

Mining

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Mining

Saila Stausholm

What form does wealth protection take in an industry where value creation is geographically fixed, and assets fall under government control? The location of natural resources cannot be manipulated in the ways intangible goods and assets are moved across jurisdictions. Permission to extract these resources must also be granted by national authorities. This chapter analyzes how claims to wealth are made by mining companies operating in resource-rich developing countries. These companies accrue wealth by obtaining tax advantages arising within mining countries as well as from the strategic placement of ownership rights in low-tax jurisdictions. On the basis of a close reading of 113 mining contracts across 21 developing countries, this chapter finds strong evidence that firms in the mining sector are able to piece together tax advantages via government deals and multi-jurisdictional structures. Three types of global wealth chain are combined in ways that provide opportunities for wealth accrual and protection by mining firms.

The distribution of wealth arising from natural resources is a contentious issue, as historically wealth arising from these resources has not been distributed in ways that benefited source country's economy or population. Many resource-rich economies remain poor, a paradox captured in the concepts of a "resource curse" and "Dutch disease" (Auty & Warhurst, 1993; Sachs & Warner, 2001; Davis & Tilton, 2005). These outcomes have been linked to corruption (Marshall, 2001; Caripis 2017), lack of administrative capacity (Arezki et al., 2012), and inadequate tax payments from multinationals (Le Billon, 2011). Unequal distribution and unstable institutions have also been linked to social unrest and civil war (Klosek, 2018). Claims to wealth arising from the mining industry are particularly important in developing countries, where the loss of rights to mineral wealth negatively impacts poverty levels and sustainable development.

More than half of the value added in the mining sector is internal to mining firms. There are few job-creating linkages with other firms and industries, making upgrading in the mining industry challenging for resource-rich countries (Korinek, 2020). While locally owned mining companies source some input and services domestically, most foreign-owned mining firms do not vertically integrate within the mining country (Katz & Pietrobelli, 2018). Across most mineral and metal types, the mining global value chain consists of a long exploration and feasibility stage and a mine construction stage, before value is generated. Construction is followed by the extraction phase. All of these activities are fixed geographically. The potential global scope of the value chain arises mostly at the processing stage, with, for example, India the main location for cutting and polishing raw diamonds (Linde et al., 2021). The final phase is the retail of finished products or sale of inputs to other industries. The value added within the value chain is mostly in the geographically fixed extraction phase.

The mining value chain consists of the extraction of raw material, and processing into valuable forms of minerals and metals. The mining wealth chain consists of the legal affordances which control the distribution and transfer of the wealth arising from mining after the export of raw materials, after the sale of processed materials, and after the sale of final products. Profits arising from these operations are claimed by corporate entities operating in different or several parts of the value chain and are protected from taxation by governments in both the mining country and elsewhere. Strategies for the protection of wealth include tax advantages obtained *within* mining countries in the form of contracts containing favorable fiscal regimes and the strategic use of ownership over mining rights in tax havens to obtain tax advantages by transacting wealth *between* jurisdictions.

As multinational corporations have organized their operations in global value chains, the globalization of capital has put states in a position of competing for investment, and tax policy has become one tool utilized to lure investors (Devereux, Griffith, & Klemm, 2002; Genschel, 2002; Rixen, 2011; Abbas & Klemm, 2013; Egger & Raff, 2015). The pitting of states against each other has driven a downward trend in corporate tax rates (Devereux, Griffith, & Klemm, 2002; Keen & Konrad, 2013) as well as discretionary tax advantages provided to firms to incentivize investment. Thomson Reuters (2015) recorded 10,000 instances globally since 2005 where states awarded discretionary incentives to investors, with an average incentive value of almost one fifth of the investment, or \$8.19 million.

Such incentives include opportunities for firms to decrease their tax bill within the jurisdiction where value-generating activities take place. Even in mining, where geology rather than business climate is the key location determinant, tax advantages are granted *within* countries through statutory and discretionary tax policy.

Given the differences between legal and taxation systems across countries, multinational firms have increasingly been able to take advantage of differences in the legal treatment of assets to obtain lower global tax rates (Jansky & Prats, 2013; Seabrooke & Wigan, 2014; Zucman & Piketty, 2015; Janský & Kokeš, 2016). The OECD's Base Erosion and Profit Shifting initiative was motivated by the prevalence of the under- or over-pricing of transactions between corporate entities within the firm, treaty shopping, and the strategic shifting of debt internationally (Beer et al., 2018; UN & ECA, 2018).

Tax incentives and multi-jurisdictional tax advantages afforded by offshore jurisdictions comprise firm tax strategy in combination. The goal of tax-minimizing firms is that profits fall *between* jurisdictions and legal categories so as to exist beyond the reach of tax authorities—to be placed “elsewhere, ideally nowhere” (Murphy, 2009, p.16; cf. Bryan et al., 2017). While the strategic deployment of intangible assets for purposes of wealth creation and protection has extenuated an imbalance between governments seeking revenue and firms active within their jurisdictions (Bryan et al., Chapter 5 in this volume), the fact of geographically fixed assets does not necessarily constrain the use of global wealth chains. The geographical fixity of assets, however, may well change the *type* of global wealth chain governance that is engaged, as tax treatments within the mining country are more important in this context. For mining companies, the global value chain is geographically fixed as is the most of the value arising from the mining itself (Korinek, 2020). This is why obtaining tax advantages *within* countries becomes as important as obtaining tax advantages *between* countries for this industry. This chapter demonstrates the prevalence of wealth creation and protection schemes in the mining industry, and discusses what forms of global wealth chain governance are implicated.

Exploration, mining machinery and extraction, the refinement and processing of metals, and final manufacture into consumer goods are the value-adding productive activities which constitute the value chain. The wealth chain consists of the legal affordances around the value chain, which distribute rights to the wealth that arises from these activities. Claims to wealth arising from mining arise and are bolstered by a diverse and

overlapping set of sources, including national law, international law, and corporate legal documents (Dezalay, 2019; Mann, 2015). National legislation in the mining code and tax code stipulate the tax rates, royalty rates, and other payments which should be made from the firm to the government. However, the fiscal regime is often negotiated in further detail in the contracts granting mining rights to firms. The legal framework, and in particular the contract, therefore is an asset in the sense that it provides entitlements to wealth. Contracts typically grant significant tax advantages, enabling the mining firm to accrue disproportionate amounts of wealth arising from the value-creating activity. Most contracts between mining firms and governments are confidential, but recent transparency initiatives have made a push toward higher levels of disclosure (EITI, 2021; Resourcecontracts.org, 2021). Analyzing 113 contracts from 21 countries, this chapter provides an overview of how mining contracts comprise legal affordances that create and protect wealth.

Data description

The fiscal regime for mining companies derives from several overlapping sources of law. Between countries, international investment treaties and tax treaties govern how income from cross-border economic activity is treated (Hearson, Chapter 3 in this volume). Within mining countries, the tax code and mining code detail the fiscal rules for mining investors, including incentives which are provided industry wide. Additionally, for each mining project contracts detail special fiscal rules governing the project (Mann, 2015). Contracts which grant mining licenses provide the legal basis for the rights to extract minerals and metals. This practice has arisen since the privatization of the mining industry from the 1980s (Dezalay, 2019; Mann, 2015). These contracts provide the legal and economic basis for global value chains and global wealth chains in mining, and are negotiated between governments of resource-rich countries, mining firms, and in some cases third-party legal professionals (Dezalay, 2019). Contracts constitute an important data source for research in global wealth chain analysis, as they specify the relationship between buyers and suppliers, or in this case, between investors and governments (Cutler & Dietz, 2017).

This chapter analyzes a large number and range of publicly available legal documents from 21 developing, resource-rich countries (see Table 12.1).

Table 12.1 Number of contracts by country

Country	Number of contracts
Afghanistan	6
Burkina Faso	7
Burundi	1
Cameroon	3
Colombia	5
DRC	9
Ecuador	1
Guinea	10
Liberia	17
Madagascar	1
Malawi	2
Mali	12
Mongolia	3
Mozambique	4
Niger	1
Peru	5
Philippines	7
Senegal	5
Sierra Leone	6
Tunisia	2
Zambia	6

These documents include the mining, tax, and in some cases investment codes (54 documents in total). Additionally, 113 contracts provided by the Resource Contracts public repository¹ are analyzed.² The contracts span the years from 1978 to 2016, but most are from 1990 onwards. The legislation used is the most recent available at the time of research (2018). The contracts analyzed span a wide range of mineral types. Most of the contracts regard refined base and precious metals such as gold, copper, and silver. The second-largest group of contracts are for bulk commodities, especially iron ore. A few contracts pertain to the mining of metallurgical products such as alumina, gemstones (usually diamonds), and heavy mineral sands. The contracts sometimes combine different categories of minerals, such as gold and diamonds.

¹ <http://www.resourcecontracts.org>.

² Data collection was conducted by the author with three legal consultants with expertise in the mining sector and French and Spanish language skills. The data and analysis can be found in Readhead (2018) and IGF (2019).

After identifying 11 relevant areas of tax, the documents were sorted through and coded according to these 11 areas.³ Each mention of something pertaining to tax within a document related to either regulation or a contract would be copied into the corresponding field in a spreadsheet. Tax incentives that were coded from legislation and contracts range from lower taxes such as a lower corporate income tax rate, tax holidays, property, VAT or sales tax exemptions, and lower withholding tax rates to provisions which allow for deductions on expenditure, such as accelerated depreciation or capital expenditure deductions. Others include extended loss carry-forward periods and royalty rates set on a discretionary basis. Stability clauses in which the tax regime cannot be changed are also counted as a tax incentive.

After translating and summarizing these tax provisions, each field was analyzed to determine whether it constituted an incentive. The assessment of the legislation as an incentive was based upon whether it afforded greater benefits than those offered in other sectors. In a second step, the corresponding text in the contract (if there was anything specified) was assessed to see if it afforded greater benefits than those already available in the law. If so, it was marked as an incentive. It is therefore possible for a country to have an incentive in the law and in the contract, if the contract provides something more extensive than the legislation.

Statutory and discretionary tax incentives in mining

The analysis of mining codes, tax codes, and mining contracts reveals that mining companies are commonly granted statutory tax advantages within mining countries. Contracts across 21 mining countries show that mining companies furthermore obtain discretionary tax incentives. Figure 12.1 illustrates the widespread nature of these tax exemptions across mining countries. Seventeen of the countries included fiscal concessions in both legislation and contracts. Looking at the subfields these are in, there are overlaps. This implies that mining firms in some instances receive concessions beyond the incentives already granted in the legislation of that country.

³ For most countries, all contracts were analyzed provided they were available in English, Spanish, or French. However, for the Philippines, Guinea, the DRC, and Peru only a limited selection of contracts was analyzed due to the large number of available contracts. The sample analyzed was selected so it reflected the different types of minerals mined in the country.

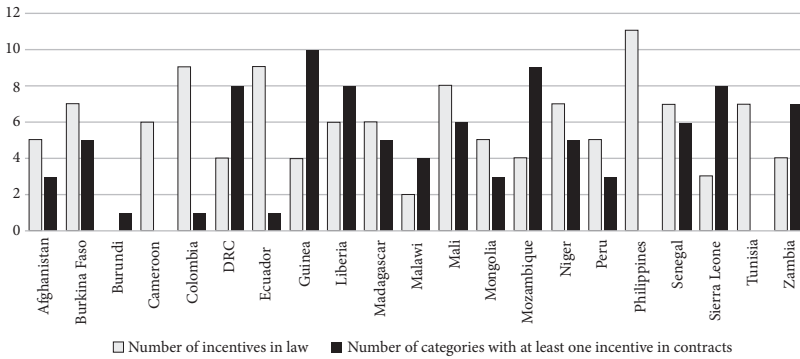


Fig. 12.1 Tax incentives by country

The three types of tax incentives that pose the highest risks of base erosion and profit shifting are lower (or exemptions from) corporate income tax rates, and concessions on withholding tax and royalty rates. Corporate income tax concessions are provided by 15 out of the 21 countries through either contract or legislation, in many cases in both. Over half the countries provide either lower royalty rates or withholding tax rates, the latter in some cases being completely exempt. The most extreme form of tax incentive is a tax holiday, which suspends corporate income tax for a period of time. These are often the most generous tax incentives, and pose the risk that they are used for tax minimization beyond that intended if the firm is able to register income such that it falls under the umbrella of the holiday (Fletcher, 2002; Zee, Stotsky, & Ley, 2002). Over half the countries provide tax incentives in either contracts or legislation. Nine out of the 21 countries have offered tax holidays with total exemptions of 3–15 years to mining firms, and a further three countries offered a semi-tax holiday where they exempt some taxes or apply a lower rate (Figure 12.2).

Protections are built into contracts that mitigate against risks of future regulation. Almost all firms analyzed have a stability clause in the contract or are subject to a statutory stability clause, and there are many cases where the stability period granted in the legislation is exceeded in the contract. These clauses limit the ability of the government—including future governments—to change fiscal rules, or, in some cases, even implement human rights legislation effectively (Shemberg, 2009). The period of stability ranges from very few years to 99 years or the entirety of contract duration. The mining company can therefore be effectively protected against new regulation. At the same time, there are also clauses that ensure that the

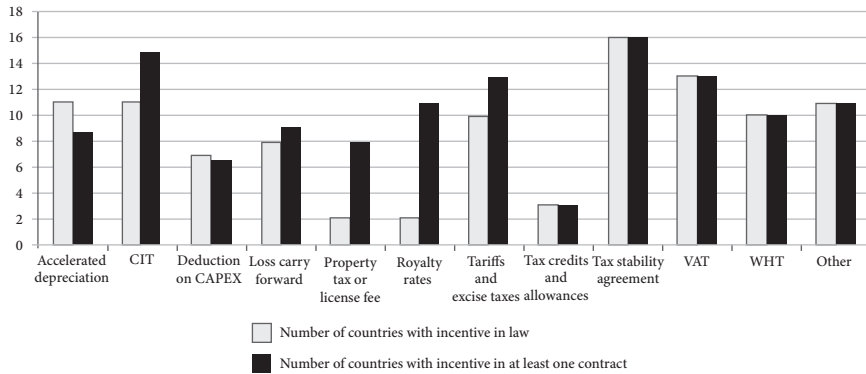


Fig. 12.2 Tax incentives by category

fiscal regime becomes more beneficial over time. Some contracts include a provision that the firm will enjoy the same affordances that any competitor receives. In consequence if other contractors can be argued to be competitors then a concession given to one firm might be applied more broadly even when that concession is not specified in the contract. For example, one contract “shall entitle [company] to take advantage of any more favorable regime applicable specifically to and agreed individually with any company whether in a development agreement or otherwise.” (retrieved from resourcecontracts.org, 2018). This can be understood in terms of the creation of fair competition and a level playing field. It also means that a contract affording the most extensive benefits might create ripple effects that extend across the entire industry, effectively ensuring a built-in race to the bottom.

The advantageousness of contracts depends on the institutional setting. Comparing contracts shows that there is variation, but that variation is limited within countries. It is therefore not the case that firms mining a specific type of mineral receive the same treatment from different governments. One type of mining is not treated more favorably than another across the board. Variation is driven more by what a country has granted than the type of mineral or metal that is mined.

Market-relational global wealth chains through government tax deals

Global wealth chains consist of legal, economic, and social relationships between clients, suppliers, and regulators (Seabrooke & Wigan, 2017). In the mining industry, the value creation for mining firms—the client—is

tightly linked to government control, and so is wealth protection. While the government in this instance acts in the capacity of both supplier and regulator, it is important that these are different agencies with different and sometimes conflicting interests, information, and capacities (Readhead, 2016). The government acts as the supplier when providing tax advantages in legal codes and contracts through the ministries of mining or other politically appointed officials (Kienzler et al., 2015), and as the regulator when acting in the capacity of the tax administration.

Wealth protection through statutory and discretionary tax incentives can be seen as a combination of market and relational global wealth chains. In the case of statutory tax incentives, all mining investors are equally entitled to them, and there is no need to engage in complex negotiations, knowledge sharing, or planning. This is akin to a market type of global wealth chain, in which the product—the tax exemption—is readily available for qualifying investors. While the structural power of mining companies can influence the existence of statutory tax incentives (Bell & Hindmoor, 2014, Marsh et al., 2014; Elbra, 2014), the firm does not negotiate directly and no complex information sharing is involved in obtaining this type of wealth protection.

In the case of discretionary incentives granted in contracts, this is more akin to a relational type of global wealth chain. The process of negotiating these contracts is long, often spanning several years, during which coordination and exchange of information is required between a small number of officials, officers of the firm, and professionals. On the government side, the negotiation is often led by political appointees or experienced civil servants, with input from a range of technical and legal experts (Kienzler et al., 2015). The use of external expertise is however limited on the government side as they often don't trust foreign experts or simply can't afford their fees (Radon, 2006). The firm team will be tailored depending on the relationship with the government. The team will usually include technical experts, such as engineers or geologists, in-house and outside legal counsel, financial modelers and economists, and, in some cases, firm managers (Radon, 2006; Kienzler et al., 2015). Mining companies have an advantage in their ability to deploy in negotiations greater levels of expertise and numbers of experts, and more experienced negotiators (Radon, 2006). In some cases, mining companies even hire members of the government team after negotiations have begun, gaining insight into government strategy and leading to turnover and instability in the government team (Kienzler et al., 2015). While perhaps not a strong trust relationship, it is a relational interaction between two teams of professionals and appointees. Over the

period of negotiation, these teams will share and come to agreement on an understanding of complex geological data, infrastructure plans, timelines for construction, and job-creation prospects, explicitly coordinating on a wide-ranging list of issues, including fiscal terms.

Relational does not imply an equal relationship between the two parties. While there is a lot of knowledge sharing and trust generation in the negotiations, there remains strong information asymmetry between the government and the mining firm. Sharing financial and geological data in itself, and in the absence of requisite scientific and economic expertise, does not produce equality between negotiating parties. The firm is most likely to hold such requisite expertise (Radon, 2006; Kienzler et al., 2015). Valuing a mining reserve is inherently difficult, as it is impossible to know either the exact amount of resource in the ground or the costs of extraction, and because prices may fluctuate considerably (Otto, 2017). The mining firm does, however, hold more expertise, and might be better able to translate geological data into a value assessment (ICMM, 2009; Readhead, 2016). Contracts may be especially skewed in favor of the firm when the firm rather than the government has conducted feasibility studies and asset evaluations (Kienzler et al., 2015).

The government's involvement as supplier is distinct from its role as regulator and tax collector. These roles and the processes in which they play out are temporally and functionally separated. Negotiation occurs prior to tax collection, and is sometimes conducted under the authority of ministers who are no longer in power when the mine is operational and tax is to be collected. While mining ministries aim to promote development and investment, they may be less concerned with the fiscal implications down the line—both because they might no longer be in office and because they have been convinced they need to compete for scarce investment (Mann, 2015; Dezalay, 2019). The tax authorities aim to secure tax collection, but face the challenges of insufficient information, lack of sector-specific expertise, and the lack of an incentive to audit firms when they are beneficiaries of concessions and exemptions (Readhead, 2016).

Hierarchical global wealth chains through international ownership structures

Though the source of the wealth is fixed, multijurisdictional ownership structures employed by mining firms enable them to engage in global wealth chains similar to other multinational companies. Intrafirm

transactions through strategically placed corporate entities are a means of profit shifting and effective tax minimization. Prices for services and intermediate products or byproducts from mining (e.g. minerals that are not the main product of the project), as well as interest rates on loans, should be reported at market prices according to the “arms-length principle.” However, these prices may be subject to manipulation in transactions between related parties (Redhead, 2016; Beer & Devlin, 2021). In addition to debt financing between entities and mispricing internal sales of products and services, capital gains may be realized within offshore jurisdictions that offer a combination of low taxes and tax treaties protecting against other governments claims (see Hearson, Chapter 3 in this volume).

Even where a fiscal regime does not provide tax advantages, transfer pricing poses risk to tax collection (Otto, 2017). In a multi-country statistical analysis, Beer and Devlin (2021) find that reported profits in the mining sector are sensitive to country tax rates, estimating revenue losses from profit shifting amount to be 0.06 percent of the GDP of selected countries, or around \$44 billion. Finér and Ylönen (2017) show how firms in the Finnish mining sector employ a wide range of tax-minimization strategies based on strategic choices around intragroup relationships and transactions. Global Financial Integrity (2014) found widespread instances of trade mis-invoicing in the mining sector in Africa (see also Grondona and Burgos on the soybean sector, Chapter 8 in this volume). Legal disputes between governments and firms may shed light on the tax avoidance of multinational mining firms. In the case of Acacia Mining in Tanzania, the firm paid large dividends to shareholders in years when they did not pay any taxes. This is likely due to a combination of the generosity of tax incentives and profit shifting through inter-company loans (Forstater & Readhead, 2017; Haines, 2017).

The ownership structure within multinational mining firms is not usually described in contracts, but in one case the appendix provided an overview. The firm in question operates a refinery project in Guinea. Figure 12.3 outlines the ownership structure, in which the local firm responsible for the mine is owned by a firm in Canada through two tiers of entities in the British Virgin Islands. The appendix states “by retaining this two-tiered [tax haven] corporate structure, [company] is preserving for its investors the most tax-efficient means for off-shore investment strategies.” The British Virgin Islands is described as “a widely accepted jurisdiction which imposes no income tax on companies incorporated within its jurisdiction” (contract retrieved from resourcecontracts.org, 2018). This arrangement allows dividends from the refinery project to be reinvested

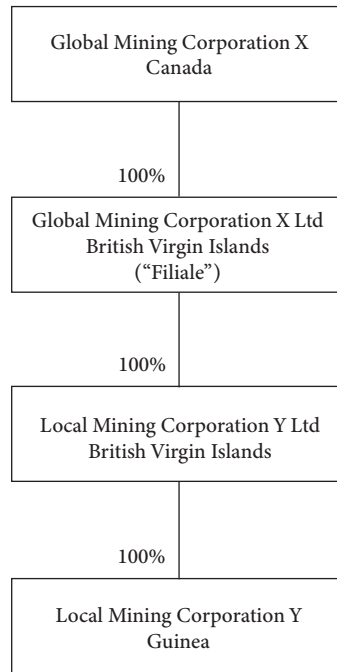


Fig. 12.3 Ownership structure of mining company

without first incurring a tax liability from investors' home jurisdictions. It also allows for the deferral of capital gains tax and tax on production profit, and prolongs the benefits of the tax holiday because taxes paid in the mining country after the tax holiday can be used to claim tax credits when remitting earlier profits from the haven. All these benefits are detailed in a letter from PwC, a professional service firm known for providing multinational corporations with advice on tax-minimization strategies. This highlights the significance of legal and tax experts in supplying these types of complicated tax haven structures (Jones et al., 2017; Murphy et al., 2019; Ajdacic et al., 2020).

Dynamic effects of combining of global wealth chain types in mining

Combining different types of wealth chains increases the level of wealth protection beyond the use of one standalone strategy. Table 12.2 outlines the different wealth-protection strategies employed in the mining industry, which can be combined. Statutory tax incentives as granted in legislation

Table 12.2 Wealth-protection strategies in mining

Wealth protection strategy	Complexity of products and services	Regulatory liability	Capabilities to mitigate uncertainty	Degree of explicit co-ordination	GWC form
Statutory tax incentives	Low	Low	High	Low	Market
Contractual tax incentives	↑	Low	High	↓	Relational
International structures	High	Low	High	High	Hierarchy

require low levels of coordination, are not complex, are widely accessible, and generate low levels of regulatory liability. Statutory tax incentives can be easily accessed by any investor, and this type of wealth protection is closest to a “market” form in the global wealth chain typology. The low uncertainty and risk of regulatory liability also applies to contractual terms, particularly if backed up by stability clauses, which a majority of the contracts examined here were. As the contract is a consequence of the relational interaction in the negotiation, in which the status/authority of negotiators impacts the outcome, and in which the notion of a mutual exchange (e.g. jobs for incentives) is important, this is best reflected in the relational global wealth chain type. The use of international ownership structures to take advantage of tax differences and obtain tax advantages *between* jurisdictions is more complex and requires a high degree of explicit coordination with tax planning expertise to the fore. This strategy might be devised and executed in-house such that the supplier–client relationship is internal to the corporation, or sourced through a professional service firm. Such a configuration conforms to a hierarchy type of global wealth chain.

Mining firms can combine market, relational and hierarchy wealth chain strategies to create and protect wealth. In the case of the firm examined above, the two-tiered tax haven structure is only the cherry on top of what is already a nice sundae. The government in question already offers mining companies a lower tax rate (30 rather than 35 percent), a 3-year tax holiday and a 15-year stabilization clause. The contract also provides the firm a 15-year tax holiday, a 15-year amortization of startup-costs and 5-year loss carry-forwards after the period of the tax holiday, a 5 percent investment credit, a cap on customs expenses, and (not least) a stabilization

clause which will stay in place throughout the duration of the contract. The firm thereby combines statutory and contractual tax advantages with the opportunities afforded by placing ownership in a tax haven. This is a hybrid market–relational–hierarchy global wealth chain.

Global wealth chain governance turns on managing the degrees to which on one hand explicit coordination is necessary, and on the other information asymmetries characterize relationships. The mining firm's objective is to maintain a large information asymmetry with tax authorities (Kienzler et al., 2015). Downplaying or misrepresenting production volumes, sales relationships, and by-product exports through missing documents or unreliable record-keeping is prevalent in the sector (Readhead, 2016). This is a challenge for tax authorities because of a lack of resources and expertise, but is exacerbated by the contractual and statutory exemptions which limit the incentive to audit, and by the complex ownership structures which make it unclear whether parties to a transaction are related parties. In this way, the already existing information asymmetry between the firm and the regulator is increased through the use of market, relational, and hierarchical wealth chains. Even if authorities can overcome the information asymmetry, firms may use the concessions and exemptions that they have been afforded to repel efforts to tax them. In one case in Ghana a stability clause was initially (though ultimately unsuccessfully) used to argue for immunity from transfer-pricing legislation (Readhead, 2016).

Conclusion

Mining firms extract value from the ground in developing countries, and extract wealth from the same countries by using legal structures to claim disproportionate ownership of the profits from the sale of mining products. Multinational mining corporations are able to protect wealth by combining different strategies and affordances arising both *within* and *between* countries. Interest in mining investment incentivizes governments and government officials, in the form of mining ministries and officials, to provide statutory and discretionary tax incentives. These are articulated in market and relational global wealth chain governance modes, providing very large tax savings with very low liability and uncertainty for investors. Policies to encourage investment and intended to ensure upgrading in

global value chains ultimately serve as the key building blocks in global wealth chains. Mining firms can also enjoy the dynamic upgrading of the output of their global wealth chains when in many cases they are protected against future regulatory intervention and promised equal treatment in case any more favorable policy is ever extended to another firm. At the same time, these firms are able to draw upon hierarchical global wealth chains by deploying tax and legal expertise to produce tax-efficient ownership structures and organize internal transactions and finance in ways that ensure profits are transferred outside of the mining country.

The power governments hold over natural resources raises the question of why these incentives are provided at all. These are valuable resources that no one can mine without a license. The puzzle is especially acute given that tax incentives in general are not at the top of investors' lists of reasons to invest (Unido, 2011). In some cases, the motive might be political or corrupt (Marshall, 2001; Readhead, 2016; Carpis, 2017). While corruption might explain single cases, it cannot explain the widespread nature of the practices. Notably, these practices are also prevalent in other industries (Klemm & van Parys, 2011). The incentives might be provided under conditions of imperfect information and bounded rationality (Poulsen, 2015). Information asymmetries between governments and investors mean that governments don't know to what extent tax incentives are necessary. Accepted ideas that incentives could potentially be important for investors might lead governments to use them excessively (Bell & Hindmoor, 2014). The puzzle might also be explained by the structural power of mining companies, exercised in negotiations and lobbying efforts (Marsh et al., 2014; Elbra, 2014).

While tax incentives are generally discouraged now (UNCTAD, 2012), multilateral organizations such as the World Bank and the OECD previously advised governments to provide incentives and legal protections in order to attract investment. Given a perceived scarcity of investment, governments were encouraged to compete to attract it (Mann, 2015). Tax incentives in mining and particularly stability clauses were historically motivated by the privatization and deregulation wave of the 1980s and the concomitant need to provide investors confidence that new regulations or nationalization would not occur (Mann, 2015). Such affordances contributed to investor-friendly environments and were particularly prevalent in sub-Saharan Africa, where the perceived need to "roll out the red carpet" was strong (Mann, 2015). A naïve take could be that these are phenomena

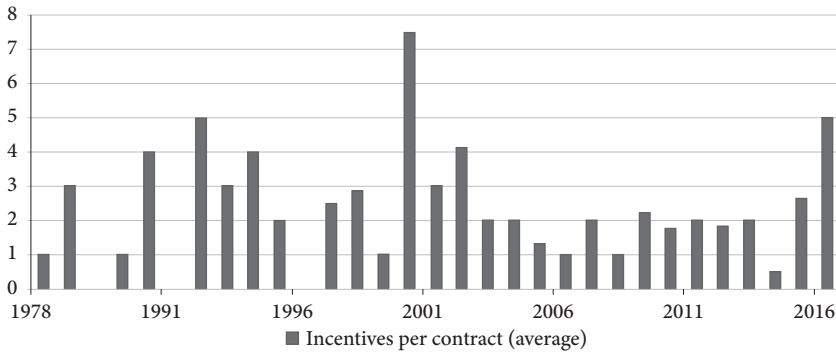


Fig. 12.4 Number of incentives over time

of the past, and improvements in institutions will mean tax incentives become less prevalent. However, the failure of institutions to ensure a fair distribution of natural resource wealth cannot be understood as a failure that can be improved simply by imposing the right legal framework. The willingness of governments to engage in tax competition enables most corporate tax minimization, and it is not being addressed by current attempts to reform the international tax system. Figure 12.4 shows that the provision of incentives has not decreased over time. These institutionalized practices should be understood as part of the colonial history of the countries that provide them, as well as a manifestation of new imperialist practices (Dezalay, 2019).

Further research might test how far the geographical fixity of the underlying value chain asset increases the importance of tax incentives and other tax advantages granted within countries. It is evidently an important element of mining wealth chains, but firms in other sectors also seek, and attain, tax exemptions. While it is likely the negotiated nature of firm tax liabilities increases the likelihood of at least some kind of fiscal incentive, discretionary deals are by no means unique to the mining sector. What is clear from this investigation of mining global wealth chains is the widespread use of wealth-creation and-protection strategies. Most of these are possible because countries to varying degrees enable them. The question remains as to the extent governments are able to transcend a perceived compulsion to compete via tax system design and discretionary tax affordances.

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