











3 TERMS USED

[To be added later. Note that decommissioning will be defined to include rehabilitation]

#### 4 INTRODUCTION

The two main extractive industries are mining and oil & gas; within each of these categories, there are a range of technology requirements depending on the resource to be extracted, its location (e.g. onshore or offshore) and the facilities needed to process the extracted resource. Such facilities may require large multi-year capital investments in infrastructure or access to additional inputs for processing the output of natural resource projects. As the mines and the oil and gas facilities become depleted, the now redundant facilities require decommissioning and remediation.

Decommissioning is a complex multi-disciplined process with an overall timescale normally lasting several years, requiring the management of diverse issues and involving international and government agencies, mining or oil & gas producing

5. Taxation Framework
6. Technical Feasibility
7. Health, Risk, Safety and Security
8. Environmental Impact
9. Other Users of the Land and the Sea

The above listed elements are not ranked in order of importance, and policymakers should decide the weight to be given to each factor based on the economic conditions, and policy priorities of their own country for an overall



Notwithstanding these generalisations, it should be noted that some unconventional oil and gas projects have characteristics which bear closer resemblance to mining projects in terms of their economic profile and, in some cases, arguably the environmental footprint (e.g. oil sands).

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#### 4.3 CONTRACT STRUCTURES AND FISCAL REGIME DESIGN





These options can combine with the options set out in Sub section 5.2 to create a complex environment, such that the options chosen by two countries can differ significantly.

The above options raise a number of operational challenges. In relation to funds, the following questions arise:

- How much should be contributed into the fund?
- What is the mechanism for withdrawals from the fund?
- On what basis should the obligation to fund be imposed?
- When should companies pay into the fund?
- What companies should pay into the fund (is this just the license holder?)
- What can be contributed into the fund (e.g. profit oil rather than just cash)?
- What happens in the event of a:
  - o Funding shortfall
  - o Funding surplus
- What currency is the fund?

Similar questions arise in relation to provisions.

Given the above, the fiscal regime will need to consider:

- Whether contributions to the fund are tax deductible when made, or at any other time (e.g., when the fund spends the moneys)
- Whether tax is imposed on drawings from the fund and/or any return of surplus and release.
- How earnings on the fund itself are taxed (or exempt from tax)

These and other tax issues are discussed in the next section.

The government will also need to consider how it would fund its share of liabilities which could arise through state participation in decommissioning. In addition, even without direct participation, income based taxes to the government will be reduced given higher costs, and lower or no production, during periods of decommissioning. In many cases, losses will be incurred during such periods, and thus refunds of prior taxes paid may be due, triggered by the carry back of losses from the decommissioning. Broadly, this may be met out of current period tax receipts or reserves which the government may hypothecate or commit into a specially designed fund.

## 6 BASIC TAX CHOICES: AN OVERVIEW OF THE COMMON MODELS

The basic choices for providing a tax deduction for decommissioning costs are as follows:

1. Provide a tax deduction when cash is expended on decommissioning
2. Provide a tax deduction when decommissioning is accrued
3. Provide a tax deduction when decommissioning is pre-funded

These options are considered in more detail in sections 1 to 4 below and particular concerns are evaluated in section 7. They are [all] seen in practice, as shown by the examples

## 6.1 MODEL 1 \ PROVIDING A TAX DEDUCTION UPON EXPENDITURE

Under this system, a tax deduction is only provided on a cash basis, leaving no tax incentive for the taxpayer to pre-fund its decommissioning. This means that there will be a greater need for government to ensure that funds are available at the time of decommissioning. This therefore encourages the use of security (see section 6.5 below).

This is the simplest mechanism as the expenditure incurred on decommissioning can be verified against an agreed decommissioning plan. There will be other questions that need to be addressed, such as whether costs are general rather than decommissioning costs and to which project the particular element of decommissioning expenditure relates (which is particularly important if the projects are taxed (and hence potentially relieved) at different tax rates).

This also provides a cash flow advantage to the government since it will receive all taxes/receipts from the extraction of the resources but will only permit tax deductibility for costs at (or near) the end of life of the project<sup>2</sup>.

The choice of timing can also be linked to the choice of tax regime more generally – if the rest of the regime is effectively a cash flow tax (e.g. providing immediate relief for capital expenditure) then allowing relief only on a cash flow basis is consistent.

From a tax perspective, this means that the project will be paying tax once the project has repaid investment and will carry on doing so through to the end of project life. At that point (or slightly beforehand), the taxpayer will incur decommissioning costs which will crystallise a large loss once the project has entered the decommissioning phase.

In most tax systems, tax losses are carried forward to the next tax year and allowed as a deduction in that year. However, the use of a loss carry back will be needed as a way to provide an effective tax deduction for such costs unless there are other ways to offset the loss. A special provision can be made in the corporate income tax law to allow loss carry-backs in the case of a terminal loss arising from the closure of mining or oil & gas operations. In turn, this may involve reviewing the income taxes paid for previous years and will typically result in refunds of taxes paid for such years.

Policymakers will need to be conscious of the government budgetary implications and availability of funds for refunds. Further, consideration will need to be given to the administration of the carry-back.

Assuming the budgetary and administrative issues can be resolved, the use of loss carry-backs can be an effective means of granting relief. This is particularly true when ring fencing applies; also, it allows for accurate deduction of the actual costs incurred, and avoids the issues of recapture of excess relief or allowance of further costs inherent in other mechanisms.

Rules are needed to cover how that loss is deducted, such as allowing offset against profits made earlier in the project life. If this is achieved through a carry back of the loss against the most recent periods first (i.e. on a last-in-first-out or 'LIFO' basis), then the effective tax rate will be the rate that applied near the end of the project life rather than at the start of project life. Where the tax rate has varied in line with the profitability of the project, this may be considerably less than the peak tax rate on the project or indeed the average rate. Significant uncertainty may arise due to the risk of law changes and this is exacerbated by the long period before tax relief is obtained.

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<sup>2</sup> Of course, the cash flow impact on the taxpayer will be the opposite.

## 6.2 MODEL 2\ PROVIDING A TAX DEDUCTION UPON ACCRUAL

Under this model, a tax deduction is taken as the decommissioning expense is charged to the profit and loss account. Where the expenditure has not yet been incurred, this will create a provision for future expenditure. The tax payer will get the tax deduction earlier in the life of the project than under model one.

The provision method enables the taxpayer to most efficiently deploy its capital. It may be argued that without the obligation of an actual cash outlay, tax-deductible provisioning can increase the expected rate of return from the project since it provides improved cash flows over models one and three. It thus could result in greater returns also to the state given different discount rates used.

On the other hand, policymakers should be conscious that an unfunded provision requires appropriate and robust controls and monitoring processes to ensure that excessive amounts are not being provided for.<sup>3</sup> Further, it may be prudent to ensure that while a provision is being made, there is some corporate backing provided by the operator, in the form of one or more financial guarantees discussed at section 5.3 above that the operator will perform its obligations on decommissioning.

Finally, it will also be necessary to develop rules to deal with excess or inadequate provisions made. Where excess sums have been provided for, there should be explicit provision in the tax law to recapture the excess. A further consideration here is whether the recapture should be at the tax rate of the excess provision year(s) or the year in which recapture takes place, and whether interest should be charged. Again, policymakers will have to consider the trade-offs in view of their need to attract additional investment to



provision, thus a current year deduction could consist of the accrual for that year plus an additional accrual for prior year amounts that have depreciated.

### 6.3 MODEL 3\ PROVIDING A TAX DEDUCTION UPON PRE-FUNDING

As noted in section 5.3, some governments require or allow companies to contribute to a decommissioning fund out of which the decommissioning liability is settled.

This model provides a tax deduction for contributions made to a dedicated and protected decommissioning fund. Typically contributions would be made by a licensee who is liable for a share of decommissioning costs under a joint operating agreement. Decommissioning expenditure met directly or indirectly by the fund would not receive further tax relief. The fund would be outside of the sole control of the company or the Government and, once committed, funds could only be released in order to be used to pay for decommissioning expenditure.

The fund would be insolvency remote, such that it could not be accessed by, for example, a liquidator should a licensee be put into liquidation. Once contributed, funds could only be used for legitimate decommissioning expenditure (whether before or after cessation of production) or refunded if the fund was in surplus once all decommissioning has been carried out.

Under this approach the taxpayer obtains a tax deduction for the costs before cessation of production and there is a shorter period during which the taxpayer is exposed to the risk of law change.

The use of decommissioning funds raises the following questions:

#### Timing of deduction

As for section 0, the timing of a tax deduction can provide a cash flow advantage to the government. The options include providing relief:

- o Upon contribution of the cash to the fund

Tax deductibility can take place on an "as-funded" basis – i.e. when an actual payment is made into a decommissioning fund or trust fund established for this purpose. This is established practice in a number of countries, including India, Mozambique, Mexico (current draft version), South Africa and Zambia. Examples of the rules applicable in the latter two countries are provided at Annex A.

These contributions are made during the development and/or operations phases of the project and the fund or other holding mechanism is then used for project decommissioning costs at the end of useful life. Under this approach, the deduction is allowed well in advance of the date that the decommissioning expenditure is actually incurred, but at the time the operator makes a cash payment to the fund and loses control of that cash. The project operator's deduction occurs when it is earning income from mining or petroleum operations against which the deduction can be offset.

The ability to take the tax deduction at the time that the contribution mitigates the timing disadvantage to the operator of contributing to the fund, but is less



contributions that are made towards the end of project life. However, this will complicate the tax system and hence may not be the most efficient way in which to provide the incentive.

#### Taxation within the fund

The taxation of the fund (i.e. whether the income of the fund can roll up free of tax, or exemption from any wealth/capital taxes) will materially affect the quantum of the funds available for decommissioning. However, this can be taken into account in determining the levels of contribution required.

### 6.4 GENERAL QUESTIONS: MEASURING THE COSTS OF DECOMMISSIONING

A fundamental question in relation to providing deduction for decommissioning costs is what costs are considered to be decommissioning. This involves both the determination of what qualifies and also the mechanism for estimating the costs that will be incurred in the future.

#### Measuring the costs of decommissioning

Specific decommissioning plans are generally set out in regulations that have their basis in national legislation. The determination as to which of the associated costs should be included in the decommissioning cost estimate should be governed by the legal and administrative framework that defines the scope of decommissioning under the relevant regulatory scheme. However, specification in the national law and regulations varies among the countries, from clearly defined to countries where these issues are hardly included in the legislation.

It is recommended that the costs recognised for tax purposes are those drawn from elsewhere in government, such that there is no opportunity for disparity in the numbers. See Appendix G in relation to the current mechanisms by which decommissioning costs are estimated for non-tax purposes.

It is recommended that where costs are deductible that there is clarity in the rules as to:

1. Which expenditure is allowable and which costs are disallowable; and
2. At what rate those costs are deductible (as countries may operate different tax rates to different streams of income).

In addition, there should be certainty that effective tax relief for allowable costs will be available.

#### Estimating the costs of decommissioning

In addition to agreeing the actual costs, a model 2 (and potentially 3, depending on how payments made into or out of the fund and income earned by the fund are taxed) will provide a tax deduction based upon the estimation of the costs of future decommissioning. Determination of the estimated costs of decommissioning is a technical matter, for which the best expertise is likely to reside within the appropriate resource ministry (mining or oil and gas). It is recommended that the tax deductibility be conditional upon approval of the estimated costs by the resource ministry and the notification by it to the tax administration. Governments may







At the most fundamental, the costs of decommissioning may not receive an effective tax deduction, even if the project has been profitable and the intention of the government has been that the project would be taxable on its overall profits (ie. after all costs including decommissioning). Most tax systems will seek to mitigate this through allowing the decommissioning loss may to be set off against profits elsewhere in the group or against the profits of a certain number of years before cessation. However this is not wholly effective, as follows:

The ability to offset the decommissioning costs against profits elsewhere in the group can reduce the impact for those groups with additional mining or oil and gas facilities that are profit making at the time of decommissioning. For these groups, the issue remains important, but generally only for the last asset. However, this option is not available for those companies with only one asset.

The ability to carry decommissioning tax losses back against the taxable profits of the previous few years can reduce the impact, but this requires that there are sufficient profits in the years prior to cessation of production. Ignoring any tax incentive, it can be expected that the last few years of ownership would be generating far less profit than earlier in the project and hence may not be sufficient to absorb the whole of the decommission costs.

As well as potentially meaning that the method is frustrating the government's intention to provide relief, this can also create the following key risks:

Constrain the sale of late life assets

The use of loss carries back as the mechanism for relieving decommissioning costs

Disadvantage single mine/field investors





## 8 CONCLUSIONS

ANNEXES

## A. TAXATION OF ENVIRONMENTAL AND RESTORATION COSTS IN ZAMBIA

### A.1 INTRODUCTION

This write up provides insight on the tax treatment of Environmental Restoration and Rehabilitation costs in Zambia. It also provides a historical background to the current legislation.

### A.2 TYPE OF MINING IN ZAMBIA

The mining industry is an economic and social backbone of Zambia. The major minerals produced include copper, cobalt, nickel, manganese, coal, emeralds, amethyst, beryl, lime stone, talc and uranium (though uranium is currently just been stock piled). The major by-products from copper extraction are gold, platinum, palladium, selenium and silver.

The main mining methods include open pit, underground, solvent extraction and electro wining.

### A.3 CASE STUDY – ENVIRONMENTAL RESTORATION COSTS

Mining companies in Zambia like in most countries are required under the Mines and Minerals Development Act to undertake environmental impact assessment studies and

*2- Capital Expenditure Deduction*

Section 33(b) of the ITA is the principal provision for capital expenditure deductions

*Amounts refunded to any person carrying on mining operations pursuant to paragraph (a) of subsection eighty-six of the Mines and Minerals Development Act, 2015 shall be deemed to be income in the year that the refund is made.*

## B. TAX TREATMENT OF REHABILITATION AND DECOMMISSIONING EXPENSES IN SOUTH AFRICA

### B.1 INCOME TAX RULES RELATING TO REHABILITATION OF THE ENVIRONMENT

Mining rehabilitation expenditure consists of two components, ongoing environmental rehabilitation expenses and expenses in respect of closure or decommissioning of mining projects. Although both components are required to be expended in terms of National legislation (NEMA<sup>5</sup> and MPRDA<sup>6</sup>) the tax effects are not the same.

In the case of ongoing rehabilitation expenses, a tax deduction is normally allowed under the general deduction formula in the Income Tax Act<sup>7</sup> (IT Act) in the year the expenditure is actually incurred.

Closure and decommissioning costs quantified and provided for in accordance with the requirements of MPRDA and NEMA relate to expenditure to be incurred in future and cannot be claimed for income tax purposes until they have been actually incurred. The IT Act specifically prohibits the deduction of provisioning for future expenses<sup>8</sup>. A further aspect to be noted is that expenditure on decommissioning and environmental rehabilitation incurred after an extractive company ceases with its mining activities may not be deductible for income tax purposes. The reasons are that trading activities may have ceased and the general deduction formula does not allow a deduction if trade is not carried on or the expenditure is not incurred in the production of income. Closer to the end of the life of a mine or petroleum field the expenses (including decommissioning and rehabilitation) would exceed income earned and even if expenditure is allowed to be deducted the benefit of assessed losses are forfeited. The South African tax system does not allow the carry back of tax losses by a taxpayer and tax losses cannot be carried forward to future tax years if the company is no longer trading<sup>9</sup>.

Mining and petroleum extractive companies have the option of utilising funding vehicles described in section 37A of the IT Act to earmark assets for all or part of the required *financial provision* for rehabilitation, decommissioning and closure and remediation of latent or residual environmental impacts. The use of these funding vehicles enables extractive companies to comply with their *financial provision* obligations under MPRDA and NEMA in a tax efficient manner.

### B.2 CLOSURE REHABILITATION TRUSTS AND COMPANIES

To encourage and facilitate preservation of funds for environmental rehabilitation and decommissioning activities the tax system provides tax benefits in relation to a closure rehabilitation trust or company<sup>10</sup>. A qualifying trust or a company used as a funding

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<sup>5</sup> National Environmental Management Act ([Act 107 of 1998](#))(NEMA)

<sup>6</sup> Mineral and Petroleum Resources Development Act (Act 28 of 2002 )(MPRDA)

<sup>7</sup> Section 11(a) of the Income Tax Act (Act 58 of 1962) allows a deduction from the income derived by a person from carrying on a trade of expenditure and losses actually incurred in





*Assets that may be owned*

The closure trust or company may only own permitted assets. These permitted assets are limited to-

- financial instruments issued by South African regulated collective investment schemes, long-term insurers, banks and mutual banks;
- financial instruments in listed companies<sup>17</sup>, unless the company is making contributions to the closure trust or company or the company is a connected person<sup>18</sup> in relation to the company making contributions to the closure trust or company;
- and
- financial instruments issued by any sphere of government of South Africa.





## C. NATIONAL AND INTERNATIONAL LEGAL REQUIREMENTS

### C.1 INTERNATIONAL OIL & GAS LEGAL REQUIREMENTS FOR DECOMMISSIONING

Since 1958, international conventions have stated that all offshore platforms must be

<sup>35</sup>[www.imo.org/.../PollutionPrevention/.../1996-Protocol-to-the-Convention-on-the-Pre...](http://www.imo.org/.../PollutionPrevention/.../1996-Protocol-to-the-Convention-on-the-Pre...)

These international laws and regulations are supplemented by relevant national and

In practice, however, rehabilitation, reclamation and mine closure plans vary greatly among and within individual countries, as do the requirements for bonding or other surety instruments to ensure that the plans are carried out.

The level of provision for mine closure within the mining laws and regulations of the developing countries is largely dependent on three factors i.e.

- The age of the country's mining law and regulations
- The activities of past mining enterprises
- Related policy and legislation, in particular environmental policy and legislation.

Many of the developing countries in Africa, Latin and South America and Asia, each with a long mining history of private sector mineral development, are characterized by having:

- A very general policy and legislation for mine closure

#### D. POLITICS, PUBLIC CONCERN AND REPUTATION.

As discussed above, the effects resulting from the political and community reaction to the closure of major facilities in a community can heavily influence the decommissioning process. If not properly managed, a destructive distrust can develop between the principal players. If any indication of non-disclosure emerges, this can lead to catastrophic outcomes, such as the Brent Spar incident.

It is advised that the selection of the decommissioning/closure option must be managed in a transparent process with a fully developed public audit trail. The three major components that need to be managed are:

- National and local politics
- Public concern
- Reputation

The development of proper decommissioning and closure process includes guidance from stakeholder groups representing all national and local interests including representatives from the oil & gas and fishing industries, environmental non-governmental organisations, as well as government officials in the areas of mining/petroleum regulation, mining/petroleum safety, fishing, navigation and all affected users of the land and the sea in the region.

The objectives of a stakeholder policy development process usually are:

To develop:

- o principles/guidelines to apply to the closure/decommissioning of existing facilities
- o principles/guidelines to apply to the design, operation and future closure/decommissioning of new facilities
- o to the extent possible, consensus between stakeholders

To provide

- o regulators (both Designated Authorities, the Department of the Environment and Water Resources and others) with guidance on how applications for closure/decommissioning are to be assessed
- o industry with guidance as to what will be expected of them in respect of closure/decommissioning, with the aim of reducing risk and uncertainty
- o opportunity for public comment and involvement in the development of government policy

Recognition of possible future liabilities and how they could be managed

## E. STAKEHOLDERS

Decommissioning is expected to attract increasing interest from parties both within and outside the industry, particularly with regard to issues on environmental, social and economic impact. The industry operates within a regulated legal framework overseen by national regulator(s).

The framework seeks to achieve effective and balanced solutions for decommissioning activities. These solutions need to be consistent with each nation's international obligation (Treaties) and have a proper regard for safety, environment, other legitimate users of the land and/or sea, economic and social considerations.

An important part of the decommissioning process is the mapping and issues identification of key stakeholders, and to provide a general advice on future stakeholder engagement. Stakeholders will have a specific and defined interest in the decommissioning activities, either because they could be impacted by the decision, and/or they can have an impact or influence on the planned activity.

Involving or engaging stakeholders can take a range of different forms, including information giving, consultation or dialogue.

The design of a stakeholder engagement plan or guidelines could be a useful tool to demonstrate how engagement is an integrated part of achieving a robust, sustainable and acceptable decommissioning programme. The guideline set out the benefits of good engagement for the operators and stakeholders alike.

Key questions in a stakeholder engagement process;

Which stakeholders to engage

How to engage

When to engage

Well managed stakeholder engagement can improve decommissioning plans and make the whole process more efficient. Stakeholder engagement can make the outcomes of the decommissioning project more sustainable. It can be cost efficient and reduce the potential of conflict, given that is done properly. The essential characteristic of stakeholder engagement is that it seeks an effective and balanced decommissioning solution.

The key stakeholders are the governments of resource-rich countries, specifically the regulatory authorities, institutions, and ministries responsible for

administering mineral resource and oil and gas extraction contracts;

issuing environmental permits for exploration, exploitation, and closure;

ensuring that legal, financial and technical measures are in place to address temporary shutdowns as well as complete closure and decommissioning at the end of the productive life of oil and gas and mining operations.

A list of stakeholders would include:

Government / Authorities & Politicians

National ( Ministries and Agencies)

Regional / District

Local (Port Authorities, Community)

International and Regional Regulators

Commercial Interest Groups

Decommissioning Supply Industry

Local Industry.



Investors  
Unions / Employee Organizations.  
Public  
NGO Groups  
    Environmental  
    Marine Life  
  
Other User of the Sea  
    Shipping & Navigation  
    Fishing Industry  
    Tourist Industry  
    Navy  
Media  
Universities and Research Organizations

## F. ENVIRONMENTAL IMPACT

Once closure and decommissioning strategies have been decided upon, it will be necessary to develop an Environmental Impact Assessment for the relevant options, rank the options and to communicate the outcome to various stakeholders.

No mine shut in or decommissioning study would be complete without proper impact assessment.

The purpose of an impact assessment is to clarify the effects of measures that may have significant consequences for the environment, natural resources, and society. The impact shall ensure that these effects are taken into account when the measure is planned and when decisions are reached regarding whether, and on what conditions, the measure may be carried out.

Examples of environmental drivers are:

- Protection of the environment
- Precautionary Principle
- Definition of end state e.g. how clean is clean
- Grandfathering
- Understanding and managing emission paths
- Characterization and management of waste
- Decommissioning plan and measurement of impacts

The inclusion of the correct stakeholder group is essential in the environmental impact assessment. The group can consider the balancing of different policy priorities and set the standard for the assessment that is appropriate to national needs, and in line with national policy priorities. It is important to recognize that there is a trade-off to be achieved, and ultimately sovereign countries must determine the standard to be achieved, while bearing in mind international minimum goals.

## G. QUANTIFICATION OF DECOMMISSIONING COSTS

### G.1 FRAMEWORK OF QUANTIFICATION

The international and regional legal frameworks drive the cost of decommissioning and remediation, assuming that the country has ratified the relevant treaties and agreements. This international legal framework defines what must be removed, when it must be removed, to what degree the sites need to be reclaimed and rehabilitated. But these laws and regulations are very high level and rely on, when available, the more detailed national and state law, regulation and guidelines.

These country specific laws, regulations and guidelines are used to define the decommissioning and rehabilitation specifications in technical and environmental terms. These specifications are the basis of the final engineering and environmental solutions, which generate the decommissioning cost estimates. Accurate decommissioning costs are critical, as if there is a shortfall in accrued provision at the end of the life of the petroleum field and mines, the state and the other partners will have to fund this shortfall.

Usually the petroleum and mining companies generate the decommissioning cost estimates and hence the provision since they are operating the facilities.

In the international accounting standards (IAS 37), it is required in the annual accounts to provide provision for the liability for the decommissioning of redundant facilities and remediation.

### G.2 COSTS

#### *General*

Decommissioning cost in the petroleum industry worldwide is estimated to be in the billions of dollars and the trend is increasing. Planned costs have often been lower than actual costs, especially for the bigger operations.

The costs have risen in recent years due to stricter sectorial, national and international legal frameworks, higher environmental focus, HSE, increase focus on well operations and P&A activities, limited experience in complicated operations, final disposal and requirement to recycle more. Decommissioning costs can be reduced by establishment of a more flexible national and international legal framework, new technology, more cost effective ways to organize the removal process, include decommissioning in the early planning phase of a project - life cycle perspective, economic of scale, bundling of projects.





## H. APPLIED TAX TREATMENT ISSUES IN DECOMMISSIONING

### H.1 ACCOUNTING FOR COSTS

In accounting for decommissioning costs, it will be necessary to consider the general rules for accounting for costs. It is of course logical that the approach taken by the country in handling project related costs, e.g. in a cost sharing contract, be followed for the sake of consistency. Further, policymakers should also consider whether decommissioning costs should be deductible on an entity or a project basis, especially where a deductible provision solution is opted for, or in cases where the overall natural resource extraction regime is based on ring fencing of reserves. The guidance provided on accounting of costs in the Government Take Note also needs to be borne in mind.

The accounting currency for decommissioning costs may be a specific challenge, as they will typically be in hard currency, while the accounting currency will usually be in the national currency of the project country. This will not be significant issue where deduction is available and is made on an ongoing basis, or even in the use of funded mechanisms, especially if the fund is managed in hard currency. However, there may be a significant mismatch where accruals based provision is made, and policymakers will have to decide, in cases where the actual cost in hard currency exceeds the provision made, whether to allow the excess relief in the year of disbursement or over the life of the project. The same consideration should then apply to all recapture of excess provision made.

It is recommended that any forex gains and losses on disbursements from a fund set up under a funded deduction mechanism be explicitly kept out of the capital gains tax regime. Any such gains and losses will be reflected in the net balance of the fund, which

A further challenge may come from costs incurred that are strictly speaking not for decommissioning, e.g. for repurposing of fields which is not uncommon for the mining sector. It is possible that in some cases good planning can lead to continued use of an extractive sector project for some completely different purpose, e.g. the conversion of open pit mines into a lake with fisheries or tourism potential. The technical argument here will be whether such expenditure is of a revenue nature (i.e. for decommissioning) or a capital cost (development of a new facility), especially if the same owner, or a related company, continues to operate the facility. It is recommended that a flexible approach be taken, and the tax treatment decided in a manner that balances the need to encourage more efficient use of sites with the need to raise revenue.

*Multiple operators cases/combined fields.*

Another complex area can be that of multiple operators who partners in a single field are. One operator may have other income from the jurisdiction while the other operator may only have one project. The first operator may wish to see ongoing deduction of decommissioning costs, while the latter would probably prefer an accrued provision. Again, a flexible approach, based on the accurate estimation of costs, and controls to ensure that both operators will perform their obligations, can enable policymakers to create a win- win that will allow both operators to make the most efficient use of their resources.

A related challenge can be multiple operators who manage contiguous fields, but utilize common facilities such as pipelines. The problem can be partic

The extension of deemed PE treatment to offshore projects under decommissioning, should resolve any issues regarding work done on offshore platforms. Such subcontractors should be subject to the normal regime for withholding taxes and VAT.