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Item 3(f) of the provisional agenda
**Taxation of the Extractive Industries**

# Co-Coordinators' Report

***Summary***

This paper is ***for discussion and comment***. It reports on the progress of work by the Subcommittee on Taxation of the Extractive Industries. The present report is a brief overview of the current progress and some of the issues arising under the following mandated workstreams.

**Workstream A – Energy Transition**: As stated in the mandate, the Subcommittee on Extractive Industries Taxation and the Subcommittee on Environmental Taxation had a meeting attended by Co-Coordinators and drafters on the topic with the view to delineate the scope of work to be done by each Subcommittee and to avoid duplication. A broad delineation was set such that the Subcommittee on Extractive Industries Taxation focuses on energy production (supply side). The Subcommittee on Environmental Taxation would concentrate on energy consumption (or the demand side). The attached table of contents (Annex A) details the topics proposed to be covered.

**Workstream B – Trade mispricing and valuation of natural resources:** The attached proposed outline (Annex B) is a workplan and a description of the main topics ahead of the Subcommittee on Extractive Industries Taxation. At its meeting in June this year, the Subcommittee suggested to change the title of the workstream as follows, "***Trade Mispricing and Valuation of Natural Resources"*** which is more neutral in tone than the term "undervaluation of natural resources".

**Workstream C – Tax incentives and Permanent Establishment (PE):** Following the last session of the Committee the Subcommittee had a meeting in June 2022 and took the view that Tax Incentives and Permanent Establishment are two issues that have little in common and would best be dealt with separately (Annex C.1. for Tax Incentives and Annex C.2. for PE). However, for ease of reference the Subcommittee continued to report on them within the same workstream.

## 1. Introduction

Since the last session in April, the Subcommittee formally met twice to work on the work program following the Committee's recommendations. The Subcommittee also had several technical meetings, often limited to discussion of one workstream within the drafting team. The present report is a brief overview of the current state of progress and some the challenges faced by the drafting teams.

## 2. Workstream A – Energy Transition:

The Subcommittee on Extractive Industries Taxation mandate reads in part: " *In collaboration with the Subcommittee on Environmental Taxation, review and reflect on adequate tax policies that can assist countries' efforts in transitioning from fossil fuel energy to renewable and environmentally-friendly sources*". To fulfill such mandate, the Subcommittee formed a drafting group for the Energy Transition chapter.

As provided for in in the mandate, the Subcommittee on Extractive Industries Taxation and the Subcommittee on Environmental Taxation had a meeting involving Co-Coordinators and drafters on the topic with the view to delineating the scope of work to be conducted by each Subcommittee, while avoiding duplication. A broad delineation was set that the Subcommittee on Extractive Industries Taxation focuses on energy production (supply side), especially electricity generation and production of biofuels. It will consider approaches to creating an enabling tax environment to drive energy transition. The Subcommittee on Environmental Taxation would concentrate on energy consumption (or the demand side).

Mindful of some grey (or "border") areas that may well be worked on by either Subcommittee, they sub-committees both agreed that their drafting groups should meet regularly and exchange views to avoid duplication. For instance, the carbon capture activity which consists of capturing and storing already emitted carbon involves new technologies and even though it appears as an an activity on the consumption side, both Subcommittees have agreed that this issue is better addressed initially by the Extractives Subcommittee, because so far extractives companies are the ones involved in developing this new technology.

The Subcommittee on Environmental Taxation has expressed a desire to work on the energy transition issue using an "archetypes" approach of categorizing countries according to their status regarding energy production and consumption, e.g. countries endowed in fossil fuel resources, countries which are big consumers of energy, countries producing and consuming a substantial amount of energy, large agricultural food producers that are energy importers, countries endowed in minerals used in renewable energy.

These categories may be suited for analysis of energy consumption and policies for energy transition. A different set of segmentation may be necessary for energy transition analysis from the production point of view. The Subcommittee on Extractive Industries Taxation has not reached a firm view on that. Available data shows that electricity generation and domestic fuel consumption generate the largest amount of greenhouse gases. The electricity generation will be a priority for the Subcommittee while keeping in mind the challenge of energy access for millions of people around the world, a key component for achievement of the SDGs.

The Subcommittee considers that the key challenge in many developing countries, especially low middle income countries and LDCs, is energy access. The Subcommittee must be able to address the tradeoff between quick access and the fundamental need for energy, and to progressively move away from fossil fuels. The Subcommittee intends to work on this key question and attempt to provide

actionable, appropriate draft guidance to the Committee, especially for countries without fossil fuel resource endowment.

The Subcommittee has drafted the annexed outline (Annex A) and invites the Committee's comments and guidance. In particular, the Subcommittee plans to work on a current inventory of energy transition measures through a survey and using data already available from sister organizations including UNCCC, UNEP, and others. It will then proceed to drafting work, with a view to producing a first draft of the chapter by the 27th Session of the Tax Committee.

## 3. Workstream B – Trade mispricing and valuation of natural resources:

At its meeting in June this year, the Subcommittee suggested to change the title of the workstream as follows, "***Trade Mispricing and Valuation of Natural Resources"*** which is more neutral in tone than the term "undervaluation of natural resources". At its 25$^{th}$ session the Committee is invited to comment on the proposed change and if necessary give further guidance. It would not be a substantive change to the workstream content.

The proposed attached outline is a workplan and a description of the main topics identified by the Subcommittee on Extractive Industries Taxation. It contains the following elements:

1) Introduction illustrating the importance of accurate product valuation to the protection of revenues in resource-rich countries;
2) Importance of Product Valuation in Tax Administration;
3) Potentially high vulnerability of tax revenues to even minor product undervaluation;
4) Difficulties in determining fair market value of natural resource products;
5) Reference prices and the "sixth method";
6) Deficiencies of traditional taxpayer-initiated pricing in the natural-resources setting;
7) The "administrative pricing" model;
8) The advance pricing agreement (APA) model;
9) Gathering country-specific information on existing pricing practices and possible opportunities for improvement.

It is proposed that the introduction to the paper will aim at defining the scope of this guidance and focus in particular on its practical character for tax administrations in developing countries. The paper will benefit from the work done in the chapter on Audit in latest update of the Handbook on Taxation of Extractive Industries (2021 Edition). The paper will focus more on problem of valuation of minerals and oil and gas, and will show the differences in methodologies between minerals and oil and gas.

The country examples on "reference prices" (similar to Advanced Price Agreements or APAs) in this area will show how the method works and what are the main challenges countries ought to pay attention to. In Norway for example reference prices are used for oil but are not regarded as suited for gas. Reference prices are also used in Zambia for the price valuation of base and precious metals .

The paper will also link with other topics of the Handbook while making sure to cross- feed with relevant work done by other Subcommittees. Some other issues to examine in the paper include product content, supply chains and value chains for mineral traceability, VAT, and rent vs purchase for equipment.

The paper will also gather views from tax administrators and taxpayers to ensure that the main issues they face are covered. It may be useful to invite experts in the mining industry at a future Subcommittee meeting to talk about mineral value chain and life cycle stages for potential misevaluation. Some members of the Subcommittee will reach out to businesses when needed.

## 4. Workstream C – Tax incentives and Permanent Establishment:

Following the last session of the Committee the Subcommittee had a meeting in June 2022 and determined that the Tax Incentives and Permanent Establishment are two issues that have little in common and would be dealt with separately. However, for ease of reference the Subcommittee continued to report on them within the same workstream.

### *4.1. Tax Incentives*

On the recommendation of the Committee at the 24th session, the Subcommittee focused on the description of impacts that the application of Pillar 2 of the current OECD/ Inclusive Framework proposals might potentially have on extractive industries. The annexed outline (Annex C.1.) describes the expected work in the following areas: 1) brief explanation of the proposed Global Anti Base Erosion (GloBE) rules, potential impact on extractive industries, and policy responses for consideration in the area of taxation of the extractive industries. The attached Annex C.1. provides a detailed outline.

The Subcommittee will also pay attention to other issues such as energy transition and tax incentives, the notion of "covered tax" in Pillar 2 design, the effect of stabilization clauses, and sunset clauses. At its last meeting in September, the Subcommittee also exchanged views on "windfall profit taxes" on extractives activities as the issues are currently debated in the international community but no concrete proposal for the Committee's attention has been made at this stage.

### *4.2. Permanent Establishment (PE)*

The outline for the PE is drafted with the view to producing a paper encompassing aspects most related to the permanent establishment concept as applicable to the extractive industries. The purpose of the paper is to study most issues related to PE in extractive industries and liaise with the Subcommittee on the update of the UN Model for possible consideration for an update, especially to the Article 5 in a way that fully addresses the unique characteristics of the extractive industries.

The Subcommittee will look at different issues and articles in the UN Model that may interact with the PE concept in the extractive industries. The points raised are as follows, as detailed in the Annex C.2.:

- Article 5: Permanent establishment
    - para 2 illustrative list;
    - para 3 construction and services PE;
    - para 4 supervisory activities
- Article 8: Shipping, inland waterways transport, and air transport
- Article 12A: Fees for technical services
- Article 12B: Digital services
- Article 13: Capital gains tax (in particular Art 13 of the UN MC 2021 which explicitly deals with the taxation of capital gains on certain licenses provided by the government)
- Article 14: Independent personal services
- Article 15: Dependent personal services

The paper will also analyse references to the extractive industries in the Commentaries:

- OECD 2017 Commentary Article 5(2) (47 and 48)
- UN 2017 Commentary Article 5 (5 and 6)

The Subcommittee invites *comments and guidance* on the proposals presented to meet the Subcommittee mandate in its various workstreams.

**Annex A**

**Energy Transition: Workplan**

1. Mandate of the Extractives SC – does this include energy generation
2. Split of topics between Environmental and Extractives SC
    a. Extractives SC should focus on reduced carbon energy generation
    b. The Extractives SC will follow the guidance of the Carbon Taxation Handbook in matters of taxation of emissions
    c. Suggest that matters such as carbon sequestration belong to the Environmental Tax SC.
3. Development of a questionnaire
    a. Focus of questionnaire.
    b. National goals?
    c. Inventory of measures to manage energy – generation, conservation, diversification
    d. Range of measures – command/control, price signals,
    e. Recipients?
        i. Revenue agencies as focus? Also send to regional bodies and forums.
        ii. Extractives companies.
        iii. EITI Secretariat
    f. Possible delays in response, place on the website with timeline for response?
4. Literature survey – deferred till after October.
5. Draft table of contents for chapter
    a. Introduction to topic and fit within Extractives Handbook
        i. Mandate and focus on discussion – manageable scope of what is viable for transition
        ii. Transition requirements – international agreements, transition to new sources
        iii. Broader view of resource endowment – solar, hydro, wave, wind
        iv. New fuels – biofuels, liquid hydrogen, other renewable liquid fuels,
        v. Goals of reducing carbon emissions and increasing energy access in developing countries.
        vi. Focus on developing nations manage energy transition from a tax standpoint…
    b. Scope of chapter and key terminology
        i. Range of "fiscal measures"? (ref prev discussion – cover tax expenditures at least)
        ii. Address tax incentives and fiscal stability clauses in extractives contracts
        iii. Energy sources and measurement of pollution and environmental harm – relative levels of carbon emissions from traditional fuels,
        iv. Definitions
        v. Revenue raising measures to help fund transition
        vi. Border taxes
        vii. Externalities involved in transition to cleaner energy
    c. Transition challenges for developing countries (energy access vs carbon reduction)
    d. Transition impacts for resource endowed developing countries and mitigation of impact of revenue loss
    e. Transition challenges for current extractives industry

f. Tax treatment of ancillary matters (financing, investment in new technology development, tax measures to encourage the use of energy saving equipment or buildings
g. Tax regimes for renewable energy generation
    i. Power generation
    ii. Cooking fuels and motor fuels from renewable sources
    iii. Expanding renewable energy capacity in developing countries for export potential
h. Direct tax measures, tax incentives, compensation of revenue (limited to mandate)
i. Indirect tax measures -VAT/GST, Excises, levies (limited to mandate)
j. Cross border tax impacts – including preserving cross border investments, BTAs, etc.
k. Cross border spillover effects and impacts of environmental taxes/ cross-border emission permit trading, including transfer pricing issues in Emission Trading Certificates (CERs) (possibly dealt with by cross reference to TP manual)
l. Impact of associated policies – e.g. mining of critical minerals
m. Transition timescales and targets.
n. Tax administration issues

**Annex B**

**Trade mispricing and valuation of natural resources**:
**A Proposed Workplan/outline**

1. Introduction
This outline proposes a workplan for the Subcommittee on Extractive Industries Taxation to collect country-specific experience through a questionnaire and produce a small number of country studies to identify best practices in a critical area of tax administration, namely the valuation of extracted product. The valuation of extracted product is important in tax administration both for addressing routine but difficult disagreements with taxpayers regarding transfer pricing, and also for addressing instances of the intentional misstatement of price for illicit purposes, as in cases of deliberate mis-invoicing or the falsification of minerals appraisal data.[1] The studies would address the challenges of product valuation in both the oil and gas and hard rock minerals industries. Support from governments, industry experts and civil society organizations would be sought in preparing the envisioned studies. This outline is intended to (i) illustrate the importance of accurate product valuation to the protection of revenues in resource-rich countries and (ii) begin the process of assessing the feasibility of the questionnaire and the country-specific studies.
2. Importance of Product Valuation in Tax Administration --
    a. The arrangements by which the host country government raises revenue from extractive projects are typically set forth in a legal instrument between the government and the producer, and usually are called the "fiscal regime." Fiscal regimes for extractive industries vary widely from country to country, between the oil and gas and hard rock minerals industries, and from taxpayer to taxpayer within the same industry.[2] For some oil and gas projects and virtually all hard rock minerals projects, the fiscal regime typically requires that the taxpayer pay both (i) royalties on the value of product that is produced, and (ii) corporate income tax on the profit earned from the taxpayer's extractive operations. The administration of royalties and income taxes depends very heavily on the valuation of product, as illustrated further below. In the oil and, sometimes, natural gas industries, another kind of fiscal regime is commonly used: production sharing agreements (PSAs), sometimes also called production sharing contracts (PSCs).[3] PSAs, which can be very complex, entail a sharing of product revenue between the host government

[1] The topic of intentional trade mispricing is described in the United Nations Handbook on Selected Issues for Taxation of the Extractive Industries by Developing Countries (2d. edition) at chapters 13.10.
[2] The broad range of fiscal regimes used in the extractive sector around the world are described in the UN Handbook, note 1 above, at chapters 2.5 and 2.6.
[3] Production sharing arrangements are discussed in the UN Handbook, note 1 above, at chapter 4.

and the private-sector investor. The valuation of product is necessary under a PSA to ensure that each party receives its intended share of revenues.

b. The valuation of extracted product is, of course, not the only tax administration issue present in the extractive industries, and it is not even the only transfer pricing issue presented. For example, issues that can arise from related-party interest expenses, related-party price hedging arrangements, and related-party management and engineering fees, also are very important. Although this outline focuses exclusively on the valuation of product, the questionnaire and other fact-finding efforts envisioned below should seek information concerning the full range of revenue agencies' transfer-pricing efforts in the natural resources field, to place product-valuation efforts in proper administrative perspective.[4]

c. The questionnaire should ask responding tax administrations to describe their current approaches to transfer pricing administration for the extractive industry as comprehensively as feasible. Suggested contents for the questionnaire are offered at the conclusion of this outline. In general, it is hoped that respondents will be able to provide a comprehensive description of their historical and current efforts to address the task of product valuation, and a detailed assessment of their current resources and perceived needs for additional resources.

3. <u>Potentially high vulnerability of tax revenues to even minor product undervaluation</u>: Under an income tax, what might be seen as relatively minor product undervaluation can lead to serious revenue shortfalls. Consider a taxpayer in the mining industry in a country that imposes a corporate income tax at a rate of 35 percent. Assume as well that the correct fair market value of product extracted during the year is $100,000,000, and that the company's deductible expenses are $90,000,000, so that the company's correctly measured taxable income is $10,000,000 and its correct level of income tax is $3,500,000. Assume now that the company understates the value of its extracted product by 5 percent, or $5,000,000. The government's revenue under the income tax is reduced from $3,500,000 to 1,750,000, a reduction not of five but instead *fifty* percent.[5] The job of the revenue inspector in addressing product undervaluation can be of very high fiscal importance, even in connection with what might appear to be relatively small undervaluation.

[4] Chapter 11 of the Handbook, note 1 above, provides a broad overview of the transfer pricing issues typically faced in tax administration for extractive industries. In addition, a comprehensive discussion of transfer pricing issues involving a wide range of industries is provided in the United Nations Practical Manual on Transfer Pricing for Developing Countries (2021).

[5] This example is provided for purposes of illustration only. The extent of tax revenue loss from particular price understatements will depend in each case on both the applicable tax rate and the taxpayer's level of profit margin.

4. Difficulties in determining fair market value of natural resource products: Although extracted commodities might be seen as relatively uncomplicated substances to value, natural resources extracted in different locations tend to vary in value considerably. The determination of the value of product taken from a particular mine or oil and gas field is in every case a complex task, with a large amount of room for uncertainty and disagreement between the taxpayer and the revenue authority. For example, crude oil might be imagined as a uniform substance that can be valued readily by reference to publicly posted prices per barrel (e.g., Brent, West Texas Intermediate (WTI), etc.). The fair market value of a given shipment of oil from a particular field, however, can differ from the posted reference price based on several factors, including varying crude content specifications of refineries (dependent on particular product demand), fluctuations in currency values between the countries involved, disparities between production volume and transportation (e.g., pipeline) capacity, and, very importantly, the terms, including the duration, of the contract under which the oil is being sold. For example, the spot price of a particular grade of oil can differ substantially from the price of identical oil sold under a two-year supply contract. Similarly, for iron ore, for example, prices per ton may differ from posted prices based on impurities in the particular load of ore, as well as the factors of transportation-cost-to-market and the effective duration of the taxpayer's sales contracts. In both the oil and gas and hard rock minerals sectors, the uncertainty involved in adjusting prices for these and other factors typically is large enough to threaten material misstatements of the taxpayer's fiscal obligations.
5. Reference prices and the "sixth method": The recently adopted "sixth method" under the transfer pricing guidelines permits the use of posted reference prices as "comparables" for use in transfer pricing analysis for commodities, including natural resource products.[6] The allowance of the sixth method, however, is far from a complete answer to the transfer pricing problem for natural resource products, since in all instances adjustments are needed to the reference price in order to determine fair market value, and, as noted above, there is enough uncertainty surrounding the adjustments to allow for serious mispricing. Also, for some important natural resource products, like gemstones, reference prices are not available, and valuation must be conducted based on item-by-item appraisals. In sum, even for products for which reference prices are readily available, the sixth method is not sufficient in itself to solve the transfer pricing problem.
6. Deficiencies of traditional taxpayer-initiated pricing in the natural-resources setting: Under the traditional model of transfer pricing tax administration, the taxpayer first provides its own estimates of arm's-length prices, and the tax administration then must review the taxpayer's estimates through the audit process. Because of the uncertainties of natural resource pricing, however, the traditional process of taxpayer-reporting-followed-by-audit can result in under-

[6] For discussion of the Sixth Method see the UN Practical Manual, note 3 above, chapter 4.7.

valuations of product. The practical problem is that even when applicable tax laws place the burden of proof on the taxpayer, the tax authority, perhaps because of the lack of enough specialized personnel, may not be able to present its objections to the taxpayer valuation or present alternative valuation methodologies with sufficient persuasiveness to satisfy a court or other appellate body. As a practical matter, this could prevent the court or other appellate body from obtaining a sufficient basis to disturb the taxpayer's initial valuation. To solve this problem, it is important for governments to consider alternatives to the traditional system of tax reporting.

7. The "administrative pricing" model –
    a. Since the 1970s, the government of Norway has maintained a system of "norm prices" for North Sea crude oil. For each field, a government agency, with a high degree of industry expertise, establishes daily prices based on available reference prices, transportation allowances, and deemed contractual terms.[7] Taxpayer appeals are permitted, but in practice the system historically has been based on a high level of trust by taxpayers in the fairness of the government's valuations.
    b. The norm pricing system has not solved all transfer pricing issues for the North Sea fields. For example, the system is not applied to natural gas pricing, for which less posted price information is available than for crude oil. It is not clear how readily the Norwegian norm pricing model can be extended to products other than crude oil, or other products for which very comprehensive posted price information is available.
    c. Nevertheless, the success of the Norwegian system shows the value of finding a means of departing, in the field of natural resource taxation, from the traditional model of taxpayer-initiated pricing followed by attempted government challenge. Our fact-finding efforts, as described below, should seek to identify any administrative pricing practices that countries currently are using, and we should consider the extent to which administrative pricing might be beneficial for different categories of product. It will also be useful to learn the extent to which administrative-pricing approaches have been used to date under PSAs.
8. The advance pricing agreement (APA) model: Under the APA model, which has been used internationally for more than thirty years, the taxpayer and tax authority agree through cooperative negotiation, prior to the filing of the tax return, on the pricing methods to be used for particular transactions. The goal is to avoid the costs and uncertainty of transfer pricing under traditional tax reporting and ex post auditing procedures. APAs would seem generally to be suited to the area of natural-resource product pricing, given the many complexities and uncertainties

[7] The prices determined under the Norwegian system apply to unrelated-party as well as related-party transactions, in order to address any instances of intentional mispricing involving unrelated parties as sales intermediaries. Argentina's rules also apply to mispricing in unrelated-party transactions.

that valuation typically entails. APAs for some products might follow the model of the Norwegian crude-oil pricing system, in which posted reference prices are modified by appropriate adjustments. For products without posted prices, an APA might provide for an appraisal process, by agreed neutral assayers, as product is removed from the ground. In all cases, the goal of the APA is to eliminate the deficiencies of the traditional enforcement regime, and thereby provide much-needed financial certainty, and freedom from extended and costly controversy, for both taxpayers and governments.[8] (It should be noted that APA programs can be expensive for governments to administer; one approach might be to limit the availability of APAs to relatively large extractive projects.)

9. Gathering country-specific information on existing pricing practices and possible opportunities for improvement –
    a. Natural resources are central to the economies and government revenues of many countries, particularly in the developing world. Extractive operations around the world are subject to a wide variety of fiscal regimes, and revenue administrations have had a wide range of experiences in administering fiscal regimes. There does not seem to be available a compendium of the experiences of different countries in negotiating and then administering extractive-industry fiscal regimes. The UN Tax Committee, perhaps in coordination with other intergovernmental and civil society organizations with experience in analyzing country-specific systems (including Tax Inspectors without Borders, the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF), and the African Tax Administration Forum (ATAF)), may be able to make a valuable contribution by facilitating detailed research on the pricing practices and experiences of revenue and mining authorities in particular countries. The resulting body of knowledge would help different countries learn from each other's experience and could be useful to countries as they initiate new natural resource projects with new fiscal regimes. A selected number of country studies, exhibiting best practices, could be appended to the UN Handbook on extractive industry taxation similarly to the way country studies are currently appended to the UN Practical Manual on transfer pricing.
    b. The envisioned research should begin with a detailed questionnaire for participating governments, followed-up by person-to-person contacts to clarify and expand upon the answers to the questionnaires. In keeping with normal United Nations transparency practice, all information gathered will be available for public inspection. Efforts therefore should be made to assist governments in answering the questionnaires without

[8] It might be possible for the investor and the host government to agree on simplified pricing methods, based on posted prices, in order to avoid controversy and provide both parties with financial certainty. This approach might be especially useful if the investor and the host government are willing to accept both the downside risk and the upside risk inherent in the approximation.

compromising existing obligations regarding taxpayer confidentiality. For illustrative purposes, a non-exclusive list of topics covered in the questionnaire might include: (i) a list of the commodities extracted within the country, along with production volumes and associated amounts of government revenue;[9] (ii) details of the fiscal regimes for each of the current projects; (ii) descriptions of the extent, if any, to which the country's statutes or regulations specify particular transfer pricing methods for different products; (iii) descriptions of audit practices, including frequency of audits and issues addressed, and technical audit tools for measuring product volume and quality, for each kind of product; (iv) regional and local sources of comparables for use in extractive-industry tax administration; (v) to the extent permitted by confidentiality rules, descriptions of any tax controversies, as well as trade mispricing issues, that have arisen from audits, including, for completed controversies, how they were resolved; (vi) the extent to which the country's laws enable the tax administration to gain access to comparables data and other information from foreign members of the taxpayer's affiliated group; (vii) any processes in effect by which government supplies the product price under an administrative-pricing approach, or by which the investor and the government enter into advance agreement with respect to pricing; and (viii) any plans by the country to revise its methods of administering extractive industry fiscal regimes. Undoubtedly the list of topics to be addressed can be expanded, and otherwise modified, as a result of further discussion within the Subcommittee and with any other participating experts.

c. It is suggested that the Subcommittee, at a forthcoming meeting, consider the desirability and feasibility of the research and follow-up analysis described in this outline, and if desired consider the most feasible practical means of organizing, scheduling, and providing necessary support to the project.

Recommended reading:

Jack Calder, "Transfer Pricing: Special Extractive Industry Issues," in International Taxation and the Extractive Industries (P. Daniel, M. Keen, A. Swistak and V. Thuronyi,eds.) (London: Routledge, 2017) at 79.

Platform for Collaboration on Tax, "A Toolkit for Addressing Difficulties for Accessing Comparables Data for Transfer Pricing Analysis," 2017 (includes discussion of minerals pricing), https://www.oecd.org/tax/toolkit-on-comparability-and-mineral-pricing.pdf

[9] It may be necessary to obtain this statistical information from sources outside the country's tax agency.

Alexandra Readhead, "What Mining Can Learn from Oil:  A Study of Special Transfer Pricing Practices in the Oil Sector, and their Potential Application to Hard Rock Minerals," Policy Paper 128, Center for Global Development (2018), https://www.cgdev.org/publication/what-mining-can-learn-oil-study-special-transfer-pricing-practices-oil-sector

Alexandra Readhead, "Monitoring the Value of Mineral Exports:  Policy Options for Governments, International Institute for Sustainable Development (2018), https://www.igfminin.org/mineral-valuation/

**Annex C.1.**

## Tax incentives and the global minimum tax in the extractive industries

This paper will focus on key issues related to Pillar Two of the OECD Inclusive Framework on BEPS' Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy and the extractives sector. This will include consideration of the impact on incentives in the sector, especially in developing countries. A new Chapter on Tax Incentives in the Extractives Industries was recently completed by the Subcommittee and finalized in 2021. It covers the topic extensively: the framework for considering tax incentives, application of the framework, typical incentives in the sector, the cost and benefits of incentives along with several examples. This publication will complement this chapter with supplementary guidance in relation to the impact of Pillar Two.

### Table of content:

- Introduction
- Background: brief explanation of GloBE
    - What is the global minimum tax? This will be a high-level overview of Pillar Two rules.
- Section 1: Impact on extractive industries
    - Why is Pillar Two important to the extractives industry? This section will highlight key characteristics of the industry such as tax incentives, large timing differences as well as stabilization agreements.
    - Which fiscal instruments commonly used in the extractive industries are considered "Covered Taxes" (i.e., included in the Effective Tax Rate (ETR) for the purposes of Pillar Two), and which ones are not?
    - Which incentives commonly used in the extractive industries are affected, or not, by GloBE?
    - What could be the impact of stability provisions and options in relation to existing stability agreements?
- Section 2: tax policy responses – consideration for extractive industries
    - What are the possible domestic policy responses of resource-rich countries, including changes to tax incentives in the domestic law, the design and implementation of a qualified domestic minimum tax, or the introduction of broader domestic minimum taxes?
    - How might the overall impact of GloBE and its policy responses affect investment in the sector?
- Conclusion

Background: brief explanation of GloBE - What is the global minimum tax? This will be a high-level overview of Pillar Two rules.

This section will provide a high-level overview of Pillar 2 - it is not intended to cover the rules in detail. The status and start dates of the rules can be updated before the publication is finalized.

**Pillar Two / GloBE**

Model rules on Pillar Two (also known as the "GloBE rules")[10] were agreed among Inclusive Framework (IF) countries in December 2021. Broadly, the Model Rules define the scope and set out the mechanism for the Global Anti Base Erosion ("GloBE") rules under Pillar Two, which introduces a global minimum tax rate set at 15%. The minimum tax will apply to MNEs with total group revenue above EUR 750 million. The GloBE Rules provide for a coordinated system of taxation intended to ensure large MNE groups pay this minimum level of tax on income arising in each of the jurisdictions in which they operate. The rules create a "top-up tax" to be applied on profits in any jurisdiction whenever the effective tax rate, determined on a jurisdictional basis, is below the minimum rate of 15%[11]. The rules will be implemented into domestic country legislation by IF countries in 2022 and 2023, for commencement in 2024.

Importantly, countries do not need to implement GloBE Rules for the rules to impact MNEs that operate in their jurisdiction, and the GloBE rules can apply to investments in countries which are not part of the IF. For an MNE group that is within the scope of the rules, the MNE group will be subject to the minimum tax either through:

- The **Income Inclusion Rule[12] (IIR)** which is a 'top-up tax' in the shareholder jurisdiction where the Effective Tax Rate (ETR) in a subsidiary jurisdiction is below 15%. Broadly, the ETR is determined using accounting profits for a jurisdiction, and current and deferred tax expense in the jurisdiction, subject to certain adjustments. If the ETR is below 15% for a jurisdiction, the Substance Based Income Exclusion (SBIE) is then applied to reduce GloBE profit to which is subject to top up tax.
- Absent an income inclusion rule in the ultimate parent jurisdiction, **the Undertaxed Payments Rule[13]** (UTPR) will apply to allow other subsidiaries of the MNE group to impose the minimum tax.

Countries are already considering their responses to GloBE Rules, and some have announced plans in relation to implementation including the EU[14], UK and Singapore. Therefore, extractive MNEs are likely to be impacted by GloBE Rules from 2024.

[10] Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two) - OECD

[11] OECD releases Pillar Two model rules for domestic implementation of 15% global minimum tax - OECD

[12] US Headquartered companies may be subject to US GILTI – whether P2 is considered a qualifying income inclusion rule is still under consideration by the IF countries.

[13] Article 2.4, 2.5 and 2.6 of the GloBE Model rules.

[14] EC Draft Directive released on 22 December 2021 Directive Pillar Two v24-11-2021 ISC-2 (europa.eu)

The timing for the UTPR is less certain than the IIR, however it is intended to commence 12 months after implementation of the IIR.

**Which investments will be subject to Pillar Two?**

In considering the impact on the sector it is important to note that not all investments will be subject to Pillar Two. For example, investors who do not meet the requisite turnover threshold of $750m and investment funds and certain JV structures which are treated as equity accounted units in financial statements are not within the scope of Pillar Two.

In addition, as Pillar Two is imposed in a shareholder jurisdiction, as noted above it will apply to investments in countries which are not part of the IF or who choose not to implement Pillar 2 themselves.

## Section 1: Impact on extractive industries

### Why is Pillar Two important to the extractives industry? What are the characteristics of the Extractive Industry that interact differently with P2 and hence warrant further examination?

List the main characteristics of the extractive industry – drawing from the previous incentives chapter: high capital costs up front, stability agreements, different types of taxes, ownership structures and revenue collection mechanisms.

**Interaction between Pillar Two and tax incentives in the extractive industry**

Tax incentives are used extensively in the extractive sector, often linked to the high-risk nature of projects and the high up-front capital cost of investment. Incentives can impact both investment in the sector and the revenue base of resource rich developing countries and need to be crafted with care.

GloBE Rules have the potential to impact the effectiveness of tax incentives and will therefore change the lens through which countries and companies view tax incentives. The aim of this paper will be to specifically address the interaction between GloBE Rules and extractives industry incentives to ensure incentives remain effective while not having any unintended consequences. For example, the effectiveness of a corporate tax holiday will be limited for MNEs that are within the scope of Pillar Two, because untaxed profits in excess of the substance based carve out may simply lead to additional tax that is paid in the company's shareholder jurisdiction.

The impact of GloBE Rules on other types of tax incentives is less obvious, for example:

- Permanent additional tax deductions may lead to top up tax if the effective tax rate is reduced below 15% because deferred tax (arising from timing differences, which are common in the sector) is only recognized in the effective tax rate (ETR) at the minimum rate[15].
- Under the current model rules, a top up tax can arise where the company has an economic loss in a particular jurisdiction, along with a permanent additional tax deduction or untaxed income[16]. The mechanism that countries adopt to provide for permanent adjustments may be impacted as a result.

**Timing differences**

Timing differences i.e., differences between the timing of recognition of income and deductions are also common in the sector due to high upfront costs and long lead times to reaching production and taxable profits – for example, accelerated tax depreciation and immediate tax deductions for exploration generally lead to tax losses in early stages of projects – this section will discuss the interaction with timing differences that are common in the sector. In general, timing differences related to tangible assets should not lead to Pillar Two Tax.

The section will also briefly cover considerations in relation to timing of implementation – noting that a coordinated start date will reduce the risk of distorted outcomes and excessive compliance burden for tax administrations and investors.

### Which fiscal instruments commonly used in the extractive industries are considered “Covered Taxes”, and which ones are not?

Different types of taxes have a different Pillar Two overlay. Certain taxes will not be ‘covered taxes’ for the purposes of the Pillar Two Effective Tax Rate (ETR) calculation.

This section will review the “covered tax” definition of the GloBE rules and compare with the typical fiscal instruments levied in extractive industries, from the “fiscal take” chapter of the handbook. It will draw conclusions on how fiscal regime design for extractive industries will be impacted by GloBE Rules.

Extractive companies not only report income taxes in country-by-country reports (CBCRs), but many file payments to governments annual reports, which contain additional information on payments beyond corporate income taxes – some of them covered taxes.

[15] Article 4.4.1 of the GloBE Model Rules.
[16] Article 4.1.5 of the GloBE Model Rules

Broadly, taxes on profits will be covered taxes for Pillar Two purposes e.g., corporate tax is a covered tax, but a royalty based on production or gross revenue is not a covered tax.

| **Mechanism** | **Description** | **Covered tax: yes/no** |
|---|---|---|
| Signature bonus | Up-front payment for acquiring exploration rights | |
| | Commonly used as a bid parameter (Notably for petroleum in the US offshore continental shelf) | |
| Production Bonus | Fixed payment on achieving certain cumulative production or production rate | |
| Royalties | Specific (amount per unit of volume produced) | |
| | Ad-valorem (percentage of product value) | |
| | Ad-valorem progressive with price | |
| | Ad-valorem progressive with production | |
| | Ad-valorem progressive with operating ratio/profit | |
| | Royalty applied to operating margin (net profits royalty) | |
| State, provincial, and/or local CIT | Rate of corporate income tax at the state, provincial, or local level in addition to federal level | |
| | Common in Canada and the U.S. as a province/state resource charge in addition to federally imposed CIT | |
| Variable income tax | CIT where the tax rates increase with the ratio of taxable income to revenue, between an upper and lower bound | |
| Resource rent | Cash flow with accumulation rate/uplift. Can be assessed before or after CIT | |
| | Cash flow with limited uplift on losses (UK) (surcharge tax on cash flow) | |
| | Allowance for Corporate Capital | |
| | Allowance for Corporate Equity | |
| Windfall taxes | | |
| Other additional income taxes | Other profit taxation mechanisms that do not fall under any of the categories above | |
| Production sharing | Fixed production share | |
| | Cumulative production | |
| | R-Factor: ratio of cumulative revenues to cumulative costs | |

| | | |
|---|---|---|
| | Rate of return, pm- or post-tax | |
| | Production Level | |
| State participation | Free equity: government receives percentage of dividends without payment of any costs | |
| | Carried equity: government contributions met by investor and recovered from dividends with interest | |
| | Paid equity: government pays its sham of costs | |
| Social investments/ infrastructure | Resource companies build infrastructure or make other social investments (hospitals, schools, etc.) or other payments in kind | |
| Indirect taxes | Custom duties, payroll taxes, stamp duties and other input taxes | |
| Other international taxes | e.g. any tax under Pillar 1 | |

### Which incentives commonly used in the extractive industries are affected, or not, by GloBE?

- The types of incentives that will be impacted by Pillar Two, e.g., incentives for reduced corporate tax, withholding tax, royalties and indirect taxes.
- Interaction with incentive tax settings that are common in the extractive industry such as loss carry forward rules and accelerated tax depreciation. Certain timing differences are considered acceptable for P2 purposes (e.g., accelerated depreciation, tax losses from timing differences) whereas others are subject to a recapture rule that can impose P2 tax if the timing difference does not reverse within 5 years.
- The P2 impacts of investment tax credits, grants and subsidies which are employed in the extractives sector.

This section will review the tax incentives described in the tax incentives chapter of the handbook and analyze their interaction with the GloBE rules. It will update conclusions from the chapter on the efficiency and effectiveness of different tax incentives in light of GloBE rules.

**Profit-based incentives**

i. Income tax holiday

ii. Withholding taxes on income remitted abroad

iii. Export processing zone (EPZ)

**Cost-based incentives**

i. Investment allowances and credits

ii. Customs duty reductions or exemptions

iii. VAT exemptions on imports

iv. Production royalty-based incentives

v. Fiscal stabilization

### What could be the impact of stability provisions on the different domestic responses to GloBE defined in Section 4?

As a consequence of GloBE Rules, source countries may consider changes to domestic tax policy to ensure any additional tax payable by MNEs in respect of activity in those countries, is paid in those source countries rather in shareholder jurisdictions. For developing countries this requires consideration of the policy settings such as tax holidays and tax incentives, including the implications where there are stabilization agreements. Under many stabilization agreements, changes to domestic tax legislation will not typically apply to the stabilized projects/entities.

We can break down stabilized EI agreements in 3 categories:

i. In the majority of cases, EI companies' ETR will be higher than 15%, or companies will be out of scope of Pillar 2 (i.e. junior companies and mid-cap). There will be no impact on those agreements.

ii. In-scope companies with jurisdiction-level GloBE ETR below 15% will be subject to GloBE rules, especially IIR from residence countries, regardless of stability provisions in host jurisdictions. In this case, the stabilization agreement is unlikely to cover the tax paid by the parent and the ETR will increase. However, any imposition of additional local taxes in the host jurisdiction in response to Pillar Two is not possible without mutual agreement. While changes to the existing arrangements should be feasible, a number of commercial and legal issues need to be considered as stability agreements operate within existing legal regimes, and they are likely to cover a range of issues beyond taxation. This section will consider whether there are practical ways to amend tax stability provisions while reducing complexity for governments and investors. An important consideration will be ensuring any additional tax paid locally is in fact a covered tax which is taken into account for the purposes of Pillar 2.

## Section 2: tax policy responses – consideration for extractive industries

### What are the possible domestic policy responses of resource-rich countries, including changes to tax incentives in the domestic law, the design and implementation of a qualified domestic minimum tax, or the introduction of broader domestic minimum taxes?

There will be different domestic policy responses available to resource-rich countries, depending on how affected they are by the implementation of a global minimum tax.

If few multinational companies in scope of GloBE have branches in their jurisdiction, or have branches with ETRs higher than 15%, some countries may not need to make any change in their domestic tax policy as a response to GloBE – they will not be at risk of giving away revenue to other jurisdictions.

The section will cover the following issues:

- Consideration of a QDMTT
- Guidance to assist countries determine the types of amendments that may be appropriate.
- All of the above will need to take account of implementation guidance that is expected to be developed by the OECD at the end of 2022. Depending on the content of the guidance, there may be a need for clear examples and practical cases the to assist countries.

Interaction between the substance based carve out and QDMTT's

- This section will explain how the carve out is calculated (refer appendix), and provide examples. The section will also explain how the carve out affects tax incentive design. It will review the protection against loopholes, such as transferring back Qualified Domestic Minimum Top-Up Tax (QDMTTs) as subsidies to taxpayers, or refundable credits.
- For countries that wish to ensure any top up tax is collected locally, but still provide investors with the benefit of the "**SBIE**", it will be necessary to implement a "**QDMTT**" either through local law or stability agreements. This will be challenging for developing countries to administer, because a QDMTT is supposed to mirror the GloBE rules, which are enormously complex (and it remains to be seen what mechanisms – if any – will exist to determine consistently whether a QDMTT is a qualifying one).
- Some countries may prefer not to enact a QDMTT, but instead to review the mix of tax incentives available to multinational companies in their legal framework. In doing so, they would probably choose to limit the types of incentives that tend to lower the GloBE ETR and favor incentives that do not, following guidance from Section 2.
- Could there be a clause in domestic legislation (some income tax calculation) that allows to "retain/tax" locally a portion of income/profit at risk of being taxed by another jurisdiction due to incentive measures?

## How might the overall impact of GloBE and its policy responses affect investment in the sector?

This section will discuss the likely impact of GloBE rules on revenue generation and investment in resource-rich developing countries. It will draw on work for the OECD, the IMF, the WB, UNCTAD, IISD/ISLP and insights from the working group.

One key aspect if the discrimination of investors of different profiles. The wide adoption of Pillar 2 is going to further separate the treatment of investors that are above and below the €750m turnover threshold – and hence, without change, some incentives will discriminate between investors of different sizes or location, such as:

- those groups above and below the threshold (assumed €750m)
- those groups from headquarter locations that operate a lower threshold than €750m
- those groups that operate other projects in the country at higher rates and can therefore blend within the jurisdiction
- Investments that are not subject to Pillar 2 e.g., investment funds
- Consider the impact of countries adopting lower thresholds, either for IIR or QDMTT

**Appendix**

Substance Based Income Exclusion (SBIE) Summary

The SBIE is equal to:

- 8% of the accounting carrying value of tangible assets (reducing to 5% by 2033) ("**tangible asset carve-out**"); and
- 10% of payroll costs for the jurisdiction (reducing to 5% by 2033) ("**payroll carve-out**").

Given the high level of capital investment required for resource projects, the tangible asset carve-out will be of relevance, especially for new investments. The payroll carve-out will also be applicable given the relatively large workforce required for extractive projects.

The SBIE is summarised as follows:

| | **Transition Period (2023 – 2032)[17]** | **After Transition (2033+)[18]** |
|---|---|---|
| **Payroll Carve-Out** | 10% - 5.8% (sliding yearly rate) of eligible payroll costs in the jurisdiction | 5% of eligible payroll costs in the jurisdiction |
| **Tangible Asset Carve-Out** | 8% - 5.4% (sliding yearly rate) of the carrying value of eligible tangible assets in the jurisdiction | 5% of the carrying value of eligible tangible assets in the jurisdiction |

[17] Article 9.2 of GloBE Model Rules
[18] Article 5.3 of GloBE Model Rules

**Annex C.2.**

## Permanent Establishment Issues for the Extractives Sector: A Briefing Paper for the UN Committee on Updates to the Model Convention

### Background

The United Nations (UN) Committee of Experts on International Cooperation in Tax Matters ("the Committee") is in the process of updating the UN Model Double Tax Convention. As part of these updates, the Committee plans to explore how the Model Convention could more comprehensively address permanent establishment (PE) issues in the extractives sector. The Committee has requested input on this matter from the UN Subcommittee on Extractive Industry Taxation Issues ("the Subcommittee")

Specifically, the Committee wishes to better understand PE issues in the context of the extractives sector, to what extent the Model addresses these issues, any gaps or challenges in the Model, and recommendations for how to improve it. The recommendations should include examples of how resource-rich countries have adapted their domestic law, and tax treaties, to protect their right to tax extractive industry income, through an Offshore Article, as one example.

The Subcommittee will address these questions in a Briefing Paper. The paper will not form part of the Handbook on Extractive Industry Taxation ("the Handbook"), which already provides extensive coverage of PE issues in Chapters 2 and 3, as well as the Tax Treatment of Subcontractors and Service Providers (among the new topics for the update of the Handbook). It will be a separate product to inform the UN Tax Committee's deliberations on updates to the Model Convention. The paper will then be shared with the Subcommittee on the update of the UN Model for further consideration.

### Table of Contents

#### 1. Introduction

This section will outline the purpose and scope of the document, as well as other reference materials e.g., Chapters 2 and 3 of the Handbook on Extractive Industry Taxation, as well as the Tax Treatment of Subcontractors and Service Providers (among the new topics for the update of the Handbook), the Intergovernmental Forum on Mining's (IGF) guidance on tax treaties for resource-rich countries, and the IMF book on International Taxation and the Extractive Industries. In addition, it will briefly restate the unique features of the extractive industries, highlighted in the Handbook, including company taxation as part of the government's take from its non-renewable resources.

## 2. PE Issues in the Extractives Sector

This section will provide a high-level summary of the main PE concerns for resource-rich countries discussed in Chapter 2 of the Handbook. These include the following:

- *Taxation of subcontractors:* The taxation of subcontractors is arguably the main PE concern for resource-rich countries. This is because subcontractors typically have a higher capacity to avoid having a PE, and hence paying tax in the source state, than a mining, or oil and gas licence holder.
- *Delineation of activities*: The taxation of exploration and production activities, as well as differences between onshore and offshore, and upstream versus downstream activities.
- *Taxation of extractive industry personnel and service providers:* The PE notion is also of importance to employee taxation in the case of short-term activities where the 183-day rule of Article 15 of the Models is not met. In such cases, employment income may still be taxed in the source state if the salaries were borne by a PE in that source state. Therefore, it is important that the PE definition be expanded for such short-term activities of the employer. As regards self-employed individuals, Article 14 of the UN Model may cover short term activities by an individual self-employed person, assuming they have a fixed base. Alternatively, gross taxation may be possible under Article 12A, but that is not full taxation on the total income.
- *Taxation of management and technical services income:* Mining, oil and gas subsidiaries may access technical services from a parent company or dedicated related-party services company, making fees for technical services a potentially significant source of outbound payments from the sector.
- *Remote operations:* An emerging PE issue for resource-rich developing countries is the remote operation and servicing of mining, and oil and gas projects. Subcontractors may be even less likely to have a PE in the source state, impacting the potential tax outcome.
- *Shipping and air transport:* There may be certain movements made with ships or airplanes, helicopters (and potentially drones), between the mainland and an offshore exploration/ exploitation area.
- *Marketing activities:* The main PE issue that companies face in extractives is PE created from the marketing activity itself (i.e., concluding sales contracts). The issue this creates for the developing country is potentially being required to provide tax relief for any offshore PE related to marketing activities.

Once again, we will not cover these issues in detail as this would replicate the Handbook. Our aim is to provide a high-level summary of the PE concerns for resource-rich countries such that the Committee has all the necessary details and context to evaluate the potential updates to the Model Convention that we propose in Part 4 of the paper.

## 3. How the Model Conventions and Commentaries Currently Address Extractive PE Issues

First, this section will map, and compare, the Articles in the UN and OECD Models that go towards addressing PE concerns for resource-rich countries. They include the following:

- Article 5: Permanent establishment
  - para 2 illustrative list;
  - para 3 construction and services PE;
  - para 4 supervisory activities
- Article 8: Shipping, inland waterways transport, and air transport
- Article 12A: Fees for technical services
- Article 12B: Digital services
- Article 13: Capital gains tax (in particular Art 13 of the UN MC 2021 which explicitly deals with the taxation of capital gains on certain licenses provided by the government)
- Article 14: Independent personal services
- Article 15: Dependent personal services

Second, it will analyse references to the extractive industries in the Commentaries:

- OECD 2017 Commentary Article 5(2) (47 and 48)
- UN 2017 Commentary Article 5 (5 and 6)

Finally, it will conclude by identifying potential gaps and weaknesses in the UN Model. Specific industry examples will be provided e.g., services not captured by Articles 5(3)(b), 12A and B, and 14.

## 4. Options for Updating the UN Model Tax Convention

First, this section will briefly recap the main policy objectives for any updates to the Model. In other words, what extractive industry PE issues should the updates aim to solve? Provide source countries with the broadest, fastest taxing rights for extractive industry income, as one example.

It will then go on to describe, evaluate, and propose legal language, for three options to update the Model. These options are derived from a survey of tax treaty practice in resource-rich countries conducted by the Intergovernmental Forum on Mining. [19]They are briefly described below.

a. Option 1: Standalone Extractive Industries Article ("Offshore Article")

The term "standalone article" refers to a special clause that deals exclusively with PE issues in the extractives sector. It may also include other items of income, such as capital gains arising from the alienation of mining assets and employment income. This is a treaty practice of several major resource producers, including Norway, the United Kingdom, and Mexico.

[19] Details of the survey conducted by IGF can be found on pg.4 of IGF, Protecting the Right to Tax Mining Income: Tax treaty practice in resource-rich countries, available at https://www.iisd.org/system/files/2021-11/protecting-tax-income-mining-countries.pdf

We will also explore the option to include onshore activities (as in the case of Mexico's treaties),[20] noting the need to consider the scope (e.g., exploration, production, decommissioning etc), and how to define connection.

b. Option 2: Self-standing "Extractives PE" in Article 5 (e.g., Australia-Germany, 2015)

A self-standing Extractives PE deems a PE to exist in the case of any exploration and exploitation activities, regardless of whether these take place onshore or offshore. There is no limit to what resource-rich countries could include in a self-standing Extractives PE. There is also no requirement to set a time threshold for triggering an Extractives PE, although countries typically do, adopting a lower threshold than the general rule.

c. Option 3: Extractives PE in Article 5(3)

The African Tax Administration Forum (ATAF) recommends this option in its Model Tax Agreement.[21] It is largely the same as Option 2 except that it must include a time threshold. This section will also explore references to drilling rigs, and ships (note interaction with Article 8), as well as Australia's substantial equipment Article.

## 4. Recommendations and Conclusions

This section will suggest recommendations to the Committee on potential updates to the Model Convention, as well as opportunities for the Subcommittee to provide further support on this topic.

[20] See Article 21 Mexico-Argentina (2015)

[21] See Article 5(3)(d) available at https://events.ataftax.org/media/events/6/documents/ATAF_Model_DTA_Revised_30_Nov.pdf