A Guaranteed Profit Share for Government:

As good as it sounds?

1.0 Introduction

There are now several fiscal regimes across the world that require the government to receive a specified share of the profits that a mine generates. These regimes are still based on the payment of royalties and corporate income tax, but they require additional payment if the government share of profits is below the stipulated threshold. This threshold is 50% or higher for the regimes that have been identified as having this feature.

Any fiscal regime could be designed to target a given government share of mine profits. However, directly setting this share could have several benefits. Depending on how it is calculated, it could provide the government with more certainty. While mine profits still depend on volatile and difficult-to-measure revenues and costs, the share of those profits is based on a simple percentage rather than a combination of different and interacting instruments. This should also make the regime easier to communicate to the public. And given that it sounds inherently fair that the government receives at least 50% of the benefits, this model might be more likely to engender public trust. It could therefore improve policy predictability, in turn boosting both investment and the sector's contribution to sustainable development.

Each country has a unique approach to setting the government's share of profits. This policy paper evaluates the regimes in Tanzania, the Philippines, and Ecuador, exploring whether they represent an improvement on the dominant fiscal regime and if they offer a template that other countries can follow. The analysis uses an economic model developed for this purpose (Natural Resource Governance Institute, 2022).

2.0 The Regimes in Tanzania, the Philippines, and Ecuador

2.1 Tanzania's Approach

Amid public frustration about Tanzania's mining deals, the government and Barrick Gold renegotiated mineral development agreements (MDAs) for three of the country's key gold mines in 2019. The renegotiated deals provide for a 50/50 share of the "economic benefits" (Acacia Mining PLC, 2019). Since then, the government has entered a 55/45 sharing arrangement with Petra Diamonds for Tanzania's only large-scale diamond mine, with the government receiving the larger share (Jamasmie, 2021). The government also appears to be following this sharing approach in deals for at least one new project. Discussions with officials suggest that the government is seeking a share of more than 50% in these deals. [1]

This sharing mechanism is not currently set out in the legal framework for the mining sector, and the Barrick Gold MDAs and agreements for other projects have not been disclosed. This analysis is therefore based on the published framework agreement between the government and Barrick Gold that informed the MDAs and discussions with government and industry officials. [2] While this means the analysis focuses on the 50/50 arrangement, the implications of a different split, such as the 55/45 agreed with Petra Diamonds, are also discussed. The three key elements of the sharing mechanism are set out below.

Definition of economic benefits. Although "economic benefits" are not defined in the framework agreement, discussions with government and industry officials suggest that they comprise government revenue streams (except for value-added tax [VAT]), [3] shareholder dividends, and any remaining profit not distributed as dividends. These benefits are calculated on a cumulative basis from the start of a mine's operations (i.e., from the start of the licence period). By the end of a typical mine's lifetime, its economic benefits should be broadly equivalent to its total profit. Discussions with officials suggest that cumulation is based on actual—not discounted—cash flow, and therefore does not account for the time value of money.

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[1] The largest mine in the pipeline—Kabanga, which will produce nickel and cobalt—has signed a framework agreement with the government that provides for economic benefits to be "equitably shared" (Kabanga Nickel Limited, 2021).

[2] This framework agreement was made public in a document setting out Barrick Gold's offer to buy the shares it did not already own in Acacia Mining, the previous owner of the Bulyanhulu, Buzwagi, and North Mara mines in Tanzania (Acacia Mining PLC, 2019).

[3] The main revenue streams are licence fees, import duties, skills development levies, royalties, export clearance fees, corporate income taxes, interest-withholding taxes, dividend withholding taxes, and a share of dividends and loan repayments through state equity. The Barrick framework agreement only provides for a government share of shareholder loan repayments (Acacia Mining PLC, 2019), but the Mining (State Participation) Regulations 2020 provide for a share of repayments of any related or unrelated party loans.

Trigger for sharing mechanism. Sharing is triggered once cumulative, post-tax cash flow is positive, meaning that all exploration and development costs have been recouped. Discussions with officials suggest that the timing of this trigger is set in advance using the mine life plan rather than being based on actual performance.

Sharing mechanism. The investor pays the taxes set out in the fiscal regime, such as royalties and corporate income tax, in line with the typical approach. However, after the sharing trigger, if one party's cumulative share from the start of the mine's operations is greater than 50% at the end of a year, it must pay the other party the amount required to rebalance. Discussions with officials suggest that this payment could be made at that point in time or, if the investor has overpaid, treated as an advance payment of future taxes.

2.2 The Philippines' Approach

The Philippines regime requires mines that operate under a Financial or Technical Assistance Agreement (FTAA) to provide a government share of at least 50% of annual "net mining revenue" after a cost-recovery period (Republic of the Philippines, n.d.).[4] There are currently seven projects with FTAAs.

This mechanism is primarily set out in a publicly available model FTAA (Republic of the Philippines, n.d.). The FTAA for a given project is subject to negotiations and therefore may differ slightly from this template.[5] The focus here is on the regime set out in the model FTAA.

Definition of net mining revenue. Net mining revenue is sales revenue (net of transport and processing charges) minus deductible expenses in a given year. Deductible expenses include, among other things, development costs after the start of production, operating costs, interest payments, and royalties.

Trigger for sharing mechanism. The sharing mechanism is triggered at the end of the "recovery period." The recovery period ends the earlier of 5 years from the start of production or the point at which all pre-production expenses have been recouped. The timing of this trigger is based on the actual performance of a mine rather than set in advance.

Sharing mechanism. The investor pays the "basic government share" throughout the project's lifetime. However, the composition of this basic government share up to the end of the recovery period and after the recovery period differs. A comprehensive list of the taxes included in the government share during these two periods can be found in the model FTAA and applicable legislation, but the main components up to the end of the recovery period include an excise tax, royalties, and a local business tax. The basic government share after the recovery period includes

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[4] Any mine licensed to a foreign company must have an FTAA (Government of Tanzania, 2020).
[5] For example, some terms in the original FTAA for an Oceana Gold mine (Republic of the Philippines, 1994) differed in some areas. (The recently signed extension to this FTAA has slightly different terms again.)

these taxes as well as import duties, corporate income tax, and withholding taxes on interest and dividends.

After the end of the recovery period, if the basic government share is less than 50% of net mining revenue in a given year, an "additional government share" must be paid by the investor to increase the total government share to 50% of net mining revenue. However, if the basic government share is more than 50% of net mining revenue, the government does not have to compensate the investor. In other words, the mechanism acts as a floor but not a ceiling on the government's share.

2.3 Ecuador's Approach

The Ecuadorian regime requires mines to provide a government share of at least 50% of "accumulated benefits." This requirement is established in the country's constitution (Constitutional Court of Ecuador, 2022). It is primarily set out in the general regulations of the mining law (Government of Ecuador, 2019).

Definition of accumulated benefits. "Accumulated benefits" are the sum of the government revenues specified in the regulations and any free cash flow available to the investor.[6] These benefits are calculated on a cumulative basis from the start of a mine's operations (though the applicable government revenue streams are only payable from the start of production). Unlike Tanzania's approach, this calculation accounts for the time value of money. Cash flows are discounted to reflect that the earlier they occur, the more they are worth to either party.[7]

Trigger for sharing mechanism. Sharing is triggered once cumulative, discounted free cash flow is positive. At this point, the investor has recouped all exploration and development costs and earned its minimum required rate of return. The provision for the investor to earn its required return before sharing is triggered means the mechanism shares some similarities to an R-based cash flow tax, commonly referred to as a Brown tax (Broadway & Keen, 2010).

Sharing mechanism. The investor pays the taxes set out in the fiscal regime in line with the typical approach. After the sharing trigger, if cumulative government revenues are less than 50% of accumulated benefits at the end of the year, the investor must pay a "sovereign adjustment" to increase the government share to 50%. However, if government revenues are more than 50% of accumulated benefits, the government does not have to compensate the investor. In other words,

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[6] These government revenue streams are VAT, royalties, and corporate income taxes. The regime also includes a share of pre-tax profits that is currently divided between the company's workers and the government, with the portion that is received by the government included in its accumulated benefits. However, a recent court ruling means that all this labour profit share will go to workers from the start of 2024 (Constitutional Court of Ecuador, 2022). This analysis focuses on this new arrangement, which means that none of the labour profit share is included in government benefits.

[7] The discount rate that is used is specific to a mine and is based on its weighted average cost of capital (WACC). This analysis assumes the WACC is around 7% in real terms, based on an interest rate on debt of 6%, a cost of equity of 8%, and a debt-to-equity ratio of 50:50.

like the Philippines' approach, the mechanism acts as a floor but not a ceiling on the government's share.

2.4 Modelling How the Three Approaches Work in Practice

The Tanzania, the Philippines, and Ecuador approaches were modelled for a gold mine of average profitability using a gold price of USD 1,600 per ounce, which is around the 10-year average (World Bank, 2022). In the figures below, "initial government benefits" are the revenues that the government would have received without the sharing mechanism, and "final government benefits" are the revenues that it ultimately receives after any rebalancing.

Tanzania. As Figure 1 shows, the government receives benefits from the mine prior to the sharing trigger as a result of input taxes, royalties, and some corporate income tax payments. Sharing is triggered in year 7 of the project's life. The government will have a cumulative share that is significantly greater than 50% at this point. It therefore must make a payment to the investor or forgo future tax payments to rebalance. The latter option is modelled, given it will probably be politically difficult for the government to make a direct payment to the investor; the implications of the two options are discussed later in this policy paper. Following this initial rebalancing, the fiscal regime continues to generate a larger initial share of the benefits for the government than for the investor. The government therefore continues to forgo a portion of future tax payments to rebalance.

Figure 1. Tanzania's sharing of benefits across the lifetime of a gold mine making average profits[8]
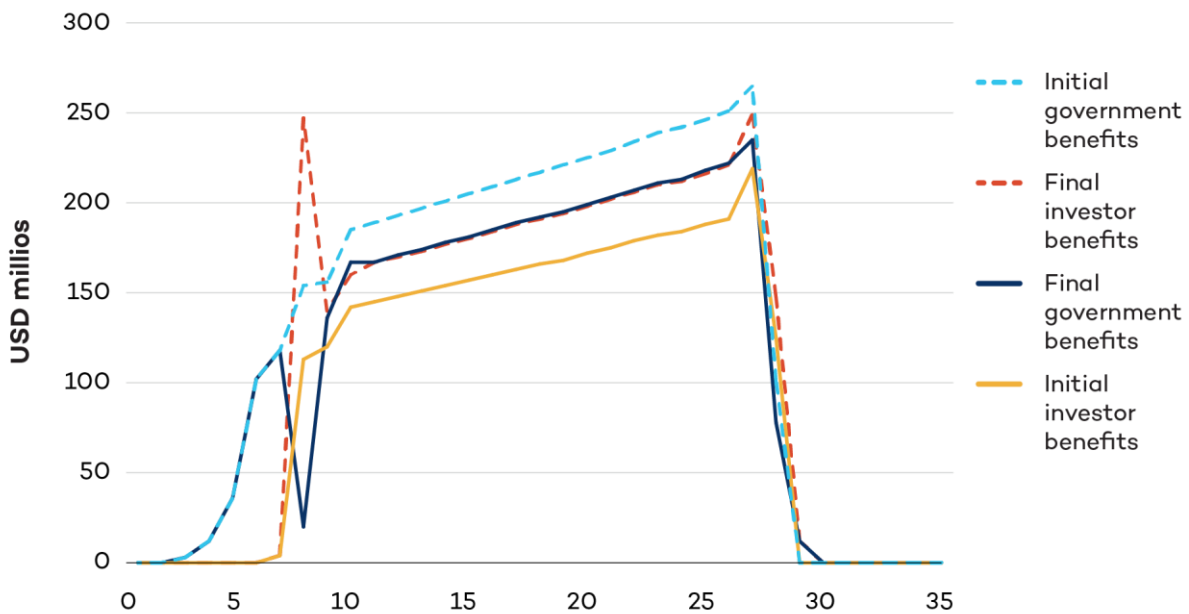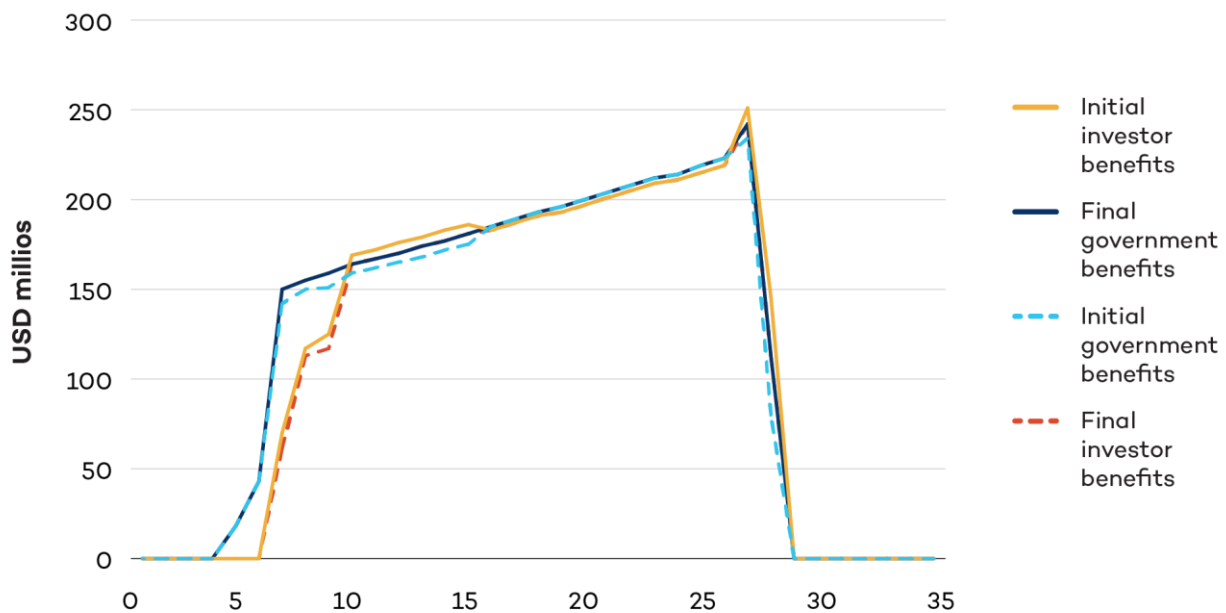

Source: Author, based on modelling.

The Philippines. As Figure 2 shows, the recovery period ends after 3 years of production, in year 7 of the project's life. Because the government's basic government share is less than 50% of net mining revenue at this point until year 16, the investor pays an additional government share. For the following few years, the basic government share is at least 50% of net mining revenue. This means that the investor does not make any additional payments. However, unlike Tanzania's approach, the government does not have to compensate the investor for receiving more than 50% of net mining revenue.

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[8] With a gold price of USD 1,600 per ounce.

**Figure 2. The Philippines' sharing of benefits across the lifetime of a gold mine making average profits** [9]

Source: Author, based on modelling.

Ecuador. As Figure 3 shows, sharing is triggered in year 8 of the project's life. This is a year later than in Tanzania's approach because the investor is permitted to earn its required return before sharing. From this point onward, annual investor returns are significantly greater than government revenues. Therefore, despite the government having received revenues in previous years, its share of cumulative benefits falls below 50%, and the investor makes an additional payment. However, these payments do not result in the government and the investor receiving the same monetary amount each year. Sharing is based on discounted cash flow. The revenue that the government received in the early years of the mine is worth more than the same monetary amount received by the investor later. This reduces the size of the additional payments that the investor needs to make for cumulative benefits to be shared equally.

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[9] With a gold price of USD 1,600 per ounce.

Figure 3. Ecuador's sharing of benefits across the lifetime of a gold mine making average profits[10]
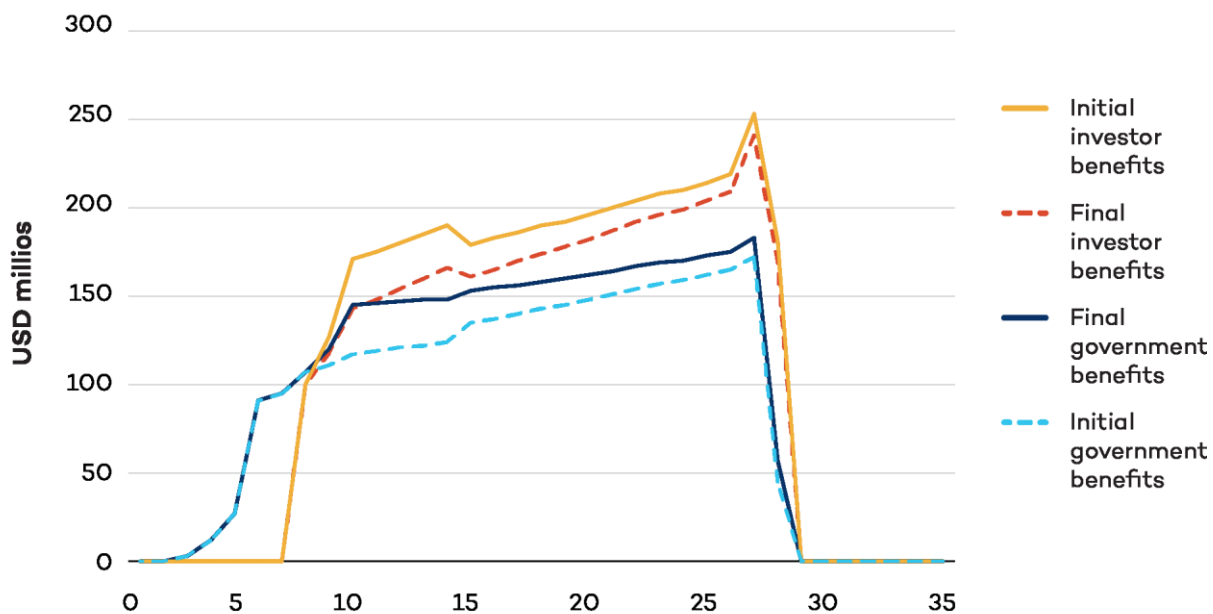
Source: Author, based on modelling.

3.0 An Assessment of the Three Regimes

The Tanzania, Philippines, and Ecuador approaches were reviewed against the typical objectives of a fiscal regime: maximizing government revenue without deterring investment, balancing reliable revenues with flexibility as profits change (often referred to as progressivity), and focusing on simplicity to limit tax avoidance risks. Political economy implications were also considered.

In the analysis of the regimes' performance in relation to a gold mine, to isolate the effect of the sharing mechanism, the performance of the regimes was compared with and without it. Tanzania, the Philippines, and Ecuador compete with other countries for investment; therefore, their regimes were also compared with those of some of the world's other gold producers.

3.1 Government Take With Average Profitability

As Figure 4 shows, the sharing mechanism affects the government take in the Tanzania, the Philippines, and Ecuador regimes in different ways.

The Philippines' and Ecuador's mechanisms both increase the government take from a mine with average profitability, compared to the regimes that would otherwise be applicable. However,

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[10] With a gold price of USD 1,600 per ounce. The model assumes that all the labour profit share goes to workers in line with the recent court ruling, and therefore none is included in government benefits.

Ecuador's mechanism has a larger impact, despite two features (highlighted in Section 2.4) that would be expected to have a smaller impact than the Philippines' mechanism. First, the investor is able to earn its required return before sharing. Second, sharing is based on a cumulative rather than annual benefit, and therefore the revenues that the government earns early in the mine's life count toward its share later in the mine's life. Ecuador's mechanism has a larger impact because several significant taxes—such as import duties and withholding taxes on interest and dividends—do not count toward the government's share of benefits. The exclusion of these taxes increases the additional payment that the investor must make for the government to receive 50% of cumulative benefits.

Tanzania's mechanism, in contrast, reduces the government take because of the ceiling that it imposes on the government's share of benefits. However, it still generates an average effective tax rate (AETR) greater than 50% (with a discount of 10%) because the 50/50 split is based on actual cash flow. Given that the government receives revenue before the investor, the government receives a larger share on a discounted basis.

Whether the three regimes strike a reasonable balance between generating government revenue and competitiveness for a mine with average profitability will depend on the wider investment climate of these countries, which is outside the scope of this analysis. For example, Ecuador's government take is higher than other countries analyzed, but the country may have more predictable policies or better infrastructure. That said, the Tanzanian government may be able to increase its government take. As noted above, it has negotiated a higher split than 50/50 for at least one mine. The 55/45 split—in line with that for Petra Diamonds—results in an AETR of 59% (not shown in Figure 4).

Figure 4. AETR for an average gold mine with a gold price of USD 1,600 per ounce[11]
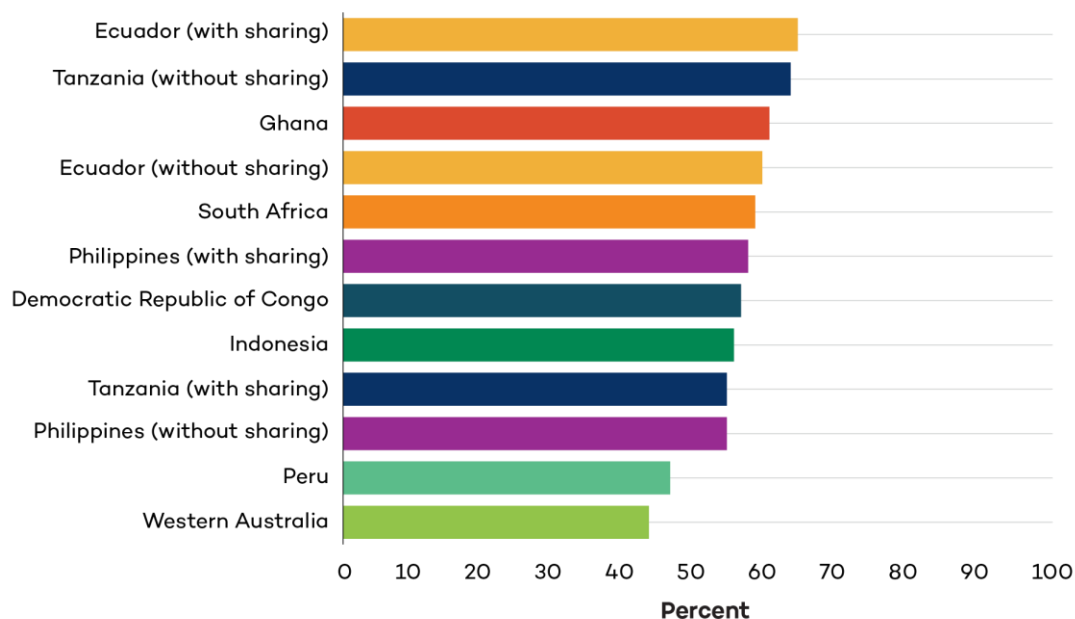
Source: Author, based on modelling.

3.2 Reliability Versus Flexibility

Many governments want a regime that generates some revenue for their budget each year, irrespective of whether a mine is making low or high profits. They also want taxes that are simple to measure and therefore difficult to avoid. However, the input and production taxes needed to achieve these objectives can prevent low-profit mines from being developed or from surviving downturns if set too high. The optimal regime must balance the objectives of reliability and simplicity with enabling investors to make their required return from a wide range of mines. Flexible, profit-based taxes are then needed to capture the largest possible share of profits above this threshold.

The sharing mechanisms both hinder and help the regimes achieve these objectives in different ways. Figure 5 and Figure 6 show the balance between reliability and flexibility by charting government take at different profit levels—measured in terms of AETR and government share of total benefits, respectively.[12] The optimal regime described above would, after setting a

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[11] With a discount rate of 10%. While Ecuador's sharing mechanism does not account for the labour profit share because none of it will go to the government from 2024 onwards, it is included in the AETR because it is a tax on the project. The Democratic Republic of the Congo's regime has an excess profits tax that is triggered for a mine when the realized price is at least 25% higher than the price in its feasibility study. The model assumed that the feasibility study has a price of $1,300 per ounce, so the excess profits tax is not triggered.

[12] Total benefits in this case are a project's revenues minus operating costs and replacement capital (but not minus exploration and development capital). This cash flow represents the money that is available to pay back the initial investment and provide a return.

government take that provides the required return to an investor in a low-profit mine, have a relatively flat AETR for higher-profit mines (which translates to the government share of total benefits slightly increasing with profits) (Wen, 2018).
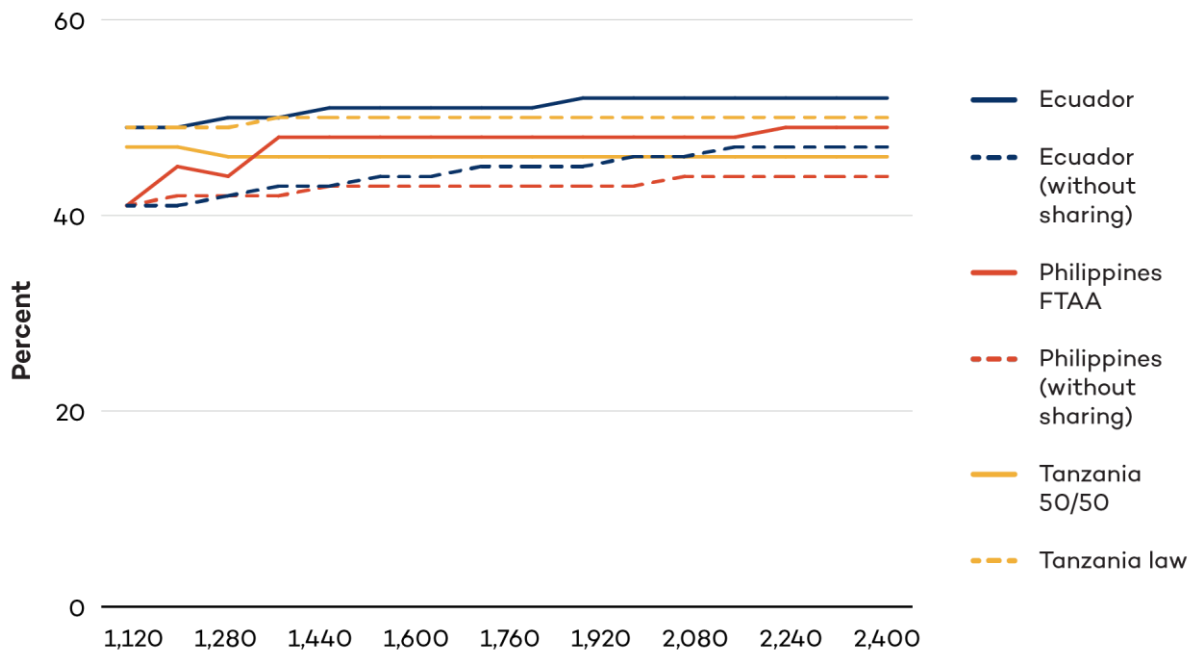
Figure 5. AETR at different profit levels[13]
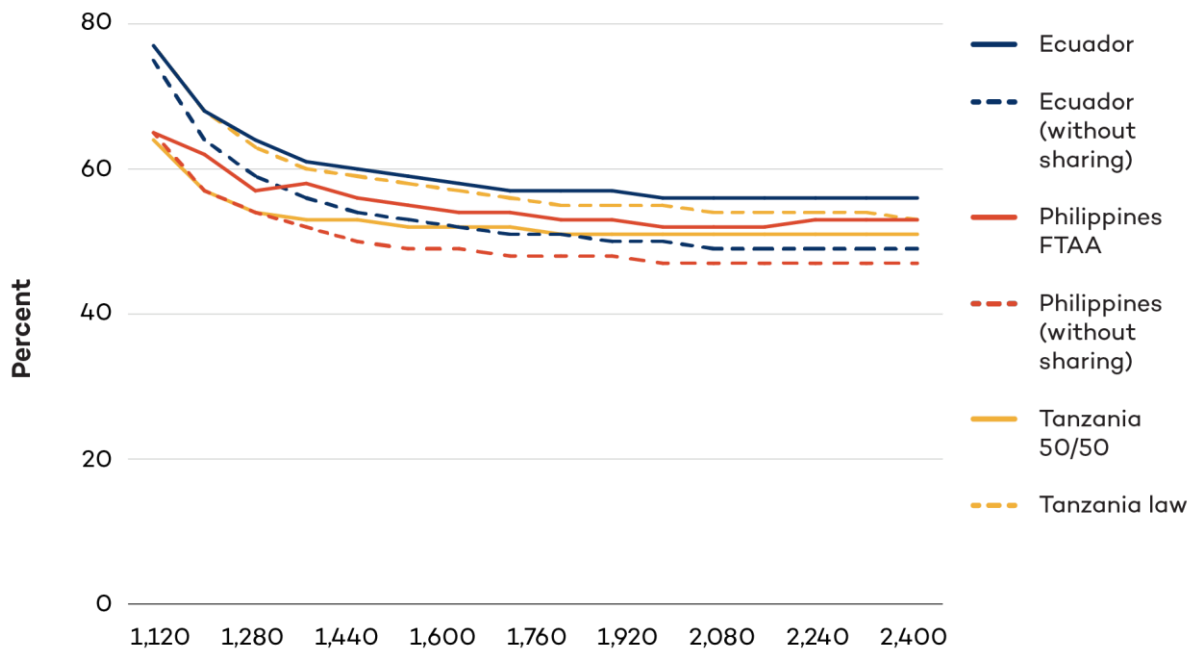
Source: Author, based on modelling.

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[13] With a discount rate of 10%. The results for only Tanzania, the Philippines, and Ecuador are shown to clearly depict each data point. The results for the other countries can be found in the model.

Figure 6. Government share of total benefits at different profit levels[14]

Source: Author, based on modelling.

Ecuador's mechanism helps to improve the balance between reliability and flexibility. The investor being able to earn their required return before sharing and sharing being based on cumulative benefits mean that it has a limited impact on low-profit mines. For higher-profit mines, it significantly increases government take. In this way, it operates much like a windfall profit tax. However, its flexibility could be improved further. The exclusion of some taxes from the government's share of benefits means that even low-profit mines may need to make an additional payment. This is particularly impactful because the rest of Ecuador's regime imposes a relatively high burden on mines even when profits are low. This also means the AETR still falls slightly with profits rather than remaining relatively flat. In addition to including all taxes in the government share of benefits, greater flexibility could be achieved by the sharing mechanism having more than one tier.

The Philippines' mechanism improves the government's ability to capture windfall profits. However, it risks increasing the burden on low-profit mines. This is because, while the limited taxes during the recovery period provide some relief, sharing is triggered before the investor earns its required return and is based on annual, not cumulative, benefits. This also limits the scope to capture an even greater share of windfall profits through the sharing mechanism, as a larger

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[14] With a discount rate of 10%. The results for only some countries are shown to clearly depict each data point. The results for all the evaluated countries can be found in the model.

government share would risk a higher burden on low-profit mines. A separate windfall profit tax would therefore be needed for this purpose instead.

Tanzania's mechanism results in the regime capturing the same share of profits, as defined by the Tanzanian framework, whether a mine generates low or high profits. (This feature is not reflected in figures 5 and 6, however, given that the AETR and total benefits use a slightly different definition of profits and are based on discounted cash flows.) The fixed share of profits means that the government must decide whether to impose a large government take on low-profit mines and capture a large share of any windfall profits. Alternatively, it could provide more relief to low-profit mines; doing so, however, would capture a smaller share of windfall profits. The 50/50 split, for example, provides more relief to low-profit mines than the 55/45 split, but captures a smaller share of windfall profits.
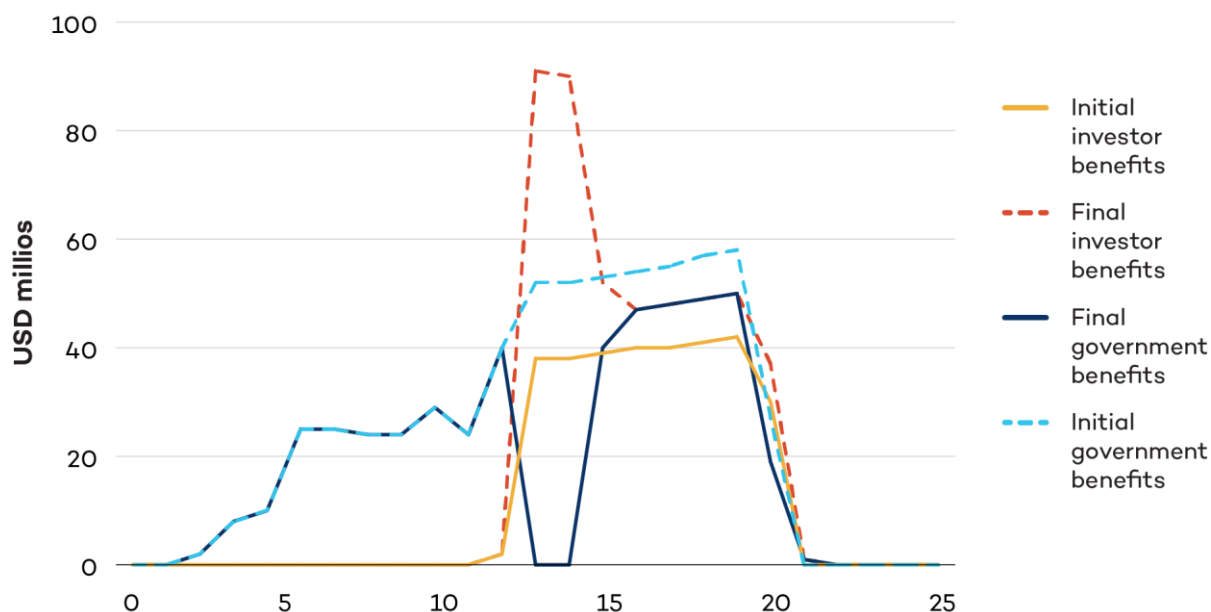
While a less flexible regime would typically be expected to provide more reliable revenues, this does not appear to be the case with Tanzania's sharing mechanism. This is because it makes all government revenues dependent on the size of total benefits. **The government can only receive 50% of total benefits, irrespective of which tax they were initially derived from. Low profits, which in turn means total benefits are small, could therefore impact even the payment of taxes not directly based on profit.**

In Figure 7, our modelling suggests that there may be years in which the government does not receive any revenues from a gold mine that is producing but making low profits. In this scenario, these 2 years of no government revenues are caused by the build-up of benefits that the government receives prior to the sharing trigger. Once sharing is triggered, the government must forgo tax payments to rebalance and for 50/50 sharing to be achieved. With a mine of average profitability, total benefits are large enough that the government does not have to forgo all its tax payments in any year, as shown in Figure 1. However, with low profits, the investor must retain all benefits for a period to rebalance.

While this example shows the potential impact of the government's accumulation of benefits prior to the sharing trigger, periods of no or low profits at other points in the mine's lifetime could also make revenues volatile. Therefore, while Tanzania's mechanism may still generate reasonable government revenues over the project's lifetime, it appears to undermine the reliability of revenues from year to year. As a result, it appears to create a regime that neither captures a significant share of windfall profits nor provides reliable revenues.

Figure 7. Tanzania's sharing of benefits across the lifetime of a low-profit gold mine[15]

Legend:
- Initial investor benefits
- Final investor benefits
- Final government benefits
- Initial government benefits

Source: Author, based on modelling.

## 3.3 Protection Against Tax Avoidance

To measure the simplicity of the regimes and the extent to which they expose a government to tax avoidance risk, the proportion of revenues generated from different tax bases is estimated.[16] Figure 8 shows this categorization of taxes according to whether they are based on inputs, production, operating profit, or corporate profit, ordered from the simplest to the most complex tax base for a government to measure.

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[15] With a gold price of USD 1,600 per ounce.

[16] This measure is simplistic in that it does not measure provisions in a specific regime that affect the difficulty in measuring a given tax.

Figure 8. Proportion of lifetime revenues from a gold mine by tax base[17]
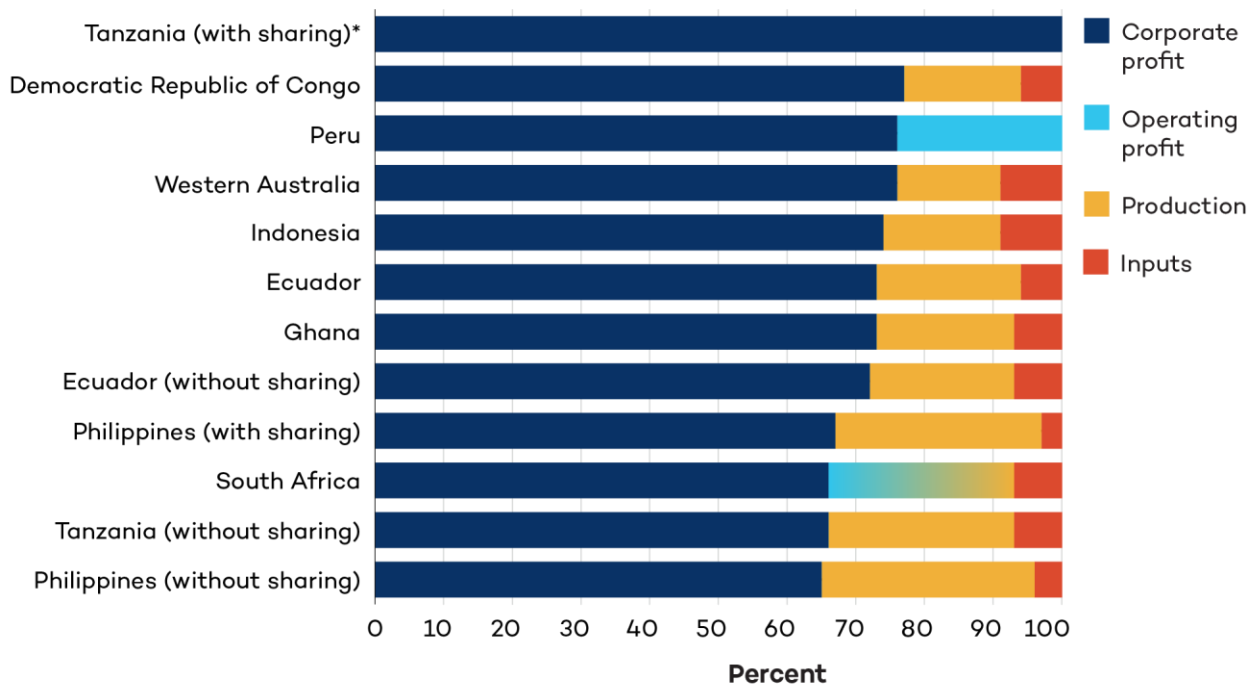
*Note: While the Tanzania sharing regime includes taxes that are not based on corporate profit, the sharing mechanism results in all government revenues being linked to it.
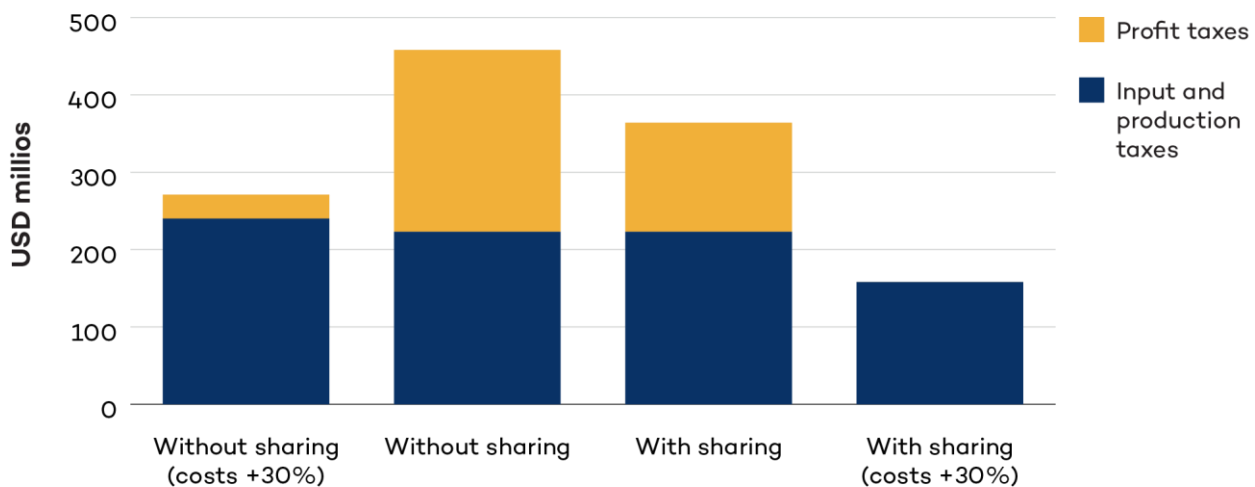Source: Author, based on modelling.

Tanzania's mechanism significantly increases the government's exposure to tax avoidance risks. As noted above, all government revenues become dependent on profit. They therefore all become dependent on government capacity to effectively assess profit rather than just the government revenues from profit taxes.

Figure 9 shows the potential impact of tax avoidance practices increasing costs and therefore reducing total benefits. Under the regime with no sharing, only profit-based taxes such as corporate income tax would be impacted by such tax avoidance practices. These practices would not affect input and production taxes such as royalties. However, with the sharing mechanism, such practices could result in artificially low profits, which could trigger the ceiling on the government share of benefits and mean reductions in payments such as royalties, even though these payments are usually not dependent on profitability; this is one of the main reasons they are included in fiscal regimes to begin with.

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[17] Note that absolute revenue is not equal across each regime, so the absolute value of revenue may be higher in a regime with a lower proportion. The area with a colour gradient for South Africa reflects its royalty having a base of gross revenue but a rate that varies according to a measure of operating profit.

Figure 9. Hypothetical exposure to tax avoidance risk with Tanzania's fiscal regimes [18]

Source: Author, based on modelling.

This feature of the mechanism exists regardless of the size of the split. A larger government share reduces the risk that tax avoidance will lower total benefits to the extent that the government's share is less than the value of input and production taxes. However, it does not eliminate that risk.

The Philippines' and Ecuador's mechanisms, in contrast, do not significantly affect government exposure to tax avoidance risks. Determining the need for additional payments to the government depends on the government's capacity to measure profits effectively. But because these regimes do not place a ceiling on the government's share, tax avoidance that reduces profits would not affect the payment of input and production taxes. Tax avoidance could extend the Philippines' recovery period and therefore delay the payment of some taxes, including import duty and interest-withholding tax, given that the end of the recovery period depends on the reported profitability of a mine rather than an ex-ante assessment. However, the rule that the recovery period must end 5 years from the start of production regardless of whether pre-production expenses have been recouped limits the extent to which it can be extended.

All three regimes contain measures intended to reduce tax avoidance risks related to financing costs. In the calculation of net mining revenue, the Philippines only allows the deduction of interest payments that are in line with prevailing international rates for similar loans. Similarly, Ecuador only allows the deduction of interest payments from taxable income if the interest rate does not exceed the rate specified by the government. It also prohibits interest on related-party loans from exceeding 20% of a measure of operating profit: earnings before interest, tax, depreciation, and amortization. Discussions with government and industry officials suggest that Tanzania has a stricter rule for related-party loans in the Barrick Gold MDAs, treating them as interest free in the calculation of total benefits. Recent Tanzanian legislation also unusually provides for its mandatory state equity

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[18] With a low profit mine and a gold price of $1,600 per ounce.

in projects to give the government a share of any loan repayments to related or unrelated parties, which will apply to any sharing arrangement.[19] This provision is intended not only to generate larger direct government revenues but also to reduce the incentive to shift profits through inflated financing costs.[20]

These protective measures are not tied to the structure of the sharing mechanisms; however, they could be included in any regime. Indeed, Tanzania's mechanism appears to neutralize the impact of taking a share of loan repayments. The government can only receive 50% of economic benefits regardless of whether they are generated from a share of loan repayments or other revenue streams.

3.4 Political Economy Challenges

In addition to how these regimes perform in relation to the typical objectives of a fiscal regime, their political economy implications will also be critical for determining whether their potential benefits are realized. In particular, the potential for them to engender public trust and therefore improve policy predictability will be key.

The clearest political economy challenge arises from Tanzania's mechanism. As noted above, if the government has captured a greater share of the benefits than the agreed split, it must make a payment to the investor or forgo future tax payments to rebalance. It will likely be politically difficult for the government to make a direct payment to the investor, and therefore it can be assumed that the government will forgo future tax payments. However, it is possible in some scenarios that the government will need to forgo all tax payments in a given year. This will also be politically difficult. As a result, Tanzania's mechanism could create situations in which the government feels forced to enter into supplementary arrangements to ensure it receives some revenues each year—for example, an arrangement that spreads the amount required to rebalance over several years. Such arrangements, whether fully disclosed to the public or not, could lead to the sharing approach eroding rather than improving public trust.

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[19] Section 10(1)(k) of the Mining (State Participation) Regulations 2020 (Government of Tanzania, 2020). The Barrick Gold framework agreement, agreed the year before these regulations were released, contains a narrower version of this provision. It only provides the government with a share of any shareholder loan repayments and excludes loans for any new investment (Acacia Mining PLC, 2019).

[20] The merits of some of these protective measures require further scrutiny. For example, taking a share of any loan repayments could result in lenders charging a higher interest rate to ensure they still recoup their loan and a required return. This would not only reduce taxable income but also make it harder for the government to assess whether an interest rate is reasonable because it would not be comparable with industry benchmarks. However, this is outside the scope of this analysis.

4.0 Conclusion and Lessons for Other Countries

Setting the share of profits that a government should receive has several potential benefits. It has the potential to provide slightly more certainty to government and to engender public trust and policy predictability. However, this analysis provides three main lessons on how to structure these regimes for other countries.

The regime should set a floor but not a ceiling on the government share, like the Philippines' and Ecuador's mechanisms do. The fact that Tanzania cannot receive more than the specified share has some unexpected consequences and three main risks: it potentially sets an unnecessarily low ceiling on government revenues (depending on the agreed split), it makes those revenues less reliable, and it increases their exposure to tax avoidance risk. A larger government share reduces but does not eliminate the risk of unreliable revenues and tax avoidance. The Philippines' and Ecuador's approaches, on the other hand, avoid these risks.

The regime should allow the investor to earn its required return before sharing is triggered and then base sharing on cumulative benefits, like Ecuador's mechanism does. Without these features, the Philippines' mechanism struggles to address the fundamental challenge of balancing reliability and flexibility. A higher government share allows the government to capture more windfall profits but also increases the risk of deterring investment in marginal mines. Ecuador's mechanism, on the other hand, performs more like a windfall profit tax. Given that other aspects of the regime can generate reliable revenues, this approach appears appropriate. That said, because the exclusion of several significant taxes from the government's share of benefits means that low-profit mines may still be impacted, this approach could be reconsidered. The mechanism could also provide further flexibility by having more than one tier. However, given that this complicates the profit split, it would need to be weighed against the implications for government certainty and public trust.

Finally, given that any additional payments to the Philippine and Ecuadorian governments depend on their capacity to effectively measure profits, other countries should be aware that these mechanisms do not negate the benefits of simpler instruments to reduce tax avoidance risks.

Setting the minimum share of benefits that a government should receive may therefore be a useful component to incorporate in fiscal regime design, but it does not change the fundamentals and the importance of getting them right.

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