



Shedding Light on a Tangled Tax Dispute in the Mining Sector

Clarifying Tax Issues at the Heart of a Dispute

FTI Consulting was commissioned to act as an expert witness in an International Centre for Settlement of Investment Disputes (ICSID) arbitration between a mining company (the “**Client**”), the claimant, and a country (the “**Country**”), the respondent, with respect to tax adjustment to which the company has been subject to for multiple years. The expert submitted reports to the Tribunal, presented her findings at hearings and was cross-examined. In addition, FTI Consulting analysed from an economic and financial standpoint the conclusions of an expert appointed on a related dispute over mining royalties and presented these findings during the hearings.

SITUATION

Our Client signed a concession agreement with the Country. This agreement provided a fiscal and legal framework offering several tax advantages to the Client.

The Client initiated arbitration proceedings to resolve the following two disputes:

- The Client had been subject to tax reassessments that it considered unjustified and in contravention of the agreement;
- The Client also believed that the Country was not complying with the conclusions of an expert report setting out the methods for calculating mining royalties, in violation of the joint request for the administration of an expert assessment procedure between the parties on that topic.

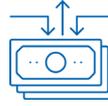
OUR ROLE

FTI Consulting provided:

- Analysis of the tax reassessments to which the Client had been subject from an accounting and financial point of view;
- Assessment of the loss suffered by the Client as a result of these tax adjustments; and
- Analysis from an accounting and financial point of view of the conclusions of the expert in the royalties procedure, with regards to the mining royalties.

FTI Consulting’s expert concluded that most tax adjustments imposed by the Country on the Client, were unjustified in light of international accounting standards, the concession agreement, the Country’s mining code and the general tax code; In addition, the FTI Consulting expert concluded that the Country’s position regarding the basis for calculating royalties did not comply with the conclusions of the expert appointed in the royalties procedure.

OUR IMPACT



The Tribunal mainly ruled in favour of the Client and ordered the Country to pay back unduly collected taxes.



Almost half of the issues related to the Client’s claims were agreed by the parties respective appointed experts in favour of the Client and half of the remaining claims were granted to the Client by the Tribunal.



The Tribunal upheld FTI Consulting’s understanding of the basis for calculating mining royalties, thus ruling almost entirely in favour of the Client for the related dispute.



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