

Report of Thematic Discussion of an Equalization Measure

On Tuesday, 19 March, the Council held a thematic discussion on an Equalization Measure as part of the Financial Terms of Contracts, in an informal setting.

Dr Daniel Wilde of the Commonwealth Secretariat and Professor Richard Roth of MIT provided expert input to the discussions. On behalf of those who participated in this thematic discussion, I thank them for their assistance.

Dr Wilde gave a presentation explaining the legal basis in the Convention and the 1994 Implementation Agreement for an equalization measure. His presentation is available on the Authority's website.

Dr Wilde also explained why the average effective tax rate provides a sound basis for comparing the tax burden on land based miners producing the same metals as may be recovered from the deep sea, and the potential tax burden on deep sea miners under the base royalty models produced by MIT.

He also provided an overview of the two options shortlisted by the intersessional working group on an equalization measure.

The two options are:

- A **hybrid model** by which a contractor shall pay to the Authority a royalty **additional** to the base royalty if they receive tax exemptions or subsidies against which sponsoring state payments are creditable, or alternatively, the contractor and its related entities pay a 25% **'top-up' profit share** to the Authority against which all payments to states related to mining activities are creditable. The definitions of related entities and profits would build on the OECD Globe Rules
- The second model, which was developed with the assistance of the IGF, requires a contractor to pay a 25% **additional profit share** to the Authority against which sponsoring state payments are creditable.

Draft text for the hybrid model was included in the report of the Intersessional Working Group on an Equalization Measure before the November 2023 meeting of the Council and is also included in the Suspense Document. Draft text for the additional profit share model was provided in the Briefing Note for the August 2023 meeting of the Intersessional Working Group on an Equalization Measure, but for ease of reference is also published on Authority's website under the papers for Part 1 of this Council session.

Delegations that took the floor supported the inclusion of equalization measure in the draft Regulations.

There was also support for including a simple provision in the draft regulations to provide for an equalization measure, with details of the preferred model for an equalization measure to be provided in a Standard. Dr Wilde suggested in his presentation that draft text could read:

'A contractor shall pay the equalization measure provided for by the Equalization Measure Standard.'

However, there was no consensus on which of the two models for an equalization measure is preferred, with some delegations stating they need to consider the two options further.

Among the issues on which delegations sought clarification was the treatment of sub-contractors under the two models for an equalization measure. A further issue raised was how an equalization measure would apply to the Enterprise.

Some delegations also expressed support for an equalization measure that would address environmental externalities. However, Dr Wilde and Professor Roth explained that the two models under consideration addressed the equalization of corporate taxes only, and did not address environmental issues, which were the subject of a separate discussion.

As the hybrid model and the additional profit share model are relatively complex, Australia remains available to facilitate further intersessional discussions on these models if delegations so wish.