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**Committee of Experts on International  
Cooperation in Tax Matters  
Twelfth Session**

Geneva, 11-14 October 2016

Agenda Item 3 b (ii)

Taxation of the extractive industries

**Subcommittee on Extractive Industries Taxation Issues  
for Developing Countries  
(Report of the Coordinator, Mr Eric Mensah)**

**Mandate of the Subcommittee on Extractive Industries Taxation Issues for Developing  
Countries**

The Subcommittee's mandate is as follows:

The Subcommittee is mandated to consider, report on and propose draft guidance on extractive industries taxation issues for developing countries on the basis that it shall:

- identify and consider the most pressing issues where guidance from the Committee may most usefully assist developing countries in this area and report to the Committee on such at its tenth annual session in 2014;
- provide a work program to the Committee at its tenth annual session that identifies and prioritizes such issues on a preliminary basis and includes proposals providing policy and administrative guidance for developing countries at a very practical level;
- and
- provide draft guidance on such issues as are approved by the Committee at its annual sessions.

In undertaking its work, the Subcommittee shall seek to engage with other organizations active in the field. The Subcommittee shall report on its work at each annual session.

**Recent Work**

During the eleventh session of the Committee in October 2015, The Subcommittee presented a progress report on its work and a series of guidance notes to the Committee seeking its approval.



a statutory approach or by ad hoc contract, involving all stakeholders (internal and external), coordination among different government entities (different Ministries and tax administrations). A particular attention is paid to provisions related to government take, such as royalties, income and additional profit taxes, withholding taxes, VAT, export taxes, etc. Contract provisions on tax implications of the “after-project” such as decommissioning and rehabilitation are also discussed for proper inclusion in contracts.

**(c) permanent establishment issues in the extractive industries:**

The guidance note discusses the concept of permanent establishment (PE) as it relates to the extractive industries, a sector which tends to employ a vast array of contractors and sub-contracts and thus leading to several considerations as to when/whether a PE occurs in the sense of treaties based upon the UN Model Convention (2011), the OECD Model Convention (2014), or other models. Although the paper focusses particularly on the oil and gas industry, it is applicable to the mining sector as well. It touches upon issues such as territorial regimes, joint operating agreement, and different kind of contracts or fiscal regimes.

**(d) Note on government fiscal take:**

This note addresses the various types of "fiscal take" available to governments, and the consequences of each in the short and longer terms.

**Action requested**

The **Committee is requested to approve the release of the final guidance note on decommissioning**, subject to further purely editorial work (including possible further examples) under the Coordinator's guidance. It is further **requested to approve release of the guidance note on permanent establishments** subject to the same sorts of editorial work. The Committee is asked to **make comments on the notes on VAT and on fiscal take**, with a view to their finalisation by the thirteenth session of the Committee and release, along with the other guidance notes, in the form of a handbook on selected issues for taxation of the extractive industries by developing countries before the end of June 2017. It is noted that every effort needs to be made to translate such a handbook into the official UN working languages as quickly as possible, especially French and Spanish.