

Fiscal Affairs Department

Tax Administration and Other Fiscal Issues



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Revenue Administration

- Revenue administration is critical in ensuring collection of resource revenues
- Revenue administration is often a weak link in the chain to convert natural resources into national wealth
- EI tax administration should not in principle be difficult
- Nonetheless, often both difficult and badly done
 - Complex regimes
 - Fragmented administration (e.g., little coordination between regulatory agency and tax administration)
- Principles of effective modern tax administration are equally relevant to EI

Factors that Assist EI Revenue Administration

- The exploration, development and production takes place within national borders
- The physical production can be monitored and audited within the country
- Internationally quoted benchmark prices available for most natural resource products
- High level of state regulation and/or ownership

Why EI Revenue Administration is Challenging

- Multinational enterprises with high competence; technical, legal, economics and finance
- Complex fiscal regimes combining tax law and contracts
- Contract area ring fencing of income and expenses
 - Each production site may be a separate fiscal regime with a range of values on different fiscal parameters
- Fragmented revenue collection responsibilities between different ministries
- Capacity constraints in the tax authority

Strategies to Assist Revenue Administration

- Develop sound tax policies
 - simple, clear, well designed, robust fiscal regime
- Adopt modern tax organization
 - integrated, reflecting principles of specialization, taxpayer segmentation
- Ensure efficient procedures
 - simple, effective, harmonized, reflecting principles of self assessment, risk-based compliance strategy
- Develop revenue authority capacity
 - adequately paid, managed, trained and equipped staff

Strategies to Assist Revenue Administration (continued)

- Clarify roles, responsibilities and relationships among key sector players

	POLICY	ADMINISTRATION & EXECUTION
FISCAL	FINANCE MINISTRY	TAX DEPARTMENT
INDUSTRIAL	NATURAL RESOURCE (NR) MINISTRY	NR AUTHORITY
COMMERCIAL	NR or FINANCE MINISTRY	NR STATE COMPANY

Specific Tax Administration Issues Relating to Seabed Mining

- Seabed mining differs from on-land mining in that the extracted resource is taken directly overseas for processing (i.e. the resource does not come on land)
- Need for tax official(s) to be stationed on boat
- Value of the resource determined outside the country
 - Relevant to both royalties and profit-based taxes
- Records held offshore
 - Access to information about the resource

Two Key Tax Administration Issues

- Access to tax information
- Capacity building within tax administration to deal with the complex tax issues that arise with the extractives sector, particularly cross-border issues

Importance of Tax Information

- Tax information is an example of asymmetric information
 - Taxpayer knows their tax information
 - Tax administration must “discover” it
- Best way for tax administration to discover tax information is through voluntary disclosure
- If tax information not voluntarily disclosed, then tax administration can use investigations powers to discover the information
- However, while business activity crosses borders, investigation powers stop at the border

Accessing Tax Information Held Offshore

- Require records to be kept onshore
 - Particular issue for seabed mining
- Use domestic powers against persons onshore who may have access to the information
- Exchange of information article in tax treaties
- Tax information exchange agreements (TIEAs)
- Multinational Convention of Mutual Administrative Assistance

Location of Records

- Tax law could include a requirement that records are kept onshore
 - Is on the boat enough? Should seabed mining companies be required to keep a copy of the records on land?
- Problem: Today MNES often centralise the record-keeping function, including through the use of “cloud” storage
 - Records can be kept offshore but must be kept in a way that facilitates timely production

Use of Domestic Investigation Powers

- Is there a person onshore who may have access to, or knowledge of the records?
 - Possibilities
 - Local partner in a “global” partnership advising taxpayer?
 - Local branch of a foreign bank?
 - Local subsidiary of a foreign company?
- Extra-territorial application of investigations powers
 - Konza case (Australia)

Exchange of Information

- Realisation that tax administrations have to co-operate if they want to effectively counter international tax avoidance and evasion
- Barriers to co-operation in the past –
 - National sovereignty
 - Secrecy laws
 - Reciprocity concerns
 - Competition for tax dollars
- Information Exchange
 - Double tax agreements
 - Tax Information Exchange Agreements
 - MNC on Mutual Administrative Assistance

Article 26 of Tax Treaties

- Original basis for exchange of information - Article 26 in tax treaties provides for exchange of information between the competent authorities of the two Contracting States
- Each tax treaty is the result of a negotiation between the Contracting States so the scope of Article 26 can vary from treaty to treaty
- Important to establish the boundaries of exchange of information under a tax treaty
 - Will not apply to royalties
 - The obligation to exchange is mandatory
 - Exchange of information outside the scope specified in the tax treaty may breach domestic secrecy laws
 - Tax treaties can override domestic secrecy laws in relation to information exchanged within the scope of specified in the treaty

Manner of Information Exchange

- How information is exchanged is matter for the two Contracting States
- OECD has done a lot of work on procedures to facilitate the exchange of information
- Three bases for exchange
 - Request
 - Automatic
 - Spontaneous

TIEAs

- Tax treaties involve surrendering source country taxing rights
 - Is this worth it to get access to tax information?
- Tax treaty exchange of information of limited use in dealing with low tax jurisdictions as they will not have tax treaties nor will they be willing to negotiate tax treaties
- Maybe able to fill in gaps through a simultaneous a audit arrangement between treaty partners when a low tax jurisdiction in the middle
- Tax information exchange agreements (TIEAs)
 - Advantage of dealing only with a single issue (i.e. no giving up of taxing rights)
- Model TIEA developed by the OECD as part of the Harmful Tax Competition Project

TIEAs

- According to the OECD website – between 2000 and 2012 there were 518 TIEAs
 - Pacific region
 - Cook islands
 - Samoa
 - Vanuatu
- Negotiations have slowed since 2012, presumably due to the revival of the MNC on Mutual Administrative Assistance

Multinational Convention on Mutual Administrative Assistance

- Developed in 1988 as a joint initiative of the OECD and the Council of Europe
- Amended by Protocol in 2010
 - Align with recent developments on exchange of information
 - Opened up to all countries
- 64 countries have signed and by extension the MNC applies to a further 15 jurisdictions
- No Pacific Island country has yet signed

Multinational Convention of Mutual Administrative Assistance

- Scope of convention
 - Exchange of information, including simultaneous examinations and participation in tax examinations abroad
 - Assistance in the recovery of unpaid tax, including measures to conserve funds
 - Assistance in the service of documents
- Applies to income and profit taxes (include resource rent taxes), capital gains tax, property taxes, consumption taxes
 - Unlikely to cover royalties
 - However, income tax information may help with enforcement of royalty liabilities
- Countries can limit their obligations under the Convention to exchange of information

Multinational Convention on Mutual Administrative Assistance

- 64 countries have signed and by extension applies to a further 15 jurisdictions
- OECD and G20 countries
- A number of middle economies
- Ghana and Nigeria – two major mining/oil & gas countries in Africa
- No Pacific Island country has yet signed

Multinational Convention of Mutual Administrative Assistance

- Why sign the Convention?
 - Can limit scope to exchange of information
 - Main advantage is that signing the Convention means that there is the opportunity for exchange of information with the home countries of the foreign investors in the extractives sector
 - This is easier than individually negotiating TIEAs

Capacity Building in International Tax

- Cross-border transactions, particularly in the transfer pricing sector, can be highly complex requiring specialised skills in tax administrators
 - Transfer pricing
 - Thin capitalisation
 - Treaty shopping

Transfer Pricing

- OECD Guidelines on legislation and practice
- There are advantages in following these Guidelines as they have become the international norm
 - Consistency in transfer pricing adjustments between tax administrations
 - Use OECD documentation
 - OECD has outreach programs for non-OECD members

Transfer Pricing

- Adopt OECD methodologies
- Contemporaneous documentation requirement
 - Failure to comply results in significant penalties
- Advance pricing agreements
- Important to train specialist staff in transfer pricing
- Regional transfer pricing unit?