

# ATTACHMENT D: TAXATION GUIDELINES FOR WORLDWIDE DECOMMISSIONING<sup>1</sup>

November 14, 2014

## OVERVIEW

### 1. Executive Summary

1.1 The extractive industries have an important role in supplying key resources needed for the development of any economy. The mining and the petroleum industry are the two main extractive industries, characterized by large multi-year investments. When production comes to an end, key drivers affecting decommissioning of mines and petroleum facilities are politics, public concern and reputation, legal requirements, cost and economics, taxation framework, technical feasibility, health, risk and safety, environmental impact and other users of the land and the sea.

1.2 The cost of decommissioning and remediation is driven by international and national legal frameworks, which define what, when and to what degree the sites need to be reclaimed and rehabilitated.

1.3 The activities related to the extractive industries in the cessation phase usually includes cost estimates and associated provisioning for the facilities mining and oil companies operates. There is a need to explore and understand the tax implication of decommissioning liability issues, and provision instruments used in the industries. The development of taxation guidelines for worldwide decommissioning and remediation could help countries with extractive industries to build awareness before policy is agreed and decision are taken.

### 2. Purpose

2.1 This note addresses the issues involved in decommissioning and remediation of facilities used to extract raw materials in the mining industry and the petroleum industry once extractives are depleted and those facilities become redundant. Broader decommissioning issues are addressed only to properly contextualize the taxation issues.

### 3. Status

3.1 This note is for guidance only. It is intended to address the issues in relatively brief form and to help build awareness of them, as well as to help put those faced with these issues in a better position to make policy and administration decisions in relation to them.

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<sup>1</sup> This draft is for UN Extractive Subcommittee discussion only, and should not necessarily be taken as representing UN Tax Committee or UN Secretariat views.

#### 4. Terms Used

CGT = capital gains tax used generally in this note to include taxation of a capital gain either through a separate specific capital gains tax regime or through the general income tax system

ESHS = Environment, sustainability, health and security

IAS = International Accounting Standards

OECD Model = OECD Model Tax Convention on Income and on Capital (2010)<sup>2</sup>

UN Model = United Nations Model Double Taxation Convention between Developed and Developing Countries (2011)<sup>3</sup>

#### 5. The Issues

##### (a) ***What are the Issues Involved?***

5.1 The extractive industries are an important component of global industry for the creation of nation wealth. The two main extractive industries are mining industry and the petroleum industry. The facilities used to extract raw materials in mining industry and oil and gas in the petroleum industry require large multi-year capital investments in infrastructure. As the mines and the oil and gas facilities become depleted the now redundant facilities require decommissioning and remediation. This is the final phase of the life cycle of these extensive facilities.

5.2 Decommissioning is a complex multi-disciplined process with an overall timescale normally lasting several years, requiring the management of diverse issues and involving international and government agencies, mining or oil producing companies, third party contractors, local communities, and non-government organizations. Decommissioning is part of the life cycle of an offshore installation.

5.3 In the life cycle, during the planning and design phase of these facilities insufficient consideration has often been given to financial and technical planning of the decommissioning and remediation phases. This has led to many unforeseen issues and challenges as the mines and petroleum facilities reach the end of their economic life.

5.4 There is also a legacy of mines and oil and gas fields that have already been closed and decommissioned in the last century and which today are creating environmental and risk issues, as there are no clearly responsible parties and/or no financial funds reserved to address the emerging decommissioning and closure issues.

5.5 Furthermore, many of these emerging legacies decommissioning issues contribute to a negative opinion and reputation of the industry and cause communities to oppose plans for new extractive industry operations, by the same or different companies.

##### (b) ***What are***

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(d) ***Legal Requirements- International Petroleum Requirements for Decommissioning***

5.17 Since 1958, International conventions have stated that all offshore platforms must be decommissioned at the end of the field life. As the complexity of the offshore oil and gas facilities has evolved, the challenge to balance the total removal with environment, safety, technical feasibility, cost etc. has forced an evolution in the law and regulations of decommissioning.

5.18 The optimal solution may not be total removal of specific oil and gas facility, but a carefully balanced compromise within the relevant legal framework. It is important that governments incorporate flexibility in their national legal framework. The present international laws and conventions, listed below, are applicable in many UN Member States and have built in such flexibility. of dC d, al gul [(o)-133 0Carnern13(l)-dhe13(bi)-1m113(

5.23 Many countries do not have provisions for mine closure in their mining laws. Few governments have actual mine closure legislation.

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- Grandfathering
- Understanding and managing emission paths
- Characterization and management of waste
- Decommissioning plan and measurement of impacts