

Subcommittee on Extractive Industries Taxation Issues for Developing Countries

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Recap: Issues in the Extractive Industries

- Important sector for many developing countries
- Challenge of ensuring appropriate “government take”
- Find balance between
 - Investment climate
 - Revenue return
- Extractive industries
 - High sunk costs
 - Fluctuating prices
 - Volatile demand
 - Long production periods
 - Economic rents
 - Vertically integrated structures

Key Areas for Developing Countries

- Capital gains taxation and indirect transfers
- Selected double tax treaty issues
- Tax treatment of decommissioning
- Value-added taxation (VAT)
- Negotiation and re-negotiation of extractive industries contracts
- Permanent establishment (PE) issues for the extractive industries
- Kinds of government “take”
- Effective review of invoicing and costs (trade mispricing)

(Committee-)Members of the Subcommittee

- Mr. Mohammed Baina
- Mr. Johan Cornelius de la Rey
- Mr. El Hadji Ibrahima Diop
- Ms. Liselott Kana
- Mr. Enrico Martino
- Mr. Ignatius Kawaza Mvula
- Ms. Carmel Peters
- Ms. Pragya Saksena
- Mr. Stig Sollund
- Ms. Ingela Willfors
- Mr. Ulvi Yusifov

Other Members of the Subcommittee

- Mr. Charles Bajungu (Tanzania Revenue Authority)
- Ms. Nara Monkam (African Tax Administration Forum)
- Mr. Miguel Pecho (Inter-American Center of Tax Administrations)
- Mr. Michael Keen (International Monetary Fund)
- Mr. Richard Stern (World Bank Group)
- Mr. Jan de Goede (International Bureau of Fiscal Documentation)
- Mr. Michael Kobetsky (University of Melbourne)
- Mr. Tomas Balco (KIMEP University, Kazakhstan)
- Ms. An Theeuwes (Shell International)
- Mr. Alvaro de Juan Ledesma (Repsol)
- Mr. Karl Schmalz (USCIB)
- Ms. Nana Okoh (Gold Fields Ghana Ltd)
- Ms. Pooja Rangaprasad (Financial Transparency Coalition)
- Mr. Michael Durst (Attorney)
- Mr. Moisés Orozco García (SAT Mexico)
- Mr. Chris Sanger (EY)
- Mr. Hafiz Choudhury (M Group)

Subcommittee Meetings in 2015

- Third Meeting: New York, April 2015
 - Presenting the work done and obtaining additional input
 - Wide audience:
 - Members of the Committee
 - Experts from governments and non-governmental organizations
 - Private sector representatives
- Fourth Meeting: Bratislava, August 2015 (Host: Government of Slovakia)
 - Finalizing Guidance Notes to be submitted for approval

(The 1st and 2nd Subcommittee Meetings were held in 2014 in Johannesburg, South Africa, and Arusha, Tanzania, respectively)

Guidance Notes Submitted for Approval to the Committee

1) Overview Note

- Summarizes and binds all Guidance Notes

2) Capital Gains Taxation and Indirect Transfers

- Implementation of capital gains taxation
 - Within the income tax law framework
 - As stand-alone capital gains tax
- Taxation of transfers of assets
 - Direct transfers
 - Indirect transfers and possible rules to tax such indirect sales

Guidance Notes Submitted for Approval to the Committee cont'd

3) Selected Double Tax Treaty Issues

- Numerous cross-border elements in extractive industries
 - Investors, license holders, service providers and suppliers are often not resident in source country
 - Natural resources, once extracted, are typically exported
- Taxes covered by treaty (substantive scope of tax treaties)
- Threshold for taxability (of investors, contractors and subcontractors)
- Territorial scope of the treaties
- Tax issues throughout the life cycle of a natural resource project
- Possibility of a tax credit in the resident state of investor
- Aspects of non-discrimination
- Tax treaty articles which apply to extractive industries

Future Work Plan

Guidance Note submitted for comments to the Committee

- 4) Guidance Note on the Tax Treatment of Decommissioning (focus on oil and gas)

Guidance Notes to continue to work on:

- 5) VAT in the Extractive Industries
- 6) Negotiation and Re-Negotiation of Extractive Industry Contracts
- 7) Permanent Establishment Issues for the Extractive Industries
- 8) Kinds of Government “Take”
- 9) Effective Review of Invoicing and Costs – exploratory work

Summary

Submission for approval

- 1) Overview Note
- 2) Guidance Note on Capital Gains Taxation and Indirect Transfers
- 3) Guidance Note on Selected Double Tax Treaty Issues

Submission for comments (not seeking approval of paper)

- 4) Tax Treatment of De-commissioning

Proposal to work on

Guidance Notes on

- 5) VAT in the Extractive Industries
- 6) Negotiation and Re-Negotiation of Extractive Industry Contracts
- 7) PE Issues for the Extractive Industries
- 8) Kinds of Government “Take”
- 9) Effective Review of Invoicing and Costs (Trade Mispricing)

Thank you!