THE SUBSIDIZATION OF EMPEROR MINES LIMITED

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The relationship existing between the Emperor group of companies and the government of Fiji is examined over a forty-year period. During a substantial part of this time the company has been subsidized by the state. Focus is on one particular period, beginning in the early 1980s when the company received tax-free status for its gold-mining operations in Fiji. The study attempts to quantify the value of subsidies offered to Emperor Mines Limited under the terms of the Vatukoula tax agreement between the state and the mining company. The authors argue that by the standards of gold-mining taxation agreements in developing as well as developed countries an extraordinary, if not unique, tax arrangement has been possible in Fiji. The tax arrangement with Emperor will also have implications for other possible mining operations in Fiji.

THIS ARTICLE CONSIDERS the history of state subsidization of Fiji's largest private-sector employer, Emperor Mines Limited (EML), and its principal Fiji subsidiary, the Emperor Gold Mining Company Limited (EGM).[1] We argue that EGM has been the recipient of extremely generous tax concessions and subsidies throughout the last forty years and that the company has, since the signing of the 1983 Vatukoula tax agreement (VTA), paid negligible amounts of tax to the government of Fiji.[2] The agreement is so structured that the company is unlikely to pay any corporate tax or royalties to the government until after the year 2011.[3] By the normal standards of international tax agreements in the mining industry the VTA is exceptional, standing

Pacific Studies, Vol. 20, No. 2--June 1997

virtually unique among such arrangements in small, low- and middle-income developing countries in allowing tax-free status for a gold mine.

First, we will consider the historical relationship between Fiji's government and EGM as it emerged through various concessions granted under the taxation system as well as through the systems of royalties and subsidies. Both the postwar colonial and postindependence taxation regimes that emerged have meant that the company has been dependent on state subsidy for close to half a century. In the second part of the study, we consider the terms of the Vatukoula tax agreement, negotiated in the early 1980s, and the circumstances that gave rise to it. The third section examines the corporate structure of EML, of which three companies at Vatukoula (EGM, Koula, and Jubilee) are the main revenue centers. In this part, we also consider certain tax implications of the agreement and the value of the implicit subsidy that the VTA has created. In conclusion, we evaluate implications of the VTA for future relations between Fiji's government and other mining companies, in particular Placer Pacific's intended development of a very large but low-grade copper deposit in the Namosi Province on the main island of Viti Levu. The fact that the government has permitted exceptional terms and conditions for mining in the case of EGM would suggest that this situation may be replicated in the future. We also consider what alternatives, if any, exist to the current taxation regime.

In comparison to other concessions granted to industry in Fiji, EGM's may appear unexceptional. When viewed over the longer historical sweep of a forty-year period, however, they are very substantial. The concessions are even more exceptional compared to tax agreements negotiated between mining companies and the state in other developing countries. In this light, the relationship between EML and the Fiji government can be seen as one of donor and recipient--with the donor being the state.

Other than Emberson-Bain's recent work highlighting the history of relations between the company and labor (1994), little has been written about EML and its exceptional governmental relations. However, the difficult industrial-relations situation at Vatukoula that Emberson-Bain analyzes (there have been a number of violent confrontations between Emperor and its labor force in the postwar era) has an uncomfortable parallel in the relationship between government revenue and the Emperor group's profits. The government has been preoccupied with the maintenance of employment levels, and although the mine has been an important source of jobs for the last fifty years, such employment has come at the price of major 'subsidies and concessions. The one exception has been the gold-export tax, reintroduced in December 1987. The relationship between Emperor and the government also mirrors the situation that prevailed during the colonial era

with the Colonial Sugar Refineries, then the most important firm in the country. With the government acquisition of Colonial in 1973, Emperor took its place as the most influential of the private-sector employers, always able to extract tax and other concessions from the state with the threat of redundancy and unemployment. This article analyzes not only the history of these concessions, but also the cost of the most recent concessions.

The History of Concessions to Emperor Gold Mining

The government of Fiji has, throughout the entire period under study, maintained a taxation regime in the mining industry that has been heavily reliant on ad valorem imposts. The system is based on three different components that evolved over time. First is a system of royalties, which can be as much as 5 percent of FOB value. Second is an export-tax regime, the rates of which vary but currently stand at 3 percent. Finally there are the usual corporate taxes under Fiji's ***Income Tax Act,*** which have developed over time but have been eroded by tax concessions as well as the company's tax-efficient accounting practices.

Taxation provisions have changed dramatically in Fiji since EML was first incorporated in 1935 and began operations. Almost at the same time, EGM was incorporated in Fiji.[4] Mine developers viewed Fiji's colonial-era tax regime as unconducive to the development of new mines.

In the case of the Vatukoula gold mine, neither the end product, gold, nor the revenue brought to state coffers appears ever to have been as significant to the government as the employment offered by extraction. The concessions offered by the state--to solve problems of what EGM claimed were inadequate finance; rising costs of production, exploration, and development; and a static gold price--have been, at least publicly, to keep an average of fifteen hundred workers employed and the town of Tavua viable. The state has granted concessions to Emperor since 1952, when the port and service tax was waived for bullion exports. Prior to this, the chairmen of the board of directors of EGM and of Loloma Goldmining, as well as the secretary of the Associated Mining Companies, had expressed their dissatisfaction with a royalty charge "based on profit on a sliding scale as against a fixed rate of 5 percent ad valorem" (Taylor Report 1960:15). The state was to collect approximately £300,000 in taxation (port and service tax, royalty, and income tax) from the company for the year. The directors, not uncharacteristically, viewed these taxes as excessive and pointed to the example of gold mining in Australia, where there was no income tax on mining profits, no royalty tax, and no tax on dividends from gold mining.[5]

To provide financial support to EGM, the state granted the company tax

concessions and subsidies throughout the 1950s. After 1952, income tax and royalty were waived for two years, beginning 20 June 1957. In addition, on 19 June 1958 the state granted the company a subsidy of £2 per fine ounce for three years--1958/1959, 1959/1960, 1960/1961--with a maximum of £150,000 per year: a potential total of £450,000 (Taylor Report 1960:15). Among the terms of the subsidy were that

> (a) the Company shall carry out capital development costing an equal or greater amount on mine buildings, plants and underground workings (exclusive of staff or employees' housing) during the period of the subsidy; the Company will be required to refund to the Government all sums received by way of subsidy in excess of the cost of such capital works; and
> (b) in the event of production in any one year falling below 75,000 ounces, the subsidy shall be reduced below £150,000 at the rate of £2 per ounce of the shortfall. (Taylor Report 1960)

The relationship of corporate welfare recipient and donor that evolved between EGM and the state in the 1950s has continued unabated in various forms to the present. The government--whether colonial or postindependence--has been willing to provide ongoing subsidies to the mine, a regime deemed necessary to generate and sustain employment levels in the Tavua area. The question that appears to have been explored with only the most moderate interest by the government was whether the mine would have been viable without ongoing subsidy.

Despite the financial assistance offered in the early 1950s operating the mine remained uneconomical. The company requested further assistance in the form of a refund of the port and service tax paid from June 1958 to 1961, a sum of £75,000.[6] The company also asked that the gold subsidy be extended for a further three years and that it be increased to £3 per ounce as of June 1961 for up to 75,000 ounces per annum, that is, up to £225,000 yearly, at a total cost of £675,000. Further, the company also requested an exemption from income tax and royalty for five years, for the period 1962 to 1966.[7] This was to be the first of many such requests for tax concessions. Subsequent attempts at tax exemption were to prove more successful.

The granting of subsidies and requests for further financial assistance did not end in the 1950s. An agreement was signed between EGM and the state where EGM was given F$2.04 million over a three-year period beginning April 1967 for development and capital expenditure (Siwatibau Report 1977: 11). Among conditions for this assistance were an increase in tunneling and rising from 10,000 to 30,000 feet annually, the maintenance of annual ore

production at more than 285,000 tonnes, and the state's appointment of an observer to the EGM board. This F$2.04 million could be regarded as a goodwill measure to keep the mine operating, as Emperor did not repay the loan and the amount was "progressively written off" ***(Parliamentary Debates*** 1977:30).

Again in May 1971, following independence, a further agreement was signed between the state and the company. Provisions included "a government grant of $150,000 . . . for the extension of Borthwick shaft from level 11 to level 16 to be completed by 30th June 1974 . . . $450,000 . . . for liquidity purposes in an interest free loan . . . [and] an industrial estate 80% owned and funded by the State and 20% owned and funded by EGM Co. Ltd . . . in Vatukoula" (Siwatibau Report 1977: 12).

Following the U.S. monetary crisis of the early 1970s, the price of gold rose to almost US$200 per ounce in 1974. The Fiji government therefore briefly reintroduced an export tax on gold, at 2 percent of its value (ibid.). But the tax was short-lived: the state granted more concessions to Emperor after a drastic fall in gold prices in 1976. According to EGM's directors, the company was once again experiencing extreme liquidity difficulties. The concessions included a waiver of 1975 taxes due amounting to F$105,000; a waiver of the 1971 loan balance, which amounted to F$206,326; and an interest-free advance of F$300,000 over a three-year period (ibid.:13).

Yet another concession was granted in 1977.[8] In the Parliamentary Session of 28 November 1977 a motion was moved by the Hon. C. A. Stinson, finance minister in the ruling Alliance Party government, for advance of a further F$2 million to EGM. This loan had been recommended by a committee appointed by the labor minister to look into the intended closure of the gold mine at Vatukoula. In his speech, Stinson outlined the state's assistance to EGM since 1968. He justified the extensive subsidies on the grounds that the "economic and social contributions" EGM was making to the Fiji economy and people more than compensated for the assistance. Stinson stated that between 1968 and 1976, wages and salaries paid by Emperor were almost F$24 million, PAYE tax received totaled F$2.156 million, Fiji National Provident Fund took in F$2.008 million, and company tax, gold tax, and royalties totaled F$2.2 million ***(Parliamentary Debates*** 1977:30).[9]

Opposition leader Jai Ram Reddy replied to Stinson by arguing that even though the company claimed "liquidity problems" in 1974/1975, it had paid dividends of F$817,000 to the parent company in Australia and had paid out F$1.571 million to subsidiary companies in Fiji (ibid.:38). These subsidiaries, Reddy also pointed out, had made profits in 1974, 1975, and 1976 of F$609,000, F$475,000, and F$526,000 respectively. EGM, therefore, was making a profit through its subsidiaries.[10] The Siwatibau Report also pointed

out that certain intercompany transactions were incorrectly charged to the EGM account instead of the subsidiaries' accounts, though it found no strong evidence of transfer price manipulation.

Parliament approved a motion that EGM be given the following concessions: (1) an advance of F$2 million in total repaid at the rate of 50 percent of pre-tax profit of EGM, repayment to government to be exempted from tax, 50 percent of the advance to be written off, and the advance subject to interest at the rate of 3 percent per annum; and (2) workers be given a 5 percent wage cut ***(Parliamentary Debates*** 1977).

Soon after, EGM announced the layoff of one thousand mine workers as a cost-reducing measure ***(Fiji Times,*** 4 January 1978, 1).[11] On 19 January 1978, the Fiji government announced its intention to expropriate the company. Then Prime Minister Ratu Sir Kamisese Mara traveled especially to Vatukoula to make the announcement personally to the mine workers, who were on strike. Negotiations towards a takeover failed, though, after the government and the company disagreed on the price ***(Fiji Times,*** 11 May 1978, 1). The government offered F$6 million for Emperor's assets and operations while the company wanted F$37.5 million. Minister for Economic Planning Sir Vijay Singh, who had been given the task of negotiating, stated in Parliament that "there was no way in which Government could justify an expenditure of anything like $37.5 million" ***(Fiji Times,*** 30 May 1978, 4). The negotiations over nationalization ended and the company continued to be privately owned.

In 1982 the government of Fiji again offered financial help to Emperor. A cabinet subcommittee had studied "EGM's troubles" and found the company--in a manner consistent with its history--experiencing serious financial difficulties. As before, one of the reasons given by the government to justify aid was continued employment for mine workers. EGM and its new and much larger partner, the Western Mining (Fiji) Corporation, were granted twenty-one-year gold-mining leases. A condition of the leases was that workers not be laid off without prior consultation with the government. The consortium also received a special prospecting license covering 6,123 hectares "with an agreed 3 year $3.13 million exploration program in the Tavua Basin" ***(Fiji Times,*** 18 March 1983, 1).[12]

The historical evidence begs an important economic question. Were the concessions granted to the company actually necessary? Or was the government a poor negotiator or the unwitting victim of a company continually threatening unemployment? There exists no definitive answer, to this question, and it is not the purpose of this article to seek one: that would necessitate knowledge of the actual cost of operations over a long period of time. No doubt such data were given to both the Taylor and Siwatibau Commis-

sions. However, given the free-rider problem of which economists are well aware, it is simply not knowable whether the data provided were accurate or not. Clearly, Siwatibau was of the view that the subsidies were justified.[13] Nonetheless, a number of commentators over the years have viewed the decision to subsidize the company with great skepticism. Ward in particular, in one of his less sagacious comments, argued that "it is pertinent to ask whether the payment of subsidy worth $750 per worker plus the probable continued subsidisation of the industry is really prudent or justified when the long run prospects of the gold mining industry in Fiji (and in the world as a whole) are relatively dismal" (1971:140).

It would be easy but quite unfair to criticize Ward with the benefit of hindsight, given the floating of gold prices in 1973 and the continuation of production at Vatukoula for at least another thirty years. However, given what was in place at the time--the Bretton Woods system with a fixed gold price of US$35 per ounce, a rising wage rate--one can well understand the subsidy decisions prior to 1973 for a mine producing low-grade ore. Moreover, there appears to be evidence to suggest that in the 1960s and early 1970s Emperor was indeed caught in the classic position of being a marginal mine facing a fixed price of gold and rising costs of production (see Emberson-Bain:161, 238, 247).

This is not to suggest that the data necessarily vindicate the government's decisions. The foregoing is intended to demonstrate only that the government of Fiji had maintained a regime of subsidy for thirty years prior to the introduction of the Vatukoula tax agreement. Nonetheless, the taxation regimes that ***are*** the main focus of this study were in place in 1982, well after the end of the fixed gold-price system, and hence are far more questionable. Some commentators have generally supported the system of subsidies and tax exemptions as necessary to transform EGM. Kasper argued that the joint-venture agreement transformed Vatukoula "from a rather conventionally run mining operation that experienced difficulties in continuing operations into an efficient and profitable enterprise" (Kasper, Bennett, and Blandy 1988:117). It is not the purpose of this article to either justify or criticize the government decisions to offer subsidies and a taxation regime that is exceptionally generous. Rather, our purpose here is to document the concessions, demonstrate how exceptional they are, and show the consequences in terms of corporate structure and operations.

Particularly significant is the timing and nature of the concessions, subsidies, and "soft" loans offered Emperor over the years. The concessions have almost invariably followed periods of decline in output and employment, as can be seen in Figure 1. More significant is that the concessions have been followed by substantial increases in gold output. This tendency very much

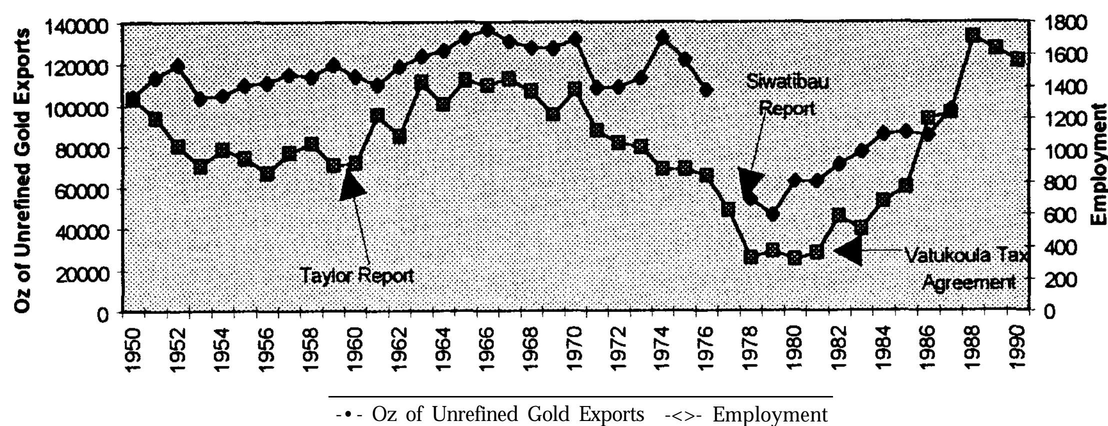

FIGURE 1. Fiji exports of gold and employment in the gold-mining industry. (Data from Fiji Bureau of Statistics; data on average number of employees at Emperor, Loloma, and Dolphin--Associated Companies of Vatukoula--from Emberson-Bain 1994:247; no employment data available for 1977)

falls in line with the arguments that the subsidies have been the basis for developing new shafts and mines. What is evident is that Vatukoula and the Tavua basin have substantial gold deposits that will continue to sustain production well into the twenty-first century: at a recent business meeting in Fiji, senior Emperor officials said they intend to develop two new mines by the year 2000 with an output of 200,000 ounces per annum at a cost of US$300 per ounce.[14] The government has helped the company subsidize its expansion.

However, one cannot argue that the concessions to Emperor were indispensable for the continued existence of the Vatukoula operations. Certainly from the magnitude of the reserves, the very high grades of the reserves, and the apparent willingness to continue to invest, it is by no means obvious that production would have ceased had the government failed to continue the subsidies. Such a determination would need some analysis of profitability at the very minimum, but even that would be inadequate to know whether the company would have invested without the subsidies.

Figure 2 compares the average operating statistics to the price of gold on the London market in Fiji dollars during the 1950-1970 period. The data are derived from published cost figures.[15] The figures indicate a definite decrease in profitability in the late 1950s, which was discussed in the Taylor Report. No cost data are available after 1970 and hence the arguments for later subsidies have less supporting evidence. None of the data presented answers the really significant counter-factual question of whether Emperor and its related companies would have invested in expanding mining capacity

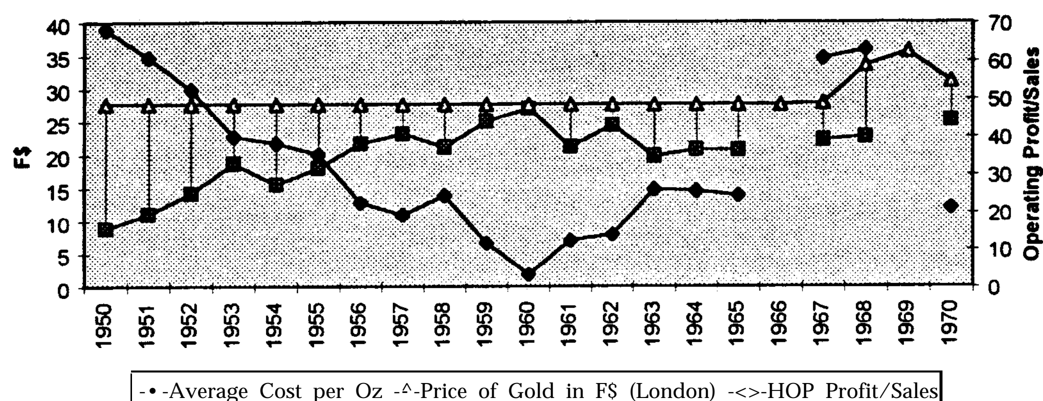

FIGURE 2. Estimated average costs, revenues, and rates of operating profit for Emperor Gold Mining Company Limited, 1950-1970. This estimate of operating profits underestimates the actual figure because it assumes that EGM profits were the same as those for the "Emperor Associated Companies," which during this period included Dolphin and Loloma. (Data from Emberson-Bain 1994:161, 247; no reliable cost estimates available for 1966 and 1969)

in the 1960s and 1980s without the concessions or with much less generous concessions. To answer this question with resort to ***ex post*** data is simply not possible.

In the final analysis, no judgment can or perhaps should be made of colonial or postindependence government policy towards Emperor. Certainly the published data, assuming they are accurate, support the arguments that profits declined in the 1950s and that production and profitability rose again when new investments were undertaken and new mines developed. Whether the company judiciously managed its relations with the colonial government to obtain subsidies to fund its expansion or whether it was genuinely on the verge of bankruptcy and the loans were absolutely essential remains largely unanswered and unanswerable. What is certain is that the Vatukoula tax agreement, as the most recent chapter of relations between government and corporation, was a generous and expensive subsidy probably far greater than necessary to induce investment in relatively high-grade deposits.

The Vatukoula Tax Agreement

In 1983 Emperor Gold Mining and Western Mining established joint ventures to conduct gold operations at Vatukoula.[16] The Vatukoula Joint Venture (with interests apportioned initially 90/10 percent and subsequently 80/20 percent between EGM and Western Mining, respectively) provided

for the working and development of the existing Emperor Mine. The Tavua Basin Joint Venture (with EGM and Western Mining holding equal interests) provided for exploration over adjacent areas of the Tavua basin. Western Mining acted as manager under each joint venture. At the establishment of the ventures, Western acquired interests in EGM's mining and prospecting assets in proportion to the company's interests under the ventures.[17]

Exploration activity established the feasibility of further mining operations in a portion of the Tavua Basin Joint Venture tenements adjacent to the existing Emperor Mine. In 1985 a third joint venture, the Tavua Basin Mining Joint Venture, was established to develop and work the Philips shaft. As with the existing Tavua venture, EGM and Western Mining held equal interests. In 1987 EGM conveyed its interest in the new venture to Jubilee Mining Limited, a then-dormant subsidiary of its parent company, EML.

In 1991 EML acquired Western Mining from Western's Australian parent. According to EML's annual report that year, the acquisition was in part funded by the issue of fully paid-up shares in EML to the Australian parent, which thus remained indirectly interested in the Vatukoula operations. Tailings from the Emperor Mine were excluded from the Vatukoula Joint Venture and related asset sale.[18]

Exploration and mining activities under the Vatukoula Joint Venture, the Tavua Basin Joint Venture, and the Tavua Basin Mining Joint Venture benefit from a three-party agreement between the two original joint venturers (and their assigns) and the Fiji government concerning Fiji tax liabilities: the Vatukoula tax agreement.[19] The agreement operates from March 1983 to March 2004, or in the case of any new mine, to March 2011. Concessions granted by the agreement concern income tax, stamp duty, royalty, and customs and fiscal duties.[20]

The VTA is not supported by any special implementing legislation. It purports to rely upon provisions in existing tax legislation that authorize the finance minister to grant specific tax concessions.[21] The three general topics covered in the VTA are tax consequences of establishing the joint ventures, operations under the joint ventures, and withholding taxes on payments to nonresidents.

Establishing the Joint Ventures

On establishing Vatukoula JV and Tavua Basin JV, Western Mining acquired existing assets of EGM in proportion to its interests under the two joint ventures. Fiji tax rules would subject the asset sale to stamp duty,[22] require EGM to recognize for income-tax purposes any recouped depreciation,[23] and forbid Western Mining's deducting for income-tax purposes that portion of the

sale price concerning capital assets other than mining tenements.[24] The VTA annuls or even reverses each of these tax consequences of the asset sale. Stamp duties are waived,[25] EGM is relieved from recognizing any of the sale monies for income-tax purposes,[26] and Western Mining is granted an immediate write-off of its acquisition expenses.[27]

Operations

Mining operations are subject under Fiji law to income tax, royalties, customs and fiscal duties on imported supplies such as plant chemicals and explosives, and export tax. The VTA grants concessions on all but the export tax.

The operations of the joint ventures benefit from two independent income-tax concessions. The first and more significant is a seven-year tax holiday for any new mine.[28] "New mine" is defined as any mine established on the Tavua Basin JV tenements.[29] The Philips shaft established under the Tavua Basin Mining JV, with ore grades considerably richer than the very old Emperor Mine operated under the Vatukoula JV, benefits from this exemption.

A second concession is the accelerated write-off of exploration expenditure and capital expended in mining operations. Regular tax rules provide for such expenses to be written off by five equal deductions spread at the election of the taxpayer over an eight-year period.[30] The VTA permits these expenses to be wholly written off in the year incurred.[31] Alternatively, deductions may be postponed for up to eight years, thereby preserving their benefit until after any tax holiday.

Fiji law reserves precious metals to the state.[32] Royalties are the price paid to the state for their exploitation. The ***Mining Act*** requires the miner to pay the royalty "prescribed"; regulations to the act set gold royalty at 5 percent of the value of ore extracted. Royalties may be calculated alternatively, subject to the minister's consent, on a yield basis.[33] In essence the yield-formula royalty equals 10 percent of profits. Where profits exceed 20 percent in value of sales, the royalty rate increases by increments. The royalty formula in the mining regulations may be supplanted by terms in a mining lease, as the new joint mining leases issued to EGM and Western Mining at the 1983 commencement of their joint ventures did--the royalty was set at 2.5 percent of taxable income. An additional royalty due under the VTA (labeled "special royalty") insures the total royalty for a year equals 2.5 percent of taxable income before the deduction of any loss carried forward from earlier years. As is usual, royalty payments are deductible in calculating taxable income for income-tax purposes.

Fiji's customs legislation provides for the imposition of a customs duty,

fiscal duty, and export duty.[34] A general goods and services tax introduced in 1992 now replaces fiscal duty.[35] The VTA exempts from fiscal duty all equipment imported exclusively for use in mining operations.[36] Additionally, specified chemicals are exempted from customs duty. Customs duty on all other items is capped at 5 percent.[37]

No concessionary treatment is granted for the export duty on gold. At the commencement of the VTA in 1983, export duty on gold was 0 percent. Various rates of duty have applied in later years, ranging from 2 to 5 percent.

Withholding Taxes

Any consideration of Fiji tax liabilities must take into account the fact that these joint-venture companies are operating subsidiaries of foreign parents, thus requiring a look at the tax position of the whole group. VTA concessions on withholding taxes are not tax neutral and go a long way towards explaining why the parent EML derives much of its income by way of interest and know-how payments.

Fiji's ***Income Tax Act*** imposes withholding taxes on dividends, interest, and know-how payments made to nonresidents.[38] In the period under consideration, withholding tax on interest payments was 10 percent until 1984 and 15 percent thereafter.[39] The taxes on dividend and know-how payments were 15 percent until 1990 and 30 percent thereafter.[40] The withholding tax on know-how payments applies only to the profit component of a payment. Rates stipulated by the ***Income Tax Act*** may be reduced by double taxation provisions: for example, Fiji's 1990 treaty with Australia limits withholding taxes on interest to 10 percent and on dividends to 20 percent. The VTA exempts interest and know-how payments from withholding taxes but leaves in place the tax on dividends.[41]

The withholding-tax concessions are the most interesting VTA component. They prompt several questions. Why should the VTA deal with withholding taxes at all? Related to the first question, who is the intended beneficiary of the concessions? Finally, is the intended beneficiary the actual beneficiary or has a distortion arisen?

From a purely legal perspective the withholding-tax arrangements have no place in an agreement with Fiji joint venturers. Conceptually, withholding taxes are levied on the recipient of income and merely collected by the party making the payment. The substantive tax obligation waived is that of a third party, who is not party to the VTA. The situation is different from a commercial viewpoint. Commonly the benefit of a withholding-tax waiver is passed along to the party making the income payment. The benefit of abolishing withholding tax on interest income, for example, can pass to the

borrower as cheaper money. The commercial practice justifies the inclusion in the VTA of a concession that from the legal perspective concerns only a third party.

The obvious question arises about which party the government of Fiji intended to benefit with these particular withholding-tax concessions: income recipient or income payer. Here the pattern of concessions is revealing. Fiji's ***Income Tax Act*** has three relevant withholding taxes. Only two are waived: those on interest and know-how payments, which represent expenses to the Fiji joint venturers. The withholding tax retained concerns payments --dividends--on which no "commercial" benefit of waiver can be passed along to the party making the payment. The pattern of concession suggests the agreement's objective is to waive withholding taxes for the benefit of the joint venturers themselves rather than any third party.

Whether the intended beneficiary of the concession is the actual beneficiary will depend on the commercial practice of passing along the benefit. The practice presumes a competitive market with the parties, for example borrower and lender, dealing at arm's length. Where borrower and lender are related there is no assurance that the benefits of waivers will be passed along. The absence of arm's-length dealing does not of itself necessarily mean benefits will not be passed on. However, what is ultimately perverse about the withholding-tax concessions is that given the structure of the Emperor group the overall pattern of concession in the VTA almost guarantees such an outcome. As lender, supplier of know-how, and owner alike, the parent EML may extract money from the joint venturers as interest income, know-how payments, or dividend income. Retention of the withholding tax on dividends pushes the parent to ensure sums as large as plausibly possible are extracted as interest or know-how payments. Under such circumstances, no benefits will be passed on to the borrower or know-how user--the Fiji joint venturer. Thus the intended beneficiary will not benefit and the actual beneficiary becomes the parent company, EML.

The tendency for high interest and know-how payments to be charged by the parent to the joint venturers has a further consequence. Should the waiver produce the usual commercial outcomes, which are cheaper loans and know-how, then tax revenue forgone from the loan or know-how supplier would be balanced by increased tax revenue from the increased profitability of the joint venturers. The pattern of concession found in the VTA, however, encouraging as it does more expensive loans and know-how, insures lower profitability of the joint venturers. Rather than there being any balancing, further tax revenues are forgone.

If, as suggested by the pattern of concession under the VTA, withholding-tax relief is meant to benefit the joint venturers and not related third parties

such as EML, the concessions should be limited to loans and know-how from independent third parties. If loan capital and know-how is to come from the parent, the pattern of concession should be to waive the withholding tax on dividends alone. Loans and know-how will then be supplied at market rates or better. The balance that exists between debt and equity funding under the ***Income Tax Act*** in a wholly domestic situation will be restored. Tax forgone on dividend payments to the parent will be balanced by increased taxable profits of the joint venturer.

Structure, Finances, and Tax Contributions of EML, 1980-1992

EML is a listed company in Australia. Apart from the mining subsidiaries in Fiji, it has other subsidiaries incorporated variously in Fiji, New Zealand, Hong Kong, the United States, and Vanuatu. A number of these companies are dormant. Figure 3 depicts the corporate structure as of 1992.

Financial Analysis

The financial performance of the Emperor group of Fiji mining companies and joint ventures has fluctuated widely over the period 1980-1992. In general, while EML has made profits the main operating subsidiary, EGM, has recorded substantial losses and has effectively paid no income tax.

From the limited information available, it appears that EGM has borrowed heavily from its parent company (intercompany payables to EML totaled A$47 million in 1992) and that interest payable on these advances has run at approximately A$4 million per annum in recent years. During the period under review, EGM appears to have paid little or no taxes. Gold production averaged 80,000 ounces per year. At prices approaching US$400 per ounce, the revenue earned over the period would be in the order of US$400 million.

Since 1986 EML has been domiciled in the tax haven of the Isle of Man, although its shares are listed on the Australian Stock Exchange. A summary of financial indicators is presented in Table 1. Excluding the effect of associate-company losses and abnormal and extraordinary items, EML is a consistently profitable company that appears to pay no tax. Whether this is due in part or in whole to its domicile in the Isle of Man is unknown.

Associate-company losses refer to investment in Odin Mining. This investment was sold as a loss of A$4.1 million in 1993. Extraordinary and abnormal items relate in part to operations outside Fiji and thus their exclusion leads to the conclusion that EML's Fiji operations are extremely profitable. An analysis of the profitability of the Fiji operations appears in Table 2.

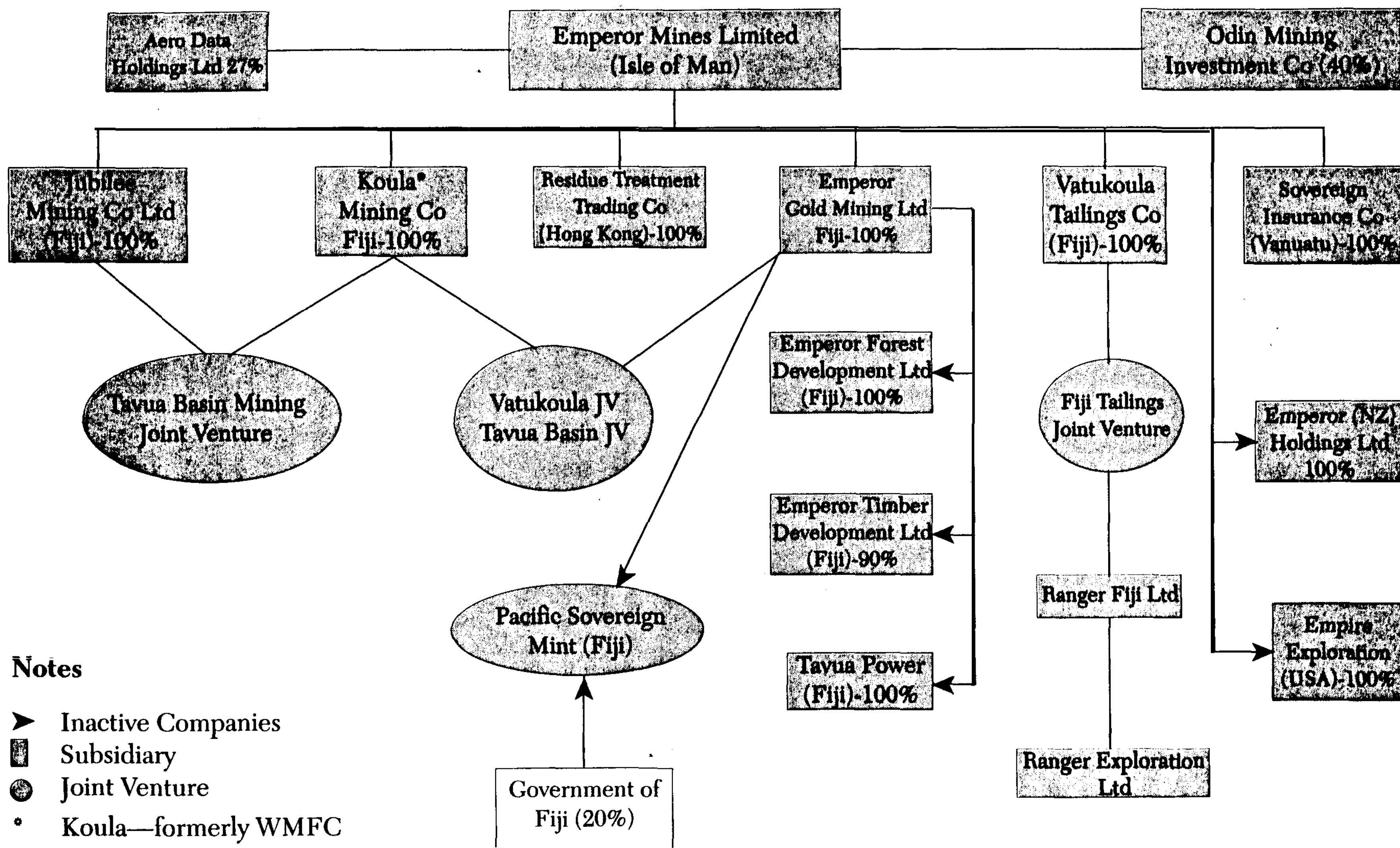

FIGURE 3. **Emperor Mines Limited corporate structure, 1992.**

TABLE 1. EML Financial Performance, 1986–1992 (A$1,000s unless noted)

	1992	1991	1990	1989	1988	1987	1986
Share Price (A$)	0.63[a]	0.51[a]	0.60[a]	3.90	3.10	6.10	3.25
Net Tangible Assets	75,442	73,196	86,69d	93,569	96,037	67,964	43,457
Net Tangible Assets/share (A$)	1.23	1.19	1.55	1.70	1.88	1.40	0.99
Revenue	47,439	40,056	44,600	46,160	52,400	%900	30,600
Operating Profits	1,080	(846)	(8,303)	13,822	14,390	22,676	3,220
– Associate Co. Contribution	722	(5,301)	(10,578)	(2,795)	(343)		
Operating Profits excluding Assoc.	358	4,455	2,275	16,617	14,733	22,676	3,ZZ0
Abnormal Items	2,245	(18,729)	(3,837)				
Extraordinary Items	722	(5,301)	(6,757)	(8,897)			
Income Tax Expense	0	(667)	(771)	618	581	(206)	327
Tax Payable	0	0	0	0	0	3	25

Source: Australian Stock Exchange 1992.

[a] A$0.10 shares.

Table 2. EML Profits Attributable to Fiji Operations (A$1,000s)

	1992	1991	1990	1989	1988	1987	1986
Operating Profit	358	4,455	2,275	16,617	14,733	22,676	3,220
Abnormal Expenses	2,147	(14,608)[a]	(2,687)				
Profits Attributable to Fiji Operations	2,505	(10,153)	(412)	16,617	14,733	22,676	3,220

Source: Australian Stock Exchange 1993.

[a] Result from charge to immediate write-off of normal development expenditure (previously this was written off over a rolling four-year mine life) and to write-off of ore stocks rendered inaccessible by fire and flood.

Table 3. Operating Profits of EML Subsidiaries in Fiji (A$1,000s)

	1992	1991	1990	1989	1988	1987
EGM	(10,589)	(19,648)	(14,662)	1,763	3,935	8,961
Koula Mining	3,019	4,903	5,469	7,109	1,824	(1,683)
Jubilee Mining	5,063	4,515	8,759	12,312	6,937	
Subtotal	(2,507)	(10,230)	(434)	21,184	12,696	7,278
Intercompany Loans	3,959	4,104				
Total	1,452	(6,126)				

Source: Australian Stock Exchange 1993.

From its Fiji gold-mining operations, therefore, EML appears to have reported profits of approximately A$50 million for the period 1986-1992. By way of contrast, the following analysis shows reported profits by EML's major Fiji operating companies and attempts to reconcile them to the parent-company figures (Table 3).

What is relatively clear is that the operations in Fiji were profitable. This can be demonstrated in two ways. If one relates profits to capital investment over the period 1986-1992, EML's return on assets averaged 12 percent. This average is likely an underestimate, as EML's assets include those outside Fiji. The second way is to compare return on assets with that of other mining operations. In the 1980s prior to its shutdown due to insurrection, Bougainville Copper Limited averaged a return on assets of 25 percent. Bougainville Copper, though, was considerably larger than Emperor. One Australian firm with revenues similar to that of Emperor was the Central Norseman Gold Corporation, which averaged 8.5 percent return on assets over the period 1986-1990.

However, the relative profitability of EML is not the issue--what remains of concern in light of its apparent profitability is the absence of direct com-

pany-tax payments. From the above analysis, incomplete though it is, two questions arise. First, why is the parent company reporting much higher profit over the period than the operating subsidiaries? Part of the answer may be due to intercompany indebtedness and interest thereon. The second question is, given that EML's operating subsidiaries have made substantial profits, why have they not paid tax in Fiji since the early 1980s? The Vatukoula tax agreement provides a reasonable explanation.

The Comparative Tax Position

How ordinary or extraordinary are the tax concessions found in the VTA? From a purely formal perspective, the concessions granted are not exceptional. All, with one minor exception, have a statutory basis in existing Fiji legislation. The joint venturers have received only tax advantages already envisaged and provided for in Fiji law.

Equally, from a comparative Fiji perspective the concessions are not exceptional either. Fiji's present ***Income Tax Act*** provides for a broad range of concessions to a variety of industries. For example, manufacturers of goods for export receive a thirteen-year tax holiday, exemption from customs and fiscal duties and the value-added tax, as well as tax-free repatriation of profits to foreign owners. Farmers may and have received tax holidays, most recently from 1986 to 1991. Parties investing in hotels and tourist watercraft benefit from accelerated depreciation and the waiver of withholding tax on interest. Seen against this range of concessions, the VTA appears unexceptional.

A quite different conclusion is reached if comparison is made with fiscal regimes imposed on mine operations in other jurisdictions. This is the more appropriate comparative perspective for at least two reasons. First, gold miners operate in a world market, not a Fiji market. Second, fiscal regimes for mines and other industries are not readily comparable. For example, a tax holiday has quite different implications for a mine, where operating profits will typically peak after capital-cost recovery in the early years, and for manufacturing, where steady growth may last indefinitely, with a corresponding profit profile.

What constitutes an appropriate taxation regime in cases where a resource is nonrenewable in nature and where economic rents are generated? There is in economics a long history of such analysis. This article will not consider these theoretical arguments; however, they have been made in mainstream economics with sufficient regularity for resource-rent regimes to be considered a standard part of the taxation rules employed in such situations (Garnaut and Clunies Ross 1983; see also Otto 1995 for a contemporary treatment of the subject).

Among developing countries, the VTA is unique for being the only taxation regime that has effectively exempted the developer from any income tax for a period of some twenty-seven years. Comparisons of tax statutes in different jurisdictions have been made in the past and their fundamental weakness is well understood (Grynberg and Powell 1992). In Table 4 we compare the VTA with actual contract terms, rather than legislation, in various countries that were examined in a recent Commonwealth Fund for Technical Co-operation report on mining regimes (1990:69-73): This report was commissioned by the Papua New Guinea government. The regimes examined in the Commonwealth Fund report have no names attached except in one case, as they are actual contract terms and hence are not normally available.

What is evident from Table 4 is that the VTA has the most generous terms of the actual contracts to be found in developing countries. The Fiji regime has no state-participation element (let alone one where the cost of state participation is borne by the developer), no additional-profits tax,[42] and almost invariably lower ad valorem taxes than the other agreements. Simply put, the VTA has no international parallel except for the case of Australia, which had no gold-mining taxes until the exemption was finally repealed in 1990 (Otto 1995:304). As a mining tax agreement the VTA is unprecedented, especially given the relatively high grades of ore in certain mines developed by the joint ventures.

Taxation Implications

The VTA effectively exempted the "new mines" owned by EML from taxation. In the years immediately following implementation of the VTA two companies, Jubilee and Koula, both products of the joint-venture agreement between Western Mining and EML, became active and both began to earn substantial profits (see Table 3). At the same time profits began to drop at EGM, which was not operating any "new mines" as defined under the VTA and hence was subject to taxes. The company appears to have become a significant liability. This condition is entirely consistent with a rational tax-planning approach to its operations.

The much higher recovered-gold rates of Jubilee and Koula can easily explain the disparities between the performance of the companies.[43] Other factors might offer a reasonable explanation as well. The ore from the high-grade Tavua basin operations was treated at Vatukoula JV treatment plant (Australian Stock Exchange 1993:3). In other words, the main operating cost of the facility was shared with the low-profit portion of the firm's Fiji operations. The methods of cost apportionment are unknown for this and other

TABLE 4. Comparison of Various International Mining Tax Contract Terms

Regime	Tax Holiday	Depreciation	Income Tax Rate	Additional-Profits Tax
VTA	7 years on new mine	accelerated	35%	none
A	none	accelerated	22.5% for 1st 4 yrs., 50% thereafter	3 tier: real thresholds at 15%, 20%, and 25%; tax rates of 5.6%, 11.8%, and 13.3% respectively
B	none	accelerated	37.5%	none
C	none	over 5 yrs.	35%	1 tier: threshold of 25% and tax rate of 35%
D	until investment recovery	over 10 yrs.	40%	3 tier: if ANCF[a] reaches 15%, 17.5%, and 20%, then rates rise to 50%, 60%, and 70% respectively
E[b]	none	over 8 yrs., some items accelerated	35% for 10 yrs., 45% thereafter	1 tier: 60% on profits above 15%

Source: For A-E, Commonwealth Fund for Technical Co-operation 1990:69-73.

[a] Accumulated net cash flow.

[b] Rio Tinto Zinc/Indonesia agreement, 1977. The additional-tax provisions are similar to the Bougainville Copper agreement.

Withholding Taxes	Royalty	Customs Duty	Export Tax	Equity/Other
exemption on interest & know-how	5% of taxable income before any loss carried forward	exempt	0-5%: varies, was 3% in 1995	no free or carried equity
exemption on interest & dividend	3%	no exemption	none	10% free equity
no exemption	2.5%		none	10% free equity, 40% repayable from dividends
no exemption	1.25%	exemption until investment recovery	3.75%-5%	20% free equity after investment recovery period, 5% tax on net cash flow
exemption on dividend until investment recovery	5%	no exemption	none	15% free equity after investment recovery
no exemption	3.75%	exempt 1st 10 yrs.	variable	option to buy up to 51% at predetermined price over 10 yrs.

overhead costs, which would almost certainly be shared between the "old mines" and tax-free "new mines."

The VTA has been a source of controversy within Fiji for a number of years. The Auditor Generals 1989 annual report cited several aspects of the agreement that were, in his opinion, questionable. The first was that the agreement appears never to have been gazetted.[44] Additionally, he noted that the VTA cost the government F$13 million in lost royalties. The report recommended the agreement be reviewed.[45]

Consideration of the EML Holding Company, which under the corporate restructure controlled the assets of the group, explains some of the behavior of the various firms under it. EML during this period was divided into the "Group," which included all the subsidiaries, and a "Holding Company," which, as the name implies, held the assets of related companies. In 1991 for example, the EML Holding Company made no revenue from trading; according to the company's annual report, all revenue from trading in that year was earned by the EML Group. According to EML's 1993 annual report, in 1992 the holding company earned revenues of A$6.4 million, of which A$3.36 million came from interest charged to subsidiaries (p. 27). The firm also earned A$1.2 million in dividends and A$1.34 million in "other income." The source of this income is unclear, but no doubt comprises management fees from its subsidiaries. In 1991 EML wrote off A$2.3 million in unrecoverable management fees charged to subsidiaries, according to its annual report (p. 29). EML Holding Company's main revenue source thus appears to be interest and management fees charged to its subsidiaries. Both fees are exempt under the VTA from the 15 percent withholding tax and these activities of the holding company, whose revenues constituted 12 percent of EML's 1992 total, may be one of the main mechanisms of tax avoidance for "old mine" companies such as EGM.

Tax Revenue from the Emperor Group in Fiji

The VTA's tax implications are of crucial interest in this study. The three tax sources of revenue from the Vatukoula mine are company tax, royalty, and export tax.

Though there were numerous revenue and cost centers, as the corporate structure depicted in Figure 3 demonstrates, the EML Group in Fiji during this period had three principal revenue centers: EGM, Jubilee Mining Company Limited, and Koula Mining Company Limited. These three companies were responsible for the vast majority of earnings in the period 1987-1992, but they appear to have paid almost no corporate tax in Fiji. Given the way in which reports are presented to the Registrar of Companies, it is im-

TABLE 5. Mining Royalties Paid to the Government of Fiji (F$)

	Sales Value during Period	5% of Sales Value[a]	Assessed Royalty Due[b]	Royalty Payment Received
June 1985	19,707,261	985,363	0	10,686 (1983)
1986	28,294,241	1,414,712	0	564 (1984)
1987	46,838,227	2,341,911	0	80 (1985)
1988	69,112,041	3,455,602	0	23,913 (1986)
1989	81,769,821	4,088,491	0	23,792 (1987)
1990	76,896,163	3,844,491	NA	23,744 (1989)
1991	48,460,806	2,423,040	NA	0 (1990)

Sources: Mineral Resources Department 1991; thereafter pers. corn., Mineral Resources Department.

[a] Royalty payable if paid under Regulation 6 of the *Mining Act.*

[b] Royalty payable at 2.5% of net profit upon which corporate income tax is levied. Amounts in this column as well as the 5% of sales value column are not received by the Fiji government but are published nonetheless by the Mineral Resources Department.

[c] Special royalty under provisions of the Vatukoula tax agreement. The date in parentheses is the year the amount was received.

TABLE 6. Nominal Levels and Effective Rates of Export Tax on Gold in Fiji

	Value of Gold Exports (F$)	Export Duty (F$)	Effective Rate (%)
1988	84,897,565	1,681,954	1.98
1989	76,196,661	1,719,547	2.25
1990	75,831,957	2,787,854	3.68
1991	44,758,887	945,985	2.11
1992	62,614,074	1,881,520	3.00

Source: Customs and Excise Department, Department of Finance, Suva, 1993.

possible to determine conclusively whether any tax was paid.[46] However, EML's report to the Australian Stock Exchange for the period 1986-1992 indicates income-tax expenses only in 1986, 1988, and 1989; the company last made provisions for tax in 1987 when it paid A$3,000 on a turnover of almost A$72 million and an operating profit for that year of A$22.7 million.[47]

Royalties paid by the mining industry are presented in Table 5. Interestingly, not only are these minuscule amounts, but they are often paid two years in arrears.[48]

Largely in response to the situation described above, the Fiji government has imposed export taxes of varying rates on gold (Table 6).[49] Since the VTA

does not prohibit export taxes, they have become the preferred device for dealing with the obvious loss of tax revenue from the mining operations. Export taxes, while ***revenue*** efficient, are the least ***economically*** efficient taxation instrument in mining operations, as they raise costs and shorten mine life.

Table 7 attempts to quantify the government's forgone revenues under the VTA. The estimates are based on the tax liability existing in Papua New Guinea, which by the standards of developing-country mining is widely considered to be quite reasonable.[50] The two estimates assume that EML should pay a rate of tax as a percentage of exports equivalent to the average paid to the PNG governments, both national and provincial, in the period 1986-1991.[51] The two estimates are based on the ratio of the contributions by mining companies to the PNG Mineral Resource Stabilisation Fund (MRSF) divided by exports. The lower estimate of 8.55 percent is based on the period 1986-1991 and the higher on the shorter period 1986-1989. The reason for the second estimate is that the Bougainville Copper Mine was closed by insurrection, and as a result contributions to the MRSF were negligible after 1990. In the period 1986-1989, the average government revenue as a percentage of exports in Papua New Guinea was 11.69 percent.[52] This contrasts sharply with the average take of the Fiji government of 1.87 percent of total exports between 1986 and 1992. Had the returns been the same as in Papua New Guinea, the very minimum that the Fiji government should have taken in revenue was F$37.04 million; using the higher estimate, the government should have received F$50.64 million. Thus the cost of the VTA is a subsidy of between F$4 and $6 million per annum to the company over the period. Assuming that the government objective is, as it has been throughout the last fifty years, the maintenance of employment at Vatukoula, the cost of the agreement is high. The government has been paying a subsidy over the period under study of between 42 and 62 percent of the gross salary of every employee of Emperor.[53]

Conclusion

Since the restructuring of EML following the Vatukoula tax agreement in 1983, there seems little doubt that EML has been profitable. EML has operated a tax-free mine in Fiji under the VTA's terms. The loss of revenue to the government, as calculated above, is significant. However, the real effect of the VTA is not simply that it has provided a mining company with an exceptional tax agreement, one that allowed the company to arrange its affairs to avoid taxes not only for new mines, but also for all its Fiji operations. What the government of Fiji has established is a precedent that may

TABLE 7. Estimated and Actual Government Revenues under Fiji and PNG Tax Regimes (F$)

	Paid by EML on Fiji Mining Operations					Hypothetical Revenue	
	Royalties	Export Taxes	Total Taxes	Exports	Total Taxes as % of Exports	Based on 8.55% of Exports	Based on 11.69% of Exports
1986	564	0	564	38,631,655	0.00	3,279,913	4,484,466
1987	80	0	80	50,557,000	0.00	4,322,624	5,910,113
1988	23,913	1,681,954	1,705,867	84,897,565	2.01	7,258,742	9,924,525
1989	23,792	1,719,547	1,743,339	76,196,661	2.29	6,514,815	8,907,390
1990	23,744	2,787,854	2,811,598	75,831,957	3.71	6,483,632	8,864,756
1991	0	945,985	945,985	44,758,887	2.11	3,826,885	5,232,314
1992	0	1,881,520	1,881,520	62,614,074	3.00	5,353,503	7,319,585
Total			9,088,953			37,040,113	50,643,149

well prove inescapable. The government is presently entertaining the possibility of granting a development permit to Placer Pacific to develop the huge but low-grade Namosi copper deposit. This project is being negotiated at the very time when investment in Fiji is at a low ebb. Investment as a percentage of GDP has fallen to 15 percent according to recent estimates, down from 24 percent at the beginning of the 1980s.

The government of Fiji wishes to promote investment so as to create employment. In many ways the situation that existed in the mid-1930s when investment dried up because of the Depression, is being replicated--but for quite different reasons. The failure of private investment in Fiji is very much a result of factors particular to the Fiji economy, whether they be political or economic, rather than a result of global recession. Since beginning its operations in Vatukoula in the 1930s Emperor has throughout most of its life received tax rebates, subsidies, export bounties, and interest-free loans. This is because the state has been willing to accept Emperor's arguments that if it failed to receive what it claimed were needed subsidies and concessions, the company would be forced to retrench large parts of its predominantly Fijian labor force.

The Namosi copper deposit is the largest project in the history of Fiji in terms of employment creation and investment. However, Placer Pacific claims that the deposits are very low-grade ore. Hence it will not be difficult for the developer to pursue a strategy of pressure on the Fiji government as EGM has done. There is every likelihood that the government will find it difficult to escape the precedent created by the VTA. In fact Placer already has applied precisely the same sort of pressure that was used by Emperor. In June of 1995 it ceased further exploration and development activities at Namosi pending a successful outcome of tax negotiations for the development of the mine. In light of the experience of EML and EGM, there is little reason for optimism that an appropriate tax regime will evolve.[54]

Given the mining tax situation currently existing in Fiji, one is at least obliged to suggest some form of alternative. The case of Papua New Guinea, which has been a source of uncomfortable and invidious comparison, is a basis from which to begin. The best aspect of the PNG system is its transparency and clarity, which contrast sharply to the situation in Fiji. A mine developer in Papua New Guinea knows exactly the tax regime it will confront because the terms are published and available in legislation. It is not possible to negotiate tax concessions without an act of Parliament. This puts considerable pressure on policymakers not to depart from the published terms. Thus, the very first measure needed to improve the mining tax situation in Fiji is a clear and published draft tax agreement. While a change in

legislation may provide a proper ***de jure*** framework, the ***de facto*** situation will not change until the discretionary power available to ministers and cabinet in Fiji is severely curtailed or eliminated. In light of the Vatukoula situation and the Namosi tax agreement, companies will feel, irrespective of whatever legislation or draft agreement is available, that they are in a position to negotiate terms until the power of the ministers and cabinet is tempered by the authority of Parliament to review such arrangements in open and transparent discussion.

Although the form of the PNG mining tax legislation would constitute a desirable transplant in Fiji, the content and substance of various parts of the PNG tax regime are less advisable. In particular, the much vaunted additional-profits tax--seen as the cornerstone of the PNG taxation regime--should not be introduced into Fiji. With rates of return that averaged 25 percent during the 1980s Bougainville Copper Limited managed to avoid additional-profits tax on all but one occasion.[55] In large part this was possible because the additional-profits tax regime negotiated with Bougainville Copper was based on a percentage rate of return. But cash-flow systems make possible distortions in behavior that result in avoidance of the additional-profits tax even in years when returns are very high.[56] What is needed in the case of Fiji is an additional-profits tax system based on the price of the resource, which is known and transparent. With such a basis, mining activity cannot be distorted to avoid the payment of tax. Moreover, these systems of taxation are easier to administer in countries where the tax administration is in need of strengthening.

In light of the Fiji government's commitment to the tax regime at Vatukoula, it is highly unlikely that the government would seek, or the company would agree to, a renegotiation of so exceptional and generous a taxation regime. The government is perfectly within its legal rights under the VTA to induce the company to negotiate a new agreement by raising the export tax on gold, which it has done on a number of occasions. Given that such a measure would be perceived by the private sector as an attempt to renege on an important agreement and hence further erode the state's credibility, it is unlikely that the government of Fiji would pursue such a course of action.

NOTES

1. Total mining employment at Vatukoula has varied between 650 and 1,800 since World War II.

2. This study reviews EGM and EML until the end of 1992. In 1993 there was a significant corporate restructuring.

3. Although the agreement expires in 2004, it is possible that a mine established in that year would enjoy a seven-year tax holiday.

4. EML was initially incorporated in 1935 in Victoria, Australia. In 1986, following a change in Australian tax law, the company was incorporated in the Isle of Man. EGM was incorporated in Fiji in September 1934.

5. *Fiji Times,* 26 July 1950, 6; 2 December 1950. EGM has consistently used the comparison with the Australian taxation regime to argue for cuts.

6. This was to be refunded by June 1961 (Taylor Report 1960:16). The tax had been paid from the government subsidy of 1958-1961 and by asking for a refund, the company was in fact asking for the waiving of port and service tax for the three years that had been paid for by the state in the first place.

7. What remains unclear from the historical records is whether the state agreed to further subsidy requests by EGM. Not the Siwatibau Report nor the parliamentary debates nor secondary sources appear to have suggested that EGM received the requested tax exemption.

8. The company announced its intention to close its operations at Vatukoula on 14 February 1977, when negotiations with the Mine Workers Union broke down.

9. Stinson played a key role in the defense of EGM and its interests in Fiji.

10. The opposition argued for the nationalization of the company.

11. It was subsequently announced that the company would lay off only 770 workers *(Fiji Times,* 17 January 1978, 1).

12. No details of the exact financial help offered to Emperor were made public. The government attempted to keep the agreement between the state, EGM, and Western Mining a secret. Some terms of the agreement have been published, however. Unlike all previous tax arrangements between the government and Emperor, this agreement was never debated on the floor of Parliament.

13. 'We do not believe that Government assistance to the Gold Mine over the past 10 years [is] excessive in light of all the economic and social benefits which the country would otherwise have lost if mining operations were to close down" (Siwatibau Report 1977:37, recommendation 3).

14. Address by the Emperor Gold Mines CEO, Mr. Colin Patterson, to the Fiji-Australia Business Council, 15 September 1996, Nadi.

15. The cost-of-production figures are derived by taking the average cost per tonne mined by EGM, multiplying by total tonnes of ore treated by Emperor, Loloma, and Dolphin Mines (the Emperor Group), and dividing by total Fiji exports of gold. The estimate is imperfect because tonnes treated does not necessarily equal tonnes mined and because the cost data are on a financial-year basis with output and exports on a calendar-year basis.

The results may overestimate operating profits/sales, as the method assumes that all gold exported from Fiji was exported by EGM and associated companies. However, as a counterweight, the figures do not include silver exports. The significance of the results lies in the trend rather than in the value of the actual profitability estimates.

16. Details of the joint ventures appear in the annual reports of the Fiji Mineral Resources Department and the annual returns of EGM, EML, Western Mining, and Jubilee Mines Limited for the years 1983 to 1993 (Registrar of Companies, Suva, Fiji).

17. The asset sale as it concerned exploration and mining tenements was implemented by the issue of new tenements to EGM and Western Mining, jointly covering areas previously held by EGM. Initial grants were Special Mining Lease (SML) S.54, Special Site Right (SSR) No. 4 and SSR No. 5 to EGM and Western Mining, apportioned 90/10 and subsequently 80/20; and Special Prospecting Licence (SPL) S.1201 and SML S.55 to EGM and Western 50/50. Subsequently SSR No. 4 was converted to SML No. 56. A further prospecting interest, SPL S.1271, was issued to EGM and Western 50/50 in 1985 and renewed in part in 1989. In 1989 SSR No. 5 was replaced by SSR No. 6 and SPL S.1208 was converted to SML S.1344.

18. During the eighties EGM had attempted to interest a number of foreign parties in working these tailings. Eventually a 50/50 joint venture was established in 1991 between the Vatukoula Tailings Company Limited (a wholly owned subsidiary of EML) and Ranger Fiji Limited to rework these Emperor Mine tailings. The venture was unsuccessful and tailings retreatment ceased at year's end, 1992. EGM subsequently acquired all assets of the two joint venturers and mothballed the retreatment facilities. Details of attempts to exploit tailings appear in the annual reports of the Mineral Resources Department and EML for the years 1985 to 1993.

19. The VTA, unlike the tax-free factory system that is widely publicized, has never been published by the Fiji government. Its terms are in the public domain, however, and have been published in Emberson-Bain 1994:197. Numerous newspaper articles in Fiji over the years have also discussed the VTA terms.

20. The relevant legislation for the period under review includes the *Income Tax Act* (1974) as amended, *Stamp Duties Act* (1971) as amended, *Mining Act* (1966) as amended, *Customs Act* (1986), and the *Customs Tariff Act* (1986) as amended.

21. The Fiji government is as much subject to the laws of Fiji as anyone else, of course, and may not contract to vary tax obligations imposed by law. Each of the concessions granted or to be granted under the VTA must be referable to the discretionary powers of the finance minister under existing legislation, and the minister's discretionary decision must be expressed in the form required by law. This article neither debates nor considers the legal efficacy of the VTA.

22. Stamp duty is tax imposed on documentation effecting a transaction. Duty is a small percentage of the transaction price with different transactions attracting differing rates of duty. The total price of the asset sale was F$4,200,000.

23. *Income Tax Act,* sect. 11(k).

24. Ibid., sects. 19(1), 23(2)(b).

25. *Stamp Duty Act,* sect. 4(a), empowers the finance minister to waive duty payable on any instrument.

26. Fiji does not tax capital gains. Asset sale monies would be a capital receipt for EGM and thus excluded from taxable income on general principles. Hence this provision benefits EGM with respect only to recouped depreciation included in taxable income under the *Income Tax Act,* sect. 11(k). There is no statutory foundation in the act for this concession.

27. *Income Tax Act,* sect. 23(4), empowers the finance minister to authorize an immediate write-off of acquisition costs.

28. *Income Tax Act,* sect. 16.2(a), empowers the finance minister to grant tax holidays to mining companies. From 1980 income-tax rates for resident companies were 37.5 percent and from June 1992, 35 percent *(ITA,* Fourth Schedule).

29. The VTA does not offer a geological or mining engineering definition of a new mine that would allow Fiji's commissioner of Inland Revenue to make a distinction between a new mine and new shafts.

30. *Income Tax Act,* sect. 23(1).

31. Relying on *Income Tax Act,* sect. 23(4); see note 21.

32. *Mining Act,* sect. 3.

33. Ibid., sect. 54; *Mining Regulations,* sects. 6, 7.

34. *Customs Act,* sect. 6.

35. Under terms of the *Value Added Tax Decree* (1992), export sectors are exempt from the value-added tax.

36. Relying on the *Customs Tariff Act* (1986), sect. 11.

37. Concessionary treatment on customs and fiscal duties is conditional upon plant, equipment, and services being purchased locally if local terms equal or better terms obtainable elsewhere. This standard condition, essentially to promote local industry, incidentally also discourages transfer pricing with regard to items available locally.

38. The tax on dividends is known as "nonresident dividend withholding tax" *(Income Tax Act,* sect. 8). This is a final tax (ibid., sect. 17[39]). The tax on interest is known as "interest withholding tax" and is not technically a final tax (ibid., sects. 9, 104[2]). Know-how payments are subject to the dividend withholding tax (ibid., sect. 8 [2][c]). As regards know-how payments this is technically not a final tax (ibid., sect. 104[1]).

39. Act 25 of 1983.

40. Decree No. 10, 1990.

41. Relying on the *Income Tax Act:* sect. 14(2)(e) regarding interest payments, sect. 8(6)(c) for know-how payments.

42. As of 1992, mining companies in Papua New Guinea have paid additional-profits tax on only one occasion, in 1980 (Commissioner of Revenue, pers. corn., 1992).

43. The new mines of the Tavua Basin Mine, which began operation in 1988, had recovery grades of 36.13 g/t in 1988, falling to 20.36 g/t in 1991. In May 1991 the mine was closed after a fire was set to the surface infrastructure. See Australian Stock Exchange 1993:2. By way of contrast PNG's Porgera gold mine, which is considered one of the richest high-grade deposits in the world, was recovering grades of 17.48 g/t in its underground phase in 1993 (see Papua New Guinea, Department of Minerals, *Quarterly Report,* September 1993, p. 23).

44. *Report of the Auditor General on the Accounts of the Government of Fiji for the Year 1989.* Paper No. 3 of 1991, vol 2:23. The Auditor General had asked the permanent secretary of Finance where the agreement had been gazetted. The authors have also been unable to find the gazettal notice.

45. In its reply to the Auditor General's statement, the Mineral Resources Department defended the decision to grant the VTA on the grounds that the development would not have occurred without the concessions. With recovery grades at 36 g/t, it is difficult to imagine that tax concessions of such magnitude were absolutely necessary. (The response of the Mineral Resources Department was provided by the Fiji Auditor General's Office.)

46. Emperor discusses at length its tax payments to the Fiji government in a full-page advertisement but does not suggest that in the 1987-1991 period it had paid any corporate tax *(Daily Post,* 5 September 1992, 38).

47. Australian Stock Exchange 1993:11. By way of facile comparison, Emperor's $3,000 corporate-tax liability in 1987, the last year in which it made provisions, was less than half the liability of a senior lecturer at the University of the South Pacific.

48. This includes royalties payable to the Mineral Resources Department under the terms of the *Mining Act.* Although no royalty is prescribed under the terms of the *Income Tax Act,* royalties were paid to the Department of Finance, under provisions of the VTA.

49. In December 1987 the government reintroduced a gold export tax, at 2 percent. In November 1989 it was raised to 5 percent and then lowered again to 2 percent in November 1991. This was raised once again, to 3 percent, in 1992.

50. Under the PNG mining tax regime existing in the late 1980s and early 1990s companies paid a royalty of 1.25 percent of FOB value to landowners and the provincial government. They paid 35 percent corporate tax and 70 percent of all positive net cash flow for rates of return above 20 percent or U.S. prime rate plus 12 percent. Companies also had to offer 20 percent equity to the government at historical cost.

51. This period was chosen because it corresponds to the period of the Vatukoula tax agreement under study. It does not include 1992 because in that year Papua New Guinea began to export oil and that sector, while contributing to the MRSF, is subject to a different tax regime than mining companies.

52. There remains one possible criticism of the approach taken above: that comparing EML and Bougainville is unfair as Bougainville is five times larger than Emperor; is open cast, capital intensive, and very profitable; and as a result the returns that the PNG government obtained during this period may reflect economies of scale rather than the mining taxation regime. There are two possible replies to this line of argument. Our estimate is based on MRSF returns divided by exports, which includes both the very large and profitable Bougainville Copper Limited operation and the equally large but totally unprofitable Ok Tedi Mine. Thus, Papua New Guinea's take of mineral exports is a reasonable reflection of what government can expect from both profitable and unprofitable mines. Moreover the lower estimate made above, of 8.55 percent of export revenue, is downward biased by including two years (1990 and 1991) when Bougainville Copper made no profits because its operations were closed. Throughout the period Ok Tedi paid nothing to the government except the 1.25 percent royalty. Therefore we contend that, despite the effect of economies of scale on government revenues, the 8.55 percent figure is not unreasonable for a reasonably profitable mine operating under a normal taxation regime in a developing country. It should be kept in mind that during the 1980s Bougainville Copper paid the PNG government some 20 percent of export earnings on average.

53. This is based on the assumption that the average gross annual wage in the period was F$8,000 per miner and that there was average employment of 1,200 over the period. See Emberson-Bain 1994:211.

54. Following the completion of this article in November 1995, Fiji's minister of Trade and Commerce, the Hon. Jim Ah Koy, announced during the 1996 budget session in Parliament that he had come to an agreement with Placer over a tax agreement for the Namosi mine. While he did not clarify its exact nature, he did say that the tax agreement Placer had been offered was "slightly more than what is offered to the Tax Free Factories and would encourage the company to continue further development work and progress towards a full feasibility study on proposed mine" *(Fiji Times,* 4 December 1995, 7). If this is in fact the case, then Placer will be offered a minimum thirteen-year tax holiday, duty-free imports, and exemption from Fiji's value-added tax.

55. PNG Commissioner of Taxation, pers. corn., 1992.

56. Bougainville Copper's additional-profits tax was not based on a percentage of cash flow. Rather, a 15 percent rate of return on investment was used as the threshold where the additional-profits tax became operative. This created enormous potential for stockpiling and other activities to raise inventory investment and thereby decrease apparent rates of return on investment.

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