

Guidance note on Tax Treatment of Decommissioning for Extractive Industries

U.N. Dep of Economic and Social Affairs.

The Committee of Experts on International Cooperation in Tax Matters

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Context

AIM OF GUIDANCE: To provide Governments with insights to enable them to design their tax regime for decommissioning, in such a way as to avoid undermining the effective decommissioning of facilities.

Key drivers affecting decommissioning:

- Politics,
- Public concern and reputation,
- Legal requirements,
- Cost,
- Taxation framework,
- Technical feasibility,
- Health, risk and safety,
- Local content.
- Environmental impact
- Other users of the land and the sea.

Different types of fiscal regime:

- Contractual (PSA)
- Concession (Tax/Royalty)

Tax Policy objectives

Key concern is to make sure that the tax system does not:

- adversely affect behaviour or
- undermine policy intentions.

Decommissioning differs from other tax policy considerations since:

- Planning/saving needs to occur over a long period
- Funding of decommissioning is critical
- Implementation is at the end of the life of (and interest in) the project
- The tax rules will likely need to address changes of ownership
- The quantum of the decommissioning cost can outweigh (many times) the profits of the final years

Key policy risks

1. Influence or impede the choice of who undertakes the decommissioning
2. Promote premature decommissioning:
 - Of the field
 - Of some of the equipment
 - Of the infrastructure available to others
3. Promote only a standard decommissioning approach
4. Affect the choice of how fields are developed
5. Stop change of use
6. Advantage multi-field investors over single field investors

Basic principles

- Qualified business costs normally considered deductible
- Costs are deductible ...
 - On a cash basis: Australia, Denmark, Norway, United Kingdom
 - Defers tax relief
 - Pre-fund basis: India, Mozambique, Mexico, South Africa, Zambia
 - Gives incentive to make provision
 - Provides visibility of funding
 - Accruals basis: Netherlands, Ghana
- Tax relief applies only to approved costs

Some key policy scenarios to address

- Late life entrant
 - Lack of tax history
 - Single project
- Decommissioning specialist
 - Qualifying as a valid expense
- Change of use
 - Residual liability
- Cross border fields
 - Interaction of two (or more) taxation regimes

Proposed next steps

1. Revise paper to include
 - mining
 - policy scenarios
 - dispute resolution
2. Revised paper for discussion at April 2016 Sub-Committee meeting
3. Presentation to Full Committee in October 2016