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GOLDEN DAYS FOR NEWMONT

PUBLIC INTEREST REPORT

Africa Centre for Energy Policy

Disclaimer

The findings, interpretations and conclusions of the report are based on publicly available information. Newmont received a final draft of the report but did not provide any comment or correction.

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SUMMARY

Ghana receives an insignificant share of the total value of Ghana's gold production.

In the last four years (2010-2013) Ghana's average share of the total value of Ghana's gold production was approximately 7 percent. While Ghana received 1.7 billion USD in taxes, the total value of Ghana's gold production was exceeding 23 billion USD in the four-year period.

Low tax payments from the American mining company Newmont clearly illustrates how Ghana is not adequately benefiting from the current tax regime.

To this date Newmont has paid less than 500 million USD in corporate taxes since its establishment in Ghana in 2003. Still, Newmont reported annual revenues of 931 million USD in 2012, 919 million USD in 2011 and 655 million USD in 2010, a total of 2.5 billion USD in the three year period. And if we calculate the net total value of Newmont's estimated

total production of 785,000-850,000 ounces for 2014, the value of Newmont's gold production in 2014 would be around 1 billion USD.

Even if production costs are being deducted, the revenues from Newmont's operations are gigantic.

According to Newmont's own information the production costs per ounce of gold were 596 USD in 2012 and 542 USD in 2013, which indicates a net revenue between 850 - 1050 USD per ounce of gold in 2012/2013. In comparison Newmont had the lowest production costs per ounce of gold of all gold mining companies in Ghana in 2012/13. Newmont Ghana's annual revenues are also substantially higher than other foreign gold mining companies in Ghana.

Foreign mining companies have literally been experiencing 'golden days' in Ghana in the last decade.

Consequently, the Government of Ghana introduced new tax measures for mining companies in 2012 with the objective of benefiting more adequately and fairly from the mining sector. But international Mining companies argue that additional taxation would reduce productivity and has threatened to introduce layoffs or mining closures if the Government introduce new taxes, most notably a Windfall Profit tax.

Ghana's mining reforms has been an obstacle to maximizing Ghana's revenues.

Foreign mining companies are currently negotiating their Investment Agreement with the Mining Review Committee (MRC) with the objective of identifying an adequate tax in the mining industry. Negotiations have been ongoing for almost two years and it is still unclear when the committee will present its findings and recommendations to the Parliament.

Ghana cannot afford not to increase tax on Newmont and other mining companies.

Ghana's domestic revenue is expected to be 8.1 percent lower than the 2014 budget estimates (GoG 2014), and the situation is likely to persist with decreasing oil revenues which could lead to cut in social service such as education and health. But while Ghana is facing significant budget deficit and declining economic growth rates, the mining industry grew with 11.7 % in 2013 (EITI 2014).

Ghana's best option would be to re-introduce an additional profit-based tax, e.g. the Resource Rent Tax, to avoid losing out on extraordinary profits on gold in the future without discouraging future investments.

A Resource Rent Tax would only target 'pure rent' or extraordinary high profits and would therefore only target excessive profits without distorting long-term investment concerns. The Resource Rent Tax is recommended by institutions such as the World Bank and the IMF, and has been implemented in countries such as Liberia, Sierra Leone and Mozambique and is currently being discussed in Kenya.

Ghana need a mining mineral law. This would enable taxes and other revenues from mining to be used to provide inclusive development for the people.

Given that mineral resources are non-renewable, it is important to develop a set of rules for the management of revenues generated from mineral extraction.

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INTRODUCTION

Ghana is often highlighted as an African success story, with free and fair elections, peace and stability in a volatile region, and the impressive economic investments and growth rates are among the highest in the world. Ghana was upgraded to a lower middle-income status in 2010 and economic growth in Ghana is generally seen as a key driver behind the reduction in extreme poverty from 51.1 percent in 1990 to 18.2 percent in 2010. Ghana is also performing relatively well on the Millennium Development Goals (MDGs). Targets on extreme poverty and access to safe drinking water have already been meet, and targets on hunger, education and gender are expected to be achieved soon (AEO 2014).

Despite Ghana's commendable progress in combating poverty, the inequality across regions and between urban and rural areas are increasing. Many rural poor communities are yet to experience the gains from economic growth, and many are left with adverse affects from Ghana's gold rush in the last decade. While the absolute number of poor declined by 2.5 million in southern Ghana, the numbers actually increased by 0.9 million people in the North (Osei-Assibey 2014).

Ghana's economy is still mainly based on subsistence agriculture, which employs approximately 75 percent of the work force, mainly smallholder farmers. Though the large-scale extractive sector constitutes an increasing part of the economy and attracts a majority of foreign direct investments, it is an enclave industry that only generates very few jobs and economic opportunities for ordinary Ghanaians. The most efficient and simple way to ensure a more inclusive distribution of Ghana's resources is through taxation, which could increase the access and quality of social services substantially.

Ghana's total expenditure on poverty reduction, which includes health, education, and other services, was 1.84 billion USD in 2011 (GFI 2014). It is clear that Ghana could have benefitted much more from increasing gold prices, and that current policy discussions on additional taxes on foreign mining companies are justified. However, Ghana's current economic challenges combined with declining incomes in the mining industry have made the Government of Ghana to abandon its previous policy statements to introduce a new tax scheme that would ensure a higher government take of the gold revenue.

This report investigates the impact of the changing tax policies and incentives in the mining sector and analyses the tax payments from Newmont Ghana. The choice of Newmont for this study is based on a number of factors. Newmont is one of the biggest gold mining companies in Ghana, it has a stability clause which costs Ghanaians millions each year, its self-image is a transparent company disclosing contracts and paying taxes regularly.

The report uses the data that recently have become available to analyse the taxation of the gold industry in Ghana. The goal is to contribute to the on-going discussion on how to maximize the government take in Ghana to benefit a population where many still are without basic services while still being able to attract investments in extractive sector.

Section 1

GHANA'S ECONOMIC DEVELOPMENT AND CONTRIBUTION OF MINING

1.1 Introduction

Gold has always been a centrepiece of Ghana's economy even during the colonization era when Ghana was called the Gold Coast. Ghana currently ranks as the world's 10th largest gold producer and the 2nd largest in Africa, after South Africa. Ghana has currently 19 operating mines, 40 mining projects in the feasibility stage and more than 150 local and foreign mining companies in operation. In addition, small scale and artisanal mining account for approx. 34 percent of the gold production with limited government control and limited scope to tax collections (EITI 2014). It is also estimated that about 500,000 miners are involved in illegal small-scale mining activities. Many of the illegal miners are migrant workers from neighbouring countries hoping to be part of the next gold rush.

Since the Structural Adjustment Programmes in the 1980es, changing governments in Ghana have been promoting an export-led economic development to attract foreign direct investments (FDI). Ghana's economy has experienced annual growth rates of average 6.0 percent from 2005-2010 and reaching a record high of 15 percent in 2011. However, poor performance in the agricultural sector and sharp falls in global commodity

prices, Ghana's growth rates declined to 7.9 percent in 2012 and to 4.4 percent in 2013 (AEO 2014).

Foreign Direct Investments in the extractive sector has played a prominent role in Ghana's economic development the last decade, and FDIs was never really affected by the global financial crisis. FDI increased to 3.3 billion USD in 2012, up 2.2 percent from 3.2 billion USD in 2011 (KPMG 2014). The outlook for FDI remains strong for 2014, but foreign companies increasingly complain about higher government taxes, high interest rates, high inflation, shortage of electricity, and increasing wage demands from workers.

In 2011, Ghana's total export receipts increased by 60.6 percent to about 12.8 billion USD. This increase was mainly driven by an increase in export earnings from the gold sector, which accounted for 38 percent of total export earnings in 2011, an increase of 29.4 percent to 4.9 billion USD. Mineral exports continued to increase and reached 5.4 billion USD in 2012, but in 2013 exports were highly affected by a substantial fall in global gold prices and exports declined to 4.7 billion USD in 2013. The decline in global commodity prices have negatively impacted on Ghana's mineral exports and the foreign mining companies (AEO 2013).

1.2. Gold Mining Share of Economy

Ghana accounted for 3.3 percent of the global gold production in 2012. However, the falling world gold prices has consequently slowed Ghana's gold production, and current forecasts predict a massive drop in export earnings to around US$ 2 billion in both 2013 and 2014 (KPMG 2014).

Oil, gold, and cocoa account for approximately 90 percent of Ghana's total exports, and declining commodity prices will therefore have a significant impact on Ghana's economy (IMF 2013). Given the unlikely prospects for higher gold prices in 2014-15, it is expected that Ghana will continue to experience lower levels of gold production and consequently lower export earnings in the coming years (AEO 2014).

Ghana's current economic challenges and increasing budget deficit of around 12 percent of GDP in 2012, will continue to put major constraints on public spending. A recent IMF mission estimated growth rates to decline to 4.5 percent in 2014, down from 7.1 percent (IMF 2014). Domestic revenue is expected to be 8.1 percent lower than the 2014 budget estimates, and the situation is likely to persist (GoG 2014).

1.3. Ghana's Mining and Tax Laws

The Minerals and Mining Act of 2006 regulate Ghana's mining sector. But most of the tax laws and regulations, which affect the mining industry, are implemented as part of the annual national budget negotiations, which is prepared by the Ministry of Finance. The bulk of revenues come from the mining royalties and corporate tax, but mining companies also pay one-off and annual payments in the form of mineral right licenses, ground rent, property rate and mining leases.

Foreign mining companies in Ghana enjoy several favourable concessions, including income tax exemptions for non-resident expatriate staff and lack of customs duties for plant, machinery and equipment for the mineral operations. Yet, long-term investments stability agreements between the foreign mining companies and the Government mean that several aspects of the mining and tax laws do not apply to the companies in practise.

Table 1: Overview of Tax Reforms

Taxation on mining	2006	2012 (current)
Corporate income tax	25 percent	35 percent
Mineral Royalty	3-6 percent	5 percent
Capital gains tax	10 percent	15 percent
Withholding tax	10 percent	15 percent
Capital allowances	10-80 percent	20 percent for five years
Value added tax (VAT)	15 percent	17.5 percent

1.3.1. Tax Reforms

- The 2006 tax reform introduced substantial improvement for foreign mining companies. Corporate tax was lowered from 45 percent to 25 percent and initial capital allowances were increased from 25 percent to 80 percent, while at the same time introducing a long list of exemptions and expatriate employee tax incentives. The reform was clearly targeted to attract foreign direct investments.

- The 2012 tax reform increased the corporate income tax from 25 percent to 35 percent, eliminated the National Fiscal Stabilization Levy, and changed capital allowances to 20 percent over 5 years from the previously allowed 80 percent deduction. The Government also introduced a bill in Parliament for a 10 percent windfall profit tax of mining revenues.

Mining companies can e.g. opt for accelerated depreciation and the carry forward of losses, which limits the potential for corporate tax revenue.

1.3.2. Mining Royalties

Mineral royalties has historically contributed with up to 80 percent of mining revenues and up to 15 percent of corporate taxes (AEO 2014). But the 2013 EITI report shows a 75 percent increase in corporate tax payments from 2010-2011 and for the first time exceeding tax receipts from mineral royalties, which could mark the end of the investment recovery period for some of the major mining companies and therefore potentially substantial increases in mining revenues in the coming years (EITI 2013).

Table 2: Government Tax Receipts (in Ghana Cedi)

Taxation on mining	2010	2011	2012	2013
Mineral Royalty	150,453,905	218,151,362	357,851,654	368,864,143
Corporate Tax*	125,249,733	499,825,765	728,268,496	456,747,172
Total	298,973,901	762,472,091	1,086,120,150	825,611,315

***Corporate tax was 25% in 2010-2011.**

Source; EITI 2014

In the 2010 Budget Statement, the Government announced that it would abolish the sliding scale and introduce a 6 percent fixed royalty rate across the board. But after strong pressure from the mining industry the amendment ended at 5 percent (IEA 2013).

Exemptions of customs import duty of capital equipment, machinery, and intermediate goods, mainly in the extractive industry, represent about 70 percent of Ghana's total imports (IMF 2013). The impact on Government revenues from the exemption of customs import duties alone is substantial.

The mining sector is also affected by other government policies and has since late 2012 been experiencing increasing costs, due the increase of electricity tariffs of 78.2 percent and water tariffs of 59.8 percent, as well as the increase of 2.5 percent in the VAT rate (AEO 2014).

1.3.3. Transfer Pricing Regulations

Global Financial Integrity (GFI) estimates that trade mis-invoicing in the form of export under-invoicing, and illicit inflows in the form of import over-invoicing over a ten-year period 2002–2011, may have led to 3.86 billion USD in lost government revenues for Ghana or on average 386 million USD annually (GFI 2014). A recent European Commission (EC) study also explicitly concluded that Ghana's tax laws potentially increased the risk of transfer pricing malpractices in the mining sector (EC 2012).

It is beyond the scope of this study to assess mis-invoicing practices in foreign mining companies, but in general it is very difficult to track mis-invoicing and whether the Ghanaian revenue authorities have capacity and/or the staff to disclose transfer-pricing practises. Ghana's first Transfer Pricing regulation was only implemented in 2013, and **foreign companies have until recently experienced a relatively unregulated policy environment for mis-invoicing and malpractices.** But Finance Minister Seth Terkper now emphasizes that the Government will close leakages and loopholes by intensifying direct tax audits and customs clearances (GoG 2014).

1.3.4. Capacity of Ghanaian Tax Administration

The Ghana Revenue Authority (GRA) was established in 2009 from a merger of three tax revenue institutions into one single agency, namely Internal Revenue Service (IRS), the VAT Service and the Customs, Excise and Preventive Service (CEPS). The Ghana Revenue Authority has approximately 4,000 employees, who on average are in charge of 360 cases and taxpayers. Only 51 tax officials work with tax, audits and all records are managed manually, which means data is not easily accessible, and information sharing between different tax offices is difficult (EC 2012).

Some years back, the Ghana Government worked with GTZ to improve its tax policy and administration. As a result, the corporate tax revenues increased by 44 percent in real terms, and direct taxation by 22 percent between 2003 and 2005 (GIE 2008). The potential for increased tax revenue mobilization is very substantial and Finance Minister Seth Terkper has also made it a key priority to close loopholes, widen the tax net, intensify direct tax audits and customs post clearances.

The Ghana EITI 2013 report on the extractive industry does not give the full overview as it only include certain payments, e.g. mineral royalties, corporate tax, payments for mineral rights licences, ground rent, property rates, and dividends paid to government. The 2013 GEITI report therefore also criticize the mining companies for their unwillingness to provide information beyond payments made to government (EITI 2013).

Section 2
REVENUE MOBILIZATION

2.1. Introduction

The lack of transparency on mine profitability and corporate costs beyond government taxes makes it difficult to determine the exact impact of tax incentives. The following estimations from different stakeholders clearly underline the economic scale of potential losses;

- According to the 2013 Budget and Economic Policy Statement of the Government, Ghana's tax expenditure is about 3.28 per cent of GDP and tax incentives was valued at about 2.4 billion GHS or 1.3 billion USD in 2012 (GoG 2013).
- ActionAid estimates that Ghana lost approximately 90 million USD in 2011-2012 as a result of mining stability agreements (AA 2014).
- Akabza & Ayamdoo estimates that Ghana lost revenues of between 387.74 - 1163.21 million USD from non-optimisation of royalty receipts between 1990 and 2007 (Ababa & Ayamdoo, 2009).

So despite the 2012 tax reform, there is an urgent need to expand the corporate tax base. Africa Tax Network calls the Ghana's tax collections for 'far below the

acceptable level for a lower-middle income country' (Tax Justice Network 2014). Several other studies also conclude that Ghana has one of the lowest levels of revenue mobilizations in Africa, with tax revenues below 20 percent of GDP, which is far lower than other mining countries, e.g. South Africa (AEO 2014).

2.2. Tax from the Mining Sector

In its 2005 EITI-report, Ghana's Ministry of Finance and Economic Planning declared total government receipts from the mining sector in 2005 to be 40.6 million GHS, or approximately 37.5 million USD, including royalties, taxes and dividends. In 2011, the tax payments had increased to 646 million USD, equivalent to 28 percent of total government tax revenues and 38 percent of total corporate taxes (CCM 2014).

The World Gold Council (2011) emphasises that revenues from gold mining account for the lion share of Ghana's total mineral revenues but comparing Ghana's take of the total value of Ghana's gold production, it appears to be under-taxed. **In the last four years (2010-2013) Ghana's average share of the total value of Ghana's gold production was approximately 7 percent.** And while Ghana received 1.7 billion USD in taxes, the total value of Ghana's gold production was exceeding 23 billion USD in the four-year period (see table 2). Similarly, in 2011 Ghana's gold production valued 5.78 billion USD and made up 38 percent of total export earnings but Ghana only received 0.51 billion USD in tax and royalties constituting only 10 percent of the export value.

Table 3; Value of Ghana's Gold Production

Year	Total production (Oz)	Gold price (per Oz)*	Total value (USD)	Total tax**	Ghana's share
2010	3,374.427 Oz	122,452 USD	4.13 billion USD	0.21 billion USD	5.1 %
2011	3,676.223 Oz	157,152 USD	5.78 billion USD	0.51 billion USD	8.8 %
2012	4,324.255 Oz	166,898 USD	7.22 billion USD	0.58 billion USD	8.0 %
2013	4,396.987 Oz	141,123 USD	6.21 billion USD	0.40 billion USD	6.4 %

*** Average gold prices from World Gold Council**

**** Exchange rates calculated from oanda.com**

Source; EITI 2014

Section 3

THE GOLDEN DAYS OF NEWMONT GHANA

2.1. Introduction

With corporate headquarters in Colorado, USA, Newmont Gold is the world's second largest gold company and has operations in United States, Australia, Peru, Indonesia, Ghana, New Zealand and Mexico. Of the 2013 consolidated gold production, approximately 36 percent came from North America, 19 percent from South America, 31 percent from Australia, 1 percent from Indonesia, and 13 percent from Africa essentially Ghana (Newmont 2014 / EITI 2014).

Newmont Ghana's mining operations in Ghana constitute an increasing part of Newmont Gold's total revenues and increased from 8 percent in 2011 to 11 percent of Newmont Gold's total revenue in 2013 (Newmont 2014). Newmont Ghana's operation costs are considerable lower than in other regions and in 2011 Newmont produced one ounce of gold for 474 USD while the global average was 591 USD per ounce. Since Newmont Ghana only started its commercial production at Akyem late 2013, it is expected that Newmont's production in Ghana will increase substantially in the coming years which will further enhance the importance of Ghana for Newmont.

Newmont Ghana increased production with 2 percent during 2013, while production costs increased with 9 percent. The total production is estimated at 656.208 ounces (EITI 2014) and production is expected to increase in 2014 to approximately 785,000-850,000 ounces due to a full year of gold production at Akyem. This makes Newmont Ghana the second biggest gold producer in Ghana with 13 percent of the total production in 2013 (EITI 2014).

- Ahafo mine (100% owned) located in the Brong-Ahafo Region, approximately 300 kilometres northwest of Accra. Ahafo started its commercial production in July 2006 and produced 570.000 ounces of gold in 2013, and reported 10.1 million ounces of gold reserves by end of 2013. Newmont Ghana is planning to expand the Ahofa mine next year.

- Akyem mine (100% owned) located approximately 125 kilometres northwest of Accra. Akyem only started commercial production in October 2013, producing 129.000 ounces of gold and reported 7.2 million ounces of gold reserves by end of 2013. Gold production is expected to increase to 350.000-450.000 ounces per year. Newmont Ghana's operations at the Akyem mine is still to be ratified in Parliament

The outstanding corporate taxpayer

Newmont Ghana has continuously argued that its Ghana operations provide substantial economic benefits in particular through tax payments. Newmont Ghana was also awarded "the most outstanding corporate taxpayer" in 2011 by the Ghana Revenue Authority and received an award at a ceremony at the Banquet Hall in the State House in Accra. According to Newmont Ghana it has invested more than 2.4 billion USD in Ghana and paid more than 700 million USD in royalties, taxes and other revenues since 2006. Newmont Ghana has directly and indirectly created over 48,000 jobs in Ghana and provided about 400 local businesses with nearly 39 million USD in contracts (Newmont 2013 and 2014).

As part of Newmont Gold's optimizing of its global operations, Newmont Ghana is expecting to increase efficiency and reduce cost in its Ghanaian operations in the next years. According to Newmont the streamlining of administrative staff will lead to global layoffs in the range of 30 percent (Newmont 2013).

3.2. Newmont Investment Agreement

Newmont's first investment agreement with the Government of Ghana was ratified by Ghana's Parliament in 2003, and included a fixed royalty and tax rate for the life of any Newmont project in Ghana. The 39 page agreement guarantees that Newmont's corporate income tax will not exceed 32.5 percent and mining royalties on gold production is 3.0 percent and 3.6 percent in forest reserve areas, which is the case for the Akyem mine. Unlike many other foreign mining companies, Newmont owns 100 percent of its mining projects although the Government is entitled to receive 10 percent of Newmont's net cash flow after the recouping period and may acquire up to 20 percent of Newmont's project at market value after 15 years of existence.

Newmont has also a stability agreement with the Government of Ghana, which ensures the company a fixed tax regime for 15 years from the start of its operations, irrespective of the changes to national mining and tax laws. Unlike the investment agreement, the details of Newmont's stability agreement have not been made public.

Newmont has continuously emphasized that it receives no hidden or confidentiality tax treatments and that all official agreements are available and public. But the Centre for Public Interest Law (CEPIL) has analysed Newmont's Investment Agreement and finds that the agreement contains significant tax loopholes that allow Newmont to avoid paying taxes. CEPIL also finds that tax allowances and concessions are generous and generally well outside those permitted in the Ghanaian tax laws (CEPIL 2012).

The Centre for Public Interest Law (CEPIL) has analysed and compared different Investment Agreement and finds that Newmont's tax allowances and concessions are more generous than other foreign mining companies. The South African company Anglogold Ashanti is e.g. taxed in accordance with the current tax laws and receives no exemptions for import duties, VAT and other tax exemptions (CEPIL 2012 / 2013). And unlike all other companies Newmont Ghana was not liable to pay property rate in 2012 and 2013 (EITI 2014).

In 2009, the Government introduced a short-term National Fiscal Stabilization Levy, which in principle is an additional profit tax. Newmont has not paid any

substantial amount under the levy and negotiations are still ongoing with the Commissioner of the Ghana Revenue Authority. Newmont has clearly stated that the levy is not applicable due to the Newmont's Investment Agreement (Newmont 2014).

In 2012, the National Fiscal Stabilization Levy was replaced by a 10 percent increase in the corporate tax to 35 percent. But since Newmont's investment agreement clearly stresses that Newmont's corporate tax cannot exceed 32.5 percent, the applicability of Ghana's corporate tax rates has been unresolved for the last two years and is currently being discussed under the auspices of the Mining Review Commission (MRC).

3.3. The True Value of Newmont's Gold

Newmont only discloses certain details of its annual financial reporting, which mostly includes government paid taxes such as corporate income tax, mineral royalties, mineral rights licenses, employment taxes, social security, fuel duties and customs duties. Unfortunately, it has not been possible to identify the exact Mineral Royalty and Corporate tax payments from Newmont Ghana Gold Limited's in the period 2009-2013. And information beyond direct government payments is limited. Newmont is not considering tax as an integrated part of its Corporate Social Responsibility (CSR) agenda and **there is no mentioning of tax in Newmont's corporate social strategies.**

From 2006-2010 Newmont did not pay corporate taxes which only started in 2011 and to this date Newmont has paid less than 0.5 billion USD in corporate taxes in Ghana. Still, Newmont reported annual revenues from Ghana of 931 million USD in 2012, 919 million USD in 2011 and 655 million USD in 2010 (GCM 2012 / 2011). **Newmont Ghana's annual revenues are substantially larger than other gold mining companies in Ghana, e.g.** Golden Star (264 million USD in 2012) or Anglogold (304 million USD in 2012).

When Newmont negotiated its Investment agreement in 2003, it was based on a 3 percent payment of the prevailing market price, which was about 400 USD per ounce of gold. A decade later the market price has increased to around 1400 USD per ounce, but Newmont still only pays 3 percent. And **if we calculate the net total value of Newmont's estimated total production of 785,000-850,000 ounces for 2014, the value of Newmont's gold production in 2014 would be around 1 billion USD.**

Table 4; True Value of Newmont's Gold

Year	Total production (Oz)	Gold price (per Oz)	Total value (USD)	Total tax**
2010	546,000 Oz	122,452 USD	668,587,920 USD	18.1 m USD
2011	572,256 Oz	157,152 USD	899,311,749 USD	113.0 m USD
2012	561,355 Oz	166,898 USD	941,824,578 USD	180,6 m USD
2013	570,202 Oz	141,123 USD	794,685,825 USD	153,8 m USD
2014*	785,000-850,000 Oz	125,980 USD	988,943000 - 1,070,83000 USD	NN

*** Average gold prices from World Gold Council**

**** Exchange rates calculated from oanda.com**

Source; GCM 2011 / EITI 2014

Even if production costs are being deducted, the revenues from Newmont's operations are astronomic. According to Newmont's own information **the production costs per ounce of gold were 596 USD in 2012 and 542 USD in 2013, which indicates a net revenue between 850 - 1050 USD per ounce of gold in 2012/2013** (EITI 2014). In comparison Newmont Ghana's production costs per ounce of gold are substantially lower than other mining companies, e.g. Golden Star (1186 million USD in 2012) or AngloGold (1187 million USD in 2012). **In 2012/13 Newmont actually had the lowest production costs per ounce of gold of all gold mining companies in Ghana (EITI 2014).**

Section 4

ARGUMENT FOR ADEQUATE AND FAIR MINING TAX

4.1. Fairer Mining Taxes in Ghana

In 2012, Ghana's gold production rose by 17 percent to 4.2 million ounces of gold, which was supported by record high world prices of 1,669 USD per ounce of gold. Analysis also indicates that mining revenues from major mining companies grew by 14 percent in 2012 (EITI 2014). This development sparked the idea in government circles to introduce additional mining taxes.

In 2012 the Government of Ghana introduced new tax measures for mining companies, which increased the corporate income tax for mining companies from 25 percent to 35 percent. The Government also established a National Renegotiation Team to review all mining agreements in Ghana with the objective of benefiting more adequately and fairly from the mining sector. **The Government has continuously made it clear that the renegotiation of mining agreements must serve in the interest of Ghana**, even if it takes moral persuasion of the mining companies (Senchi report 2014).

The lack of transparency on mine profitability makes it difficult to determine the exact impact and profitability of a national windfall tax. **To this date, the Government of Ghana has not calculated the costs of tax exemptions**

nor estimated the basic revenues in the mining sector. The lack of transparency and knowledge of profitability is naturally a major challenge (Africa Tax Network 2014). But the Government continuously stresses that the asymmetry in access to information tends to profit the foreign mining companies in the on-going renegotiation of mining contracts.

'Let those mining businesses prosper in Africa but let them also pay what Africa deserves' (Senchi report 2014).

The 2012 Government financial bill introducing a Windfall Profit tax of 10 percent on mining companies failed to get support in Parliament. In 2013 and 2014, the Government reiterated its intention to re-introduce the Bill in Parliament after due consultations with relevant stakeholders. But speaking at the 2014 Davos World Economic Forum in January last year, President Mahama renounced the idea of a windfall profit tax and **the 2015 Government financial bill contained no mentioning of a Windfall Profit tax or any other mining taxes** (GoG 2014).

It is important to note that a Windfall Profit tax is not controversial but is in line with recommendations from IMF and the World Bank, and a so-called resource rent tax is commonly applied in the extractive sector and also in the oil and gas sector in Ghana. Ghana's first mining law from 1986 actually included an additional 25% tax on profits over a certain level. But the additional profit tax was removed in the 2006 reform with the objective of increasing competiveness in the industry. Also, **the international gold price is still 300 percent above the 2004 price level and international mining companies have literally been experiencing 'golden days' in the last decade.** Between 2002 and 2008, mining companies made huge profits, with average returns above 25 percent, and some companies even experienced annual returns of more than 35 percent (PWC 2007).

But **after more than a decade of increasing commodity prices the Bill on Windfall Profit tax was introduced at the worst possible time**. In 2012 the international gold prices started their decline and foreign mining companies are currently implementing measures to enhance efficiency or order to increase revenues and several mining companies in Ghana have been issuing plans for layoffs and closing of mines.

Newmont Ghana is pressuring the government to sustain the current taxes and has continuously warned that **substantial layoffs would be necessary in order to readjust expenditures in light of the declining gold prices.** In September 2014 Newmont negotiated a deal with Ghana Mine Workers Union, but job cuts are still on the table. The Ghana Chamber of Mines has also strongly

warned against additional tax burdens in the mining sector, which would make gold mining unprofitable in Ghana. The Chamber also warned that an introduction of a windfall tax would discourage investments in Ghana, especially due to declining gold prices (GCM 2014).

Foreign mining companies are currently in discussions with the Mining Review Committee (MRC) on its Investment Agreement with the objective to identify an adequate tax in the mining industry. Negotiations have been ongoing for almost two years and it is still unclear when the committee will present its findings and recommendations to the Parliament.

But **this report clearly documents the unequal distribution of Newmont Ghana's profit to the Government of Ghana.** In 2012, Ghana received 180 USD million in total taxes (EITI 2013) whereas Newmont's profit (calculated on reported production costs and tax deductions) was 416 million USD which is more than twice as much as the Ghanaian tax revenues from Newmont Ghana the same year.

4.2. Is a new Resource Rent Tax the solution for Ghana?

Ghana's best option would be to re-introduce a profit-based tax, e.g. the Resource Rent Tax, which will guarantee a more equal distribution of profits between the company and government, without compromising sufficient returns for mining companies receives on their investments. A Resource Rent Tax will be an additional tax on top of existing taxes, but it only kicks in when corporate revenues exceeds a certain threshold.

The Resource Rent Tax is very similar to a Windfall Profit Tax but only targets 'pure rent' or extraordinary high profits, but does not affect normal profits below the threshold. Such an additional tax **would guarantee that when profits rise extraordinarily, as in the case of gold sector in Ghana, the government receives a fairer share of these extraordinary profits** – without distorting long-term investment and operational decisions from the companies.

A Resource Rent Tax does pose challenges on how to set the threshold and how to define normal and extraordinary profits, and risks stemming from corporate profit shifting are as well significant. However, when implemented and administered in an orderly fashion, a Resource Rent Tax can immensely benefit Governments in good times with high profits, without affecting private companies in bad times when profits are low.

A Resource Rent Tax is recommended by high-level

actors such as the World Bank and the IMF, and is used by countries such Norway, United Kingdom and Australia. In the context of Africa, it has been implemented in e.g. Liberia, Sierra Leone and Mozambique and is currently being discussed in Kenya. A tax regime consisting of royalties, corporate income tax and **Resource Rent Tax must consequently be seen as "best practice" in the extractive industry.**

The concept of a Resource Rent Tax is not new in a Ghanaian context. Similar provisions exist in the Ghanaian oil industry (the so-called 'additional oil entitlement'), and Ghana's first mining law from 1986 actually included an additional 25% tax on profits over a certain level. But the additional profit tax was removed in the 2006 reform with the objective of promoting foreign direct investment in the industry.

It is important to emphasize that company incentives for aggressive tax planning and transfer pricing is likely to increase with the introduction of a Resource Rent Tax. Companies could easily spend more than it would have spent on operations and investment and the delay and uncertainty in revenue receipts would pose a serious challenge for dependency countries like Ghana. The above challenges clearly illustrate that **a Resource Rent Tax would only be effective with a well-functioning tax authority,** which Ghana is still striving to develop and consolidate.

Section 5

FROM MINING TAXES TO DEVELOPMENT

5.1. The Need for a Mineral Revenue Management Law

Taxes and other revenues from mining must be used to provide inclusive development for the people. However, it is not often the case in most mineral-rich countries including Ghana. This stems from the fact that most mineral rich countries see mineral revenues as additional source of revenues for the budget, which does not need special considerations. Therefore, the significance of this study encompasses the urgent need to capture sufficient rent from mining companies such as Newmont and to invest the rent in sustainable development initiatives.

However, given that mineral resources are non-renewable, it is important to develop a set of rules for the management of revenues generated from mineral extraction. Ghana does not have a mineral revenue management framework, which has made it difficult to track both the revenues and the development impact of investing the revenues. A mineral revenue management framework is essential for Ghana at this stage of its mineral resource management, to guide Government's spending patterns for maximum economic impact. A mineral revenue management framework for Ghana should have some of the following features.

i. A Mineral Revenue Holding Fund which shall be a transit Fund from which mineral revenues will be shared between the Central Government and impacted communities. There should be a reconciliation of the revenues entering the Mineral Revenue Holding Fund and the subsequent transfers every year.
ii. A formula for distributing mineral revenues between the Central Government and communities, particularly benefitting adversely impacted communities.
iii. Provisions that require the Central Government to use its share of revenues to set up a Sovereign Mineral Fund, which will be used for annual budget support, stabilization of the budget and for future generations. In some countries, there are separate funds for the budget, stabilization and future generations. However, considering that mineral revenues are not currently large, one Fund that fulfils the three objectives of current spending, stabilization and future generations is appropriate for Ghana.
iv. A condition requiring that only 60% of the balance standing in the Sovereign Mineral Fund can be transferred to the Annual Budget whilst the rest is invested in qualifying instruments to be used in times of revenue shortfalls. In times of revenue shortfalls, the withdrawal from the Sovereign Wealth Fund should not hamper the liquidity of the Fund and fiscal sustainability.
v. A Community Mineral Development Fund for transferring the community share of mineral revenues.
vi. Deposit and withdrawal rules approved by Parliament.
vii. The operational management structure of the Fund – making the Bank of Ghana holds responsibility for managing the Mineral Revenue Holding Fund and the Sovereign Mineral Fund.
viii. Transparency and accountability rules.

5.2. Benefit Sharing to Mineral Communities

The current mineral revenue sharing formula in Ghana is not legalized. It has remained an administrative fiat for decades[1] . It is important to review the current regime and to legalize it.

Examples of revenue sharing regimes abound with often-legalized rules. For example, the Petroleum Revenue Management Act of South Sudan provides that 2% and 3% of net petroleum revenues are allocated to the producing

[1] Administrative fiat of 1991 (letter no. AB.85/156/01)

states and local communities respectively. The Kenyan Mineral Bill proposes that the Central Government takes 75% of the State's share of mineral revenues whilst 20% and 5% are shared with County Government and Local Communities respectively. The disparity between oil and mineral revenue distribution to communities is based on the fact that oil revenues are mostly larger than mineral revenues. Thus the share of oil revenues distributed to communities is proportionally lower.

Proposals for mineral revenue sharing between the central Government and Ghanaian communities are provided here.

- Mineral revenues to the State should be shared between the Central Government and communities in a ratio of 70:30. The proposal for 30% of net revenues to be distributed to communities is based on the fact that beneficiaries at the community level are diverse. These include Stool Lands, Traditional Authorities and the District Assemblies. In South Africa, there is one general transfer of national revenues to communities called "equitable share" transfer. This is different from what pertains in Ghana where mineral royalties are desired with only mining communities. It is necessary to recognize the differential effects of mining extraction in impacted communities versus non-impacted ones.
- For communities where Stool Lands are involved, 10% of the 30% ceded revenue transferred to the Community Mineral Development Fund should go to the Administrator of Stool Lands. The remaining 20% should be distributed to the beneficiaries in the following percentage order – 55% for District Assemblies, 25% to Stools and 20% to Traditional Authorities. For communities where Stool Lands are not involved, the entire 30% should go to the beneficiaries in the same order above, i.e., 55% for District Assemblies, 25% to Stools and 20% to Traditional Authorities.

5.3 Investment of Mineral Revenues for Development

Guidelines for the state and communities have become more necessary to prevent arbitrary, speculative and wasteful spending of non-renewable mineral revenues. The Central Government must be required to spend the annual budget allocation on capital infrastructure. The priority areas should be limited to projects that have social and economic multiplier effect on the development of the country. The priorities shall include:

i. Education
ii. Health
iii. Agriculture
iv. Road and rail infrastructure

However, there should be an escape clause that allows the Government to suspend the legal provisions on the use of mineral revenues during emergencies. During emergencies which should be defined in the law to mean natural disaster, serious economic downturn, or war; the Government's hands must not be tied. However, the Government must seek Parliamentary approval before making this spending and report the same to Parliament after the emergency subsides.

At the community level, low absorptive capacity of the District Assemblies undermines their ability to spend mineral revenue efficiently. To ensure that they do not apply mineral revenues to recurrent expenditure, it is proposed that:

i. There should be regulations to govern the management of mineral revenues in the Assemblies.
ii. Spending of ceded revenues should be spent on Education, Health and Agriculture.

5.4 Transparency and Accountability

Transparency and accountability in the management of mineral revenues build the trust of the people in the Government. It also ensures that citizens and communities can track their entitlement as well as the destinations of revenues. This in turn fosters accountability. It is proposed that:

i. The Central Government should report quarterly and annually on mineral production, mineral receipts, and sales price on project-by-project basis.
ii. The Central Government should report on expenditure from mineral revenues as part of the annual Budget.
iii. The Central Government should report on transfers from the Mineral Revenue Holding Fund to the Sovereign Mineral Fund and the Community Mineral Development Fund.
iv. District Assemblies should report quarterly and annually on mineral receipts from the Community Mineral Development Fund and expenditure incurred including detailed information on projects funded with mineral revenues.
v. The Auditor General should conduct an annual audit on the Mineral Revenue Holding Fund, the Sovereign Mineral Fund and the Community Mineral Development Fund, submit to Parliament and publish its report.

Section 6
CONCLUSIONS

Ghana's mining reforms has been an obstacle to maximizing Ghana's revenues.

Although the mining sector contributes proportionally to Ghana's economy, government revenues from foreign mining companies remain remarkably low in comparison to company profits. Ghana must therefore urgently safeguard its fair share of the mining profits. But Ghana's latest mining reform from 2012 is in some ways an obstacle to maximizing Ghana's revenues, and a fixed royalty tax rate compared to a profit-based tax and sliding royalty is clearly not the best option for Ghana. The reform has in praxis limited the government to introduce ad-hoc taxes and levies, as the National Fiscal Stabilisation Levy, which has no effect on the foreign mining companies, who are covered by stability agreements and therefore not enforceable.

Ghana's must introduce a Resource Rent Tax

Ghana's best option would be to re-introduce a profit-based tax, e.g. the Resource Rent Tax, to avoid losing out on extraordinary profits on gold without discouraging future investments. A Resource Rent Tax target 'pure rent' or

extraordinary high profits and would therefore only target excessive profits without distorting long-term investment concerns. Declining world market prices on gold is not a valid excuse to postpone additional taxes on mining. On the contrary, the effects will only kick-in when gold prices increases again. The Resource Rent Tax is recommended by institutions such as the World Bank and the IMF, and has been implemented in e.g. Liberia, Sierra Leone and Mozambique and is currently being discussed in Kenya.

Ghana cannot afford not to increase tax on Newmont and other mining companies.

Ghana's current economic challenges and increasing budget deficit will continue to put major constraints on public spending. Lack of revenues from the mining sector will consequently have serious impacts on the social services to the poor. The Government of Ghana must therefore withstand pressure from the mining industry and reintroduce a profit-based tax, such as the Resource Rent Tax - as a serious alternative to the Windfall Tax.

Lack of transparency is a major challenge

The lack of transparency on tax in the mining industry is a major problem. Most foreign mining companies have signed up to international guidelines, such as the OECD Guidelines on Taxation, which stress that companies must act in accordance with both the letter and spirit of national tax laws. In consequence, mining companies must disclose all the necessary information to assess and determine the accuracy of tax payments including beneficial ownership information and all operating affiliates. A transparency regime for the governance of revenues from Newmont and other mining companies will provide opportunity for citizens to "follow the money" from mining and to scrutinize decisions on mineral revenue investments.

Poor investment of mining revenues is a development challenge

Lack of a legal framework to govern the assessment, collection and responsible investment of mineral revenues remain an important challenge. The Government of Ghana must develop a public investment management plan and to judiciously apply mineral revenues to the realization of government's investment objectives.

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