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**Committee of Experts on International  
Cooperation in Tax Matters  
Fifteenth session**

Geneva, 17-20 October 2017

Item 5 (c) (ii)

**Possible update of the Extractive Industries Handbook**

**POSSIBLE UPDATE OF THE EXTRACTIVE INDUSTRIES HANDBOOK**

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In cases where there is a capital gains tax on sales occurring within a country, the question of how indirect sales should be treated is examined. Instead of transferring an asset, e.g. a mine itself (direct transfer), the owner of an entity holding the asset may transfer its interest in that entity (thus “indirectly” transferring the underlying asset). In the case of a direct transfer of a mining or petroleum right, even by a non-resident, the source country can levy a tax under its domestic law on the gain from the sale of such property.

The chapter reviews issues and considerations a country may face in taxing or, in some circumstances, not taxing such direct transfers. Next, it considers indirect sales of mining or petroleum assets. For example, in order to protect the tax base of the source country in those cases, an indirect transfer tax rule could be implemented to tax indirect sales. The chapter reviews issues involved in making, implementing, and administering such a decision. An indirect transfer tax rule may involve both domestic law and applicable tax treaty issues, and the relationship of these is analyzed.

#### **5) Selected transfer pricing issues in the extractive industries**

The chapter is divided into two parts. Part I is a table reflecting the transfer pricing issues that often arise in the extractive industries in each phase of the value chain. The issues are categorized as relevant to the oil and gas industry, the mining industry or both, and comments are provided as to whether the identified issue is a tax issue that should be addressed by the tax administration of the relevant country, with advice on how to address and resolve the issue.

In part II several case studies are presented, some of which resulted from discussions with tax inspectors working in developing countries. The chapter is meant to serve as a useful summary and checklist of selected issues that commonly arise. It is recommended that the extractive industries chapter and the United Nations Practical Manual on Transfer Pricing for Developing Countries be consulted together.

#### **6) Tax Treatment of Decommissioning for the Extractive Industries**

This Chapter covers the tax treatment of decommissioning costs for mining and oil and gas projects. Such decommissioning may be required under a wide range of domestic laws, international agreements and voluntary guidelines.

Decommissioning requirements may be mandated by law or by the agreement under which the extraction activity has taken place, and may be intended to meet a number of goals.



The Chapter



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practical guidance on issues and best practice in auditing oil and gas or mining activities;

“trade mispricing” issues insofar as they may differ from transfer pricing issues (this was an issue kept open for future consideration by the previous subcommittee);

tax treatment of subcontractors and service providers;

a specific chapter on Production Sharing Contracts;

tax treatment of financial transactions that support the extractive and energy sector, such as hedging, finance leases, debt financing and thin capitalization issues;

environmental tax issues; and

tax incentives and the extractive industries.

5. Some of these items may need to be considered in conjunction with other subcommittees.

6. One suggestion put to the Secretariat is that the mandate of a possible new Subcommittee could be expanded to “Extractives and Energy”. This would enable consideration of issues such as hydro power and other means of electricity generation, tax issues around renewables and carbon taxation.