IGF-OECD Program on Tax Base Erosion and Profit Shifting in the Mining Sector in Developing Countries

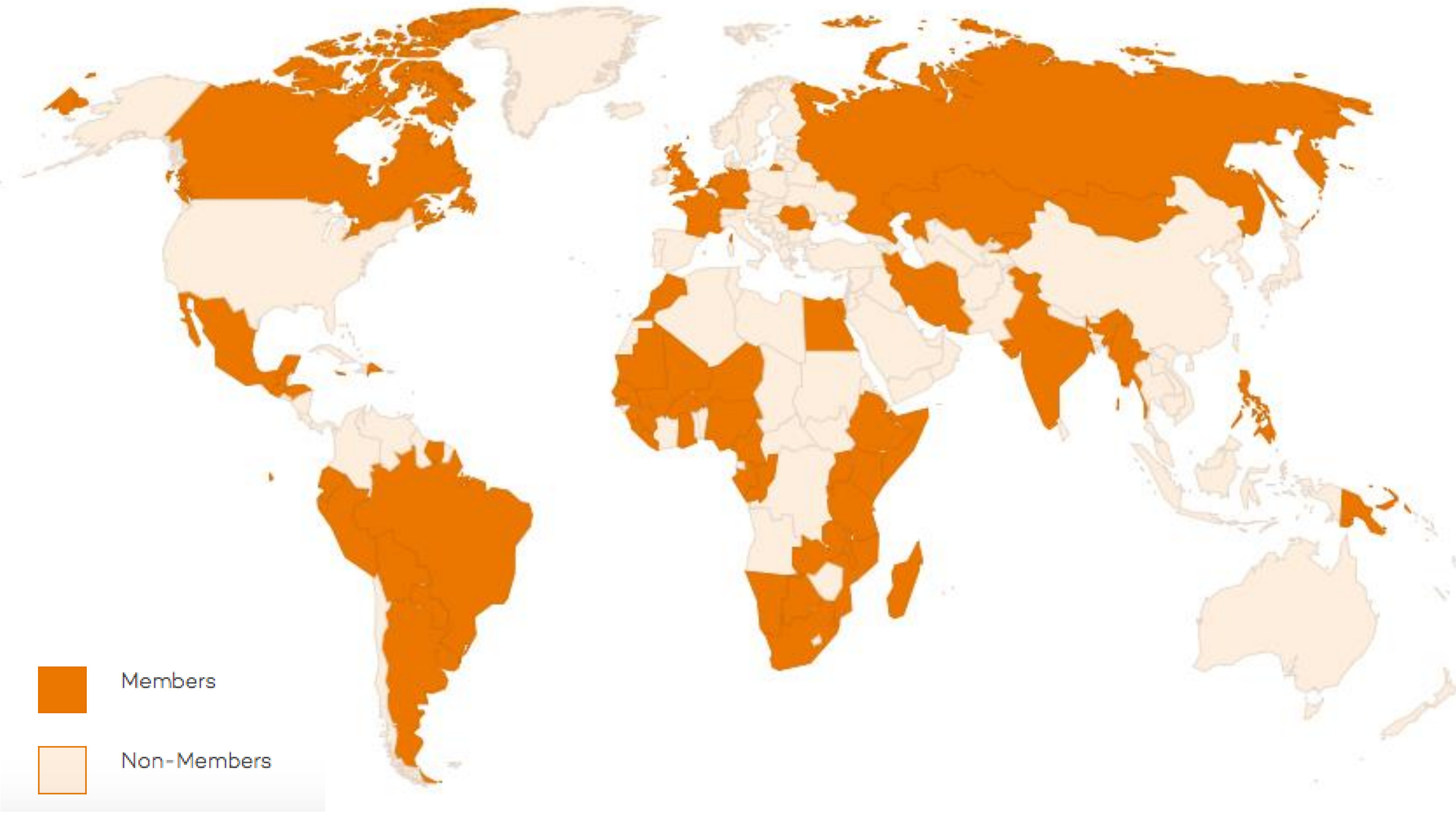
Presentation to OECD Policy Dialogue on Natural Resource-Based Development

June 16th 2017

Intergovernmental Forum on Mining, Minerals, Metals & Sustainable Development (IGF)

- Formally established in 2002; first annual meeting in 2005;
- Forum for discussion and policy development (does not create obligations for member states);
- 58 Members today, growing to 60+ in a few weeks;
- Annual meeting in Geneva in October has 275-300 participants from government, civil society, industry and academia;
- Focuses on mining and sustainable development: MPF;
- Provides capacity building and training for governments, and other stakeholders;
- Conducts outreach to other engaged organizations, stakeholders.

IGF Member Countries



Needs and Challenges

- At the 2016 IGF AGM, member countries identified tax base erosion and profit shifting (BEPS) as their primary concern;
- BEPS are a particular risk to developing countries given their reliance on corporate income tax as a major revenue stream;
- Many resource-rich developing countries lack the sector-specific knowledge and expertise to respond to BEPS issues affecting mining revenue collection;
- The OECD BEPS Actions cut across sectors; hence, there is value in adapting them to be mining specific.

IGF-OECD Program on BEPS in the Mining Sector

Objective: To provide developing country tax authorities and mining regulatory agencies with practical guidance and tools to address a range of BEPS issues affecting mining revenue collection. These materials will cover:

1. Excessive interest deductions;
2. Transfer mis-pricing (i.e. over-invoicing of goods, services, and assets received, and under-invoicing of mineral sales to related parties);
3. Limiting base erosion from mining tax incentives;
4. Implications of mining stability clauses & investment treaties for BEPS;
5. Mineral valuation capabilities to detect underpricing of exports;
6. Implications of tax treaties for BEPS in mining;
7. Indirect transfer of assets;
8. Ring-fencing implications for revenue timing/collection;
9. Financial arrangements (including metals streaming); and
10. Abusive hedging arrangements.

Rationale Behind Priority Issues:

- They are corporate direct tax issues commonly identified by developing countries that may be impeding resource mobilization from the mining industry;

- They were selected by participants at OECD-IGF Brainstorming Meeting on Mobilizing Resource Revenues from the Mining Sector: Tackling Leakages and Building on the OECD/G20 Actions on BEPS in 2016;

- The ten issues are not exhaustive, however the approach highlights the linkages between BEPS issues, and the need for a holistic response;

- Governments and companies need to take responsibility for harmful tax practices.

What the program will deliver:

By producing practical guidance and tools to counter base erosion and profit shifting in the mining sector in developing countries, we will accomplish the following tasks:

- **Building on actions such as the OECD/G20-led Actions on BEPS**, we will adapt existing guidance on international tax issues to be mining sector specific.
- **Filling vital gaps in the available resources**, we will develop new practical guidance and tools that specify the precise legal, administrative, organizational, and technical means required for tax authorities and mining regulatory agencies to address the tax issue.
- **Keeping administrative capacity front of mind**, we will deliver practical tools capable of being implemented by developing country tax authorities.
- **Creating a 'one-stop shop' website** for developing country tax authorities seeking support on tackling BEPS issues in the mining sector. A dynamic online repository for international tax issues and the mining industry.

Where we are now:

- Around the last OECD NR-PD, we developed a forward work program, and identified issues for immediate action;
- At the 2017 IGF AGM in October, and the NR-PD in December, we will present preliminary material on the following, today we invite your feedback on the direction of our work:
  - Excessive interest deductions in the mining sector;
  - Transfer Pricing Risk Assessment Toolkit for the Mining Industry;
  - Design and use of tax incentives for mining investment;
  - Strengthening mineral testing and verification capabilities, as well as mineral pricing methodologies for opaque markets e.g. bauxite;
  - Stabilisation clauses and investment treaties.
- Fundraising is ongoing

Issue 1: Interest Deductions - Structure

- Use of debt in mining (“fact finding”)
  - Differences/similarities to other sectors, across minerals/metals
  - How does life stage of mine affect?
- What are main issues developing countries grappling with?
  - Eg Capitalising interest costs into asset prices; complexity of arrangements; large number of debt instruments to analyse; how to benchmark debt terms?
  - And how have countries responded.
- What policy tools do countries have to influence allocation of debt to producing countries?
  - Eg BEPS Action 4, gearing ratios, caps on interest rates
  - How would each affect investment decisions?
- Target: this year.

Issue 2

Transfer Pricing Risk Assessment Toolkit for the Mining Industry

Alexandra Readhead

OECD Natural Resource Policy Dialogue

15th to 16th of June 2017

➢ What's the purpose of the risk toolkit?

To strengthen the capacity of tax authorities to determine whether particular high-risk related party transactions in the mining sector should be selected for transfer pricing audit.

➢ What does the toolkit cover?

1. Offshore marketing arrangements;
2. Intercompany debt;
3. Corporate services – procurement, and management.

➢ Why?

- Risk to revenue; and
- Prevalence.

How the Toolkit can help your tax authority detect and mitigate transfer pricing risks in mining

Transfer Pricing Risk Assessment Toolkit

Information	**Information checklist** for each transaction, including useful publications.
Methodology	**A step-by-step guide** to reviewing high-risk related party transactions in the mining sector.
Industry Insight	**Practical experiences** from tax officials in mining countries, as well as industry experts.
Financial Data	**Limited data** showcasing industry practices (NOT comparable data).

How might your tax authority use the Toolkit?

You're planning a transfer pricing audit, which related party transactions should you focus on?

Sells minerals to marketing hub

Buys equipment via procurement hub

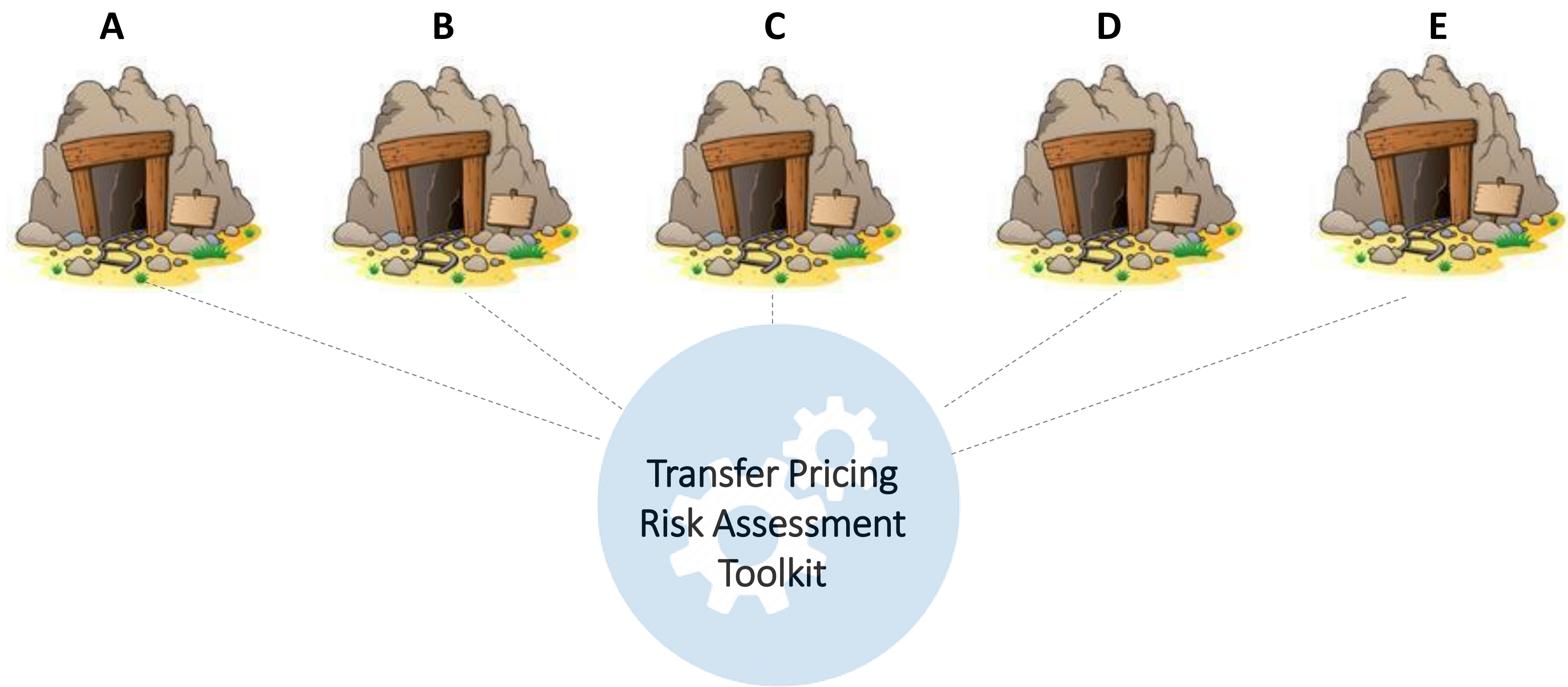
Gets management services from affiliate

Receives loan from affiliate

Transfer Pricing Risk Assessment Toolkit

How might your tax authority use the Toolkit?

You have resources to conduct transfer pricing audits for 3 of 5 mines, which do you audit?



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Next Steps

Our immediate plans:

- ATAF will use the Toolkit in its technical assistance to member countries;
- GIZ, in partnership with the Intergovernmental Forum on Mining (IGF), will run trainings on the Toolkit for interested countries, starting with Cote d'Ivoire in August;

Other plans?

The Toolkit will be available online, and can be accessed by anyone interested in using it.

Countries should download the Toolkit and use it in whatever way is most useful.

Questions about the Toolkit, or expressions of interest in training opportunities should be directed to alexandra.readhead@iisd.org

Issue 3: Mining Fiscal Incentives

Objective: To provide resource-rich developing country governments with practical guidance on how to design and use mining tax incentives in a way that limits potential for base erosion and profit shifting.

1. **A catalogue of commonly used tax incentives for mining investment**:
   - prevalence; relative costs and benefits; relative significance to investors, considering project life-cycle; potential for abuse/ profit shifting;
2. **Case studies**, extrapolating high-level principles for design and use of incentives;
3. **A demonstration of the fiscal cost of incentives** using project cashflow models;
   - relative magnitudes of direct revenue loss; potential for indirect revenue loss;
4. **Recommendations on design and use of incentives**, including a checklist of policy and administrative considerations.

Issue 5: Mineral Valuation - Structure

- Extends the Mineral Prod. Pricing Toolkit
- Issue: what can tax authorities do when examining sale price of a mineral product to related party where there is no transparent market price to compare against?
  - Use bauxite as a case study to illustrate
- Structure:
  - Transformation chain, key products and their characteristics
    - (as per established methodology)
  - What do we know about how they're traded; what drives prices; adjustments/penalties?
  - Possible options on how to proceed (information requirements? Prescribe a price formula?)

Thank You!

If you want to contribute – please contact us:

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