



# Contributors

- **Subcommittee Members**
  - Meetings in Arusha (Tanzania), NY (UN) and Bratislava (Slovakia)
- **Special Thanks to Subcommittee Members**
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  - Susana Bokobo Moiche
- **Special Thanks to Secretariat**
  - Michael, Ilke and Victoria

# Objectives

- Provide overview of
  - special issues arising in Extractive industries
  - in relation to application to Tax Treaties
    - Special Articles in the tax treaties
- Provide guidance to tax treaty negotiators
  - Implications for taxing rights
  - Implications for elimination of double taxation
- Followed by detailed and specific topical notes
  - – e.g. Capital Gains, Permanent Establishments

# Approach and Structure

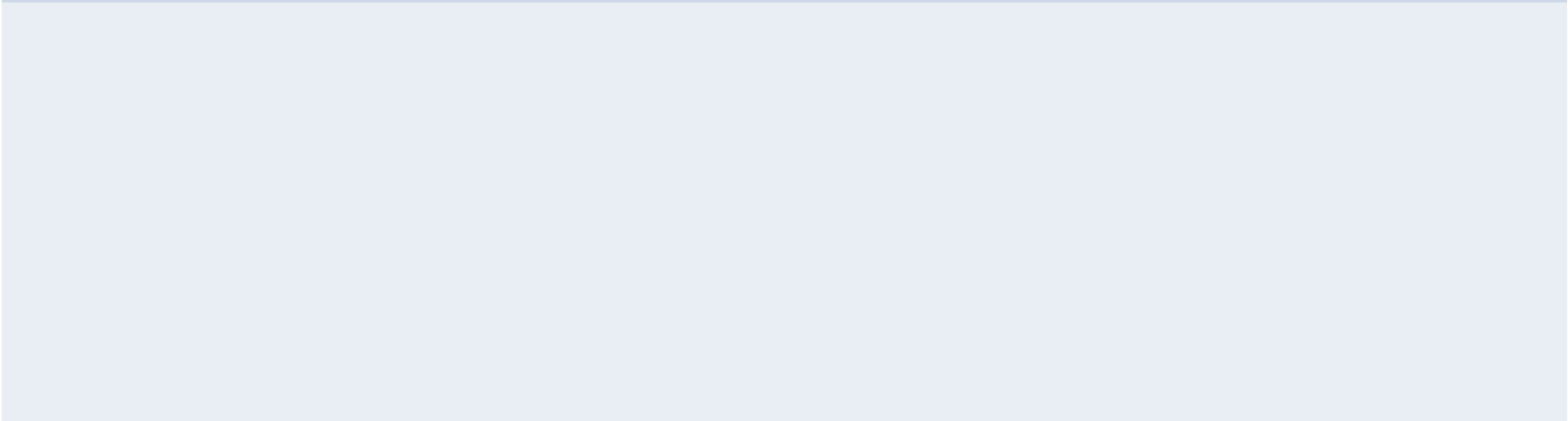
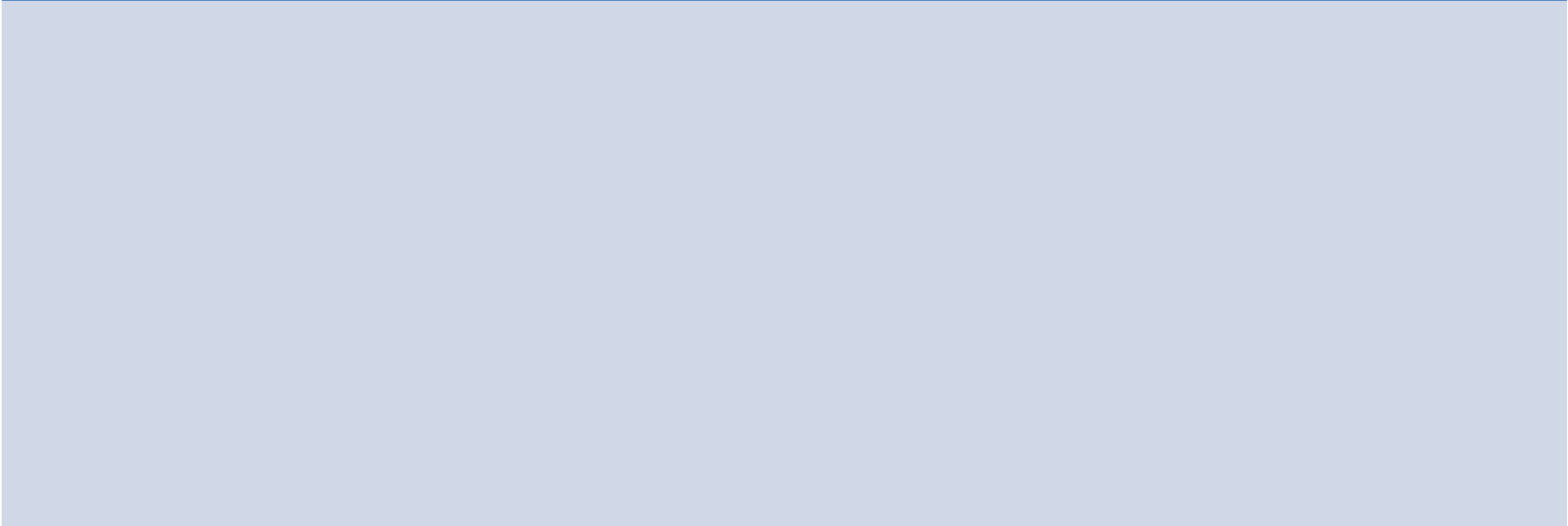
- Background
- Overview of Business Cycle
- Special focus
  - Personal Scope
  - Substantive Scope
  - Selected Articles addressed
    - Emphasis of Extractive Industry Issues
    - Emphasis of differences between UN MTC and OECD MTC
- Examples of Real Life Treaties

# Lifecycle of Extractive Industry Project



# Stages, Activities, Actors, Issues

Stages	Key Activities	Actors	Domestic Tax Issues	International Tax Issues
Contract Negotiation and Signature	Extractive company may get engaged in competitive bidding or contract negotiation with assistance of advisers and lawyers	Extractive Company, Consortium members, Advisers, Lawyers, Financiers	Obligatory (tax) payments, such as Signature Bonus, Payments to advisers and WHT consideration	Are Signature Bonus payments covered by scope of DTT? Taxation of income to advisers? Is DTT applicable?
Exploration Activities & Evaluation	Exploration activities in different form take place – geological studies, drilling, and seismic tests, sample taking and analyzes, Evaluation of potential for further extraction	Extractive Company, Subcontractors specializing on the exploration activities (on-shore and off-shore), analyzes	Obligatory (tax) payments, such as Discovery Bonus, Payments to subcontractors and	







# Substantive Scope

## Article 2 – Taxes covered

- Relevance of inclusion of particular types of taxes into the scope of the treaty
  - Potential limit on taxing rights, and
  - Obligation of country of residence to eliminate DT
- Benefits of inclusion of taxes, which are of profit/income and capital nature
  - Reduction of the overall tax burden on the investor
    - The Credit (Elimination of Double Taxation) is equally important

# Types of Taxation Models

- Profit Tax Model (Norway)

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# Territorial Scope

## Article 3

- Definition of Contracting states
  - Notions of territory and territorial waters, but also continental shelf and exclusive economic zone, within which the states may exercise the taxing rights in accordance with international law
    - Will omission limit the taxing rights?
      - Sub-committee position – omission of part of territory or area from the scope means the tax treaty does not apply to this territory, therefore the tax treaty may not limit the taxing rights of the country of source
        - » And country of residence may not be obliged to grant credit

# Business Profits and Permanent Establishment Issues

## Articles 5 and 7

- Profit Attribution 7 UN vs. 7 OECD
  - 7/1 Force of Attraction, 7/2 Limitation to deduction
  - 7/5 Purchasing activities
- Permanent Establishment Issues
  - Exploration activities
    - Reference to OECD Commentary
      - Policy options in respect of exploration activities
        - » Not PE, PE, PE after time period
- Other PE issues
  - Construction/Installation Project
  - Service PE
    - Emphasis on Subcontractors and Issues arising

# Service Providers and Tax Considerations

- Who are the service providers?
  - Consultants in the initial stage (Legal, Financial, Other)
  - Exploration activities
    - Drilling,
    -

# Services – Tax Treaty Policy Options

- Wider or narrower PE definitions
  - Thresholds – as short as 30 days
    - Link to Article 15 – taxation of employees
- Technical Services Article
  - Scope of Services covered by the special article

# Special Articles Focus

- Article 6 – Immovable Property
- Article 8 – International Transport
- Article 9 – Transfer Pricing Issues
- Articles 10, 11, 12 – Interest and Royalty Considerations
- Article 13 – Capital Gains
  - Highlight Issues – refer to Special Note
- Articles 15, 16, 21, 22, 24 - Highlights



Thank you...

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