, approved through order of the President of NAMR.

Stability clause

The Ministry of Economy recognised the need to include express stability provisions with respect to the royalties' system in the new legislation. According to the Draft Royalties Law, title holders under mining licenses (concessions) in force at the date the Draft Royalties Law enters into force, as well as under mining licenses awarded after entry into force of the Draft Royalties Law, will continue to pay royalties at the level set out in their respective mining licenses for the duration of those licenses, save for the adoption of more favourable rules for the title holders or mandatory European Union rules. In case the initial duration of the mining licenses is extended, NAMR will apply the royalty rates in force at the date of signing the additional acts for the extended period.

This express stability clause is welcomed as there have been many discussions and contradicting views from authorities and courts regarding the stability of the royalty rates under the current legal framework. On the one hand the Mining Law provides that the rates will remain unchanged for the entire duration of the mining licenses, on the other hand the successive pieces of legislation amending the royalties' regime provide that the changed rates apply both to new and ongoing mining licenses.



Update of the royalties' rates

The Draft Royalties Law provides the Government the possibility to amend the royalties' rates by means of government decision (rather than by adoption of an amendment law by the Parliament), upon request of NAMR, based on opportunity economic analysis. We would expect that such amendments of the royalties' rates would not apply to mining licenses in force at the date of those amendments, in line with the stability provisions.

Royalties payment

The royalties will be payable monthly (as opposed to the quarterly payment set out in the Mining Law). In case of failure to pay the royalties within 6 months as of due date, NAMR has the obligation to terminate the mining license.

Next steps

The Draft Royalties Law is subject to public debate for 10 days as of publication. Upon completion of the consultation period, a final draft will be prepared and submitted for approval by the Parliament.

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