

# The “Pay Your Taxes” Debate

## *Perspectives on Corporate Taxation and Social Responsibility in the Chilean Mining Industry*

**Contributors**

*Manuel Riesco*

*Gustavo Lagos and Marcos Lima*

This United Nations Research Institute for Social Development (UNRISD) Programme Paper has been produced with the support of the MacArthur Foundation. UNRISD also thanks the governments of Denmark, Finland, Mexico, Norway, Sweden, Switzerland and the United Kingdom for their core funding.

Copyright © UNRISD. Short extracts from this publication may be reproduced unaltered without authorization on condition that the source is indicated. For rights of reproduction or translation, application should be made to UNRISD, Palais des Nations, 1211 Geneva 10, Switzerland. UNRISD welcomes such applications.

The designations employed in UNRISD publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of UNRISD concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

The responsibility for opinions expressed rests solely with the author(s), and publication does not constitute endorsement by UNRISD.

## Contents

Acronyms	iii
Preface/Préface/Prefacio	iv
Preface	iv
Préface	v
Prefacio	vii
<b>Part I: Pay Your Taxes! Corporate Social Responsibility and the Mining Industry in Chile, <i>Manuel Riesco</i></b>	<b>1</b>
Summary/Résumé/Resumen	3
Summary	3
Résumé	4
Resumen	6
Chilean History and the Struggle Over Natural Resources	9
CSR and the Mining Industry	10
How to Earn Money Operating at a Loss	13
Outflows of profits to service loans	14
Abusing tax incentives	15
Other schemes	16
The Case of BHP Billiton's Minera Escondida	18
CSR leader	18
Financial results: Minera Escondida versus CODELCO (1998–2002)	19
Free Raw Materials	25
Immiserizing Growth	26
What Should Be Done?	30
Bibliography	32
<b>Part II: “Pay Your Taxes!” Faulty Calculations or Ideological Prejudice?, <i>Gustavo Lagos and Marcos Lima</i></b>	<b>35</b>
Summary/Résumé/Resumen	37
Summary	37
Résumé	38
Resumen	39
Introduction	41
The Case in Numbers	42
A Technical Analysis of the Figures	45
By-products	45
Unexplained differences between the LME price and the concentrate selling price	46
Differences in the treatment and refining charges	48
The Vision of Authority	50
Conclusions	51
Bibliography	52
<b>Part III: Responses</b>	<b>53</b>
The Debate Over the Findings, <i>Manuel Riesco</i>	55
Is Further Debate Necessary?, <i>Gustavo Lagos and Marcos Lima</i>	61
<b>UNRISD Programme Papers on Technology, Business and Society</b>	<b>65</b>
<b>Figures</b>	
Figure II.1: LME copper price behaviour, 1998–2002	47
Figure II.2: Historic data for annual contracts and spot price	48
<b>Tables</b>	
Table I.1: Chile: Copper mines and ownership	11
Table I.2: Escondida business results	17
Table I.3: Comparative business results, CODELCO versus Escondida	21

Table I.4: Business results per unit of revenue and production, CODELCO versus Escondida	22
Table I.5: Minera Escondida: Differences in transfer prices of copper and by-products, refining and shipping costs, and impact on income and taxation	24
Table I.6: Chile: Selected copper figures	29
Table II.1: Minera Escondida: Differences in transfer prices of copper and by-products, refining and shipping costs, and impact on income and taxation	44
Table II.2: Differences generated by using long-term contracts and spot prices	45
Table II.3: CODELCO income by sale of by-products	45
Table II.4: Ore characteristics, 2002	46

## Acronyms

<b>AIDS</b>	acquired immunodeficiency syndrome
<b>ARCIS</b>	Universidad de Artes y Ciencias Sociales
<b>BHP</b>	Broken Hill Proprietary Company Limited (established in 1885; name officially changed to BHP Limited in 2000)
<b>CENDA</b>	Centro de Estudios Nacionales de Desarrollo Alternativo
<b>CEO</b>	chief executive officer
<b>CIF</b>	cost, insurance, freight
<b>CIPMA</b>	Centro de Investigación y Planificación del Medio Ambiente
<b>COCHILCO</b>	Comisión Chilena del Cobre
<b>CODELCO</b>	Corporación Nacional del Cobre de Chile
<b>COMEX</b>	Commodity Exchange Inc.
<b>CSR</b>	corporate social responsibility
<b>DFL</b>	Decreto con Fuerza de Ley
<b>ECLAC</b>	Economic Commission for Latin America and the Caribbean
<b>ENAMI</b>	Empresa Nacional de Minería
<b>FOB</b>	free on board
<b>FTA</b>	Free Trade Agreement
<b>GDP</b>	gross domestic product
<b>HIV</b>	human immunodeficiency virus
<b>IFC</b>	International Finance Corporation
<b>IIED</b>	International Institute for Environment and Development
<b>IRS</b>	Internal Revenue Service
<b>ISO</b>	International Organization for Standardization
<b>JECO</b>	Japan Escondida Corporation
<b>KfW</b>	Kreditanstalt für Wiederaufbau
<b>LME</b>	London Metal Exchange
<b>MMSD</b>	Mining, Minerals and Sustainable Development Project
<b>OPEC</b>	Organization of the Petroleum Exporting Countries
<b>SCM</b>	Sociedad Contractual Minera
<b>SA</b>	Sociedad Anónima
<b>SEC</b>	Securities and Exchange Commission
<b>SII</b>	Servicio de Impuestos Internos
<b>Plc</b>	Public Limited Company
<b>Pty</b>	proprietary
<b>PUC</b>	Pontificia Universidad Católica de Chile
<b>RTZ</b>	Rio Tinto Zinc
<b>TC/RC</b>	treatment and refining charges
<b>TNC</b>	transnational corporation
<b>UNDP</b>	United Nations Development Programme
<b>UNRISD</b>	United Nations Research Institute for Social Development
<b>US</b>	United States
<b>VAT</b>	value added tax

## **Preface/Préface/Prefacio**

### ***Preface***

Over the past two decades, an increasing number of transnational corporations (TNCs) have adopted a variety of policies and practices associated with corporate citizenship or corporate social responsibility (CSR). CSR is often defined as greater responsiveness on the part of TNCs and other companies to the social, environmental and human rights concerns of multiple stakeholders in both host and home countries, and as going beyond the minimum standards set out in law. The CSR agenda has evolved considerably in terms of both the number of companies, civil society organizations, governments and international agencies supporting it, and the range of issues addressed. An earlier focus on selected environmental issues, working conditions, community relations and philanthropy has broadened to include such aspects as labour and other human rights, the social responsibilities of suppliers, and the role of TNCs in dealing with specific societal problems such as violent conflict and HIV/AIDS. An issue that has received less attention is that of corporate taxation. This omission is curious not only because of the key role of taxation in social development, but also because of the fact that responsibilities associated with taxation have always been a central element of citizenship and should, presumably, apply as well to corporate citizenship.

The lack of attention to the question of taxation has played into the hands of critics of TNCs who dismiss CSR as window-dressing and point to the double standards that exist when companies promote CSR initiatives and simultaneously engage in legal forms of tax avoidance or illegal tax evasion to minimize their fiscal contributions, as well as other practices that can have perverse developmental impacts.

Growing awareness of these problems, and evidence that they are increasing in the context of globalization and economic liberalization, has prompted some civil society organizations, governments and intergovernmental organizations to take action to curb such practices. Internationally, we see, for example, the formation of the Tax Justice Network and the Publish What You Pay Campaign, the efforts of the Organisation for Economic Co-operation and Development to combat tax havens, and certain developing country governments imposing or proposing increased royalties on mining companies.

As part of a series of studies on the uptake and impact of CSR in developing countries, the United Nations Research Institute for Social Development (UNRISD) requested Manuel Riesco of the Centro de Estudios Nacionales de Desarrollo Alternativo (CENDA) to prepare a paper that would examine the fiscal performance of foreign mining companies in Chile, the extent and dynamics of tax avoidance, the issue of double standards, the role of government policies in shaping fiscal behaviour, and the nature of policy reforms that might enhance the developmental contribution of TNCs.

The Riesco study, presented in part I, attempts to understand why it is that a flourishing private mining sector pays so few taxes in Chile, and why the reported pre-tax profits of a large, modern, foreign-owned copper mine are on a par with those of what Riesco describes as “the ageing and ailing state-owned corporation, CODELCO”. To explain these situations, Riesco identifies an overly permissive neoliberal policy and legal environment; intracorporate financial flows that allow mining affiliates not only to repay loans to related off-shore financial affiliates at generous rates but also to benefit fiscally by being indebted; the sale of copper and by-products at reduced prices to companies that are part of the same corporate structure; and the over-charging of shipping, and treatment and refining charges, by these or other related companies.

The preliminary findings of the Riesco study were posted on the CENDA Web site, and were presented to two commissions of the Chilean Senate dealing with the mining industry and picked up by the press, fuelling a national debate on the question of why foreign mining companies paid no royalties and so few taxes. Certain regulatory authorities and business interests criticized the study. One of the companies examined in the study, BHP Billiton, sought a third-party opinion and subsequently submitted to UNRISD a paper, by Professors

Gustavo Lagos and Marcos Lima from the Engineering Faculty of the Pontificia Universidad Católica de Chile, which was highly critical of the Riesco paper. In view of the polemic, UNRISD has decided to publish both papers in the form of a debate, which also includes a reply by Riesco and a rejoinder by Lagos and Lima.

In their paper, presented in part II, Lagos and Lima argue that it is not possible to conclude that the foreign-owned company, Minera Escondida, had underreported its income. Riesco's calculations, they argue, do not take into account or give sufficient weight to various factors, including variations in the by-product content of the ores produced by CODELCO and Escondida; the volatility in world copper prices and treatment and refining charges; the fact that Escondida sells under long-term as opposed to spot contracts; and a variety of other factors that affect sales prices. They also note a range of regulatory institutions and controls that are in place to detect and prevent the types of anomalies identified by Riesco.

In their replies, presented in part III, the authors essentially stick to their guns. Riesco acknowledges the need for some fine-tuning of his calculations but confirms the role of transfer pricing in substantially lowering corporate profits and income declared in Chile. He argues that the by-product content of CODELCO ores is unlikely to be excessively greater than that of Escondida and that the nature of the long-term contract that results in lower prices is not so much an explanation as part of the problem of transfer pricing. Referring to the serious problems of under-staffing of the state oversight agency, COCHILCO, he questions this agency's regulatory capacity. He also reaffirms the perversity of a situation where a vibrant sector of the economy pays no royalties, and he praises the recent attempt by the Chilean government to introduce a law that would impose a 3 per cent royalty on mining companies.

Lagos and Lima also maintain their original position, adding that the comparability of the financial performance of the state-owned and foreign-owned mines also reflects the fact that the state-owned company has become very competitive. Furthermore, they argue, the scenario described by Riesco suggests the existence of a major international tax fraud conspiracy which is unrealistic, involving as it would not only many companies but also the International Finance Corporation, boards of directors, auditors and so forth. Moreover, they say, numerous controls exist to prevent such a situation, not least regulations on product sales and international trade, sanctions imposed by securities exchanges, the response of shareholders and the threat of lawsuits.

Such differences in opinion clearly indicate the need for additional research. But they also suggest that the criteria that should inform the judgement as to what is acceptable fiscal behaviour are not only technical and legal, but also ethical and political. UNRISD leaves it to the reader to decide which set of arguments is more convincing.

Peter Utting  
Deputy Director  
and Coordinator of CSR Research, UNRISD

### ***Préface***

Au cours des deux dernières décennies, de plus en plus de sociétés transnationales (STN) ont adopté des mesures et pratiques diverses, qui sont associées aux entreprises citoyennes ou à la responsabilité sociale des entreprises (RSE). La RSE est souvent définie comme une plus grande sensibilité manifestée par les STN et d'autres sociétés commerciales, dans leur pays d'origine et dans les pays où elles s'établissent, aux préoccupations de diverses parties en matière d'environnement et de droits de l'homme, sensibilité qui les conduit à aller au-delà des normes minimales prévues par la loi. La RSE a considérablement évolué, tant pour ce qui est du nombre de sociétés, d'organisations de la société civile, de gouvernements et d'institutions internationales qui y sont favorables, que de l'éventail des sujets abordés. Si elle était initialement associée à un intérêt pour certaines questions environnementales, aux

conditions de travail, aux rapports avec la population locale et à la philanthropie, elle recouvre aujourd'hui un champ beaucoup plus vaste, qui englobe les droits des travailleurs et d'autres droits de l'homme, les responsabilités sociales des fournisseurs et le rôle des STN face à des problèmes de société spécifiques tels qu'un conflit violent ou le VIH/sida. L'imposition des sociétés, en revanche, a moins retenu l'attention. Cette omission est curieuse, non seulement parce que l'imposition joue un rôle clé dans le développement social, mais aussi parce que les responsabilités associées à l'imposition ont toujours tenu une place centrale dans la citoyenneté et que ce principe devrait sans doute s'appliquer aussi aux entreprises citoyennes.

Le manque d'attention porté à la question de l'imposition a fait la part belle aux détracteurs de la RSE qui n'y voient qu'une façade et dénoncent l'utilisation d'un double standard par ces sociétés commerciales qui, tout en favorisant les initiatives de responsabilisation sociale, cherchent des moyens légaux de se soustraire au fisc ou de pratiquer l'évasion fiscale pour réduire au minimum leurs contributions publiques et se livrent à d'autres pratiques qui peuvent avoir des effets pervers sur le développement.

Une conscience accrue de ces problèmes et leur aggravation dans le contexte de la mondialisation et de la libéralisation économique—comme le prouvent divers éléments—ont incité certaines organisations de la société civile, des gouvernements et des organisations intergouvernementales à agir pour faire cesser ces pratiques. Témoins, au niveau international, la formation du réseau Tax Justice Network (pour la justice fiscale) et la campagne Publish What You Pay (pour la transparence et contre la corruption), ainsi que les efforts déployés par l'Organisation de coopération et de développement économiques (OCDE) pour lutter contre les paradis fiscaux et l'attitude de certains gouvernements de pays en développement qui soumettent l'exploitation minière au paiement de redevances ou proposent de les augmenter.

Dans le cadre d'une série d'études sur l'accueil et l'influence de la RSE dans les pays en développement, l'Institut de recherche des Nations Unies pour le développement social (UNRISD) a demandé à Manuel Riesco du Centro de Estudios Nacionales de Desarrollo Alternativo (CENDA) de se livrer à une étude et d'établir un rapport sur les impôts versés par les sociétés minières étrangères au Chili, l'ampleur et la dynamique de l'évasion fiscale, la question des doubles standards, le rôle des politiques gouvernementales sur le comportement face à l'impôt, et la nature des réformes politiques qu'il faudrait pour augmenter la contribution des STN au développement.

Dans son étude, présentée dans la première partie, Manuel Riesco tente de comprendre la raison pour laquelle un secteur minier privé aussi florissant paie si peu d'impôts au Chili, et pourquoi les bénéficiaires avant impôt que déclare une importante et moderne mine de cuivre, exploitée par une société étrangère, équivalent à ceux de la CODELCO, que Manuel Riesco décrit comme une "entreprise publique malade et vieillissante". Manuel Riesco explique cette situation par une politique néolibérale et un environnement juridique permissifs à l'excès; par

预览已结束，完整报告链接和二维码如下：

[https://www.yunbaogao.cn/report/index/report?reportId=5\\_21288](https://www.yunbaogao.cn/report/index/report?reportId=5_21288)

