Peru: Reporting obligations for new mining royalty regime clarified

Recent guidance issued by the Peruvian tax authorities clarifies some of the new rules governing the mining royalty regime and includes a requirement to submit an information return for the period October-December 2011.

Fundamental changes to the mining royalty regime became applicable on 1 October 2011. The mining royalty is the consideration paid by mining sector companies in exchange for the right to exploit metallic and non-metallic non-renewable mining resources in Peru. Under the new rules, mining companies that have not signed a legal stability agreement with the government must pay on a quarterly basis a royalty equal to 1% to 12% on operating profits, as well as a “special tax” at a rate ranging from 2% to 8.4% of operating profits. The mining royalty may not be less than 1% of quarterly sales income. Companies that have concluded a legal stability agreement must make a “special contribution” equal to between 4% and 13.12% of operating profits. The amounts collected by the government are distributed among regional governments, municipalities and national universities to finance investment projects and technological and scientific research. The recent guidance only applies to companies without a legal stability agreement.

Background

According to the new rules under the mining royalty regime, mining sector enterprises generally will be required to file a quarterly tax return and pay the mining royalty in local currency by the last 12 business days of the second month following the month in which the quarterly period ends. For the period October-December 2011, however, mining sector enterprises must submit a monthly return (Electronic Form No. 1698) and make prepayments of the royalty based on the monthly sales income and the operating margin for 2010. The due date for the monthly return is the last business day of the month following the period to which the return relates.

The monthly prepayments to be made in connection with the fourth quarter of 2011 (the first of which was due 30 November 2011) may be set off against the final amount of the mining royalty determined based on the operating profits of that period or 1% of the quarterly sales income, whichever is higher. The tax return relating to the fourth quarter must be submitted by the last 12 business days of February 2012.

However, based on guidance issued by the Ministry of Economy and Finance and the tax authorities on 23-24 November 2011, an additional monthly return will need to be submitted in connection with the fourth quarter of 2011. In addition to the prepayment return, taxpayers will need to submit an “exceptional return” containing specific information on the tonnage of the mineral treated from each concession. The guidance also sets out the format for reporting and where the form must be submitted. The general due date for the exceptional report is the last business day of the month following the period to which the return relates (the information report for October 2011 was deferred until 5 December 2011, but the next report (for November) is due on 30 December 2011).

Comments

Mining sector companies should be aware of the reporting obligations and deadlines established for the period October-December 2011, particularly those connected with the monthly prepayments, which not only involve submission of a monthly prepayment return but also the exceptional report. Failure to comply with these provisions may result in the imposition of penalties and interest.

Considering the Peruvian government’s intention to begin collecting the applicable royalties and distributing them, further guidance is likely.

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