

Attachment A:

Draft Outline of Overview Note on Extractive Industries Taxation Issues¹

Executive Summary/Purpose

The purpose of this note is to give an overview of some of the issues for extractive industries taxation in developing countries including possible cluster of such issues and the interactions between them, options available and the likely effect of taking such options in particular circumstances. This is intended to help policy makers and administrators but also to give guidance to taxpayers operating in developing countries. A series of guidance notes will accompany this overview note. These notes will deal with some of the issues identified in this overview note in more detail.

Status of the Note

This note is [currently only a discussion draft and even in final form it will be] for guidance only. It is intended to address the issues of taxation of the extractive industries in short form and to help build awareness of them, as well as to help put those faced with these issues in a position to make policy and administration decisions in relation to them.

Terms Used

"Extractives" - non-renewable natural resources such as crude oil, natural gas and mining products

¹ This guidance note was prepared by the Secretariat of the Committee of Experts with input from other Committee Members.

Introduction/Industry Background

Similarities between extractive industries and other industries:

- Need for foreign investment
- Dominated by MNEs

Differences between extractive industries and other industries:

- Need for large up-front investment
- Investment isn't as "footloose"
- Uncertainty - regarding price development and exploration possibilities
- Long production period
- Larger environmental concerns
- Possibility of "economic rents"

Differences between different types of extractive industries:

- Industry structure
- Market structure
- Financing structures

Challenges for governments:

Balance:

- The need to attract foreign direct investment
- Ensure that the government receives a fair share of revenues
- Timing issues in relation to receipt of revenue
- Environmental issues
- Transparency and confidentiality

Possible Types of Fiscal Instruments and their

Some Specific Issues

Policy and legal issues:

Predominantly domestic policy and legal issues

Avoidance of double taxation and creditability issues under treaties

Exchange of information

Dispute resolution (incl. mutual agreement procedure)

Overriding royalties

Effective review of invoicing and costs under treaties

authorities

Access to and effective use of information

Capability building:

Addressing knowledge gap issues

Addressing information gap issues including accessing information and using it effectively

Contract issues