

REPORT

OF THE

JOINT COMMITTEE ON FINANCE AND MINES & ENERGY

ON THE

**GRANT OF FISCAL CONCESSIONS TO ANGLOGOLD
ASHANTI (GHANA) LIMITED UNDER A TAX
CONCESSION AGREEMENT (TCA) BETWEEN THE
GOVERNMENT OF THE REPUBLIC OF GHANA AND
ANGLOGOLD ASHANTI (ASHANTI) GHANA LIMITED**

JUNE 2018



**IN THE SECOND SESSION OF THE SEVENTH PARLIAMENT OF THE FOURTH
REPUBLIC OF GHANA**

**REPORT OF THE JOINT COMMITTEE ON FINANCE AND MINES
AND ENERGY ON THE TAX CONCESSION AGREEMENT
BETWEEN THE GOVERNMENT OF THE REPUBLIC OF GHANA
AND ANGLOGOLD ASHANTI (GHANA) LIMITED FOR THE OBUASI
MINE REDEVELOPMENT**

1.0 INTRODUCTION

The Tax Concession Agreement between the Government of the Republic of Ghana and AngloGold Ashanti (Ghana) Limited for the Obuasi Mine Redevelopment was laid in the House on 15th March, 2018 by the Honourable Minister responsible for Lands and Natural Resources, Mr. John Peter Amewu.

Pursuant to Orders 169 and 188 of the Standing Orders of the House, the Request was *referred* to the Joint Committee on Finance and Mines and Energy for consideration and report.

The Committee met and considered the Request with a Deputy Minister for Finance, Hon. Kwaku Agyemang Kwarteng, a Deputy Minister for Lands and Natural Resources, Hon. Benito Owusu-Bio as well as officials from the Ministries of Finance and Lands and Natural Resources and the Minerals Commission and hereby presents this report to the House pursuant to order 161(1) of the Standing Orders of the House.

2.0 BACKGROUND

Article 257 (6) of the 1992 Constitution vests mineral rights in Ghana in the President in trust for the people of Ghana. Under the Minerals and Mining Act, 2006 (Act 703), the Minister for Lands and Natural Resources, on behalf of the President, is responsible for granting mining rights to qualified applicants.

Upon the grant of a mining lease for the exploitation of the stipulated minerals, the Minister is required to submit the lease to parliament for ratification in accordance with article 268(1) of the Constitution and section 5(4) of the Minerals and Mining Act, 2006 (703).

The Minister is further empowered under Sections 48 and 49 of Act 703 to enter into Stability and Development Agreements including fiscal concessions with a holder of a mining lease if the investment proposed will exceed Five Hundred Million United States Dollars (US\$500 million). These Stability and Development Agreements may provide for stability and other terms that relate to the operation of the mining lease.

Section 49 (3) of Act 703 requires Development Agreements to be ratified by Parliament.

2.1 OBUASI MINE

The Obuasi Gold Mine is the oldest existing mine in Ghana, having started production in 1897 and has produced over 32 million ounces of gold during its 120-year life.

As part of the arrangements for the merger of AngloGold Limited and Ashanti Goldfields Limited to form AngloGold Ashanti Limited (AGA) in 2004 to support plans of extending the life of the Obuasi mine, the government of Ghana granted AGA a stability agreement (ratified by Parliament) which conferred various fiscal concessions and stabilization to the company's subsidiaries in Ghana namely, AngloGold Ashanti (Ghana) Limited (AGAG) which operates

the Obuasi Mine and AngloGold Ashanti (Iduapriem) Limited (AAIL) operating the Iduapriem Mine. The Stability Agreement for these entities are operational and valid until April 2019.

While the Iduapriem Mine continues to run profitably, the Obuasi operation, in spite of continued investments by AGA, has for the most part been loss-making due to challenges from operational difficulties, compounded by the sudden fall in gold price in 2013. This prompted AGAG to undertake a major restructuring programme, under an Amended Programme of Mining Operations (APMO) approved by the Government of Ghana in November 2014 in accordance with the mining laws of Ghana. During the period of limited operations under the APMO, the Obuasi Mine was invaded by illegal miners in February 2016.

The main objective of the APMO was to conduct a feasibility study to determine an operating scenario for the Obuasi Mine which is sustainable for the longer term. As part of the restructuring process, underground mining was suspended at the end of 2014 and the entire workforce retrenched in accordance with applicable laws and the Collective Agreement between the company and its workers. Additionally, nearly 60% of the company's concession was relinquished to Government, reducing AGAG's mining lease area from about 475 square kilometres to about 201 square kilometres. A smaller size workforce of about 750 was engaged on fixed term contracts while the mine moved into a limited operation phase in 2015, which involved smaller scale production principally through the retreatment of tailings.

As required under the APMO, a feasibility study to map out the future options to redevelop the Obuasi Mine was conducted, while construction of the underground decline, which is a key component to the future mechanization of the mine, continued. Environmental reclamation works also continued during the period.

With the lull in activities and the mine put under *Care and Maintenance* from 2016, at an annual cost of US\$50-60 million the Mine was invaded by illegal miners in early February

2016 resulting in a declaration of *force majeure* by AGAG on 9th February 2016, for a period of 12 months.

Law and order was restored at the mine by the Government in November 2016, mainly through negotiations with the local communities and illegal miners, relocation of miners onto parts of the area relinquished by AGAG, and the presence of the security forces. The *force majeure* was lifted by AGAG in February 2017. Security has since been maintained by the Government and it is expected that recommencement of mining operations will enhance the security situation.

The feasibility study has shown good prospects for a mine with estimated life of some 22 years.

TOTAL WAIVER REQUESTED

The total estimated value of the taxes and duties involved in the Fiscal Concessions and for which waiver is being sought is the *Cedi Equivalent of Two Hundred and Fifty-Nine Million United States Dollars (US\$259,000,000.00)*.

3.1 MEMORANDA RECEIVED

During the consideration of the Agreement, the Committee received written memoranda from the following bodies:

- Ghana Mine Workers Union of TUC
- Ghana National Coalition on Mining (NCOM)
- The George Paa Grant University of Mines and Technology

3.1.1 Ghana Mine Workers Union of TUC

In addition to the memorandum, executives of the GMWU were given opportunity to appear before the Committee to make *viva voce* presentations to expatiate on their concerns.

The Ghana Mine Workers Union's petition and presentation were essentially requesting that there should be security of tenure for the workers of the mine when re-opened, guaranteed pensions for the workers and that the rights of these workers are respected at all times.

They also prayed for local content and local participation in the sub-contracts that would be granted by the Mine.

The GMWU also wished for a provision on Windfall Profit Tax which would become payable whenever realised gold prices exceed the projected price by 20% or more.

3.1.2 Ghana National Coalition on Mining (NCOM)

Further to their memorandum, the NCOM also appeared before the Committee to make *viva voce* presentation on their concerns with the Agreement.

The NCOM which described itself as a coalition of Community Based Organisations (CBOs) and Non-Governmental Organisations (NGOs) questioned Parliament's authority to approve the Tax Concession Agreement.

Whilst conceding that the Minerals and Mining Act, 2006 (Act 703) clothes the Minister to grant stability terms and fiscal concessions, they were of the opinion that the wide discretion had created a gap in the law which needs to be filled going forward.

The NCOM also questioned the proposed US\$2 per ounce contribution to the Obuasi Community trust, averring that the contribution would be taken as a deductible expense by the company before profits are declared for taxation purposes. They rather wished that AGAG would be slapped with an obligation "to support or invest in any community project or facility."

They also objected to confidentiality provisions in the Agreement.



George Paa Grant University of Mines and Technology

The UMaT suggested per their written submission to the Committee that the Corporate Tax rate of 35% should be made applicable to AGAG and should not be reduced to 32.5% since the Government may be pressured to grant same to other mining companies. They also believe that the Royalty rate of 5% should be strictly applicable to the Mine. They finally were of the opinion that the concession should be truncated after 7 years.

4.0 OBSERVATIONS AND RECOMMENDATIONS

4.1 Benefits to Ghana from the Obuasi Mine Redevelopment (OMR)

The Committee observed that the Tax Concession Agreement will facilitate the redevelopment of the Obuasi Mine which is expected to have a positive net contribution to the Ghanaian economy. Economic gains from the redevelopment of the Obuasi Mine are estimated as follows:

- A total direct contribution to the economy of Ghana is projected to be US\$5.3 billion (approximately 51% of the total sales revenue) over the life of the mine. This total contribution includes direct contribution to government revenue (fiscal mechanisms), local content, as well as employment and community investment.
 - Out of the total contribution to the economy, US\$2.2 billion represents the direct contribution to government revenue (through the various fiscal mechanisms) over the life of the Mine, representing about 21% of the total revenue pie over the life of the Mine.

- Local Content and Employment (and their multiplier effects). Out of the total contribution to the economy, US\$2.4 billion represent contribution to the economy through local content (i.e Ghanaian businesses participating in the value chain), representing about 24% of the total revenue pie over the life of the Mine.
 - The number of persons employed directly at Obuasi during operations by AGAG and its subcontractors will be between 2000 and 2500, with up to an additional 1500 people being employed during the construction phase. The economic contribution to the economy through employment and other community investments represents about 7% of the total revenue pie over the life of the Mine.

- Corporate Social Responsibility and Local Community Support – AGAG has established a Hospital and a School at Obuasi as independent operations for use by the community as well as the Mine. Although these have been established to be principally self-sustaining, the mine redevelopment will further facilitate them. A strong and vibrant mine will enable continued funding of the Obuasi Community Trust, and AGAG has committed to an on-going contribution of US\$2 per ounce produced.
 - The mine redevelopment will also enable continued funding support for the Malaria Control program which has been of benefit not only to the Obuasi Community, but also to Districts in the Upper East and Upper West Regions of Ghana.

- Positive image to Ghana's economy as an investment friendly and business gateway to Africa. The Obuasi Mine has, for the international investment

community, been high profile, especially during the years that Ashanti Goldfields was listed on the London and New York Stock Exchanges. In recent years the difficulties encountered and losses suffered by AGAG are also well known internationally.

The establishment of a clear partnership between the Government and AGAG to facilitate the Obuasi Mine Redevelopment will send a strong message to the international investment and mining community that the difficulties are a matter of history and that Ghana is really open for business. This is likely to result in even more positive feedback from the international investment community about Ghana as a stable investment destination.

4.2 Improved Security in Obuasi

It was earlier noted that the recommencement of operations of the Mine would improve the security situation in Obuasi which has in part deteriorated as a result of the Mine being under care and maintenance. The operation of the mine will also breathe a new life into the Obuasi community and its environs.

4.3 Indirect Impact

Further to the direct benefits and contribution to the economy from the recommencement of the operation of the Mine, the Committee observed that multiplier effects of the direct contribution could be significant based on the extent of the interconnections between the mine and the rest of the economy.

Notable, the operation of the Mine will contribute significantly to reduce illegal mining in the area. A significant part of the approximately 60% of the company's concession area relinquished to the State is being processed for licencing to small scale miners and is

therefore expected to provide livelihoods to the beneficiary small scale miners and enhance the economy in the Obuasi area and beyond.

4.4 Likely Negative Impacts of not Approving the Agreements

As to what would happen if the House refused to approve the Agreement, the Committee was informed that a refusal to approve the Agreement would make the *status quo* persist. Under the current circumstances, the Obuasi Mine is not operating and without the assistance of Government, it is likely to continue that way. As is the case now, the impact will continue to be that Government will lose potential revenue inflows that would accrue from the redevelopment of the Mine. The local Obuasi economy would continue in its decline and the almost deserted ghost town community is likely to continue, if not worsen, in the absence of the key economic driver which is the operation of the Mine.

4.5 Assessment of the relevant Taxes

The Ministry of Finance, working together with the Ghana Revenue Authority and AGAG, has provisionally estimated the fiscal impact of the Agreement by way of potential revenue foregone by Government in granting these tax concessions to support the redevelopment of the Obuasi Mine. The table below shows the estimated value of the fiscal concessions contained in the Tax Concession Agreement and in particular the estimated tax revenue which will be foregone by the Government for the first 10 years by applying the concessions compared with current tax law, i.e. assuming no tax concessions and current tax laws apply.

Table 1: Estimated value of the fiscal concessions

Fiscal Concession	Tax Concession Agreement	Cost to Government (US\$'million)
Royalty	3.1(f)	40
Income Tax	3.1(a)	2
Capital Allowance	3.1(a)	56
Retention of Losses	3.1(a)	0
Customs Import	3.1(c)	161
VAT	3.1(g)	N/A
Deemed Disposal	3.1(d)&(e)	0
Total		259

Source: Ministry of Finance and Ghana Revenue Authority

4.5.1 Royalty

The Royalty revenue loss to Government is computed as the impact between the stabilized current position of AGAG which is 3% until April 2019, after which the granted sliding position in the Agreement is compared with the current law position of 5%.

4.5.2 Income Tax

The Corporate Income Tax concession is estimated as the impact between the current law position of 35% and the concessionary income tax rate of 32.5% granted in the Agreement.

4.5.3 Capital Allowances

This is derived on the basis that the current unutilized capital allowance balance is carried forward to 31st December 2020 and become part of losses on 1st January 2021. Capital allowances arising after the effective date will be treated in terms of the current law.

4.5.4 Retention of Losses

This tax would only be triggered in the event of a change of control of AGAG and therefore the cost to the Government of Ghana would be zero if no such event occurs.

4.5.5 Customs Import Taxes

The estimated value of Customs Import taxes shown in the table indicate the impact between the current law and an exemption/waiver of customs duty.

4.5.6 Value Added Tax (VAT)

VAT is stated as zero (0) on the table because it has been worked into the Customs/Import Taxes. The amount of VAT to be exempted totals the cedi equivalent of US\$76.6 million.

4.6 Withholding Tax on Interest on Intra-Group Loans

The Committee was informed that any interest paid by the Mine on intra-group loans will attract 8% withholding tax by the Government of Ghana. Should the current law remain the same, then there would be no revenue loss to government pertaining to taxes on intra-group loan interest payments.

4.7 Sustainable Livelihood

The Committee noted that gold is an exhaustible natural resource which will be completely depleted at some point in time. The Committee therefore recommends to Government, AGAG and other stakeholders to put sustainable and alternative livelihood programmes and

industry in place within the Mine area. This would ensure that the economy of Obuasi continues to function properly even after the exhaustion of the mineral deposits thereat.

4.8 Claw back on Concession

The Committee noted that per the Agreement, the AGA is required to be exempt for the Stability Period from the application of new taxes that may be imposed under an enactment.

The Committee was however informed that AngloGold Ashanti (AGA) has in subsequent negotiations agreed with the Government of Ghana to reduce the Stability Period to seven (7) years solely in respect of a minimum corporate tax regime that may be introduced by Government.

Thus, should the government go ahead to implement its intention to introduce a minimum corporate income tax, the AGA agrees to be amenable to the tax after seven (7) years instead of the total 10 years stability period.

The Committee finds this to be in the supreme interest of Ghana since the Government will be able to subject AGA to the intended minimum corporate income tax after just 7 years of the Stability Period.

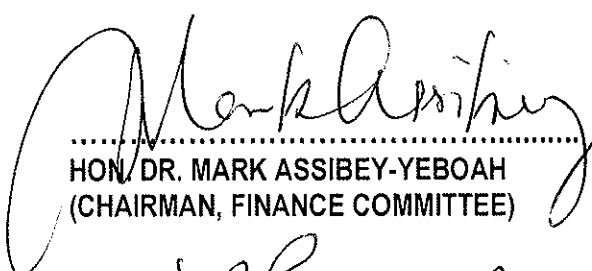
3.0 CONCLUSION

The Committee is satisfied that the grant of fiscal concessions under a Tax Concession Agreement (TCA) is necessary for the planned redevelopment of the Obuasi Mine of AngloGold Ashanti (Ghana) Limited for the achievement of the targeted economic and social benefits for Ghana as a whole and Obuasi in particular.

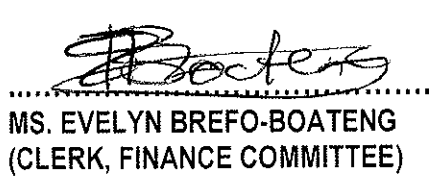
The Committee hence recommends to the House, in view of the foregoing observations, to adopt this report and approve by resolution, **the Grant of Fiscal Concessions to AngloGold**

Ashanti (Ghana) Limited under a Tax Concession Agreement (TCA) between the Government of the Republic of Ghana and AngloGold Ashanti (Ashanti) Ghana Limited in accordance with Article 174(2) of the 1992 Constitution of the Republic of Ghana.

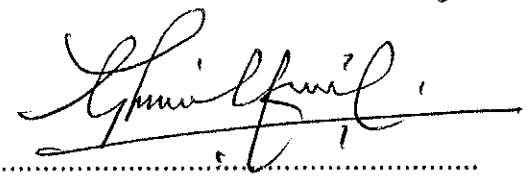
Respectfully submitted.



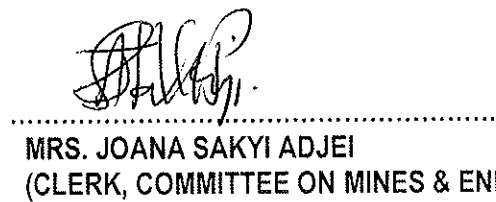
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HON. DR. MARK ASSIBEY-YEBOAH
(CHAIRMAN, FINANCE COMMITTEE)



.....
MS. EVELYN BREFO-BOATENG
(CLERK, FINANCE COMMITTEE)



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HON. EMMANUEL K. GYAMFI
(CHAIRMAN, CTTEE ON MINES AND ENERGY)



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MRS. JOANA SAKYI ADJEI
(CLERK, COMMITTEE ON MINES & ENERGY)

20TH JUNE, 2018



