African governments fighting tax drainage – what does this mean for the Tenke deal?

The last 12 months has seen a notable pick up in interest in mining assets across Africa. Of specific interest are those transactions where the underlying asset resides in Africa, but where ownership is through an offshore listed entity, and payments, change of ownership, etc., all take place in a jurisdiction outside of Africa. A recent example of this is the sale of Tenke Fungurume (TFM) where a listed USA company sold its shares in the DRC mine to a Chinese consortium.

At first glance this is a seamless transaction, but the question that comes to mind is the following:

Is there any benefit, financial or other, to the country where the asset resides?

Africa has always been hungry for mega-mining projects – the kudos, the infrastructure, the employment, the status and the revenue. Given the commodity cycle, of late these mega projects have been few, and since 2015, there has been a growing movement focused on tax injustices in Africa and a bid to stop illicit financial flows.

Movements such as Stopthebleeding Africa IFF campaign received a huge boost, when in January this year, African leaders adopted the ground-breaking "High Level Panel on illicit financial flows." This high level endorsement was backed by Thabo Mbeki, the African Union and the Economic Commission for Africa, representing an unprecedented level of support for any such financial campaign on the continent.

African governments are under huge pressure to review their double tax treaties, particularly in Sub-Saharan Africa. Most recently South Africa and Rwanda successfully renegotiated their agreements with Mauritius to curb tax drainage.

So what does this mean for this example?

There are risks attached and the Core Consultants' risk map below highlights some of these risks:

If one considers the risk map, the Tenke transaction is seemingly straightforward, where the investor of the asset, simply passes ownership to a new company with no effect to the underlying asset (figure 1)

figure 1: At first glance the sale of TFM to China Moly is straightforward

However the reality is that there are a number of financial and tax risks that Tenke needs to consider in order to satisfy the various facets of the Africa regulatory environment, of which tax structures are but one. Just as an example, the risk map could look as follows:

figure 2: Potential risk map for the Tenke/China Moly deal

Selling assets in Africa is never straightforward. The fact that there are impending changes to tax regimes (i.e. tax duties and double taxation treaties), including regulatory volatility, adds a level of complexity. It is important when doing business in Africa to work with a company that understands the environment, can give clarity to your objectives, understands and is up to date with Africa's regulations, knows processes and ensures you follow required regulatory processes to the letter.