Resource Nationalism Update

► **Argentina:** The Argentine Government formally nationalized 51% of YPF from Spanish oil company Repsol. Repsol has begun proceedings under the bilateral investment treaty to seek compensation of $10.5b (or the equivalent of USD46.55 per share) for its 57.4% stake in YPF. A number of countries have raised concerns about the move by Argentina, as there is concern that there is the potential for collateral damage in other resource sectors.

► **Australia:** The Minerals Resource Rent Tax (MRRT) Bills became law in March 2012. With a 1 July 2012 commencement date fast approaching, there are a number of important decisions that all companies with iron ore or coal projects must now turn their attention to. As an affected taxpayer, companies will need to be aware of the decisions they need to make and their future obligations. A summary of these decisions and obligations is included in an Ernst & Young tax insight, along with an MRRT timeline identifying the key actions that need to be taken to manage a MRRT implementation.

► **Chile:** The Government is proposing tax reform to raise levies on companies to help fund an education overhaul. The tax reform bill, which still needs congressional approval, will raise the income tax rate for companies from 17% to 20%, lower stamp duty on credit and increase the annual tax revenue by between $700 million and $1 billion.

► **China:** The Chinese Government is seeking to require rare earth companies to obtain a value-added tax (VAT) permit. The VAT slip will aid in the regulation of quantities of rare earths exported from China. The Ministry of Industry, Information, Technology in China is also considering a national inventory of rare earths to allow for strategic buying and selling of rare earths.

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1 Lumina Copper shares pounded on spectre of broader Argentine nationalism, Mineweb, 18 April 2012; Repsol sues Argentina over YPF seizure, Financial Times, 15 May 2012
2 Ernst & Young Tax Insight, 23 January 2012
3 Chile proposes tax reform to fund education overhaul, Reuters, 27 April 2012
4 China to impose a rare earths tax, MineWeb, 4 June 2012
Mozambique: The Ministry of Mineral Resources and Energy in Mozambique has issued a tender for new exploration licences in the coal-rich Tete province that will be restricted to Mozambicans only. There have also been indications that Mozambique may also introduce a capital gains tax and legislation that will force companies to list around 5% of its domestic ventures on the Mozambican stock exchange.

Bolivia: Bolivian president Evo Morales suggested nationalising Bolivia's natural resources in a speech at a meeting of the Organisation of American States General Assembly. This follows the Government's nationalization of shares held by Spain's Red Electrica España in Bolivia's electricity transmission company, Empresa Transportadora de Electricidad S.A.

Democratic Republic of Congo: The Government is proposing to change its mining laws in 2012 to allow the government to take a greater stake in new mining projects and to raise taxes. The current mining code requires miners to cede 5% of a project to the State at the point of exploration. Mining companies will also be required to divulge their investors to increase the transparency and there will also be new procedures for new mining concessions.

India: An Indian task force, comprising representatives of the Steel, Mines and Environment and Forests Ministries, is working on the modalities for the levy of a Forest Development Tax on minerals mined in forested regions.

Indonesia: On 21 February 2012 the Indonesian Government issued Government Regulation No 24 of 2012. This regulation makes a number of changes:

- The issue of Mining Permits (IUPs) to a foreign investment company will now be done by the national Minister of Mines and Energy rather than at the regional level.
- Contracts of work (CoWs) and Coal Contracts of Work (CCoW) will remain valid for the term of their contracts but must adjust to the new mining code.
- The new law states that IUP holders need to carry out refining and processing in country - export of metal ores is banned. The implementation date of this is not yet clear (May 2012 or May 2014). There is also draft legislation to ban low-calorific coal exports from 2014.

The 2012 regulation also expands the divestment requirement to 51%. Companies holding IUPs will be required to divest shares to Indonesian participants in stages upon 5 years of commercial production. The new regulation also stipulates how the divestments should take place. The regulation does not, however, stipulate the consideration that National, Provincial or District Governments will have to pay to acquire stakes in the IUP.

In addition, there are reports that the Indonesian government is planning to issue a mining export tax regulation by June. A tax of 25% on mining exports is being considered for 2012 and a tax of 50% for 2013. By imposing export taxes the government seeks to become a producer of higher-value finished goods as opposed to exporter of raw materials.

Mongolia: The Mongolian government has passed new legislation to introduce a 49% cap on foreign ownership in strategic sectors including natural resources and in businesses worth more than $75 million or ones involving state-owned corporations. The new law was presented to the Parliament on 24 April 2012, shortly after the proposed $900m acquisition by the Aluminium Corporation of China of a 60% stake in one of Mongolia’s largest coal miners, SouthGobi Resources.

Pakistan: The Pakistani Federal Board of Revenue (FBR) is considering a new sales tax special procedure for coal mining companies to take effect in the next fiscal year. Current rules allow Inland Revenue Officers discretionary powers to unilaterally work out sales tax on the basis of a minimum value of taxable supply of locally produced coal at Rs 1000 per ton. The new procedure will fix the taxable value of locally produced coal to ensure that sales tax on coal is paid by all coal mining companies at a uniform rate.

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5 New Coal Exploration Licences in Mozambique to Be Awarded to Locals, IHS Global Insight, 5 June 2012
6 Bolivian president suggests nationalizing resources, IHS Global Insight, 4 June 2012
7 "Congo to boost State’s share of mining projects, raise taxes,” Bloomberg Businessweek, 21 March 2012
8 “India working on mining tax”, Mining Weekly, 20 March 2012
9 “Changes to the Indonesian Mining Law,” Ernst & Young Mining and Metals Tax Alert, May 2012
10 “Indonesia to impose mining tax by June, Mineweb, 13 April 2012
11 Mongolia passes watered-down foreign investment law, Reuters via MineWeb, 18 May 2012
12 Pakistan is reforming the way in which sales tax is calculated on coal, Coalweek, 14 May 2012
Ernst & Young's Global Mining & Metals Center

With a strong but volatile outlook for the sector, the global mining and metals industry is focused on future growth through expanded production, without losing sight of operational efficiency and cost optimization. The sector is also faced with the increased challenges of changing expectations in the maintenance of its social license to operate, skills shortages, effectively executing capital projects and meeting government revenue expectations.

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