

## Summary of Intersessional Workshop on the Taxation of the Transfer of Rights and Assets Relating to Deep Sea Mining

The Intersessional Workshop on the Taxation of the Transfer of Rights and Assets Relating to Deep Sea Mining hosted by Natural Resources Canada (NRCan) with the technical support of experts with the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) was held virtually on the 26th and 27th of April. Registrants included over 50 people from 30 countries.

Areas of general agreement during the workshop:

- There was general agreement amongst participants that it would be appropriate for the regulations to include a profit share on the transfer of exploitation rights relating to deep-sea mining. However, at least one participant indicated a preference for only a royalty-based system of payments.
- There was general agreement that a profit share on the transfer of exploitation rights would need to be extended to the exploration phase of deep-sea mining. There are likely to be material gains arising from the sale / transfer of exploration rights, similar to land-based mining.
- There was general agreement to maintain the *de minimis* threshold (i.e., the minimum interest % in an asset that has to be transferred to trigger a profit share) of 20% as proposed by the African Group.
- There was general agreement that the profit-sharing rate should be reviewed in conjunction with royalty rates on a regular review cycle (e.g., as per Regulation 82; for example, every five years).
- There was general agreement on the need for broader anti-avoidance / abuse rules to be added to the text. The general anti-avoidance rule currently included in the regulations (Regulation 77) envisages royalties as the main form of payment to the ISA. This would need to be extended to capture all forms of payment, including a profit share.

There was no agreement regarding:

- The 50% sourcing rule (taxing 100% of the gain including profits arising from the sale of other business activities) proposed by the African Group; or
- the 25% profit share rate proposed by the African Group.

Other areas of discussion included:

- The need for a dispute mechanism was recognized and it was confirmed that any dispute would be dealt with by the “Seabed Disputes Chamber of the International Tribunal of the Law of the Sea” (Article 186/187).
- Concerns around the potential for double taxation were raised by participants, considering where the ISA and a sovereign state both tax the transfer of rights.
- Implications of a profit share on legitimate corporate reorganization and financing transactions (e.g., streaming or farm-in arrangements) and options for how this may be addressed while mitigating complexity and risk of abuse.

All materials and presentations from the workshop are available upon request.

Canada will be providing an update on progress towards regulations on the taxation of the transfer of rights and assets during the Council meetings in July.