

Extractive Industries Taxation Issues

Overview and Process

- In 2013 the Subcommittee was mandated to consider, report on and propose draft guidance on extractive industries taxation issues for developing countries.
- The membership of the Subcommittee included some members of the Tax Committee, representatives of the business sector and government, persons from civil society organisations, academics and other experts.
- Subcommittee meetings were held in Johannesburg, Arusha, New York, Bratislava, Livingstone and Amsterdam (the last was a joint meeting with some members of the Transfer Pricing Subcommittee).
- An overview note and eight guidance notes on various topics were approved by the Tax Committee. The notes deal with issues for both the mining and oil and gas industries.
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Overview of Extractive Industries taxation issues

- An overview is given of some of the taxation issues for the extractive industries in developing countries, options available and the effect of deciding on options in particular circumstances.
- Intention is to build awareness of the issues, assist policy makers and administrators in developing countries as well as to provide information to other stakeholders.
- The note gives an overview of the mining and oil and gas industry structures to provide context for designing and administering a tax regime and seeks to provide policy and administrative guidance at a practical level.
- It is acknowledged that extractive industries are unique in many ways and an important revenue base in many developing countries and emerging economies.
- The tax and fiscal system should ensure that the government obtains an adequate and appropriate share of the benefits from the country's resources while providing a return commensurate with the risks borne and functions carried out by the parties.

Fiscal Take in the Extractive Industries

- The guidance note provides context on how value derived from natural resources can be shared between government and investors, an overview of and discussion of the issues arising for the types of government take available, and the interaction between the tax instruments and with the general tax regime in a country.
- Government's share from the development of natural resources could include profit based income taxes, royalties, other taxes and fees, obligations placed on investors (for example, 2.5e)32nc 0 Tw (e)32n.2 (or)1a-3.4,)1.1 ((ude)-2)C7.61-dmi8

Tax aspects of Negotiation and

Transfer Pricing issues in Extractive Industries

- The guidance note identifies issues that may arise in the extractive industries during consecutive stages of the extractive industries' value chain and provides suggested solutions for addressing the issues.
- - a marketing hub,
 - information challenges, and
 - management services.
- The value chains of mining and mineral extraction, and production of oil and natural gas are described.
- Mining specific case examples, with findings and considerations, are presented
 - the export of low value minerals to an intermediary distribution company,
 - coal group marketing activities,
 - price fluctuations and intermediary sales of uranium,
 - market off-taker function,
 - buying and selling of iron ore,
 - intercompany financing,
 - copper joint venture, and
 - sale and leaseback of equipment.

Transfer Pricing issues in Extractive

Selected Tax Treaty Issues for the Extractive Industries

- International tax issues arise as extractive activities often include cross border elements which impact on taxes payable by extractive industries.
- The guidance note reviews the relevant tax treaty articles and highlights the issues that developing countries may consider in the process of designing their tax treaty policy and in applying their tax treaties with other jurisdictions.
- The UN Model Convention (also OECD Model) contains only a few provisions specifically addressing issues arising in extractive industries and therefore the general provisions are applicable.
- Several countries have included specific provisions affecting extractive industries in their tax treaties.
- In designing domestic tax law and negotiating tax treaties countries should ensure that the interaction between the

Permanent Establishment issues for Extractive Industries

- The permanent establishment (PE) concept is one of the pillars for the international taxation of business profits , involves both fixed and mobile activities, applies and is interpreted differently for purposes of establishing whether it exists, and is used in treaties with different thresholds.
- The purpose of the guidance note is to provide an overview of PE tax aspects and focuses on the main taxation issues and implications of recognising the presence of a PE, taking into account the provisions and Commentaries of the UN Model Convention and the OECD Model Convention and specific provisions of tax treaties countries have entered into regarding extractive industries.
- The note deals mainly with PEs in the oil and gas industry and discusses the issues raised by the practical application of the concept as reflected by case law, tax disputes and articles on the subject.
- Service PEs, construction or installation PEs, the geographical and commercial coherence test, the application of the PE concept to the different phases of a project life cycle and the attribution of profits to a PE are also discussed.

Taxation of Indirect Asset Transfers

- Extractive assets of a company could be sold indirectly by the transfer of shares or ownership interests in the company. Shareholders and the company may not be tax residents of the mining or oil and gas country.
- The guidance note discusses and provides options (with pros and cons) for policy makers and administrators.
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Tax treatment of Decommissioning in Extractive Industries

- The guidance note addresses the broad principles behind a government's regime for decommissioning and the work that needs to be done to achieve local, national and international legal requirements.

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