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Committee of Experts on International Cooperation in Tax Matters

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**Issues Concerning the Taxation of the Extractive Industries for Consideration
by the Committee**

Note by the Secretariat

Summary

Foreign direct investment issues and corporate taxation, including resource taxation issues for developing countries, is on the agenda for the ninth session of the Committee of Experts on International Cooperation in Tax Matters under agenda item 6(b)(iii). This paper is intended to assist discussion of that agenda item but should not be taken as representing concluded secretariat views.

participants and the ensuing discussions will be made available on the website of the Financing for Development Office before the ninth annual session.

Issues in Extractive Industries and their Taxation

The proper management of natural resources has set some countries on course for sustainable development and prosperity. However, in many others countries, the extraction of natural resources³ has not resulted in growth but has, to the contrary, had some adverse impacts on the country's economic development. Natural resource

Firstly, the government can operate state-owned enterprises which transfer some or all of their profits to the treasury as “taxes” or “other revenues”. While a deeper discussion is not within the scope of this paper, in weak governance contexts, such enterprises may be susceptible to low levels of productivity and low investment rates due to influential interest groups.

Joint venture structures

Secondly, a government can opt to form a joint venture with a private company, holding an equity stake. Here, the intention of the government is often the transfer of technology and knowledge. Depending on a country’s financial strength and its risk profile, a joint venture is often chosen if a government wants to preserve control over its natural resources even though it is unable or unwilling to fully fund the exploration.

Production sharing

A third and similar option is production sharing. Here, the ownership of natural resources

Extracted resources need to be processed to be of value involving many different functions. In this case, one key transfer pricing risk arises where private companies enter in convoluted

There are also general issues of effective negotiation techniques when negotiating contracts, especially if developing countries are dealing with powerful private companies. There are, however, recognized techniques to maximize the effectiveness of bargaining power from apparently weak positions and ways of leveraging apparently small advantages. Capacity building efforts will need to address such negotiation techniques alongside more general efforts to raise knowledge and information on international tax issues surrounding the taxation of the extractive industries.

In all of these areas, some consideration to investment policy more broadly and to International Investment Agreements may be necessary, such as the potential issues arising under Fair and Equal Treatment Clauses, clauses relating to expropriation and “Umbrella” Clauses that are being interpreted as giving contractual provisions a treaty dimension.

Issues for consideration by the Committee – possible approach

The Committee might wish to consider:

1. Forming a multi-stakeholder Subcommittee tasked to confer in a way most conducive to effective developing country participation;
2. Mandate the Subcommittee to report back at the next annual session suggesting a work program, within the time frame of the current membership,
 - a. that identifies, prioritizes and carries policy and administrative guidance for developing countries on taxation of extractive industries The issues at hand are many and often related to each other, so strong prioritization might be needed;
 - b. that addresses how this can be achieved in a way that best utilizes the special characteristics of the Committee and the universality and convening power of the United Nations, while recognizing those activities of others in the field that support developing country efforts, address actual developing country cases and experience and respond very practically to their needs in this area;
3. The Coordinator for any such Subcommittee (traditionally chosen from among members of the Committee, when possible);
4. The extent to which the membership of any such Subcommittee should be determined at the annual session, or could be settled later at the discretion of the Coordinator, bearing in mind the need for broad and balanced representation in practical terms. Strong developing country involvement at the practical level would seem essential to a successful work programme despite the lack of Subcommittee funding and meeting in