TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27TH SESSION: COUNCIL - PART 3

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete.

1. **Name(s) of Delegation(s) making the proposal:**

African Group of 47 Member States

2. **Please indicate the relevant provision to which the textual proposal refers.**

23

3. **Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the "track changes" function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.**

New 4 (g) has submitted all documentation relating to the Direct Transfer of Rights Tax that comply with regulation [23 bis and 23 ter] and whether that tax has been paid to the Authority by the Transferor '.

New 5 (c) the Transferor has not paid the Direct Transfer of Rights Tax to the Authority on the Transfer

New 8 (d) payment of the Direct Transfer of Rights Tax to the Authority'

4. **Please indicate the rationale for the proposal. [150 word limit]**

The African Group has consistently argued across multiple submissions that there should be a tax on the transfer of rights. This tax should be referenced in Reg 23 (4), (5) and (9).

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23 bis

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23 bis Taxation of the Direct Transfer of Rights

1.) The transferor shall pay a Direct Transfer of Rights Tax to the Authority whenever there is a transfer of rights under an exploitation license.

2.) The Direct Transfer of Rights Tax shall be equal to 25% of the transferor's profits from the transfer of the exploitation rights.

3.) The profits from the transfer of the exploitation rights shall be equal to the amount received by the transferor for the transfer minus the actual and direct exploitation expenditures made by the transferor under the exploitation contract.

4.) The Authority shall issue Standards providing for further details of the, administration and enforcement of the Direct Tax on the Transfer of Rights and for related matters.

4. **Please indicate the rationale for the proposal. [150 word limit]**

It is best practice and common practice in extractive industry taxation to tax the direct transfer of rights.

Contractors may make significant profits selling licenses. Under the current payment regime the Authority and humankind would receive nothing when a contractor transfers/sells an exploitation license. There should be a tax on the transfer of rights so that humankind can fairly share in the profits contractors make from selling exploitation rights.

Under draft regulation 39 contractors are already responsible for keeping accounts that include 'actual and direct expenditures for exploitation'

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23 ter

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23 ter Taxation of the Indirect Transfer of Rights

1. The Authority shall levy a 25% Indirect Transfer Tax on any gain made from the transfer of a 20% or greater interest in any entity which derives 50% or more of its value, directly or indirectly, and regardless of where that entity is incorporated, from rights under Exploitation Licenses, assets used to undertake commercial mining under Exploration Licenses, and activities undertaken in the Area.

2. Any series of transfers that could have been undertaken as a single transfer, but which were undertaken as a series of transfers so as, in the sole opinion of the Authority, to avoid the 25% Indirect Transfer Tax, shall be treated as if they were a single transfer.

3. The transferee shall be responsible, regardless of where that entity is incorporated, for:

   a. calculating the value of the gain as equal to the gross consideration to be received by the transferor minus the paid-in capital of the transferor;

   b. calculating the amount of the 25% Indirect Transfer Tax on that gain;

   c. informing the Authority of the Indirect Transfer Tax due;

   d. paying the Indirect Transfer Tax to the Authority; and

   e. deducting the amount of the Indirect Transfer Tax from the consideration received by the transferor for the transfer.

4. The Authority may revoke without compensation the Exploitation License that has been transferred when the Transferee has:

   a.) failed to inform the Authority within 90 calendar days of the transfer taking place of a transfer which could conceivably have led to a tax liability under the Indirect Transfer Tax;

   b.) intentionally underestimated the tax liability under the Indirect Transfer Tax; or

   c.) failed to pay the Indirect Transfer Tax due within 120 calendar days of the transfer.

5. The Transferor shall receive a tax refund or pay additional tax as the case may be, when it can provide evidence that in the opinion of the Authority is convincing, that the amount of the Indirect Transfer Tax actually received by the Authority from the Transferee was different from 25% of the true market value of the gain from the transfer, and in such a case the value of the tax refund, or additional tax as the case may be, shall be equal to the amount of tax actually received by the Authority from the Transferee minus 25% of the true market value of the gain.

6. The Authority shall issue Standards further providing for the administration, and enforcement of the Indirect Transfer Tax and for related matters

4. Please indicate the rationale for the proposal. [150 word limit]

There may be an attempt to avoid the direct tax on transfers by transferring exploitation licenses indirectly.

For example, company A, which is resident in a low tax jurisdiction, may own 80% of the Contractor. Company A may sell this 80% stake to Company B, which is also resident in a low tax jurisdiction, for significant profits. Under the current regulations mankind would not receive anything from this transaction despite the profits from the transfer ultimately deriving from the value of minerals in the Area.

It is important that such transactions are taxed and that mankind benefits whenever profits are made from exploitation rights in the Area.

The new regulation would ensure that a tax is paid and mankind benefits whenever profits are made from the transfer of shares in companies that derive their value from exploitation rights.

The tax is specified as a withholding tax, with the payment being the responsibility of the transferee in the first instance. This is necessary as it is difficult to enforce a tax on the transferor, as once it has transferred its interest it will not have any assets in the Area. In contrast, the Authority can take effective enforcement action against the transferee as it derives its value from indirect ownership of the exploitation license, which the Authority can revoke.

The transferee deducts the tax due from its payment to the transferor, and the transferor can claim a tax refund if the deduction exceeds the amount of the tax. Thus, the transferor who profits from the sale, ultimately bears the cost of the tax.