

# *An equalization measure for deep-seabed mining in the Area*

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The Commonwealth

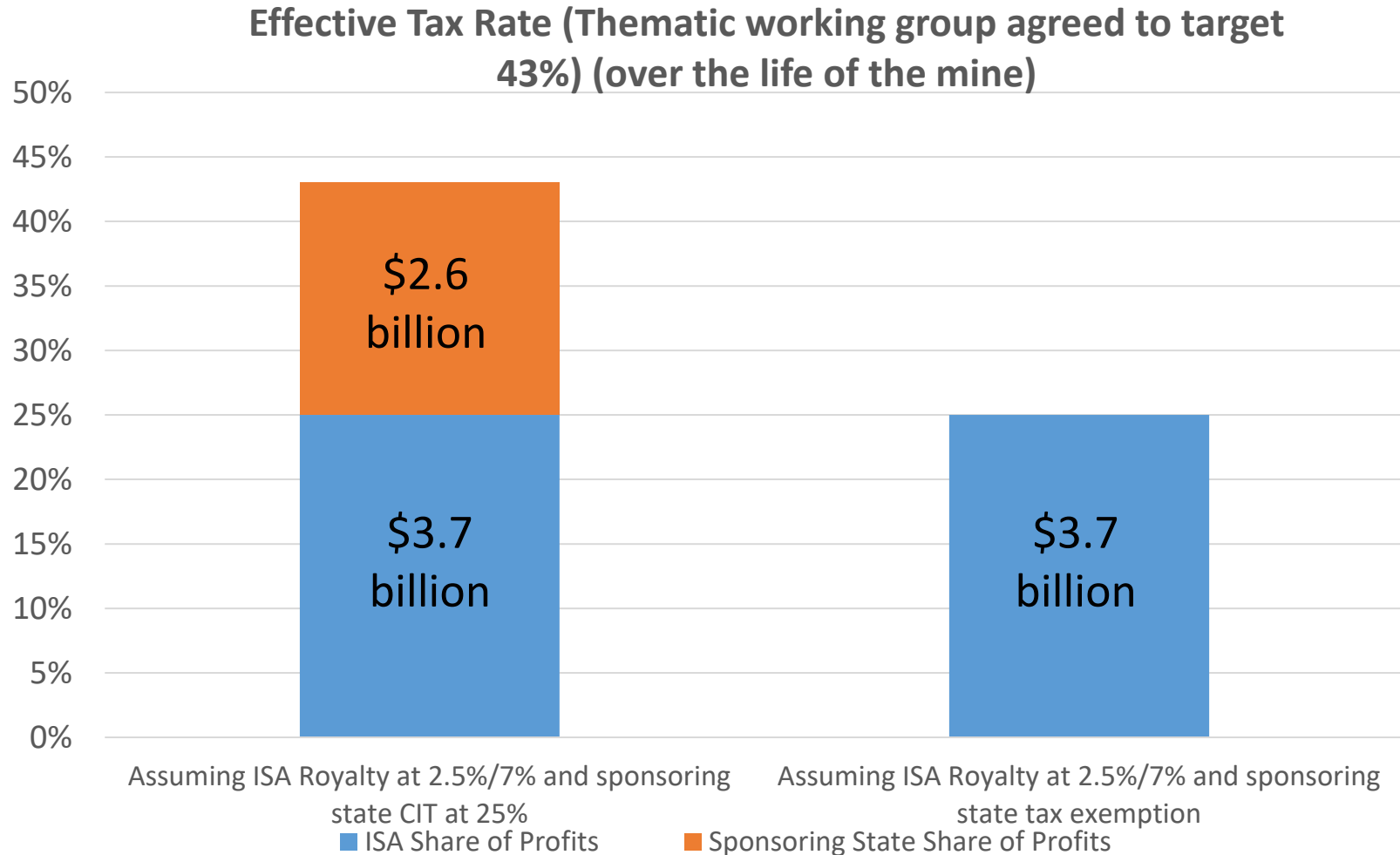
## Disclaimer

- The views and opinions expressed in this Presentation are those of the presenter and do not necessarily represent the views of the Commonwealth Secretariat or any Commonwealth Member country.

## Overview

1. The 1994 Implementing Agreement Section 8.1.b provides that ‘The rates of payments under the system shall be within the range of those prevailing in respect of land-based mining [...]’.
2. The effective tax rate for a mine is a good measure of ‘rates of payment’.
3. The effective tax rate = payments to government/profits (over the life of the mine).
4. The average effective tax rate for land-based mining is 43%, and this is a good effective tax rate to target for deep-seabed mining (DSM).

## Effective tax rate



## How the equalization measure works

1. There is a need for an equalization measure to ensure a 43% effective tax rate regardless of sponsoring state tax exemptions.

- Under all equalizations measures:
  - a.) a contractor that pays little or nothing to its sponsoring state pays more to the ISA; and
  - b.) a contractor that makes significant payments to its sponsoring state pays little or nothing under the equalisation measure.
- the equalization measure is in addition to the ISA base royalty. Thus, it cannot reduce ISA revenue from a mine.

## Benefits to an equalization measure

Key benefits of both equalization measures:

- disincentivise sponsoring state tax avoidance.
- help ensure a level playing field with land-based mining.
- can increase but not decrease ISA revenues from a mine.
- help create a level playing field between contractors regardless of tax exemptions and subsidies.

## Text providing for an equalization measure is included in the Draft Exploitation Regulations

<https://www.isa.org.jm/wp-content/uploads/2025/01/10012025-Revised-Consolidated-Text-2.pdf>

### **[Regulation 64bis**

#### **Equalization measure**

A Contractor, from the date that its Plan of Work has been approved, shall pay the equalization measure as determined in accordance with the applicable Standard governing the equalization measure.]

- The details of the equalization measure are to be provided in a standard.
- <https://www.isa.org.jm/wp-content/uploads/2025/03/Revised-Suspense-Document-ISBA-30-C-CRP.2-Rev.1.pdf>

## Options for the equalization measure

### Option 1: Hybrid

- if a contractor receives tax exemptions or subsidies then it pays an additional royalty of 8% against which payments to the sponsoring state are creditable;
- in the alternate, the contractor pays a 25% profit share (on profits from all related entities from mining activities) to the ISA from which royalty payments to the sponsoring state and all mining payments by related entities are creditable.



## Options for the equalization measure

### **Option 2: Profit Share**

- the contractor pays a 25% profit share to the ISA against which its payments to the sponsoring state are creditable.

## Previous questions on the equalization measure

Question	Answer
Does the reference to subsidies in the hybrid measure contradict the reference to GATT in UNCLOS?	No. The hybrid is penalising a contractor that has a subsidy: it is not providing for a subsidy.
Are state-owned enterprise contractors liable for the equalization measure?	Yes. The term 'contractor' as defined in the exploitation regulations encompasses SOE contractors.
Are state contractors liable for the equalization measure?	This is likely a moot point as a state would be unlikely to expose itself to unlimited liability by directly undertaking commercial mining. However, the term 'contractor' as defined in the exploitation regulations does appear to include state contractors, meaning the equalization measure would apply.
Is the Enterprise liable for the equalization measure?	The current definition of a 'contractor' appears to include the Enterprise and makes the enterprise liable for the base royalty and equalization measure. Given the exemptions provided to the Enterprise by UNCLOS Annex IV Article IV, this may need to be revisited. However, this is beyond the remit of the equalization measure working group.
Do the profit shares allow for the deduction of costs?	Yes – option 2 profit share includes a detailed and comprehensive list of allowable costs. Yes – option 1, the profit share part of the hybrid refers to 'Income', as defined in GloBe pillar two, which is net of costs.

## Which option is best?

- Option 2 Profit Share has much to commend it including:
  - a.) it is similar to other successful extractive industry profit shares.
  - b.) the text for the Option 2 profit share is complete. In contrast many of the definitions for the hybrid are to be drafted.
  - c.) the use of a hybrid is unusual in extractive industry taxation and may cause uncertainty for contractors, the ISA and sponsoring states.
  - d.) the hybrid leans on definitions from the global minimum tax, the future of which is uncertain.

## Way forward

- Decide on the option for the equalization measure

## Useful links

	Link
Draft Exploitation Regulations	<a href="#">Consolidated text.pdf</a>
Suspense Document	<a href="#">Suspense-document.pdf</a>
Briefing Note on the Equalization Measure, Subsidies, State Owned-Enterprises, State Contractors and the Enterprise	<a href="#">Briefing Note on the Equalization Measure Subsidies State-Owned Enterprises State Contractors and the Enterprise.pdf</a>
Report of the Intersessional Working Group on the Equalization Measure (	<a href="#">Report of the Intersessional Working Group on an Equalization Measure.pdf</a>