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MINING TAXATION IN THE AGE OF ESG AND PILLAR TWO: COMPARATIVE PERSPECTIVES FROM ROMANIA, SOUTH AFRICA AND GLOBAL JURISDICTIONS

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Abstract: *This paper examines mining taxation at the intersection of company law, fiscal sovereignty, and environmental, social and governance (ESG) imperatives in the era of the OECD/G20 Pillar Two global minimum tax. Using Romania and South Africa as primary case studies and situating them within a comparative frame that includes Canada, Zambia and Australia, the paper analyses how supranational harmonisation and resource nationalism shape fiscal regimes, corporate governance, and investment incentives in the extractive sector. It argues that mining taxation has become a cauldron in which competing demands i.e. international tax coordination, national fiscal autonomy, and corporate ESG obligations are examined. The paper identifies key tensions (royalties versus covered taxes; double taxation risks; administrative capacity) and proposes policy responses. These measures aim to reconcile global tax fairness with the developmental needs of resource-rich states while embedding tax transparency within corporate governance frameworks.*

Keywords: *Mining taxation; Pillar Two; royalties; ESG; Romania; South Africa; corporate governance; international tax; resource nationalism.*

Introduction

Mining taxation occupies a distinctive place in public law and public policy. Unlike ordinary corporate tax bases, extractive industries are

subject to a multiplicity of levies—corporate income tax, royalties, resource rent taxes, withholding taxes, and special levies—each reflecting different policy objectives, i.e. revenue mobilisation, rent capture, investment promotion, and social redistribution. Historically, states have oscillated between low fiscal burdens to attract foreign capital and higher burdens to capture resource rents. In the contemporary era, two global developments have intensified the legal and policy complexity of mining taxation.

First, the energy transition has elevated the strategic importance of certain minerals such as lithium, cobalt, nickel, rare earth elements, thus creating new geopolitical and fiscal pressures. States seek to secure supply chains for green technologies while also extracting fiscal value from these resources (European Commission, Critical Raw Materials Act, 2023). Second, international tax governance has undergone a major shift through the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS). The Pillar Two global minimum tax (GloBE) introduces a 15% effective tax floor for large multinational enterprises (MNEs), aiming to reduce profit shifting and tax competition (OECD, Pillar Two, 2023). The interaction between Pillar Two and resource-specific levies, particularly royalties, remains contested and legally ambiguous.

This paper explores how these dynamics play out in two contrasting jurisdictions: Romania and South Africa. Romania, as an EU Member State, is subject to supranational directives that implement Pillar Two and impose mandatory disclosure and sustainability reporting obligations. South Africa, a resource-rich developing economy outside the EU, has pursued a sovereignty-driven approach to resource taxation, emphasising royalties and anti-avoidance measures. By comparing these jurisdictions and situating them within a wider international context (Canada, Zambia, Australia), the paper seeks to illuminate the tensions between international tax harmonisation and national fiscal autonomy, and to propose governance responses that reconcile tax policy with ESG objectives.

Methodology

The brief study uses a comparative legal method combining doctrinal analysis, policy review, and normative assessment. The selection

of Romania and South Africa is purposive, Romania exemplifies an EU-aligned approach where supranational law shapes national tax policy; whilst South Africa exemplifies a resource-rich state prioritising fiscal sovereignty and redistributive objectives. The comparative method highlights patterns of convergence (for example, increasing emphasis on transparency and ESG) and divergence (for example, treatment of royalties under Pillar Two, scope of anti-avoidance rules).

Primary sources include national legislation (royalty statutes, tax codes), supranational instruments (EU directives), OECD model rules and guidance, and leading judicial decisions. Secondary sources include policy papers, government strategy documents, and academic commentary on mining taxation, resource governance, and corporate law. Comparative examples (Canada, Zambia, Australia) are used to test the generalisability of findings and to surface policy options.

Limitations are acknowledged. Romania and South Africa differ significantly in economic scale, legal tradition, and political economy. Therefore, the comparative method aims to illuminate legal and policy trade-offs rather than to produce universal prescriptions. As such, the paper focuses on legal frameworks and policy instruments rather than econometric evaluation of revenue outcomes.

Context: Mining Taxation, Royalties and Pillar Two

Mining taxation typically comprises a combination of royalties and profit-based taxes. Royalties, levied on production value or volume are attractive to governments because they are administratively simple and yield revenue early in the project lifecycle. Profit-based taxes (corporate income tax, resource rent taxes) better capture economic rent but are more sensitive to tax planning and transfer pricing. The coexistence of royalties and profit taxes raises questions of incidence, investment incentives, and effective tax rates.

Pillar Two introduces a global minimum effective tax rate (ETR) of 15% for large MNEs. The GloBE rules operate through an Income Inclusion Rule (IIR), an Undertaxed Profits Rule (UTPR), and a Subject

to Tax Rule (STTR) for certain covered payments (OECD, Pillar Two, 2023). The fundamental ambiguity relates to whether royalties and other resource-specific levies qualify as "covered taxes" for the purpose of calculating the ETR. If royalties are excluded, a jurisdiction could impose high royalties while the MNE's ETR remains below the Pillar Two floor, potentially triggering top-up tax in the parent jurisdiction and creating double taxation risks. If royalties are included, states may lose fiscal flexibility to design resource-specific levies.

The policy stakes are equally high. Resource-rich developing countries often rely on royalties for predictable revenue and to capture rents in contexts of weak administrative capacity. Whilst developed jurisdictions may prefer profit-based taxation to align with international norms. Therefore, Pillar Two's design transects with broader debates about tax sovereignty, development, and fairness.

Romania: EU Harmonisation, Transparency and Corporate Governance

Legal and Policy Framework

Romania's mining taxation resides within the EU legal order. The EU's adoption of Pillar Two through Directive (EU) 2022/2523 requires Member States to implement the GloBE rules, including mechanisms for top-up taxation and coordination (Directive (EU) 2022/2523, 2022). Romania is also subject to DAC6 (Directive 2018/822), which mandates disclosure of certain cross-border tax arrangements, and to the Corporate Sustainability Reporting Directive (CSRD), which expands non-financial reporting obligations (DAC6 (2018); CSRD (2022). These instruments embed tax transparency and sustainability reporting into corporate governance.

Romania's domestic fiscal instruments include royalties on mineral extraction and corporate income tax. The precise design of royalties; ad valorem versus specific, sliding scales tied to profitability affects investment incentives. In the EU context, Romania is necessitated to reconcile national fiscal objectives with EU rules on state aid, competition, and harmonised tax measures.

Interaction with Pillar Two

The implementation of Pillar Two in Romania raises several issues. First, the EU directive leaves room for Member States to determine the treatment of royalties in calculating the ETR. Romania's approach will influence whether royalties are treated as deductible expenses for ETR purposes or as taxes that reduce the ETR. Second, DAC6 and CSRD increase transparency obligations for mining companies, requiring disclosure of tax planning and sustainability metrics. This effectively shifts tax strategy from a purely fiscal exercise to a governance and reputational concern.

Romania's EU membership also offers dispute resolution and coordination mechanisms that can mitigate double taxation risks. However, harmonisation may limit Romania's fiscal autonomy to design resource-specific levies tailored to national development goals.

Corporate Governance and ESG

EU directives have hard-pressed tax transparency into the boardroom. Under CSRD and related rules, companies must disclose tax strategy, payments to governments, and sustainability impacts. Romanian companies operating in mining must therefore integrate tax policy into ESG reporting and board oversight. This integration can strengthen accountability but may also increase compliance costs and deter investment if perceived as burdensome.

South Africa: Resource Sovereignty, Royalties and Anti-Avoidance

Legal and Policy Framework

South Africa's mining taxation regime reflects a long history of resource governance and redistributive policy. The Mineral and Petroleum Resources Royalty Act 28 of 2008 introduced a profit-sensitive royalty designed to capture a share of resource rents (Section 4, of the Mineral and Petroleum Resources Royalty Act 28 of 2008; Republic of South Africa, 2008). Corporate income tax, withholding taxes, and other levies are designed to complement royalties. South Africa has also strengthened

anti-avoidance measures, notably through an expansive interpretation of the General Anti-Avoidance Rule (GAAR) in recent jurisprudence (Supreme Court of Appeal (South Africa), Commissioner for the South African Revenue Service v Coronation Investment Management SA (Pty) Ltd [2023] ZASCA 10 (Bloemfontein: Supreme Court of Appeal, 2023).

South Africa's political economy, wherein mining is principal to employment, regional development and historical inequality, shaping fiscal choices. Resource nationalism and demands for community benefits have also driven calls for higher royalties and local participation.

Interaction with Pillar Two

South Africa participated in the OECD Inclusive Framework and has engaged with Pillar Two implementation. However, as a sovereign state outside the EU, South Africa retains its discretion in designing its royalty regime and in determining how royalties interact with the GloBE rules. The key policy question is whether royalties should be treated as "covered taxes" that reduce the ETR or as non-covered levies that do not. South Africa's preference for capturing resource rents through royalties seems to suggest a reluctance to cede fiscal flexibility.

Whilst the GAAR jurisprudence signals a domestic commitment to curbing aggressive tax planning by MNEs. Under Pillar Two, top-up taxes may be imposed in other jurisdictions if South Africa's ETR falls below the floor, potentially reducing the net fiscal benefit of royalties. South Africa must therefore weigh the revenue advantages of royalties against the risk of international top-up taxation and investor responses.

Corporate Governance and Community Rights

South Africa's King Report emphasises stakeholder inclusivity and ethical leadership (Institute of Directors in Southern Africa (IoDSA), King IV Report on Corporate Governance for South Africa, Johannesburg: IoDSA, 2016; p. 22). Mining companies face pressure to demonstrate community engagement, local procurement, and environmental stewardship. Meanwhile, tax transparency is increasingly a component of social licence to operate. However, unlike the EU's mandatory CSRD,

South Africa relies more on the Companies Act 71 of 2008 and governance codes and voluntary standards, which can produce uneven compliance.

Global Implications: Canada, Zambia and Australia

Canada: Indigenous Rights, ESG and Pillar Two

Canada's mining sector is subject to federal and provincial fiscal regimes. Canada has implemented Pillar Two through domestic legislation and guidance, including safe harbours to ease compliance (Government of Canada, Critical Minerals Strategy, 2025). Royalties in Canada are generally deductible for corporate tax purposes at the provincial level, but the interaction with Pillar Two's ETR calculation is complex. Canada's distinctive feature is the centrality of Indigenous rights and consultation obligations, which shape fiscal arrangements and benefit sharing. Courts and tribunals have increasingly required governments and companies to account for Indigenous interests, linking tax policy to governance and human rights considerations.

Canada's approach demonstrates how developed jurisdictions can integrate Pillar Two while maintaining mechanisms to protect investor certainty and to incorporate ESG and community obligations into fiscal policy.

Zambia: Fiscal Instability and Developmental Pressures

Zambia's mining taxation has been marked by frequent policy changes. The country applies a sliding-scale royalty on copper and has oscillated on the deductibility of royalties for income tax purposes (ZRA (2023); TJNA (2023). Such volatility undermines investor confidence and complicates compliance under Pillar Two, which relies on stable tax bases to calculate ETRs. Zambia's experience highlights the vulnerability of developing economies to revenue shocks and the trade-offs between immediate revenue needs and long-term investment attraction.

For Zambia and similar states, Pillar Two presents both risks and opportunities; risks in the form of compliance complexity and potential double taxation; and opportunities in the form of international coordination

that could reduce harmful tax competition if implemented with development-sensitive safeguards.

Australia: Harmonisation and Domestic Integration

Australia enacted comprehensive domestic legislation to implement Pillar Two, including the Income Inclusion Rule and Domestic Minimum Tax (ATO Guidance (2025). Australia's mining royalties are integrated into the domestic fiscal regime, and the government has sought to align domestic rules with OECD guidance to minimise disputes. Australia's experience shows that developed jurisdictions with strong administrative capacity can implement Pillar Two while preserving domestic policy space for resource taxation. However, the proviso is the requirement of clear guidance on the treatment of royalties and robust coordination mechanisms.

Policy Discussion: Tensions and Trade-offs

Double Taxation versus Fiscal Flexibility

The dominant tension exists between avoiding double taxation and preserving fiscal flexibility. If royalties are excluded from "covered taxes," MNEs may face top-up taxes in parent jurisdictions, effectively increasing the global tax burden and potentially deterring investment. If royalties are included, states may be constrained in using royalties to capture rents. However, a balanced approach requires clear rules on the classification of royalties, mechanisms for relief from double taxation, and international dialogue that recognises the developmental needs of resource-rich states.

Administrative Capacity and Compliance Costs

Pillar Two imposes significant compliance burdens, such as ETR calculations, documentation, and coordination across jurisdictions. As such, developing countries with limited administrative capacity may struggle to implement complex GloBE rules. Therefore, simplified approaches, safe harbours, and technical assistance are therefore essential to ensure equitable implementation.

ESG, Corporate Governance and Tax Strategy

The convergence of tax transparency and ESG reporting is apparent. Boards are increasingly accountable for tax strategy as part of broader sustainability obligations. This convergence can improve accountability and reduce aggressive tax planning, but it also raises compliance costs and may shift investment decisions. Policymakers should consider the means as to how disclosure regimes can be calibrated to promote transparency without imposing disproportionate burdens on smaller firms.

Investor Certainty and Policy Stability

Recurrent changes to mining taxation (as seen in some developing jurisdictions) destabilise investor confidence. In fact, Pillar Two may exacerbate uncertainty if jurisdictions adopt divergent treatments of royalties. Stability, predictability and clear transitional rules are therefore critical to maintain investment flows while achieving revenue objectives.

Recommendations

1. The clarification of Royalties in Pillar Two Guidance. The OECD and jurisdictions should provide explicit guidance on whether and how royalties count as "covered taxes" for ETR calculations. A pragmatic approach could treat royalties as covered taxes where they are levied as a tax on income or profits, but not where they function as a fee for access to a resource. Clear criteria and examples would reduce disputes.
2. The adoption of Development-Sensitive Implementation. For developing countries, simplified compliance mechanisms (safe harbours, standardised ETR templates) and technical assistance should be made available. The Inclusive Framework should consider transitional arrangements that protect revenue-dependent states.
3. The coordination of Relief Mechanisms. To avoid double taxation, jurisdictions should adopt coordinated relief mechanisms (tax credits, bilateral adjustments) and dispute resolution pathways. The EU model of coordinated implementation offers lessons for multilateral coordination.

4. The integration of Tax Transparency into Corporate Governance. National regulators should require board-level oversight of tax strategy and public disclosure of tax payments and policies, calibrated to firm size and sectoral risk. Romania's CSRD provides a model for mandatory disclosure; South Africa's King IV offers governance principles that can be strengthened through mandatory elements.
5. The stabilisation of Fiscal Regimes for Investment Certainty. States should commit to predictable fiscal frameworks for mining projects, including clear rules on royalty adjustments and sunset clauses for extraordinary fiscal measures. Stability clauses in investment contracts should be balanced with sovereign rights and public interest.

Conclusions

Mining taxation is situated at the intersection of fiscal policy, company law and sustainable development. The advent of Pillar Two has introduced a new layer of international coordination that pledges to curb profit shifting, whilst raising complex questions for resource taxation. Romania's EU-aligned approach and South Africa's sovereignty-driven model, illustrate the competing pressures of harmonisation and fiscal autonomy. Comparative examples from Canada, Zambia and Australia demonstrate that implementation choices have profound consequences for revenue, investment and governance.

Reconciling Pillar Two with resource-specific levies requires clear legal guidance, development-sensitive implementation, and stronger governance frameworks that integrate tax transparency into corporate responsibilities. For Romania, the EU context offers tools for harmonisation and dispute resolution but limits some fiscal discretion. For South Africa and other resource-rich states, the challenge is to capture resource rents while avoiding international top-up taxation and preserving investor confidence.

Ultimately, mining taxation will remain a cauldron for competing policy objectives. The path forward lies in pragmatic international cooperation that recognises the special characteristics of extractive industries, supports administrative capacity in developing countries, and

embeds tax policy within broader ESG and governance frameworks. Such an approach can align fiscal sovereignty with global tax fairness and sustainable development.

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