

## 经过辩论，议会最终修改了矿产资源的支付范围



### 联系人:

#### Michael Ahern

税务及法律服务主管合伙人  
michael.ahern@pwc.com

#### Tsendmaa Choijamts

税务及法律服务, 执行总监  
tsendmaa.choijamts@pwc.com

#### Maryna Tarnavska

税务及法律服务, 高级经理  
tarnavska.maryna@pwc.com

#### Munkhjargal Ragchaakhuu

税务及法律服务, 高级法律顾问  
munkhjargal.ragchaakhuu@pwc.com

#### PwC Tax TMZ LLC

Central Tower, 六层  
603室, 乌兰巴托  
14200, 蒙古国

Tel: +976 70009089

Fax: +976 11 322068

[www.pwc.com/mn](http://www.pwc.com/mn)

该税务快讯由普华永道税务TMZ LLC制作。本快讯中包含的材料仅供一般参考, 不包含对所描述每个项目的全面分析。读者在采取(或不采取任何行动)之前, 应根据自己情况咨询专业意见。我们对于依赖于本快讯内容而采取的行为或出现的疏忽不承担任何责任。

© 2020 PricewaterhouseCoopers Tax TMZ LLC.

All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers Tax TMZ LLC, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.

### 议会批准了《矿产法》关于矿产资源使用费的修正案。

2019年3月26日, 议会修正了《矿产法》(以下简称“**修正案**”) \*。修正案的重点是《矿产法》第47条, 对矿产资源销售方、运输方、使用者相关的矿产资源使用费(“**使用费**”)作了修改。修正案还扩大了使用费的实体覆盖范围, 不仅包括采矿权持有者, 还包括从事上述活动的实体以及向蒙古中央银行出售/存放黄金的实体。在修订之前, 使用费仅适用于矿产许可证持有人这次修正案生效之前, 使用费只适用于采矿权拥有者。

2019年6月28日, 宪法法院根据“该修正案不符合蒙古国宪法规定的概念和原则, 因为它造成经济压力, 并通过征收双重税限制蒙古国的正常商业运营”的声明, 对该修正案进行了审查。

经审查, 宪法法院认为该修正案违宪, 废除了该修正案。法院的理由是, 修正案违反了《宪法》第5.4条\*\*, 其中规定“国家[...] 应以确保各类企业的发展及其人口的社会发展为目的规范国家经济”, 并且宪法第19.1条规定: “国家应对公民创造人权和自由得到确保的经济、社会、法规环境”。换言之, 宪法法院认为, 修正案违反了蒙古国政府创造友好商业环境和确保经济发展的宪法义务。

\*2006年7月8日颁布的《蒙古矿产法》(“矿产法”)。

\*\*1992年1月13日颁布的《蒙古宪法》(“宪法”)。

2019年7月16日，议会审查了宪法法院的上述结论，并发布了议会第70号决议。根据该决议，议会决定接受宪法法院的结论，废除修正案。

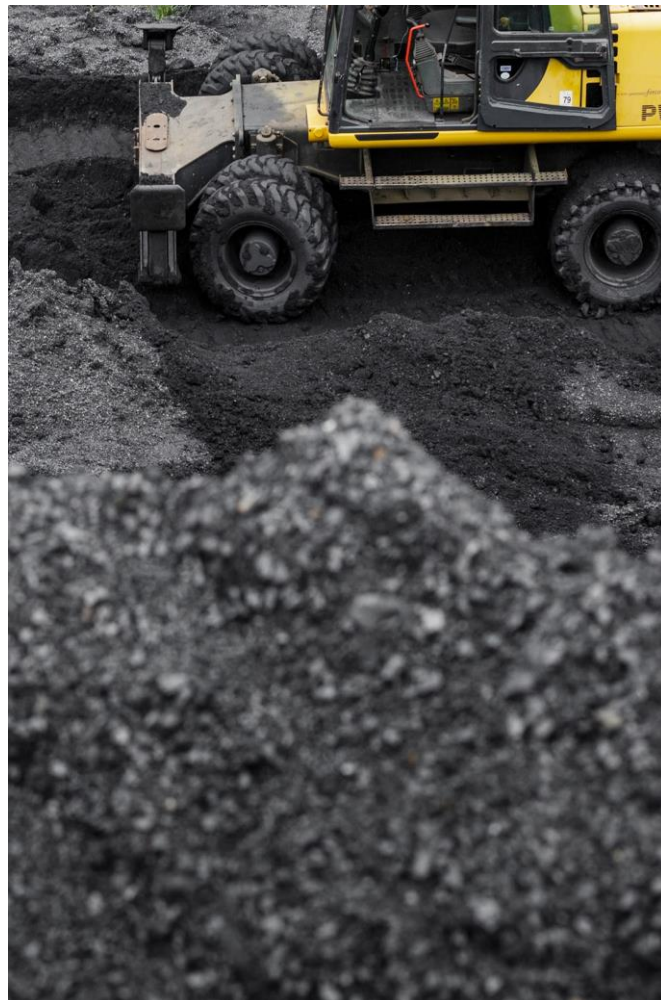
因此，宪法法院全体法官于2019年10月30日审查了上述议会第70号决议及其修正案。宪法法院裁定该修正案违宪，并废除该修正案和议会第70号决议。

根据宪法法院的裁决，议会于2019年11月22日通过了另一项矿产法修正案（“**第二修正案**”），涉及矿产法的相同条款。《第二修正案》阐明，特许权使用费将适用于出售、运输或使用《第一修正案》规定的矿物。但是，如果付款人同时进行上述活动，则特许权使用费不会在交易中应用两次。同时，第二修正案更新了不同类型矿物的累进特许使用费费率。政府受权批准一项关于如何评估、征收和报告特许权使用费的准则。

根据第二修正案，下列实体须支付特许权使用费（与第一修正案相同）：

- (i) 矿物许可证持有人
- (ii) 矿产出口商
- (iii) 向蒙古中央银行出售/存放黄金的实体。

根据《实施法》，第二修正案特许权使用费实体的定义条款应在2019年10月30日和11月25日追溯适用。



如果在这方面有更多的问题，请随时与我们联系。

\*2019年11月22日颁布的第二修正案实施法（“**实施法**”）。



# TAX AND LEGAL ALERT

Mongolia • Issue 01/2020 • February 2020

## *After debates, the Parliament finally changes the scope of payments for mineral resources*

### Contacts:

#### Michael Ahern

Partner & TLS Leader  
michael.ahern@pwc.com

#### Tsendmaa Choijamts

Executive Director, Tax and Legal Services  
tsendmaa.choijamts@pwc.com

#### Maryna Tarnavska

Senior Manager, Tax and Legal Services  
tarnavska.maryna@pwc.com

#### Munkhjargal Ragchaakhuu

Senior Legal Consultant  
munkhjargal.ragchaakhuu@pwc.com

#### PwC Tax TMZ LLC

Central Tower 6th floor  
Suite 603, Ulaanbaatar  
14200, Mongolia  
Tel : + 976 70009089  
Fax : +976 11 322068

[www.pwc.com/mn](http://www.pwc.com/mn)

This Alert is produced by PwC Tax TMZ LLC. The material contained in this alert is provided for general information purposes only and does not contain a comprehensive analysis of each item described. Before taking (or not taking) any action, readers should seek professional advice specific to their situation. No liability is accepted for acts or omissions taken in reliance upon the contents of this alert.

© 2020 PricewaterhouseCoopers Tax TMZ LLC. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers Tax TMZ LLC, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.



*The Parliament approves amendments to the Minerals Law with respect to royalties on usage of minerals resources.*

On 26 March 2019, the Parliament amended (the "**Amendment**") Minerals Law\*. The Amendment focused on the Article 47 of the Minerals Law and made changes in relation to *royalties* on usage of minerals resources (the "**Royalty**") applied on selling, transporting for selling or using minerals. The Amendment also expanded the scope of entities who are subject to paying the Royalty by including not only mineral license holders, but also entities who engage in the aforementioned activities as well as entities who sell/deposit gold to the Central Bank of Mongolia. Prior to the Amendment, the Royalty applied to mineral license holders only.

On 28 June 2019, the Constitutional Court reviewed the Amendment as per a claim that "the Amendment did not conform to concepts and principles under the Constitution of Mongolia as it causes economical pressure and curtails normal conduct of business in Mongolia by imposing double taxation."

Upon review, the Constitutional Court concluded that the Amendment was unconstitutional, effectively repealing the same. The Court's reasoning was that the Amendment was in breach of Article 5.4 of the Constitution\*\* which states "*The State [ . . . ] shall regulate the economy of the country for the purpose of ensuring development of all types of enterprises as well as social development of its population,*" and Article 19.1 of the Constitution which states that "*The State shall be responsible to the citizens for the creation of economic, social, legal and other guarantees ensuring human rights and freedom.*" In other words, the Constitutional Court deemed that the Amendment violated the Government's constitutional duties to create a friendly business environment and ensure economic development.

\* The Law of Mongolia on Minerals ("**Minerals Law**") enacted on 8 July 2006.

\*\* The Constitution of Mongolia ("**Constitution**") enacted on 13 January 1992.

# TAX AND LEGAL ALERT

Mongolia • Issue 01/2020 • February 2020

On 16 July 2019, the Parliament reviewed the said conclusion of the Constitutional Court and issued the Parliamentary Resolution No. 70, under which the Parliament decided to accept the Constitutional Court's conclusion to repeal the Amendment.

Consequently, on 30 October 2019, the full seat of the Constitutional Court reviewed the above-mentioned Parliamentary Resolution No. 70 and the Amendment. The Constitutional Court resolved that the Amendment was unconstitutional and repealed both the Amendment and the Parliamentary Resolution No. 70.

Following the Constitutional Court's decision, on 22 November 2019, the Parliament passed another amendment to the Minerals Law ("**2<sup>nd</sup> Amendment**") regarding the same provisions of the Minerals Law. The 2<sup>nd</sup> Amendment clarified that the Royalty will be applied on selling, transporting for selling or using minerals as it was provided by the 1<sup>st</sup> Amendment. However, the Royalty will not be applied twice on a transaction if a payer undertakes the above activities simultaneously. Also 2<sup>nd</sup> Amendment updated progressive Royalty rates for different types of minerals. The Government is mandated to approve a guideline on how the Royalty will be assessed, imposed and reported.

As per the 2<sup>nd</sup> Amendment, the following entities are subject to paying the Royalty (same as the 1<sup>st</sup> Amendment):

- (i) mineral license holders
- (ii) mineral exporters
- (iii) Entities who sell/deposit gold to the Central Bank of Mongolia.

As per the implementation Law, a provision defining entities subject to the royalty of the 2<sup>nd</sup> Amendment shall apply retrospectively during 30 October and 25 November 2019.

*Should you have more questions with this regard, please do not hesitate to contact us.*

\* The Law on Implementing the 2<sup>nd</sup> Amendment ("**Implementation Law**") enacted on 22 November 2019.

