LIBERIA REVENUE AUTHORITY

LRA Tax Practitioner Training
Module XI

Natural Resource Tax Administration

Liberia Revenue Authority

Monrovia

2022

CONTENTS

Overview: Natural Resources Definition & Categories

What is a natural resource?

A material source of wealth, such as mineral deposit, or a fresh water, that occurs in a natural state and has economic value

Natural resources - categories:

- Non-renewable resources [e.g. minerals – oil, gold, etc.]
- Renewable resources [biological resources – fisheries, forests]
- What about water?
- Resource extraction (harvesting) – the starting point of economic activities

Overview: Natural Resources Legal Status & Regime

- **Who owns a particular natural resource? – Issue of the legal title**
- Location and type of a natural resource – determining factors
- Natural resources and the legal nature of the territory – key link - Legal status and National (individual States') resources – entirely within their boundaries
- International resources - resources that cross states' boundaries or are located in the areas outside of any state's jurisdiction or control
- Legal regime – a set of rules and regulations (including relevant institutions) governing access to and exploitation of the resource

What's Special about NR Sector

- Substantial rents (return to owner)
- Pervasive uncertainty
- Asymmetric information
- High sunk costs, long production periods
- Extensive involvement of multinationals in some countries…and of State-Owned Enterprises in others
- Volatility of commodity prices – structural change surprises
- Minimum transparency & accountability
- Few of these considerations are unique to EI resources—they're just bigger. What is unique is:
  - Exhaustibility
  - Recognize revenues as transformation of finite assets in the ground into other assets

Historic trends of resource taxation

- Mining/oil sector dominates economy in many LDCs
- Resource sector dominated by transnational / foreign co's
- For centuries royalties formed backbone of mineral taxation
- Combination of fiscal instruments:
  - Royalties/production taxes (average rates of 3-4%) & ordinary profit taxes
  - Since 2000 global convergence of CIT rates, Liberia has 25 – 30%
- Since 1970s increasing fiscal burden on mineral sector (iron ore, oil & gas)
- More direct government involvement with rising shares in economic rents:
  - More sophisticated rent sharing measures: resource rent taxes,
  - Production-sharing contracts
  - Equity participation (= contract-stability enhancing outcome as automatically shares in windfall profits)
- Race to the bottom: aggressive tax incentives/tax holidays for mining to attract FDI (many African states)
- **Key policy question: Are tax incentives needed? – regional tax coord.**

Taxing the Natural Resources Sector

Why should the exploitation of mineral and petroleum resources be taxed?

- Minerals belong to the state - compensation
- Tax is the price of exploiting a public asset
- States provide legal and institutional framework for resource exploitation
- Enclave character - projects may have few spin-offs – redistribution of benefits
- Dealing with the economic, social and political impact of resource exploitation
- Companies can raise large amounts of money, they can make large profits

Overview: Natural Resource Charter

Precept 4

“Tax regimes and contractual terms should enable the government to realize the full value of its resources consistent with attracting necessary investment, and should be robust to changing circumstances.”

Central Objectives

- Trade-offs
- Maximize PV of net government revenues
- Timing of receipts
- “Progressivity” – taxation of rent?
- Ease of administration (for authorities) and compliance (for taxpayers)

I.5 Why does tax design of natural resource sector deviate from other economic activities?

- Separate fiscal system for resources sector due to **resource rent** potential (scarcity of resources, Hotelling rule,1931)
- Resource rents are surplus return over & above input costs (capital, labour, other production factors, opportunity costs of sunk capital)
- Pure rent represents financial surplus that could be taxed away without influencing economic behavior or distorting resource allocation
- 2 risks are present in developing resource projects:
  - Commercial risk
  - Sovereign risk (constructive expropriation by regulation, taxation decisions)
- Govt's can reduce both risks by adhering to macroecon. & fiscal stability, providing exploration data, delivering good physical infrastructure
- Practically, deposit-by-deposit approach difficult to achieve due to information asymmetry regarding deposits' profit potential, informed by—
  - Differing grades
  - Geographic distance to market
  - Infrastructure availability
  - Cost of development
  - Sovereign risk

Factors determining resource taxation

Thomas Baunsgaard – Primer on Mineral Taxation, IMF WP/01/139

Hard-rock mining:

- Artisan mining, may escape standard tax regime: only attracting licensing fees, royalties or surface fees
- Small-scale mining
- Large-scale projects may negotiate special tax allowance systems
- Production-sharing agreements very rare

Oil: Large oil/gas fields generate super rents, therefore royalties & other fiscal charges are commonly much higher than in mining (between 12.5% and 20%)

- ✓ Size of oil field normally shows high correlation with profitability
- ✓ Production-sharing contracts are common

Gas:

- Not as profitable as oil – demand market must first be created
- Expensive pipeline infrastructure, cross-border problems, exceedingly expensive downstream liquefaction & transportation
- High political risks, individually negotiated with flexible fiscal regimes

1.17 Fiscal stability / equilibrium clauses

- Risks affect both investor & government
- Investors are risk adverse BUT so are LDCs-governments
- If taxes are deferred continuously, pressures for renegotiation grow
- Hence, investors seek fiscal stability clauses
- Perception of fiscal stability enhanced, if tax measures are introduced that correlate tax take closely with RoR:
  - Hence, progressive profit taxes
  - RRT in theory & to lesser extent CIT or PSCs
- Fiscal preservation clauses initially attractive, but over LT expensive as it limits govt. ability to change fiscal terms in times of ‘super profits’
- Different forms of stability clauses:
  - Freezing rates & tax base definition
  - Administrative complex if per project
  - Guaranteeing investor share of economic rent
  - wide-spread fiscal preservation in petroleum, oil and Gas and Mining and other Agreements (Agriculture)- Liberia

Negotiating fiscal regime – Liberia, the World over

fluctuating balance between governments & investors

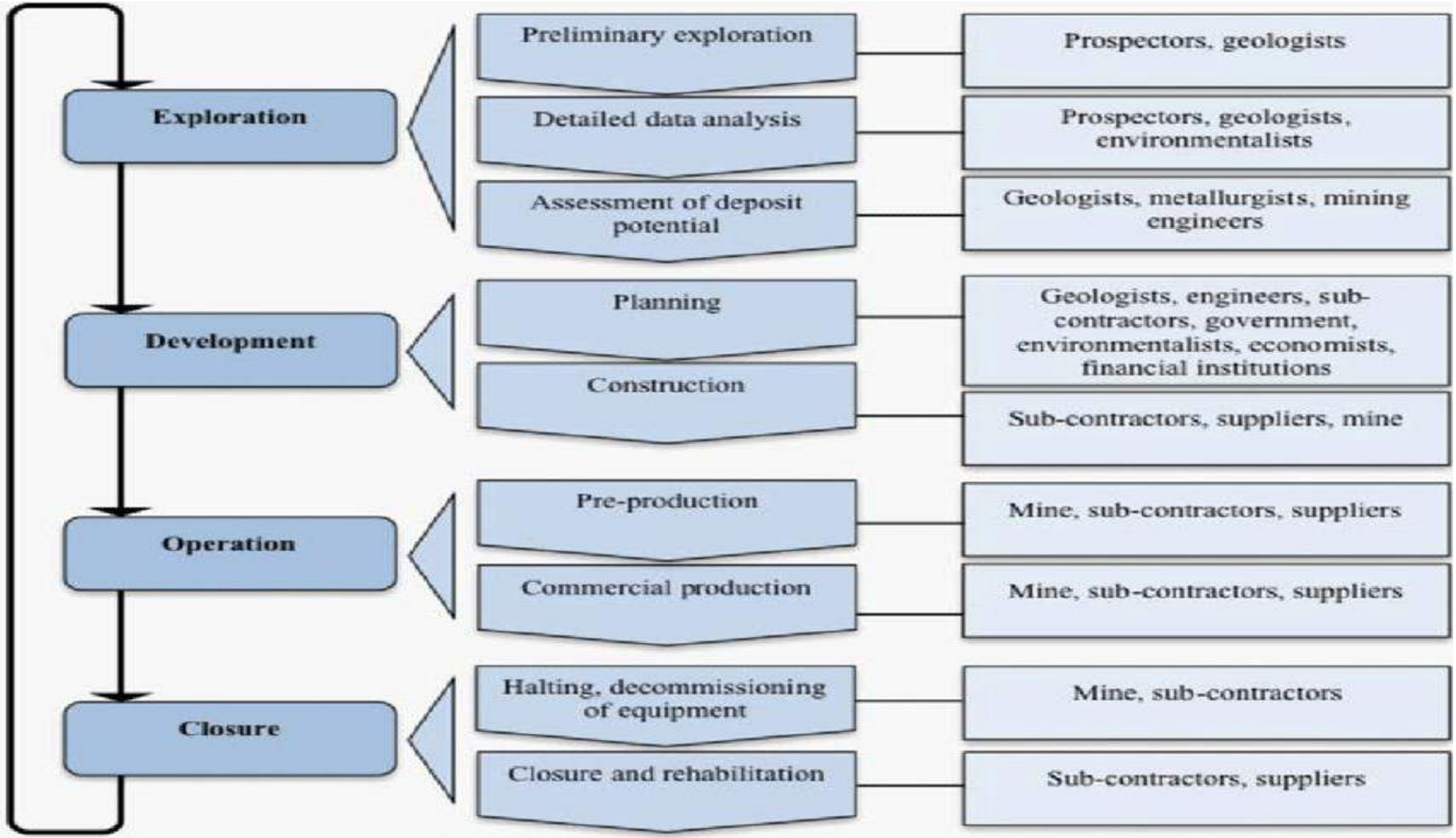
INVESTORS — prefer back-end loading of tax payments:

- Low burden fiscal measures to compensate for project & sovereign risk
- Recoup initial capital outlay on mining, oil & gas projects over shortest time possible
- Maximising long-run post-tax returns
- Fiscal stability provisions – no windfall profit taxes when commodity prices increase
- Preference for Rent Resource Tax or Brown Tax (negative tax or subsidy by governments)

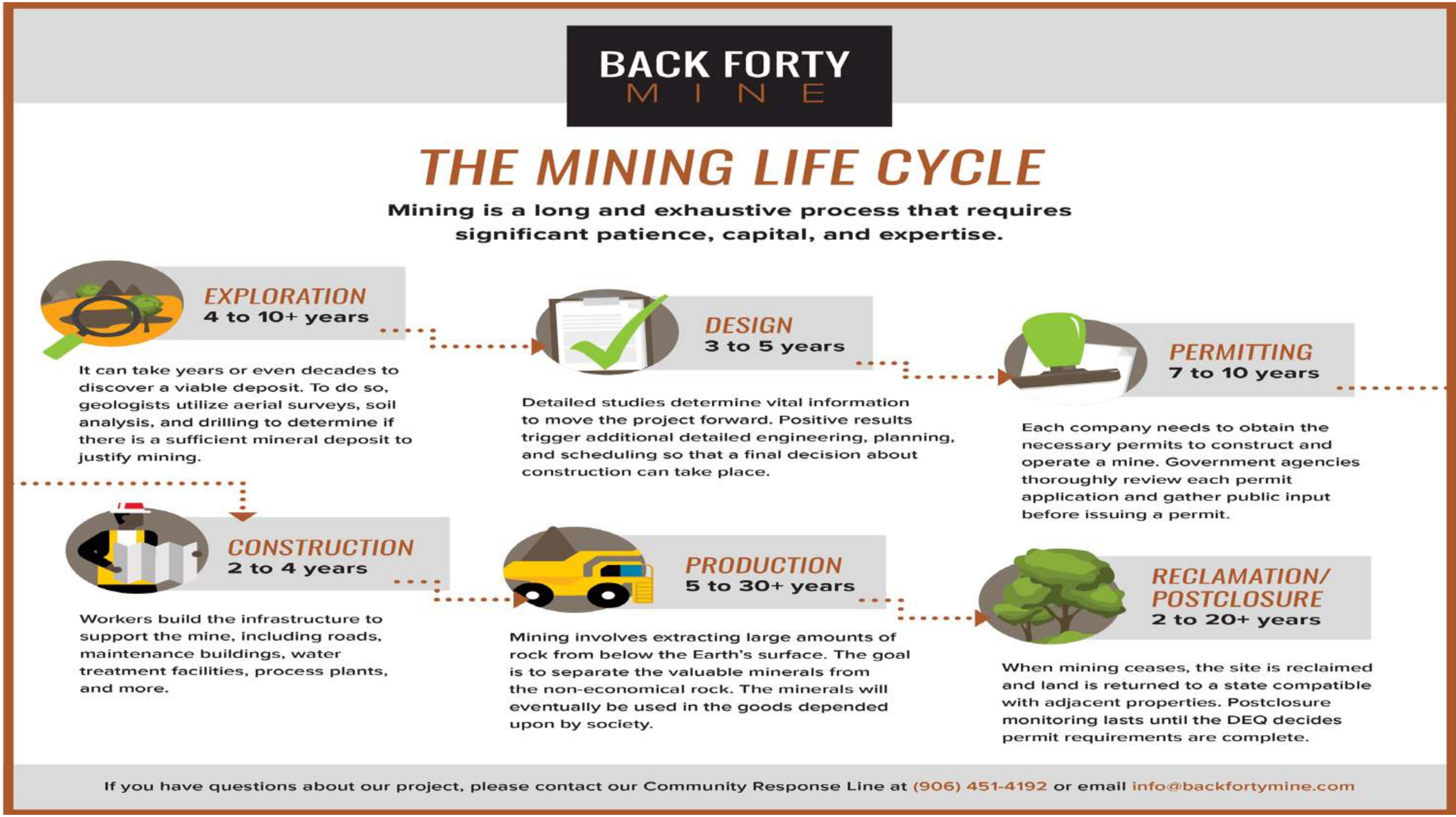
GOVERNMENTS — prefer front-end loading of tax payments:

- Securing substantial share of resource rent
- Minimising tax-induced inefficiencies
- Receive fiscal revenues as production commences
- Integrating mining and oil & gas tax issues into general tax codes
- Simplify tax administration & protect with anti-avoidance measures against transfer pricing practices
- Minimise information asymmetry as to projects' profitability

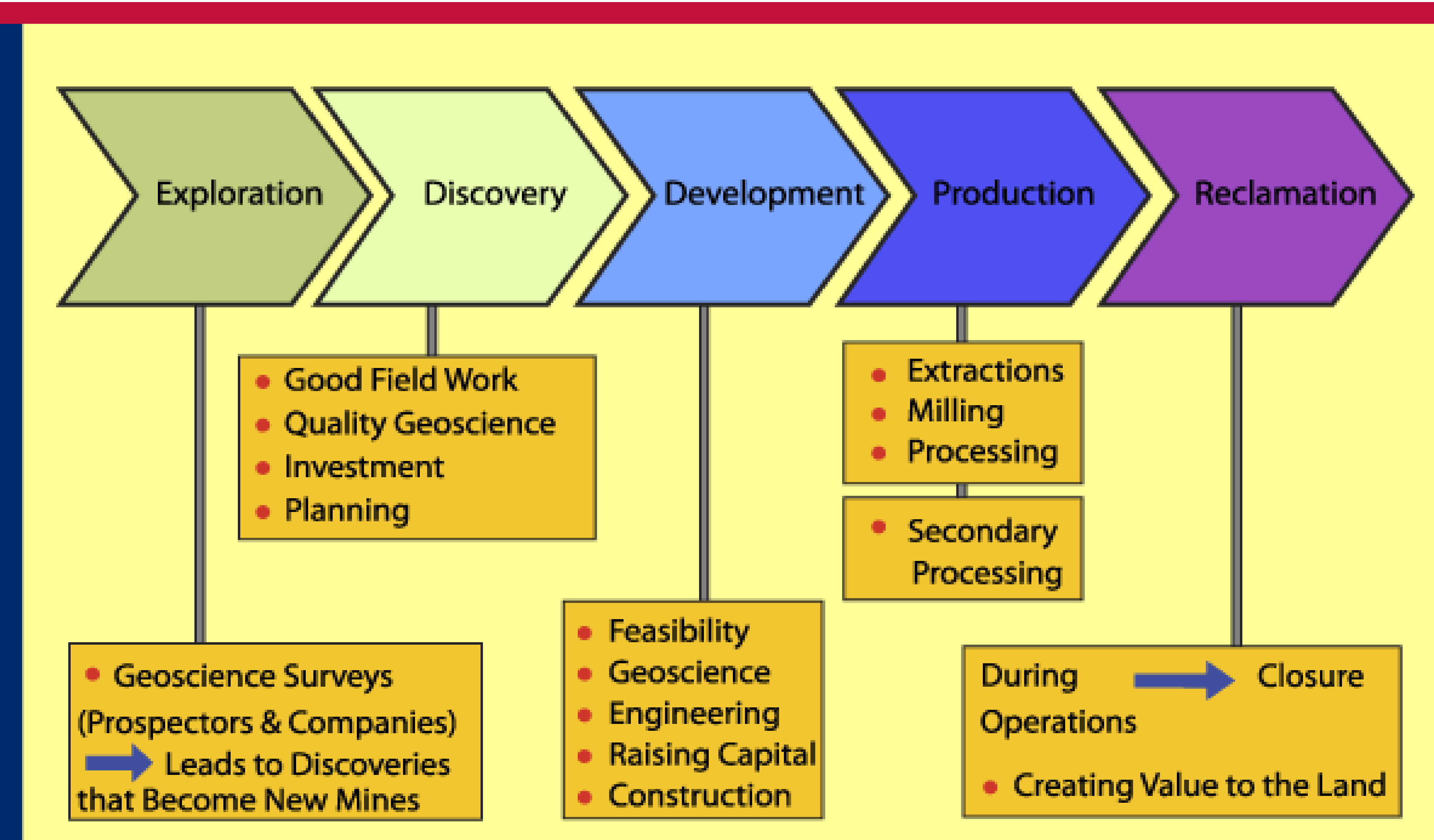
Mines Life Cycle



Mines Life Cycle



Mines Life Cycle



How to Tax

Do special sector characteristics warrant special tax regimes?

- Lengthy and costly exploration and start-up phases
- Size of investment & timescale - capital intensity
- Possibility of exploration failure - incentives
- Fixed/immobile assets, often in remote/difficult locations
- Special technological knowledge required
- Non-renewable/finite resource
- Unpredictability and cyclical nature of international commodity markets
- The relative importance of EI to host countries
- Enclave character – little local employment opportunities
- Major social and environmental impact (restoration/ decommissioning), costs when project income has ceased
- Mining: Costs increase as projects mature
- Mining: Long life-span of projects 25 years? 50 years? 100 years?

1.14 Non-tax fees — front-end loading favoring government as resource owner

- **Fixed fees, prospecting/mining surface rental fees:**
  - Administrative charges unrelated to profits but a function of size of area under license (more regulatory measure to make unaffordable the sterilization of mineral deposits as anti-competition strategy by firms)
- **Competitive bonus bidding (petroleum sector) / discovery or production bonuses:**
  - In competitive bidding market for oil/gas leases, government could get up-front appropriate share of economic rent
  - If too few players bid, high risk of collusion with low rent capture for govt.
  - Front-end loading may discourage marginal resource development
  - Needs little administrative effort
  - In cases of uncertain geological potential & high sovereign risk, investors are loath to commit significant funds & bidding amounts may generally be too low
  - Could destabilize project over long run, as initial low bids for potentially rich resource may trigger re-negotiations of fiscal terms

LIBERIA'S NATURAL RESOURCE SECTOR

- **Liberia is endowed with a variety of Natural Resources:-**
  - Mining- Gold, Diamond, Iron Ore, Barite etc.
  - Agriculture- Rubber, Oil Palm
  - Forestry- variety of tree species such as red Ironwood, Camwood, Teak, Mahogany, etc.
  - Petroleum- Oil & Gas exploration on-going

In the FY2020/21, the Natural Resource sector contributed US$78.8m up from US$68.8m collected in FY 2019/20 representing a 15% increase in revenue collections from the sector

Liberia's Natural Resources Section and Sector

- **Natural Resources Sector of Liberia**

  - Extractive
    Mining and Petroleum
  - Renewable
    Agriculture and Forestry

- **Natural Resources Section**

- The Natural Resources Tax Section is a specialized tax section within the Domestic Tax Department responsible for administering taxation in the natural resource sector of Liberia. The section is responsible for audit and Analysis, Assessment and Accounting in the Mining, Petroleum, Agriculture and Forestry sectors.

Legal Framework

- Like in all other countries all minerals on the surface of the ground or in the soil or subsoil or rivers, streams, water courses, territorial waters and the continental shelf of Liberia are the property of republic of Liberia.

- Natural Resources activities in Liberia are governed by
- Liberia Mineral policy
- Liberia Minerals and Mining Law 2000,
- Liberia Public Procurement and Concession Act

Legal Framework

- Renewable resources include the uncultivated forest, cultivated trees (example, rubber and oil palm), other growing plants (including food and tree crops)s, the raising and subsequent harvesting of fish or livestock, the sea, sun, wind, rivers and other similar resources that are not exhausted if their energy is captured or their products are prudentially harvested, but do not include cultivated forest or uncultivated trees if used in forestry

- Renewable activities in Liberia are governed by
  - Agriculture and fisheries Acts and regulations
  - Forestry laws and regulations,
  - Liberia Public Procurement and Concession Act

Legal Framework

- Liberia Revenue Code
- Other relevant regulations

Liberia Mineral policy- Provides the policy framework for the sustainable management of Liberia mineral resources and provides guidance on interventions by government institutions and other stakeholders towards the management of Mineral resources to ensure sustainable economic growth.

The Liberia Mineral and Mining Law 2000- provides rules and regulations for licensing, exploitation, development production of minerals in Liberia.

Legal Framework

- Rubber Industry Rehabilitation and Development Fund Act – governs non-tax terms of extraction of rubber-tree resources in Liberia

- Oil Palm Development Fund Act governs non-tax terms of extraction of palm-oil resources
- Fisheries Regulations
- Forestry Development Regulations

- The Liberia Public Procurement and Concessions Act, 2005- This sets out a transparent and competitive system of bidding for state extractive and renewable assets

- The Various Mineral Development Agreements between the GoL and the Concessionaires

- Liberia Revenue Code (LRC) and related regulations and policies

Regulatory Entities

- Mining is regulated by Ministry of Mines and Energy (MME) –
- Liberia Land Authority

- Petroleum – National Oil Company of Liberia (NOCAL)
- Liberia Petroleum Regulatory Agency –LPRA

- Agriculture – Ministry of Agriculture – MOA
- Forestry – Forestry Development Authority- Task force - FDA
- Fisheries – National Fisheries and Aquaculture Authority

- Fiscal Policies - Ministry of Finance and Development Planning - MFDP
- Fiscal Administration – Liberia Revenue Authority – LRA

- Environmental Protection – Environmental Protection Agency -EPA

Taxes and Non-Tax Revenue

- Income Tax Advance Payment (2% Gross Income)- Sec. 601 (c)(3), 701 (c)(3),
- Corporate Income Tax (25% & 30%)–Section 602, 702 (a) & 741
- Personal Income Tax (PIT) - (Section 200, 905 (e))
- WH on Royalties, License Fees and Similar Payments (10% Res. & 15% Non-res.) - Sec. 806 (b) and 905(b)
- WH on Gambling Winnings (20%) – Section 806 (c) & 905 (c)
- WH on Services, (6%) – Sec. 806(e), (f)(3) and 905 (f) &(h)(3)
- Royalties and Surface Rent (Section 604 and 704)
- Other obligations as per any Concession Agreement –section (4)(f)
- WH on Interest and Dividends (5%), Services, (6%) – Sec. 806(b), (e), (f)(1-3) and 905 (f) &(h)(1-3)
- WH on Rental (15% and 10%) - Section 806(d) & 905(d)
- Real Estate (Section 2000)
- GST and Excise Tax (Sections 1021 & 1120)
- Excise Taxes (Section 1120 & 1121)
- Customs Duties (1200)

- FDA related fees -

Income Tax Imposed

- Every person is obliged to pay taxes for which the person is liable (sec 2)

- Section 601 imposes a tax known as income tax on taxable income from agriculture production and renewable resource projects

- Section 701 imposes a tax known as income tax on the taxable income of every mining project as defined in sec 700.

- Similarly, Section 740 imposes income tax on the taxable income from a petroleum project as defined in section 700

I.6 Types of resource taxes

- **No single best model of different tax combinations—**
  - Model incorporating self-adjusting tax increases in times of high commodity prices, will guarantee stability of fiscal contract & increase country's LT-attraction for FDI
- **Direct tax instruments / *in personam* taxes / net revenue:**
  - Corporate income tax plus withholding tax of 15% (capital gains tax rate)
  - Progressive profit taxes such as gold mining formula
  - Resource rent taxes
  - Brown tax, cash flow tax with government subsidy
  - Windfall profits tax, additional profit tax, super-profit tax, net profits royalties
- **Indirect tax instruments / *in rem*:**
  - *Ad valorem*, specific/production volume royalties
  - Import duties, export duties
  - VAT, sales tax
  - Property or capital taxes, stamp duties
- **Non-tax instruments:**
  - Competitive bonus bidding, auctions (e.g., hydrocarbons)
  - Surface Rent
  - Production sharing contracts
  - State equity participation

I.7 Corporate tax – mining (forestry, fishing)

- Most jurisdictions apply standard corp. rate
- Higher CIT rates apply in oil & gas sector (bigger rents)
- Resource deposit specificity, may lead to individually negotiated corp. tax dispensation for large-scale projects
- Some jurisdictions exempt mineral extraction activities from withholding taxes due to higher tax burden on mining co's
- Mining rehabilitation / decommissioning trust funds: deduction for contributions to fund & tax-free buildup of fund
- Special capital allowances for capital intensive projects (100% expensing)
- Transfer pricing incidence potentially high — requires introduction of OECD-type anti-transfer pricing rules & ring-fencing provisions:
  - TNCs dominate & with multi-jurisdictional operations
  - Sale of minerals below market prices to affiliates in low-tax jurisdictions
  - For example: diamonds notoriously difficult to value – see lessons from Southern Africa on need for GDV
  - Not all minerals are traded on metal exchanges (vertically integrated firms)

Income Tax Imposed

- The applicable tax rate for extraction of renewable resources except for rice is 25% (rice is 15%)
- The applicable tax rate for mining and petroleum is 30%
- Regardless of the legal form of organization adopted, a producer's taxable income shall be determined separately for each mining production project.
- A person with interest in more than one project shall not be permitted to consolidate his income or loss

1.10 Indirect charges: royalties

- **Royalties - oldest form of mineral extraction taxation – is it a tax???**
- **Imposed in 3 forms:**

1. **Value of mineral sales (*ad valorem*)**
2. **Set charge per production volume (= unit or specific royalty)**
3. **Profit-based or net smelter royalty**

– Favoured by governments due to front-end loading of tax payments
– Is a consideration for right to extract (similar to capital and labour input costs)
– Analogous to lease payment: if lessee is operating unprofitably, lessor will not rent-out property for free
– High rate royalties deter investments as it increases economic cut-off grade
– Will make development of marginal deposit unprofitable
– In case of oil/gas production royalties can be imposed on net of cost basis to accommodate for production & transportation cost
– Admin capacity must exist to monitor closely production volumes

1.11 *Ad valorem* royalty vs. profit royalty

- **“By far the predominant form of mineral taxation is the *ad valorem royalty* which simply takes a percentage share of the gross value of output from specified mining project”**
  - *Head & Krever (eds.): Taxation towards 2000 – Australian Tax Research Foundation, p. 210*
- *Ad valorem* royalty is determined by applying royalty rate on gross sales value of minerals
- Royalty does not accommodate:
  - Differences in production costs of minerals
  - Differences in profit ratios from sale of minerals
- Profit-based royalty focuses on after-cost profits from sale of minerals
- Profit-based royalty base is narrower— hence, much higher rate structure Royalty payments in terms of ITA principles deductible expense
- *Ad valorem* & specific royalties create least uncertainty for governments

1.12 Advantages / disadvantages of *ad valorem* royalty

ADVANTAGES:

- Companies cannot artificially inflate costs
- Less collection risk for Government
- Royalty adjusts automatically for commodity price & profit fluctuations
- Non-negotiable aspects of royalty has fiscally stabilising impact:
  - Communities benefit of increased public resources as mining commences
  - Over long run should maximise investor certainty
- Narrow compliance gap as administration is straight forward & predictable
- However, fair market value must be ascertainable

DISADVANTAGES:

- Base of royalty is broad — high rates may unduly erode investor profits
- Encourages mining of high-grade ores (“picking-the-eye”)
- Need command & control measures against ‘high-grading’
- Regulatory capacity to enforce mining of deposit to "average grade of ore"
- Complex calculations in case of composite minerals in concentrate/sulphides rock

1.13 Advantages & disadvantages of profit royalty

ADVANTAGES:

- Profit royalty has minimal adverse impact on private investment behaviour:
  - Government & investors are both proportionately at risk
- It focuses on mine's ability to pay
  - But it is a factor payment not a tax!
- Royalty calculation does not require segregation based on mineral type, grade, or level of processing
- One rate could be applied to all mineral categories

DISADVANTAGES:

- Profit royalties may easily be subject to aggressive tax accounting
- Comprehensive anti-avoidance measures needed (as in ITA)
- High collection risk for government because royalties vary with profits

Income Tax Imposed

- Section 700(b)(5) defines a mining production project to mean " Mineral Development, Mining or related activities carried out by a mining project producer within a Mining License Area.

- A mining project producer is a person who carries out-
  - Mineral exploration under a mineral exploration license
  - Mineral exploration, development or production activities under an MDA or class A license

Limitation of Scope- Sec 700(b)(6)

- Mineral exploration, mining development, mining, or related activities carried out under any category of license issued in accordance with the mining law other than a **mining exploration license** or a **Class A mining license** is not a “mining project” and is taxable under the general rules of chapter 2 rather than a “mining project” under chapter 7 except that the royalty rates of section 704 apply to the sale or other disposition of minerals mined under the license other than a class A license.

Income tax imposed/ Interaction of MDA & RCL

- For purposes of determining income tax, income from a renewable resource and mining projects is considered to be income of a resident legal person or a sec 803 permanent establishment taxable according to the rules applicable to a resident person.

- The CAs, MDAs and PSAs have overriding provisions over the RCL

- Care must be taken to review and consult the CAs MDAs/PSAs before evoking any provisions of the revenue code.

Valuation of Resources or Minerals-

- Extracted minerals shall be valued for all purposes of the code using the valuation method described in section 703

- Section 603 and 703(a) provides; “resources or mineral extracted by a renewable resource project or mining project are valued for all purposes at fair market value f.o.b Liberia without reduction for claims, counterclaims, discount, commissions or any other asserted offset or deduction

Valuation of Renewable Resources and Minerals- Sec 601 (a) & 701(e)

- The fair market value F.O.B Liberia is determined for the day of shipment in accordance with section 10(cc), and in the case of a product for which there is a reliable international price index, as specified in regulations referencing that index- sec 703(b)

- The fair market value of gold F.O.B Liberia is the London afternoon gold price fixing (London PM Fix) for the day the gold is shipped from Liberia

Fair Market Value (“Value”)

- The phrase “Fair market value” (including its short form “value”) means the fair market value as determined in an arm’s length transaction by parties acting without obligation or coercion.

- A transaction between related persons is assumed not to be at arm’s length and regulations **may specify disclosure and documentation requirements** not applicable to transactions between unrelated persons

- The meaning of arm’s length may be established for related persons transactions through a methodology specified in an Advance Pricing Agreement in accordance with section 18

Advance Pricing Agreement

- The GoL and a producer may agree to a transfer pricing a transfer pricing methodology (TPM) in an APA in accordance with Sec 18.

- If a person who has entered into an APA complies fully with its terms and conditions the MoF will not contest the application of the TPM subject to the APA

- APA may specify the related party transactions it covers (covered transactions)

- APA negotiations must follow OECD and UN TP guidelines

Royalties

- Paid to the resource owner in return for the extraction of renewable resource product or finite resources from the land

- Under LRC, Royalty is due and payable to the GoL at the time of each shipment and in the amount of stated percent of the value of commercially shipped mineral, regardless of whether the shipment is a sale or a disposition;

- Some MDAs spell out different due dates

- The royalty rates under the LRC:
  - Iron ore- 4.5%
  - Gold and other base metals- 3%
  - Commercial Diamonds- 5%

Surface Rent

- Annual rent payments usually charged per unit of measurement of the surface area.
- Different rates may be prescribed for each phase/stage of the renewable resource or mining project life cycle.
- Surface rent is due on the effective date of the agreement and on the agreement anniversary thereafter- LRC- sections 604 and 704
- LRC prescribes different rates for each stage of the life the project life cycle.
- Rates in the CAs, MDAs & PSCs differ from the LRC

Surface Rent

Phase	Rate
Developed land	US $2.00 per acre
Undeveloped land	US $1.00 per acre
Land within mineral exploration license area	US$0.20 per acre
Land within a mining license area	Year 1-10 US$ 5.00 per acre
	Year 11-25 US$ 10.00 per acre

- The surface Rent amounts are subject to the inflationary adjustment in accordance with the US GDP implicit price deflator
- CAs and MDAs prescribe different surface rents and different ratios for the deflator.

Deductions Allowed for Producing Income

- The determination of deductions is necessary for the ascertainment of the taxable income of a person

- The general deductibility rule is that for an expense to be deductible, it must have been incurred in the generation of income included in Gross income

- Revenue expenditure incurred in generating Gross include is deductible unless specifically excluded under the RCL

- Capital expenditure is only deductible by way of Depreciation/amortisation

Allowable Deductions

- All expenditures incurred during the tax period wholly, and exclusively in connection with project operations (including non-capital operating costs but excluding capital costs except to the extent of the annual allowance for depreciation) are allowed as deductions including but no limited to the following items:

- Royalties and surface Rents paid under a mining exploration license or class A license in accordance with the mining law;

- Surface rent and other fees specified in Section 604, including non-tax fees paid in accordance with an applicable renewable resource law, limited in any period to the amount paid during or prior to the period and in the amount attributable to the period

Allowable Deductions

- Allowance for depreciation in accordance with the depreciation rules of chapter 2 subject to the special rules of sections 610 and 706

- Carry forward of net operating loss from prior periods up to 7 years beginning with the tax year in which commercial production begins

- Interest and other financial costs in connection with the operation of the project whether paid to an affiliate or third party, for the tax period incurred (subject to limitations for mining projects)

Allowable Deductions

Limitation on interest deduction:

- Interest paid to any person other than a resident bank is limited to the amount of interest received plus 50% of taxable income other than interest- sec 203(d)
- Interest carry forward under chapter 7 does not expire- Sec 708
- Production development, Exploration and development expenditure- deductible commencing in the period in which commercial production begins- Sec 600 and 709
- Sec 600, 709 & sec 706 imply that no deductions are available prior to commencement of commercial production

Allowable Deductions

- Payments to any government- approved trust fund for mining reclamation/Decommission expenses subject to limitations- sec 710

- Management fees BUT not exceeding 2% of the operating expenses incurred for the tax period

- Subject to sec. 203 (c)Amount of bad Debts incurred provided that amount was subject to income taxation in a prior tax period

- Charitable donations made in Liberia to qualifying organizations subject to limitations (Sec. 205 (b))

Allowable Deductions

- Expenses related to the project's and mining project's "other income" under subsection (a)(2) to extent otherwise allowable as a deduction under chapter 2 and this chapter.

- Project or Mining project's "other income" includes income received from business activity or investment accruing in, derived from, brought into or received in Liberia, including currency gains when realized (but not from hedging transactions) less any allowable deductions.

Non- Deductible Expenses

- Payments to an expatriate employee as reimbursement for taxes and duties paid by the employee to the government
- A loss from a hedging transaction
- Incentive deductions for manufacturing and service businesses under section 204(d)
- An amount otherwise allowed as a special tax incentive deduction under section 16
- Section 16 stipulates special investment incentives specifically excludes chapter 6 & 7 producers- Sec 16 (e)

Special Rules for Depreciation- Sec 610 and 706

- Depreciation of property placed in service **before commercial production begins** in the **first tax period** in which the mining production project's commercial production begins

- Any upfront payments that are mandatory under a contract are treated as the cost of property placed in service before commercial production begins and are to be amortized over a period of 10years

- The costs of **community development contributions** or **social contributions** that are mandatory under a contract are deductible in the year incurred;

- **Tangible moveable property-**(not including fixtures) are to be placed in one of two categories;

Special Rules for Depreciation- Sec 610 and 706

- **Heavy machinery**- to be depreciated by the pooled depreciation method at 30%
- **Light machinery-** to be depreciated by the pooled depreciation method at 40%

Tangible Fixed and Intangible Property

- Section 610 (c) and 706 (c) provide for a five year recovery period (20% per year) for agricultural and mining production assets

A. Tangible fixed property used directly in the mining and quarrying of metallic and nonmetallic minerals and milling, beneficiation, and other preparation of minerals but not equipment used to smelt, refine or process minerals or mineral ores and……

Special Rules for Depreciation- Sec 610 and 706

- Mining equipment which does not meet the definition is subject to 15 year recovery period or the expected period of commercial production whichever is shorter.

- A mining project's other tangible fixed property and intangible property shall be depreciated on an asset-by-asset basis over a 15 year period or the expected period of commercial production whichever is shorter using a straight line method

Related Party Transactions-

- Disclosure requirements- Sec 620 and 713
- Disclose the existence of related party transactions and contemporaneously document the manner in which prices are set in transfers to related persons
- Notarize an agreement governing related party transaction in accordance with the law of the related person's country of residence
- Upon request, provide copies of agreements and other documents substantiating the existence of related party transactions and the manner in which prices are set

Related Party Transactions

- GoL and a producer may agree to a transfer price methodology in an APA in accordance with section 18
- The minister is required to issue regulations clarifying the degree of feasible, the reference prices, comparable and standards that will be used to evaluate transfer prices.
- The regulation takes into account the guidelines in section 18(b)

1.1 Special Challenges of Natural Resource Tax Administration

- Difficulties in administering fiscal regimes
- Different fiscal instrument for different multinationals
- Lack of robust monitoring of projects for revenue protection and collection
- Minimum budgetary support making compliance and monitor difficult

1.1 Special Challenges of Natural Resource Tax Administration

- **National**
- Stability and credibility
- General legislation or contract? Narrow the scope for negotiation?
- Processes for granting rights – design of auctions
- New contract forms
- Transparency and accountability
- Administration
  - Difficulties in administering fiscal regimes
  - Different fiscal instrument for different multinationals
  - Lack of robust monitoring of projects for revenue protection and collection

1.1 Special Challenges of Natural Resource Tax Administration

- Different ASM structure and regulatory regimes in neighboring countries
- Minimum capacity and equipment to conduct minerals valuation. Inadequate laboratory and testing facilities

- **International (BEPS)**

- Tax treatment of gains on sales of rights (direct or indirect)
- Tax treaties, base erosion and profit-shifting
- Vulnerability to abusive transfer pricing
- Alternatives to reliance on corporate income tax (Durst, 2019)
- A multilateral instrument?

END OF MODULE 11 ON Natural Resource Tax Administration

Thank You!