

# Transfer Pricing in the Mining Sector in Guinea

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## EXECUTIVE SUMMARY

Guinea is home to some of the largest and most valuable iron ore and bauxite deposits in the world. Although yet to commence production, Simandou is Guinea's most notable mineral asset with estimated reserves of over 1.8 million tonnes of iron ore. Guinea's mineral sector accounted for more than 25 percent of the country's gross domestic product (GDP) and about 95 percent of export earnings in 2011.<sup>1</sup> Tax avoidance among mining companies in Guinea is yet to be quantified, however it would be safe to assume that the problem is considerable. The Open Society Initiative for West Africa (OSIWA) estimates that illicit financial flows (IFFs) have grown at an annual rate of 23 percent within the Economic Community of West African States (ECOWAS), rising from less than US \$3 billion in 2002 to more than US \$18 billion in 2011. Despite the threat that tax avoidance, specifically transfer mispricing, poses to the tax base, the government of Guinea is only just beginning to address these issues. Comprehensive legal and administrative reform is urgently required if Guinea is to combat transfer mispricing, and secure its fair share of resource rents.

Transfer pricing is the mechanism by which prices are chosen to value transactions between related legal entities within the same multinational enterprise (MNE). These are referred to as "controlled transactions" and may include the purchase and sale of goods or intangible assets, the provision of services, the provision of financing, cost allocation, and cost sharing agreements. As long as the price that is set matches the "arm's length" price at which a transaction would have taken place between unrelated parties, this is not problematic. However, transfer pricing may become abusive or illegal when related parties seek to distort the price as a means of reducing their overall tax bill. In these instances the practice may be referred to as "transfer mispricing."

This case study investigates the barriers to implementation of transfer pricing rules in the mining sector in Guinea. It forms part of a series of five country case studies including Ghana, Sierra Leone, Tanzania and Zambia. The result of this study is a number of recommendations that aim to provide guidance on practical steps to improve transfer pricing enforcement in the mining sector. The recommendations can be broadly grouped into four categories: transfer pricing legal framework, administrative arrangements, knowledge and skills and information.

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1 United States Geological Survey. *The Mineral Industry of Guinea in 2011* (2011), 21.1

## Overview of recommendations

		Recommendation	Responsibility
Legal framework	1	Amend Article 117 of the Tax Code to state: (a) that related party transactions will be evaluated according to the arm's length principle, thereby clarifying the meaning of "improper deductions" and, (b) how the arm's length principle is to be applied.	Ministry of Finance
	2	Amend current transfer pricing documentation provisions to clearly stipulate the frequency with which documentation should be updated, as well as the particular information to be included. This will prevent delays to the audit process, and ensure that the national tax administration (DNI) has the information it needs to undertake transfer pricing audits.	Ministry of Finance
	3	Amend the Decret Relatif A L'Application Des Dispositions Financieres Du Code Minier to clearly communicate how Article 138-11 (arm's length principle) of the Mining Code will be applied.	Ministry of Mines
	4	Encourage mining companies to submit their long-term purchase agreements (LTPAs) for approval in accordance with Article 138-11 of the Mining Code. At present, companies are not doing this because it's not mandatory, and the incentive to submit voluntarily is weak due to the government having limited capacity to conclusively establish non-arm's length sales.	Ministry of Mines
	5	Introduce the option for large-scale taxpayers to request advance pricing agreements (APAs). This will reduce the transfer pricing monitoring burden. Challenges associated with negotiating APAs can be overcome with technical support from international development partners.	Ministry of Finance
Administrative arrangements	6	Establish a formal coordination mechanism to improve mining tax administration, bringing together the Ministry of Finance, DNI, and the Ministry of Mines.	Government of Guinea
	7	Identify a small number of tax inspectors within the Fiscal Control Division to be trained as transfer pricing specialists. While all officials in the Large Taxpayers Office require basic transfer pricing training, identifying dedicated transfer pricing specialists will provide a focus for capacity building efforts, and ensure consistent application of transfer pricing rules.	DNI
	8	Dedicate more resources to the mining sector team within the Fiscal Control Division of the DNI. While each division is important and transfer pricing is not the only consideration, given the tax potential of the mining sector there is a strong argument for increasing the workforce of this particular audit team.	DNI
Transfer pricing information	9	Develop a comprehensive transfer pricing risk assessment framework to improve the accuracy and efficacy of transfer pricing audits. The "red flags" currently used to review company tax returns are inadequate and a specific transfer pricing risk framework is required.	DNI
	10	Adapt the generic transfer pricing framework in recommendation 9, to capture transfer pricing risks specific to mining, as well as appropriate industry ratios to benchmark risk evaluation.	Mining Audit Team
	11	Introduce a transfer pricing annual return form that taxpayers are required to submit with their annual tax return. The transfer pricing return form would require taxpayers to specify all related party transactions for that tax year, as well as detail the taxpayer's structure with respect to other related parties within the multinational group.	DNI
	12	Obtain a joint subscription to the Bauxite Index. <sup>2</sup> These price benchmarks can be used as the basis to review reported sale prices, as well as pricing formulas detailed in LTPAs.	DNI and Ministry of Mines
	13	Finance a subscription to a transfer pricing database for the DNI. On their own, locally determined standard industry rates are insufficient. To overcome this challenge the DNI requires access to an international comparables database.	International partners
Knowledge and skills	14	Facilitate further training on transfer pricing, as well as specialized mining audit training, for DNI officials. So far, only three tax officials have received training on transfer pricing, which was specific to banking and financial services.	International partners
	15	Facilitate capacity building for civil society, the media, and parliament, with respect to transfer pricing in the mining sector.	International partners

2 <https://thebauxiteindex.com/>

## TRANSFER PRICING LEGAL FRAMEWORK

### Status of transfer pricing rules

There are currently no transfer pricing guidelines in Guinea. Article 117 of the Tax Code requires taxpayers to reintegrate funds that have been “improperly deducted,” however there is no explicit requirement that related party transactions should be conducted according to the arm’s length principle. Referencing the arm’s length principle would clarify the meaning of “improper deductions,” yet regardless of this omission Article 117 empowers the commissioner general to make transfer pricing adjustments. Here the onus is on taxpayers to ensure that profits indirectly transferred to affiliates outside of Guinea, or to low tax jurisdictions, are included in their taxable income.

Beyond this basic prohibition, Article 117 of the Tax Code outlines a range of “abnormal management acts” that could constitute transfer mispricing including: markdown or mark-up of purchases or sales, payment of excessive royalties, interest free loans or unjustified rates, and any benefit that would be disproportionate with the service provided. Where there is a lack of evidence to verify whether transfer mispricing has in fact occurred, taxable income will be determined based on a comparison with similar companies operating in Guinea. There is no specific penalty for transfer mispricing, however Article 26 of the Finance Act of 2001 states that corporate income tax due may be increased by 100 percent plus interest.

A growing awareness of the scale of the transfer pricing problem led the Finance Ministry to introduce transfer pricing documentation provisions in the Tax Code in 2014. Article 13 of the Finance Act of 2014 requires companies operating in Guinea to maintain contemporaneous documentation on intercompany transactions, as well as their transfer pricing policy. Companies are expected to make such information available to the authorities on request, however there is currently no penalty if companies fail to submit this information. According to the general Tax Code, the documentation requirement applies only to companies with an annual VAT-excluded turnover, or gross assets, of more than 175 billion Guinean Francs (GNF). However, it also states that the government can request the same information from companies below this threshold if there is evidence of potential transfer mispricing.

The transfer pricing documentation provisions have only recently been made law and the government is yet to invoke them. Mining companies are aware of the new requirements and have begun keeping transfer pricing documentation in anticipation of requests. While the new documentation provisions are a step in the right direction, there is a lack of legal guidance regarding the particular methods companies are expected to use to calculate transfer prices.<sup>3</sup> This will undoubtedly cause confusion and frustration on the part of taxpayers when the government inevitably disputes their justification for the price set for related party transactions. This problem is already being anticipated by mining companies, “transfer pricing disputes go on for years in countries that clearly stipulate the methods for use, let alone in a place like Guinea where the methods are a mystery.” The lack of clarity on transfer pricing methods also prevents the national tax administration (DNI) from developing expertise in the application of particular transfer pricing methodologies (some are more complex than others) and in identifying exactly what information is required to evaluate related party transactions.

*Guinea’s current transfer pricing rules are incomplete. It is necessary to clarify which transfer pricing methods taxpayers are required to use to apply the arm’s length principle, and what documentation must be kept to justify related party transactions.*

<sup>3</sup> It is common for countries to adopt the five OECD transfer pricing methods, leaving room for an alternative method to be agreed if necessary. See Chapter II of the OECD transfer pricing Guidelines for information on the five OECD methods.

Senior officials at the DNI have acknowledged that the lack of specificity with respect to how the arm's length principle should be applied creates uncertainty for taxpayers, as well as weakening the government's position to challenge the basis for related party transactions. The justification given is that the government wanted to pass some law on transfer pricing immediately and develop detailed provisions later. While this is understandable, the lack of comprehensive transfer pricing provisions is indicative of the government's narrow understanding of the topic. DNI officials openly acknowledge that some of the provisions were simply "cut and pasted" from the OECD guidelines.

For the mining sector specifically, Article 138-111 of the Mining Code of 2013 states that companies trading mineral substances at a price lower than arm's length will be subject to a corresponding adjustment in their taxable revenue, as well as potential criminal sanctions as outlined in the General Tax Code. The Mining Code provides the various metal indices that companies must use to compute royalties. In addition, if a titleholder is found to have been trading at below arm's length prices for a continuous period, Article 138-11 affords government the pre-emptive right to purchase 50 percent or less of a company's mineral product. Finally, the DNI is empowered to adjust the assignment price for an operating permit, or mining concession, where the reported sale price is lower than the arm's length price. There is no explicit reference to arm's length pricing in relation to outbound payments to related parties, however Article 176 states that taxes will apply according to the general legislation, in this case the Tax Code. Article 24 of the Decree on Financial Regulations of the Mining Code specifies that OECD transfer pricing methodologies are to be used to guide the application of the arm's length principle to related party transactions. However, this is yet to take effect as the four mining decrees signed by the President in 2014 have not been formally published.

The Mining Code requires companies to apply the arm's length principle to the sale of mineral substances, as well as the assignment of an operating permit, or mining concession. However, given that the majority of mining development agreements (MDAs) were negotiated before the new Mining Code, these requirements can be easily bypassed. The arm's length principle is only reflected in more recent mining development agreements such as the Alliance Mining Commodities (AMC) Convention (Article 16). Older agreements fail to mention arm's length pricing, instead more equivocal terms such as "competitive prices" are used.

## **Relevant anti-tax avoidance rules**

### *Thin capitalization*

Thin capitalization is a major problem among mining companies operating in Guinea. Many companies consistently report losses due to high levels of debt, and in doing so delay paying corporate income tax. To limit the impact of thin capitalization on the tax base, Article 97 of the Tax Code allows the deduction of interest on related party loans to the extent that debt is 1.5 times higher than equity. However, there is an exception where both affiliates pay taxes in Guinea. In such cases there is no limit on the deductibility of interest. Interest rates on related party debt must not exceed the refinancing rate of the Central Bank of Guinea.

**Box 1. Gold mine avoids corporate tax for 20 years due to high levels of debt**

Before the DNI conducted a verification exercise in 2011, a gold mine located in Guinea had never paid corporate income tax. The mine had US \$160 million in debt, plus US \$147 million in amortized loans. The majority of standard loans were coming from the mine's parent company located in Jersey. In one example, a US \$386 million loan from the parent company was put in the company's bank account in Guinea and then taken back immediately. The verification team produced a report that gave the local company one month to rectify the problem. As a result, the company reduced the deficit to US \$23 million, cancelling all other claimed deductions. The government collected US \$13 million in tax as a result of the reduced deficit. It is interesting to note that the same local company has again reported a loss in its 2014 tax return.

*Advance pricing agreements*

The general Tax Code does not include advance pricing agreements (APAs), however a similar arrangement is provided in Article 138-11 of the Mining Code. Mining companies who enter long term purchase agreements (LTPAs) are invited to submit their pricing mechanism or formula to the mines minister and the finance minister for approval. Government has one month to request the company to revise the LTPA. If there is no objection during this time approval will be deemed granted and the government will forgo its pre-emptive right to purchase 50 percent of a company's mineral substances.

While LTPAs are not strictly APAs — the agreement is between the titleholder and the buyer, rather than the titleholder and the tax administration — but they do set pricing parameters that enable the government to monitor company sales. However, in practice it is unlikely the government will reject a LTPA given the overriding desire to attract investors. For example, a new bauxite company has been granted an exploitation license despite the ministry of mines not seeing the LTPA. Moreover, many government officials in both the ministry and the DNI argue that the pricing formulas used in LTPAs are too complex for them to monitor. However, international advisors reject this argument suggesting that it is a lack of political will that is hindering the monitoring of pricing formulas.

Irrespective of whether pricing formulas are overly complicated or not, there is currently no requirement that companies submit their LTPA to government for approval. There is an incentive for companies to submit their LTPA given that the government's pre-emptive right is waived once an LTPA is approved. However, the practicalities involved with exercising this right make it unlikely that the government will use this provision, thus reducing the value of the incentive. A legal amendment requiring mandatory approval of LTPAs would be ideal, however in the short-term the ministry of mines should actively encourage companies to submit their LTPA in accordance with Article 138-11.

If the government expand the transfer pricing provisions in the Tax Code it may make sense to include a provision for APAs. APAs may have similarly challenging pricing formulas with respect to mineral sales, however the advantage is that such agreements would be directly between the company and the DNI. This would give the government a stronger legal basis from which to ensure compliance, once an appropriate price has been agreed. APAs also offer greater scope than LTPAs, at least in their current form. APAs can be used to cover other intercompany transactions such as the provision and receipt of services. The development of APAs requires expertise and resources, but they offer a discrete, time-bound opportunity for technical assistance. The finance ministry, in conjunction with the DNI, would lead the APA process, however it is critical that the mines ministry is also involved given their technical expertise.

*Difficulties with monitoring pricing formulas included in Long Term Purchasing Agreements make it unlikely that government will invoke its right to purchase 50 per cent of a company's product. This reduces the incentive for companies to submit agreements for approval.*

### *Reference pricing*

It is increasingly common for resource rich economies to compute mineral royalties based on publically quoted prices or comparable products sold in the international market during the same time period. In 2011, the Ministry of Mines introduced reference pricing in Article 161 of the Mining Code. This article provides the specific price indexes to be used to calculate royalties for base metals such as bauxite and iron ore, as well as industrial or semi-industrial production of precious metals. The benchmarks do not provide true arm's length prices as they do not account for the specific characteristics of each transaction, however they are arm's length "proxies" to prevent companies from under invoicing related party sales. To verify royalty computations, the ministry has a subscription to the London Metals Exchange (LME), and receives regular commodity price reports from Standard Chartered Bank. The DNI however does not have access to this information. In the past, tax inspectors accessed commodity price information via personal relationships with officials in possession of subscriptions.

## TRANSFER PRICING ADMINISTRATIVE ARRANGEMENTS

### **Transfer pricing capability**

According to the Finance Act, the DNI has primary responsibility for verifying tax returns and proposing tax adjustments. Neither the Finance Act nor the Tax Code are explicit regarding responsibility for monitoring transfer pricing issues, however in practice this sits with the DNI and the finance minister is the ultimate arbiter. While there are some checks and balances, there is limited independent oversight of the verification process from the selection of transfer pricing cases through to approval of tax adjustments. The finance minister wields significant power and can partially, or totally, cancel a tax adjustment without peer review. Officials from the ministry of mines and DNI suggest that many tax issues that go to the finance ministry are not acted on.

There is no specific transfer pricing unit at the DNI, rather these issues are mainstreamed across the Fiscal Control Division. The current approach seems realistic given that only three tax inspectors have been trained on transfer pricing; they are the most competent inspectors and therefore required to lead verifications covering a range of tax issues. To set up an exclusive transfer pricing unit would undermine the other functions of the Fiscal Control Division by forcing their best people to focus on nothing else, despite the wide variety of tax avoidance measures utilized by taxpayers. The sectoral split in the Fiscal Control Division enables a specific focus on mining, which is sensible given the significance of the sector to revenue collection. Currently, the number of tax inspectors is split evenly across the four sector teams (telecoms; services; banking and insurance; mining and construction). While all these sectors are important, the mining sector is the largest contributor to GDP and tax revenue. Consequently, there is a strong argument to increase the number of inspectors allocated to work on mining tax issues. Time was identified as the major constraint that prevented more frequent verifications of mining companies. This challenge could be overcome, and oversight of the mining sector increased, with a larger workforce. Despite four sectoral teams, they have not yet developed risk assessment tools specific to their sectors. Adapting existing tools and processes to the mining sector would make the team more specialized and effective.

*To set up a stand-alone transfer pricing unit may not be appropriate for Guinea at this stage. It would require some of the most competent people at the DNI to focus exclusively on transfer pricing, potentially hindering other revenue raising activities.*

### Inter-agency coordination

Coordination is a major challenge for transfer pricing in the mining sector. Verification of mining companies is solely the responsibility of the DNI and finance ministry, and there is no formal involvement of the ministry of mines. There has only been one instance where a mixed team — comprising the DNI, finance ministry, and ministry of mines — was assembled to conduct a verification of a mining subcontractor. DNI officials regarded the mixed team as very efficient: officials from the ministry of mines provided a good understanding of the mining sector and specific information on the subcontractor in question. When asked why this approach had not been repeated, the response from DNI and finance officials was that there hadn't been another case that warranted it. This seems unnecessarily reactive. Improved coordination between the DNI and ministry of mines would be an efficient approach to develop specialist expertise among tax inspectors, as well as ensure that limited audit resources are properly targeted.

There are both political and institutional challenges to inter-agency coordination. The law states that the finance ministry, and by extension the DNI, are responsible for verifications, and they are keen to protect this mandate. There may also be resistance from the ministry of mines as coordination is likely to create additional work for officials, as well as compromising the ministry's privileged relationship with companies.

*The one time that a joint audit of a mining company took place was a success. Rather than waiting for such a case to come again, a proactive approach to coordinated audits, or sharing information and expertise, would seem more efficient.*

## TRANSFER PRICING ACCOUNTABILITY MECHANISMS

### Civil society

Despite Guinea's history of political dictatorship, civil society groups have an impressive track record in grassroots civil resistance. Protests held in the last few years of the Lansana Conté administration, as well as the demand for democracy after Conté's death and the subsequent military coup, were led by a conglomeration of civil society organizations and political parties. These civil society groups emerged as a result of discontent in the 1990s, the media's resentment towards the Conté regime and the military dictators that replaced him. While civil society groups have demonstrated significant strength in helping to secure democracy in Guinea, their involvement in the management of the country's natural resources has been more limited. Arguably, this could be due to a preoccupation with the political transition and a lack of information and expertise to effectively monitor the mining sector.

There are notable examples of where civil society groups have engaged with mining issues, particularly in the area of representing local communities to ensure that they benefit from mining activity. Civil society oversight on issues of tax avoidance in the mining sector is more limited due to capacity constraints. The National Publish What You Pay (PWYP) coalition and the Extractive Industries Transparency Initiative (EITI) have improved fiscal transparency, however there is a long way to go before these initiatives have the force required to significantly improve government accountability. The capacity of civil society groups is slowly improving due to technical assistance from international organizations such as the Natural Resource Governance Initiative (NRGI) and the World Bank (WB). However, there is concern that their contribution is hindered by political interference. A few of the civil society organizations and individual representatives are politically aligned and have used their public platform to attain positions in the government.

### **Extractive Industries Transparency Initiative secretariat**

Guinea joined the EITI in 2005 and published the first reconciliation report in 2007. Voluntary suspension from the EITI was sought in 2009, and later lifted in 2011. The extent of the legal reforms that have resulted from the EITI process so far are Article 122 and Article 155 of the Mining Code in reference to license-holder obligations. According to international NGOs operating in Guinea, the government has failed to demonstrate an understanding of how the EITI could be used to accomplish its own goals, nor show a commitment to applying it. For the first time, the government is preparing a report that will be measured by the new EITI standard from 2013. It remains to be seen how well they will do in meeting the standard, although it is already known that a number of the requirements will not be met. The local EITI secretariat is regarded as weak, to the extent that the World Bank is withholding a vehicle until the internal governance of the secretariat improves.

Government officials are broadly of the view that the EITI has done little to improve fiscal transparency in the mining sector. As long as companies report paying what the government thinks they should have paid, there are no checks on whether this is correct. While this may point to a broader failing of the EITI (the standard does not explicitly require calculation of what should have been paid), it does require that the information needed to calculate payments should be made public, including the applicable fiscal regime as well as production and export data. With respect to what the standard requires, Guinea has had some success. The 2013 report, for example, revealed money that wasn't being represented accurately because it was being paid by third parties subcontracted to manage mining imports and exports. The concern remains that the EITI is merely an accounting process that fails to get to the heart of fiscal transparency issues. Nevertheless, there is nothing to prevent the government of Guinea from going beyond the EITI standard to further strengthen fiscal transparency in the mining sector.

### **Parliament**

It is important to caveat the following review by recognizing that prior to 2013 the Guinean parliament had little independence. For the 24 years that Lansana Conté ruled Guinea, parliament was under strict control. Following the military coup in 2008 parliament was dissolved and replaced in 2010 by an interim body. Legislative elections did not take place until 2013. Parliament's limited oversight of the mining sector should be seen in light of these challenges.

Parliament is responsible for passing mining laws, ratifying MDAs and monitoring natural resource management. To fulfil these tasks a permanent committee for mines and energy has been created within parliament. However, in practice, the Executive still has significant political control, resulting in limited pushback from parliament on issues pertaining to the mining sector. When parliament has been more assertive, for example, refusing to approve the fiscal regime of a particular bauxite company in the early 2000s, the executive overruled. The limited number of parliamentary disputes regarding mining and oil contracts over the last 15 or more years, is arguably evident of parliament's lack of supervision of the sector. As mentioned in the previous section, this is mainly due to political interference, particularly the misuse of emergency procedures, as well as capacity constraints. With respect to monitoring tax avoidance, senior government officials suggest that it is, "not the job of parliamentarians" to think about the implementation of legislation, specifically tax compliance, as this is the responsibility of the Executive. Parliament may ask questions regarding mining revenue collection in relation to the annual budget, however there is no precedent for this.

*The Executive enjoys significant political control over parliament, including inappropriate use of emergency procedures. This means limited opportunity for pushback from parliament on mining issues.*



## TRANSFER PRICING KNOWLEDGE AND SKILLS

### Transfer pricing expertise

Guinean tax inspectors receive extensive training. Every year five tax inspectors travel to France for general training at the School of Public Finance and the Finance University of Paris. In addition, two inspectors from each of the four sections in the Fiscal Control Division travel to France annually to be trained on recovery and control. Most tax inspectors have trained as economists, accountants, and lawyers before starting at the DNI, and once they are recruited they undergo one year of training on a range of fiscal matters.

Despite this training, until recently there was very limited knowledge of transfer pricing. Only three officials from the DNI have received training on transfer pricing, limited to a single workshop delivered by the IMF in 2015. According to those that have been trained, there is an urgent need for more inspectors to be able to evaluate related party transactions. A former auditor for a private firm, now turned government official, identified the level of training and workload as two key challenges for the DNI. Knowledge of international taxation is also a major gap. Although there are approximately 15 auditors per sector in the Fiscal Control Division they are each required to cover a vast number of cases, whereas private audit firms have enough auditors that they can each spend one month looking at a single case. Cases have to be taken to the chief of fiscal control, and the assistant to the head of the Large Taxpayers Office (LTO), who have some knowledge of these matters.

The DNI has sufficient human resources for the work, however in practice tax inspectors struggle to identify the gaps in the material provided by companies, to ask the right questions, and to build an overall picture based on specific information. Tax officials lack specialist expertise in the mining sector as well as an applied understanding of business more generally. There is a need for all government officials, not just tax inspectors, to understand the business case for each mining project, the amount of investment involved, and the expected rate of return. Some tax officials at the DNI are impressive, yet it is unclear whether the majority of inspectors are up to the task. Concerns have been raised by government officials that when the DNI conducts verifications it is often the companies being verified that cover accommodation and transport costs, as well as per diems, potentially compromising tax officials.

### Understanding the mining value chain

Despite the technical skill of tax inspectors at the DNI, there is a big gap in their understanding of the mining industry. This limits their ability to effectively identify and evaluate transfer pricing risks in the mining value chain. A small number of tax inspectors have received transfer pricing training specific to the banking and insurance sector, yet they have not received this in relation to mining. The lack of understanding of the mining sector means that audit resources may be misallocated, and mining companies may receive unnecessarily onerous information requests.

Limited technical expertise and knowledge of the mining sector is compounded by the absence of coordination between the finance ministry, DNI, and the ministry of mines. When it comes to verification of mining companies the responsibility lies exclusively with the DNI and there is no involvement of officials from the ministry of mines. A senior government official, formerly at the ministry of mines, was of the view that, “no verification of a mining company should take place without people from the mining sector.” According to him, fiscal agents would be less likely to be

*Tax inspectors lack knowledge of the mining industry. This is compounded by poor coordination with the ministry of mines, preventing effective oversight of mining taxpayers.*

fooled by mining companies if staff from the ministry of mines were included in the verification process. The government appears to be taking a different approach to coordination in relation to the newest bauxite operation in Guinea. The president has requested the establishment of a fiscal commission specifically to monitor price issues so as to maximize government revenue. The commission is to be led by the fiscal advisor at the ministry of mines and comprised of officials from the finance ministry, ministry of budget, and the state-owned mining company, Soguipami. This may prove to be a good model for oversight of mining verification exercises in the future.

## TRANSFER PRICING INFORMATION

### Risk assessment and selection of transfer pricing cases

The DNI commits to conducting annual verifications of 20 percent of all large taxpayers. Once tax returns are received from companies at the end of April, the DNI reviews declarations to look out for general red flags. These include: i) ratio of total cash flow to total revenue declared; ii) successive losses; and iii) drastic fall in total revenue. These red flags are decided by the head of the DNI and can change from year to year. The DNI deliberately changes the risk assessment indicators to prevent companies from gaming the system. Where risk indicators are identified, those companies will be selected for verification.

While this approach captures the major audit risk areas, it lacks specific guidance with respect to transfer pricing audit risks, nor are there benchmarks to help tax officials determine whether a transfer pricing risk area has been manipulated and to what extent. At present the Fiscal Control Team at the DNI is split into four sectors: services, commerce, telecoms, construction, mines and industry. Each of these four sectors should have a specific transfer pricing risk assessment matrix, replete with relevant industry benchmarks and ratios. For example, in the mining sector successive losses may be common in the first few years of operation due to high upfront costs. Given the past performance of mining companies in Guinea when it comes to declaring profits, it is clear that specific transfer pricing indicators must be developed to guide tax officials to differentiate between standard industry practice versus tax abuse.

Mining companies are verified regularly by the DNI. Between 2012 and 2014 all major mining companies were verified. However, according to DNI officials, verification of mining companies tends to happen less regularly given that they can take a long time and be subject to political interference. While the Tax Code limits verifications to a period of three months, most mining audits take up to two years as companies have complex accounting systems and there are often lengthy disputes with companies once the DNI delivers its findings. Mining companies are also verified less frequently than other companies due to the political sensitivity of the sector. According to a senior tax official, “the DNI needs to avoid mining companies thinking that they are being stalked or annoyed.”

*The DNI verifies mining companies less regularly than other sectors. This is partly due to the political sensitivity of mining. According to a senior tax official, “we need to avoid companies thinking that they are being stalked or annoyed.”*

### Access to appropriate comparable data

International databases for transfer pricing comparables are non-existent in Guinea. The DNI has no access to information on international markets other than that which is publically available. Taking account of this information challenge, Article 117 of the Tax Code specifies that where there is no precise comparable by which to apply the arm’s length principle, the amount will be determined by comparison

with other companies engaged in similar activities in Guinea—these might be called ‘standard industry rates’. To determine standard industry rates the DNI relies heavily on the Marche Public, the government organization that monitors public procurement. While prices of government purchases provide a useful comparison, unfortunately this is less relevant for the mining sector given that the government does not buy mining materials and equipment.

Standard industry rates are a pragmatic approach to evaluating related party transactions, however this may not always be consistent with the arm’s length principle. The method is also made difficult by there being only seven operating mines in Guinea. In practice, the DNI often tries to create internal company comparables. For example, to evaluate transport costs they will take a fixed point in time and compare current transport costs to previous transport costs, and if there is an increase the company will be invited to justify it. This is a practical solution, however the lack of accuracy may sometimes lead to disputes with mining companies. A senior official, formerly from the ministry of mines, pointed out that there are some costs, namely geological surveys, which are incurred before mining projects commence and that the government does not even attempt to evaluate these, despite the fact that the costs are carried forward from the outset.

The mining sector has the advantage that transactions involve publically traded commodities, meaning that the realized sale price of a company’s mineral products can be easily compared to international prices. However, while getting the right price for gold seems relatively straightforward (given that the market price is readily identifiable), bauxite on the other hand has been much more complex. For all bauxite companies operating in Guinea, the company responsible for production is directly related to the buyer. This is not unique to Guinea, it is common in the bauxite industry and is primarily due to the nature of the commodity: bauxite has few alternative uses other than in the production of aluminium, and, after numerous buyouts only a handful of large companies remain in business. However, the highly integrated nature of the value chain, and lack of a publically quoted price, presents a big transfer pricing risk for bauxite rich countries.

*The highly integrated nature of the bauxite value chain has made verifying the sale price particularly difficult. But the sector is changing and government should subscribe to the bauxite price index to evaluate related party sales.*

#### Box 2. Guinea’s bauxite industry at risk of under-invoicing

Bauxite is the major mineral product of Guinea. For all three bauxite operations in Guinea the price or a price formula has been fixed in advance between related parties. Consequently, the government is concerned that they don’t know the real price of the bauxite being sold. This concern grew recently in relation to the largest bauxite operator, Compagnie des bauxites de Guinée (CBG). According to an agreement with CBG, the government of Guinea is entitled to 300tpa of bauxite to sell independently. At the last auction in May 2015, the government received US \$4 more per tonne than the price received by CBG for sales to the related buyer. The company purchasing the bauxite from the government was a Netherlands-based company that has a 10 percent stake in CBG and is part of the existing purchasing group currently paying US \$4 less per tonne. While a 10 percent difference between spot prices and long-term contractual prices may be reasonable, the government has yet to find a way of determining this, and, given that HALCO, the majority shareholder, is purchasing virtually all of CBG’s bauxite, there is a case to be made for improved monitoring of bauxite sales.

The bauxite industry presents specific transfer pricing challenges, however the sector is changing and the government has the opportunity to strengthen its capacity to evaluate the sale price between related parties. For example, there is now a bauxite price index that the government can subscribe to that provides a monthly spot price. Spot prices are likely to be more volatile and higher than long-term

contractual prices, yet this index offers the government an objective reference point when evaluating sale prices. In the case of CBG, the government is limited in its ability to evaluate reported sale prices because at present it can only review production costs, it cannot determine the real economic value of the exported bauxite. Access to a monthly spot price would give the government a better idea of the real economic value so that it could then determine whether the reported sale price is reasonable.

The closed nature of the bauxite market is starting to change with growing demand from China. Following Indonesia's ban on the export of bauxite, Chinese consumers have been forced to diversify their bauxite supply, hence the emergence of China Hongqiao Group Ltd in Guinea. The value chain is likely to become less integrated, similar to the transformation that took place in the iron ore industry over the last decade. Interestingly, in 2014, bauxite from Guinea was the most expensive among Chinese bauxite imports at US \$89.1 per ton CIF in April, nearly US\$30 above the average. It will be useful to compare the sale price of the newest bauxite operation, which is exporting to China, to the imported price in China. Not only will this help in the evaluation of this particular company's sale price, it may also be useful in exploring whether structural under-pricing is an issue in relation to other bauxite producers in Guinea.

### Access to information

Mining companies operating in Guinea are generally forthcoming with both financial and production information. According to officials at the ministry of mines, all mining companies provide quarterly production reports to the ministry, which the IMF reconciles against export records twice yearly. Financial reports and tax returns are sent to the finance ministry at the end of April, with financial reports also forwarded to the ministry of mines. There are some companies that are less reliable and the government has to chase to get information; this is generally smaller companies that have less reputational risk and often claim that the information is with the parent company or that approval is required. However, these are exceptions rather than the norm. According to a senior official at the DNI, "There is no problem accessing information from companies in Guinea, they have good accounting standards, and all the financial information, including proof and invoices, is in Guinea. However for companies that export, how can you evaluate the price of exports from information provided by companies?"

Despite the availability of information from companies operating in Guinea, the challenge is accessing information from other tax jurisdictions where parent and related companies are registered. There is no formal or informal cooperation between the DNI and other relevant tax administrations. Consequently, the DNI is unable to evaluate cross-border transactions. In many instances the DNI is unable to confidently identify all the related parties engaged with local mining companies, let alone the legitimacy of their transactions. The DNI admits that it generally hasn't sought cooperation from other administrations; in one example they reached out to the French tax administration in relation to an issue with a French subcontractor to Sotelgui, yet there was no response. The Guinea government appreciates the international community's concerns regarding confidentiality of information, however the assumption that developing countries won't be able to manage the information is unfair and should be tested before the automatic exchange of information (AEOI) is ruled out as an option for developing countries.

*The DNI generally hasn't sought information from other tax jurisdictions. However on one occasion they contacted the French tax administration for information on a French subcontractor to telecommunications company Sotelgui, and received no response.*

### Box 3. Management service charges to headquarters

Government officials recently met with a gold mining company as part of the mining contract review process launched by the president in 2012. At the meeting the officials stressed that management service charges paid by the local company to its parent company should be fair. This followed concerns that the local company was paying excessive management service charges as a means of transferring profits out of the country. It was agreed that the internal auditor for the local company will provide a report outlining how the management fees are calculated so that the government can evaluate whether the charges are appropriate.

A subcontractor working for the same gold mining company paid 30 percent of total revenue, approximately US \$20 million in consultancy charges to its parent company. A private audit firm, hired by the subcontractor to conduct an internal audit, traced the consultancy charges back to the subcontractor's parent company, however it was unclear what the subcontractor was receiving in return. The private auditors established that the charges were for nothing real, and that the type of services provided by the parent company, human resources and technical, were not the kind likely to be required by the subcontractor in Guinea. The private firm reported this to the subcontractor, however the government, specifically the DNI, remained unaware.

### Box 4. International purchasing centres

Two cases highlight the international dimensions of tax collection.

The first case concerns a bauxite and alumina complex with the capacity to produce 2.1mtpa of bauxite and 700,000 tpa of alumina. The local company stopped producing in 2012 due to the owner's decision to close operations, following a labor movement over low pay. Prior to closing down, the company had a purchasing unit located in Europe that made all the purchases for the Guinea branch. The DNI became aware that the US \$1,300 per ton that the company was paying to the purchasing centre for the chemical caustic soda (required to produce alumina) was significantly inflated. The DNI compared the purchase price of the same product as procured by a local brewing company and found a difference of US \$500 per ton. The company responded that the higher price was due to the cost of transport and insurance, however the local brewing company, despite having similar costs, was buying the same product for US \$800 per ton. The company was unable to justify the price difference. Consequently, the DNI added the difference in price to the recorded company profits and their income tax was adjusted.

The second case relates to a gold mine. Once again, the parent company was registered in Europe and had a related company responsible for procuring and shipping the raw materials required for the local company's operations in Guinea. The local company would pay fees to the parent company for this service even though the materials were being procured from an unrelated company in China, which was also responsible for shipping the materials to Guinea. When the DNI visited the local company to investigate the issue they were given an invoice which showed shipping costs were three times the total cost of the materials. The shipping costs alone accounted for approximately 70 percent of the local company's total costs. Rather than the paying the fee to the supplier in China, or even the purchasing centre in Europe, the total amount, including the annual commission of US \$5-6 million for the company in Europe, was paid to the parent company. The DNI wrote to the local company three times, requesting to see the invoices from the supplier in China to determine whether the invoice from the parent company was an accurate representation of the service fees. They have yet to receive a reply.

## TRANSFER PRICING DOCUMENTATION REQUIREMENTS

As mentioned in the first section, the government has recently introduced transfer pricing documentation requirements in both the Finance Act and the Tax Code. Previously, there was no legal basis to request companies to keep, or submit, contemporaneous transfer pricing documentation. The mining companies interviewed for this study are aware of the new provisions and have begun keeping the required documentation. Transfer pricing documentation should improve government oversight of related party transactions, as well as send a strong message to companies that they are being monitored.

However, one of the weaknesses of the new provision is that it lacks specificity. The documentation requirement does not stipulate how frequently companies are expected to update and prepare transfer pricing documentation, nor do they set out what information should be kept.<sup>4</sup> Specificity is essential if the government is to ensure that the transfer pricing documentation received is relevant, and to minimize the compliance burden for companies. Given that specific transfer pricing information is required from mining companies, it may be useful for the DNI to work with the mines ministry, to clarify what the transfer pricing documentation rule requires of mining companies.

Finally, transfer pricing documentation is less useful if Guinea is prevented from accessing tax information from other relevant jurisdictions. According to a senior tax official, “What company is going to say that their prices are not market prices, it is one thing to write a transfer pricing documentation provision and another thing to implement it.” The clear inference here is that if the DNI has difficulty accessing robust comparables as well as information on related parties from other jurisdictions, transfer pricing documentation will be of limited use in conclusively evaluating related party transactions.

*According to the current transfer pricing documentation requirements it is unclear how frequently companies are expected to update and prepare transfer pricing documentation, and what information should be kept.*

## TRANSFER PRICING DISPUTE RESOLUTION MECHANISMS

The government of Guinea has double taxation agreements (DTAs) with France, Tunisia, and Morocco, and is at an advanced stage with Egypt, Ukraine, and the United Arab Emirates. They are keen to expand their treaty network further, however developed countries have been less willing to engage. Regardless, the mutual agreement procedures (MAPs) in these DTAs are an unlikely transfer pricing dispute resolution mechanism. This is because only a few of the local mining companies have parent companies registered in the countries within Guinea’s treaty network. Moreover, MDAs tend to specify the particular dispute resolution mechanisms to be used, overriding MAPs.

In practice, both the Guinea government and companies are reluctant to pursue arbitration to resolve disputes in the mining sector. For the government, arbitration is costly and unlikely to be successful given that Guinean lawyers are not well trained in this area in comparison to international legal teams. On the company side, many representatives said that arbitration was not an option as it would likely jeopardize their relationship with the government, which is ultimately more important. Companies will therefore incorporate tax adjustments regardless of their validity. Consequently, the DNI and mining companies resolve disputes through a process of case-by-case negotiation. The finance minister has the right to partially or

<sup>4</sup> See Chapter 7 of the UN Transfer Pricing Manual for detailed guidance on transfer pricing documentation rules. Ghana and Tanzania have both used the UN Manual as the basis for their transfer pricing documentation rules.

totally cancel a tax adjustment, particularly where it would put a company at risk of going under. In such instances the company must provide proof of the detrimental financial impact of an adjustment and the minister can choose to “waive a tax so as to not kill another tax” (i.e., PAYE tax, surface rents etc). This “give and take” approach seems to be working for the government and companies, however the lack of a clear decision-making framework creates considerable scope for corruption, as well as forced compromise.

## TRANSFER PRICING TECHNICAL ASSISTANCE

Technical assistance on transfer pricing has been minimal thus far with only three tax officials having received training. The IMF delivered this training in June 2015, on the subject of transfer pricing in the banking sector. There are plans to for future IMF transfer pricing trainings. Training has also been provided by the Institute for Mining for Development (IM4DC) on the subject of mining tax administration, including international taxation issues. Officials from the mines ministry and the DNI attended this training in Addis Ababa in late 2014.

Despite limited training for individual officials, there has been no transfer pricing technical assistance provided to government so far, and no support on drafting transfer pricing legal provisions. Training for individual DNI officials is a good start, yet there is a need for in-country support aimed at developing transfer pricing systems and tools that are context and sector specific. The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) and the World Bank have expressed a willingness to support such technical assistance in the mining sector specifically, if requested by the government. DNI officials have asked for support in the following areas: technical support on transfer pricing in the mining sector; further training on transfer pricing generally, ideally with follow up in-country; and improving collaboration with relevant tax administrations.

*DNI officials have requested international development partners to provide technical support on transfer pricing in mining, further training on transfer pricing generally, ideally with follow up in-country, and assistance improving collaboration with relevant tax administrations.*

## GOVERNMENT LEADERSHIP

Tax abuse in the mining sector is a clear priority for the current government administration. In 2013 the president participated on a G8 panel on tax avoidance where he made a strong call for G8 countries to help developing countries tackle this important issue. The mining contract review process, as well as the explicit prohibition on corruption in the new Mining Code, is strong evidence of the president’s personal commitment to maximizing tax revenue in the mining sector. While DNI officials acknowledge that the mining sector is politically sensitive, there was general agreement that there is no political interference when it comes to selecting mining companies for verification. However, this has not always been the case. Previously, it was difficult for the DNI to audit mining companies. In one instance a tax inspector had travelled overseas to investigate a mining company and found money in an account despite the fact the company had never declared profits. On the finance’s minister’s reading of the report, the inspector was requested to return overseas and confirm that the company was not making a profit. Tax inspectors agree that under the current regime, commitment to mining sector reform makes such political interference unlikely. While explicit political interference has reduced, the removal of the most competent tax inspectors following a successful verification of a gold mining company in 2011, may suggest that there are some government officials that still want to limit the DNI’s oversight of the mining sector.

Improving tax collection in the mining sector is a priority, however transfer pricing, and tax avoidance generally, are yet to be embedded in the political discourse. The government is concerned that mining companies are not paying as much tax as they should, yet there is less thought given as to why companies might not be paying tax, for example transfer mispricing or thin capitalization. According to a senior official at the ministry of mines, “People focus on what government is collecting, and although they may think it is less than should be collected, they don’t consider why or how this is happening.” This reflects the overarching challenge for the mining sector: a lack of strategic direction. According to representatives from mining companies, the government is not focused on the big picture; rather than strengthening local involvement in the mining value chain so that more tax revenue can be generated from transactions taking place in Guinea, the government instead is concerned with chasing withholding tax payments on revenues leaving the country. To improve tax collection in the mining sector, the government must first develop a strategy that clearly prioritizes the various trade-offs, as well as the short, versus long-term gains.



## CONCLUSION

The government of Guinea, specifically the finance ministry and the DNI, are only just becoming cognisant of transfer pricing to the extent that they are taking action in the form of transfer pricing documentation provisions. This is a good place to start, as access to transfer pricing documentation can be one of the major bottlenecks to the implementation of transfer pricing rules. However, without the necessary transfer pricing legal framework, expertise, and information, these provisions are ineffectual.

The government, particularly the political leadership, must prioritize transfer pricing reform; it is critical to safeguarding and increasing Guinea's domestic tax base. Fortunately, the DNI is a strong foundation for transfer pricing reform. While politicians and senior bureaucrats may not have recognized the scale of the transfer pricing problem, there are a handful of tax officials at the DNI that have an encyclopaedic knowledge of transfer pricing issues, particularly in the mining sector. With further training, access to information, a strong legal framework and political support, these officials have the capacity and the motivation to combat transfer mispricing in the mining sector.

Transfer pricing reform is required to ensure that the fundamentals are in place. However, beyond this the government must be strategic about the implementation of transfer pricing rules, selecting specific sectors, taxpayers, and transactions to focus on. The mining sector is an obvious area to concentrate on given its contribution to GDP. For the DNI to effectively monitor transfer pricing in the mining sector, tax officials require further training on transfer pricing as it relates to mining; support developing sector specific risk assessment tools to guide identification and evaluation of transfer pricing risks along the mining value chain; improved coordination with the ministry of mines to enable exchange of information and expertise; and access to appropriate domestic comparables. In relation to the last point, the DNI has made a pragmatic decision to rely primarily on standard industry rates. This may not be fully consistent with the arm's length principle but it is a simple way to begin to monitor transfer pricing risks and provide a basis to challenge taxpayers. This is particularly feasible in the bauxite industry where there are enough different operators to build a meaningful comparison. Given the size of the mining industry in Guinea it is realistic for the DNI, in collaboration with the ministry of mines, to get control of transfer pricing issues, as long as the approach is simple and contextually appropriate.

## RECOMMENDATIONS

### Transfer pricing legal framework

- 1 The Ministry of Finance should amend Article 117 of the Tax Code to state: (a) that related party transactions will be evaluated according to the arm's length principle, thereby clarifying the meaning of "improper deductions"; and (b) how the arm's length principle should be applied. While it is important for each country to identify appropriate transfer pricing methods depending on context, in most instances, the five OECD methods form the basis, leaving room for innovative techniques depending on the circumstances. This additional guidance will clarify expectations for taxpayers, and strengthen the legal basis for transfer pricing adjustments.
  - 2 The Ministry of Finance should amend current transfer pricing documentation provisions to clearly stipulate the frequency with which documentation should be updated, as well as the particular information to be included. Specifically, taxpayers should be required to keep an annual transfer pricing file that provides an overview of the MNE group business, as well as information on specific intercompany transactions between the company registered in Guinea and its affiliates. This information should be updated annually.<sup>5</sup> This amendment will prevent delays to the audit process, and ensure that the DNI has the information it needs to undertake transfer pricing risk assessments and audits.
  - 3 The Ministry of Mines should amend the Decret Relatif A' L'Application Des Dispositions Financieres Due Code Minier to clearly communicate how Article 138-11 of the Mining Code will be applied. The only reference to transfer pricing in the aforementioned decree requires taxpayers to use OECD transfer pricing methods to calculate arm's length prices. Given the importance of transfer pricing documentation, the Ministry of Mines may also wish to reference Article 13 of the Finance Act 2014, specifying the particular information required to evaluate transfer pricing risks in the mining sector.
  - 4 The Ministry of Mines should encourage companies to submit their long term purchase agreements (LTPAs) for approval in accordance with Article 138-11 of the Mining Code. At present, companies are not submitting LTPAs for approval because (a) it's not mandatory, and (b) the incentive to submit voluntarily (i.e. government waiving its pre-emptive right) is weak due to the government having limited capacity to conclusively establish non-arm's length sales. The ideal solution would be to amend the code so as to uncouple submission of LTPAs from the government's pre-emptive right, requiring companies to submit LTPAs for approval as a matter of obligation. However, in the short-term, the Ministry of Mines should actively encourage companies to voluntarily submit their LTPAs for approval, so as to enable more informed oversight of mineral sales.
  - 5 The Ministry of Finance should introduce the option for large-scale taxpayers to request advance pricing agreements (APAs). Article 138-11 of the Mining Code invites companies to submit LTPAs for the purpose of agreeing future prices for mineral substances, however this does not extend to other related party transactions. Challenges associated with negotiating APAs can be overcome with technical support from international development partners.
- 5 See Chapter 7 of the UN Transfer Pricing Manual for detailed guidance on transfer pricing documentation rules. Both Ghana and Tanzania have used the UN Manual as the basis for their transfer pricing documentation rules.

### Transfer pricing administrative arrangements

- 6 The government of Guinea should request the establishment of a formal coordination mechanism, bringing together the Ministry of Finance, DNI, and the Ministry of Mines for the purpose of improving mining tax administration. This mechanism could take the form of a mining revenue taskforce, co-chaired by the Ministry of Finance and Ministry of Mines. The taskforce would not assume the audit responsibilities of the DNI, but rather aim to strengthen the exchange of data and expertise so as to make mining audits as informed and efficient as possible.
- 7 The DNI should identify a small number of tax inspectors within the Fiscal Control Division to be trained as transfer pricing specialists. While it is important that all officials in the Large Taxpayers Office receive some basic training on transfer pricing, identifying dedicated transfer pricing specialists will provide a focus for capacity building efforts, and ensure consistent application of transfer pricing rules. These specialists should be the primary recipients of transfer pricing training, ensuring continuous development of expertise. Specialists should remain embedded within the various sector teams of the Fiscal Control Division, enabling them to identify potential transfer pricing issues during general audits. Once the transfer pricing specialists are sufficiently experienced, the DNI may wish to set up a separate transfer pricing unit, however it is advisable to start with the decentralized approach and build up over time.
- 8 The Fiscal Control Division should dedicate more resources to the mining sector team. At present, officials within the Fiscal Control Division are divided equally across four sectors: telecoms, services, banking and insurance, mining and construction. Each division is important and transfer pricing is not the only consideration, yet given the tax potential of the mining sector there is a strong argument for increasing the capacity of this particular audit team.

### Transfer pricing information

- 9 The DNI should develop a transfer pricing risk assessment framework to improve the accuracy and efficacy of transfer pricing audits. The Large Taxpayers Office currently uses a small number of “red flags” to review company tax returns for the purpose of selecting cases for audit. This risk framework needs to be made more robust in terms of transfer pricing; specifically indicators should include taxpayer compliance, comparison to standard profit margin of taxpayers in similar industries, trends in turnover, balance sheet items, profitability ratios, cross border transactions with related parties, transactions with related parties in low tax jurisdictions, recurring losses or significant changes in operating results, and use of intangibles.
- 10 The mining sector audit team in the Fiscal Control Division should adapt the generic transfer pricing framework in recommendation 9, to capture transfer pricing risks specific to mining, as well as appropriate industry ratios to benchmark risk evaluation. To develop this sector-specific framework it is recommend that DNI officials collaborate with the Ministry of Mines to i) map the mining value chain, (ii) identify potential areas of transfer pricing risk, and (iii) develop standard industry rates to enable evaluation of risk manipulation.
- 11 The DNI should introduce a transfer pricing annual return form that taxpayers are required to submit with their annual tax return. The transfer pricing return form would require taxpayers to specify all related party transactions for that

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tax year, as well as detail the taxpayer's structure with respect to other related parties within the multinational group.<sup>6</sup> This form will reduce the compliance-monitoring burden, and enable more accurate selection of cases for audit.

- 12 The DNI and Ministry of Mines may wish to obtain a joint subscription to the Bauxite Index.<sup>7</sup> The Bauxite Index provides the CFR reference price, as well as the CBIX calculator, a simple tool that gives an indicative price for any bauxite delivered to China, based on the specific alumina, silicon, and water content. These price benchmarks can be used as the basis to review reported sale prices, as well as pricing formulas detailed in LTPAs.
- 13 International development partners should finance a subscription to a transfer pricing database for the DNI. Standard industry rates are a useful input to determining the arm's length price, however they should be used in conjunction with foreign comparable data. To overcome this challenge, the DNI requires access to an international comparables database, such as Orbis by Bureau van Djik. While these benchmarks may not always reflect the local context, they at least provide a reference point that the DNI can refer to when challenging taxpayers.

#### Transfer pricing knowledge and skills

- 14 International development partners should facilitate further training on transfer pricing, as well as specialized mining audit training, for DNI officials. So far, only three officials at the DNI have received training on transfer pricing, focused on banking and financial services. Further training must be fast-tracked, with priority given to transfer pricing risks in the mining sector. This training should be delivered to DNI officials, as well as officials from the Ministry of Mines, and Soguijami. It is critical that the latter institutions are included in the training so that they can apply their industry knowledge and technical expertise to monitoring potential risk transfer pricing areas.
- 15 International development partners should facilitate capacity building for civil society, the media, and parliament, with respect to transfer pricing in the mining sector. This training should improve basic knowledge, as well as form the basis for the development of performance monitoring tools to keep the government accountable, and the citizenry informed.

*Research for this case study took place in August 2015.*

6 See the Ghana and Tanzania tax administration websites for examples of annual transfer pricing return forms.

7 <https://thebauxiteindex.com>

## APPENDIX 1: INTERVIEW PARTICIPANTS

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Former secretary-general, Ministry of Mines: Guillaume Curtis  
Country project manager, GIZ: Alpha Diallo  
Director-general, GAC: Mamady Youlah  
Regional tax manager, AngloGold Ashanti: Momar Mbengue  
Fiscal advisor, Ministry of Mines: Bouna Sylla

## APPENDIX 2: ABBREVIATIONS AND ACRONYMS

APA	advance pricing agreement
CBG	Compagnie des bauxites de Guinée
DNI	National tax administration
DTA	double taxation agreement
EITI	Extractive Industries Transparency Initiative
GDP	gross domestic product
GNF	Guinean Francs
IFF	illicit financial flows
IMF	International Monetary Fund
LTPA	long-term purchase agreement
LTO	Large Taxpayers Office
MAP	mutual agreement procedure
MDA	mining development agreement
MNE	multinational enterprise
NRGI	Natural Resource Governance Institute
OECD	Organisation for Economic Co-operation and Development