

MEMORANDUM TO PARLIAMENT

BY

THE MINISTER FOR FINANCE

ON

**APPROVAL OF GRANT OF FISCAL CONCESSIONS UNDER
A TAX CONCESSION AGREEMENT (TCA) TO ANGLOGOLD
ASHANTI (GHANA) LIMITED (AGAG)**

14th MARCH 2018

1.0 PURPOSE

Parliament is respectfully invited to consider and approve a grant of fiscal concessions under a Tax Concession Agreement (TCA) to Anglogold Ashanti (Ghana) Limited (AGAG).

2.0 CABINET APPROVAL

2.1. At its Twenty-fifth meeting held on Thursday, 25th January, 2018, Cabinet considered and approved the request for tax exemptions as indicated above for consideration of Parliament.

3.0 BACKGROUND TO THE TAX CONCESSION AGREEMENT

3.1. 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 of Lands and Natural Resources, on behalf of the President is responsible for granting mining rights to qualified applicants.

3.2. After the grant of the mining leases for the exploitation of the stipulated minerals, the Minister is required to submit the leases to Parliament for ratification, in accordance with Article 268(1) of the Constitution and Section 5(4) of the Minerals and Mining Act, 2006 (Act 703).

3.3. Upon granting of a mining lease the Minister may, on the basis of Sections 48 & 49 of Act 703, enter into a Stability and Development Agreement (DA) including fiscal concessions with the holder of the lease if the investment proposed will exceed Five Hundred Million American Dollars (US\$500 million). The DA may provide for stability and other terms that relate to the operation of the mining lease.

3.4. Section 49(3) requires DAs to be ratified by Parliament.

4.0 BACKGROUND INFORMATION ANGLOGOLD ASHANTI (GHANA) LIMITED

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

4.2. As part of the arrangements for the merger of AngloGold Limited and Ashanti Goldfields Company Limited to form AngloGold Ashanti Limited (AGA) in 2004 to support plans of extending the life of Obuasi mine, the Government of Ghana granted AGA a stability agreement (ratified by Parliament) which conferred various fiscal concessions and stabilisation to the company's subsidiaries in Ghana, namely, AngloGold Ashanti (Ghana) Limited (AGAG) which operates the Obuasi Mine and AngloGold Ashanti (Iduapriem) Limited (AIL) operating the Iduapriem Mine. The Stability Agreement for these entities are operational and valid until April 2019.

4.3. While the Iduapriem mine continues to run profitably, the Obuasi operation, in spite of continued investment by AGA, has for 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 in November 2014 in accordance with the mining laws. During this period of limited operations under the APMO, the Obuasi Mine was invaded by illegal miners in February 2016.

4.4. 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 Operating

Phase in 2015, which involved smaller scale production principally through the retreatment of tailings.

4.5. 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 mechanisation of the mine, continued. Environmental reclamation works also continued during the period.

4.6. 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.

4.7. 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 the miners onto part of the areas 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.

4.8. The feasibility study has shown good prospects for a mine with an estimated life of some 22 years. The Obuasi ore body is located along a 13 km length of the Ashanti gold belt regional shear, and as at December 2016, had mineral reserves of 6.3 million ounces and resources totalling 33.5 million ounces. Through further drilling, the company aims at converting further mineral resources to proven and probable reserves to increase flexibility and to extend the life of mine beyond 22 years. Despite the considerable mineral reserves and resources, the nature of ore body and operations make an investment into the redevelopment of the mine challenging to deliver the requisite returns, especially in the first ten years of the life of mine.

4.9. The initial 6-year investment to redevelop the mine and unlock the value locked up in the deposits at Obuasi, through what is described as the Obuasi Mine

Redevelopment (OMR) project, involves approximately US\$881 million capital cost (including contingency). Additionally, on-going stay in business capital is estimated to be US\$1,045million over the life of mine (22 years).

4.10. The OMR is expected to involve substantial redevelopment of underground and surface infrastructure with a mixture of replacement, refurbishment and upgrades occurring in phases over a six year period. The OMR is designed to enable an early start to processing (some 18 months after commencement of construction) at a rate of 2000 tonnes per day (tpd). Subsequent works will enable an increase in processing to 4000 tpd from year 3 and a further increase to 5000 tpd from year 5 onwards. Work on the extension of the existing development decline will commence immediately but the decline is only planned to reach the higher grade areas (deeper in the underground mine) after 10 years.

4.11. Thus, in the first 10 years, the mine plan will focus on the shallower and more accessible lower grade blocks with the cost of the future development being funded out of project cash flows. However, the lower grades mined in the first 10 years mean that the project faces significant challenges during this period, while beyond the first 10 years, mining of the deeper but higher grade material is expected to result in improved project economics.

4.12. AGAG has already applied for the environmental permits to cover all the projects to be implemented over the life of mine. These environmental permits are expected to be issued by the EPA in the next month or so. The EPA and AGAG have recently entered into a new Reclamation Security Agreement (RSA) to cover the basis for the life of mine reclamation of the Obuasi Mine.

4.13. To make the required investment, AGA has indicated that it would need Government support. The support expected would mainly be in terms of some fiscal concessions (as contained in the proposed Tax Concession Agreement (TCA), revised and adopted on 27 November, 2017) as well as stabilisation for the project (as proposed in the Development Agreement (DA) being proposed for

Parliamentary ratification), especially during the difficult first 6 to 10 years of the life of mine.

4.14. The ensuing engagement with Government during 2017-18 resulted in a number of agreements, notably, a Tax Concession Agreement (TCA) (executed on 27 November 2017) and a Development Agreement (DA) (executed on 16 January 2018), which are being tabled in Parliament for the approval of the Honourable House by resolution under Article 174 (2) and ratification under Article 268(1), respectively, of the Constitution.

5.0. BENEFITS TO GHANA FROM THE OBUASI MINE REDEVELOPMENT (OMR)

5.1. The table below shows the highlights of the Obuasi project financials and the expected revenues that would accrue to Government.

FINANCIAL OVERVIEW (based on signed TCA and DA)			
Financial Indicators	Unit	First 10 Years (2019-2028)	Life of Mine
Project gold (Economic footprint)	Moz	3.19	8.45
Gold Price assumption (Real)	US\$/oz	1,220	1,220
Initial Period Capital Investment	\$m real	881	881
Stay In Business Capital (SIBC)	\$m real	398	1,045
Peak Negative Cash Flow (exclusive of VAT)	\$m real	(476)	(476)
NPV ₁₅ (real of approval, post tax)	\$m real	(61)	222
NPV _{10.4 wacc} (real of approval)	\$m real	7	497
IRR	%	10.8%	21.9%
Payback Period (Standard)	years		6.6
Government revenue by fiscal mechanism			
PAYE, SPL and other fuel taxes	\$m real	60	137
Royalty	\$m real	130	474
Corporate Income Tax	\$m real	33	1,203
Withholding Tax on interest	\$m real	9	9
Withholding Tax on foreign services	\$m real	55	114
Custom duties (in model = 2004 stabilised)	\$m real	18	66
Dividend Withholding Tax	\$m real	-	153
Total government revenue (including PAYE)	\$m real	304	2,157

5.2. The Tax Concession Agreement which will facilitate the redevelopment of the Obuasi Mine is expected to have a positive net contribution to the Ghanaian economy. The following are estimates of expected economic gains from the redevelopment of the Obuasi mine:

- The 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 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 mine, representing about 21% of the total revenue pie over the life of mine.
- Local Content and Employment (and its multiplier effect). 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 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 mine.
- Corporate Social Responsibility and Local Community Support. AGAG has established the Hospital and 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 this. 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.

- o The mine redevelopment will 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 AGA are also well known internationally.
 - o 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 given some of the increased concerns of the international investment community about certain other jurisdictions as stable investment destinations. This decision is likely to have a very positive impact for Ghana, especially if Ghana joins in with AGA in making public presentations on the Obuasi Mine Redevelopment.
- It is recognized 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 and also breathe new life to the Obuasi community and its environs.

- Indirect Contributions. Additional to the direct contribution to the economy, 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.
 - o A notable one is the contribution to reducing illegal mining. A significant part of the approximately 60% of the company's concession area relinquished to the State is being processed for licencing to s
 - o Mall scale miners and is therefore expected to provide livelihoods and enhance the economy in the Obuasi area and beyond.

6.0. LIKELY NEGATIVE IMPACTS OF NOT APPROVING THE AGREEMENTS

6.1. Under the current circumstances the Obuasi Mine is not operating and without the assistance of Government, in terms of approving the Agreements, it is likely to continue that way. As is the case now, the impact will continue to be that Government will lose the potential revenue inflows. The socio-environmental impacts – both locally and nationally - may not have been readily quantifiable here, but is known to be significant since the local Obuasi economy has declined and the almost deserted ghost town community is likely to continue, if not worsen, in the absence of the key economic driver.

6.2. Again, government is having to spend on maintaining social order, including enhanced security with the mine not operating and therefore taking direct charge of its security. A relaxing of the State's involvement in security management at this time may escalate the illegal mining complications to the level of 2016 and lead to a complete breakdown of law and order

7.0. ASSESSMENT OF FISCAL IMPACT OF TAX CONCESSIONS

7.1. The Ministry of Finance, working together with the Ghana Revenue Authority and AGAG have provisionally estimated the fiscal impact by way of potential revenue foregone by government in granting these tax concessions to support the redevelopment of the Obuasi mine. The subsequent table shows the estimated

project value of the fiscal concessions contained in the attached Tax Concession Agreement and in particular the estimated tax liability which would be foregone by the Government in real terms for the first 10 years by applying the concessions compared with the current tax law, i.e. assuming no tax concessions and current tax laws apply.

Fiscal concession	Tax concession agreement	Cost to Government (US\$M), Real
Royalty ¹	3.1(f)	-40
Income Tax ²	3.1(a)	-2
Capital allowance ³	3.1(a)	-56
Retention of losses ⁴	3.1(a)	0
Customs import ⁵	3.1(c)	-177
VAT ⁶	3.1(g)	N/A
Deemed disposal	3.1(d) & (e)	0
		-275

Notes:

- (1) The above table shows the impact between the stabilised current position (3%) until April 2019 where after the current law (5%) compared to the sliding scale described under 5.4 above.
- (2) The impact between the current law (35%) and the concessionary income tax rate of 32.5%.
- (3) This is on the basis that the current unutilised capital allowance balance is carried forward to 31 December 2020 and become part of losses on 1 January 2021. Capital allowances arising post the effective date will be treated in terms of the current law.
- (4) This tax would only be triggered in the event of a change of control of AGAG and therefore the cost to the Government would be zero if no such event occurs.
- (5) The above table shows the impact between the current law and an exemption on customs duty.

7.2. The detailed breakdown of the import duty is attached as appendix A.

8.0 CONCLUSION

8.1. The Tax Concession Agreement together with The Development Agreement (DA) granted AngloGold Ashanti (Ghana) Limited (AGAG) by Government is to provide impetus for pursuing the Obuasi mine redevelopment project to realise the potential of the mine's significant mineral resources and thereby secure its contribution to the economic development of, not just, Obuasi but the Ghanaian economy as a whole is required to be ratified by Parliament.

8.2. Parliament is, therefore, respectfully requested to consider and ratify the DA in accordance with Section 49(3) of the Minerals and Mining Act, 2006 (Act 703).



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KWAKU KWARTENG, MP
(DEPUTY MINISTER FOR FINANCE)

ATTACHMENTS:

1. Forwarding letter, folio 1
2. Parliamentary Memo, folio 2
3. Cabinet approval, folio 3
4. Tax concession Agreement, folio 4
5. Tax Assessment (Import duty), folio 5