Transparency and Accountability in the Extractive Industry County by County Reporting leading to Unitary Taxation

Krishen Mehta,
Dar Es Salaam, October 3, 2013
What do the success stories (Norway, Chile, and Botswana) have in common?

- Transparency in revenue and budgets
- Delinking revenue from expenditure, creating a stable revenue base
- Investments in education, social programs, and infrastructure
- Setting aside reserves for the future, like the Sovereign Wealth Fund and Copper Stabilization Fund in Chile
Current state of play in Africa

Nigeria:
- In 1970, 19M people below poverty line
- In 2013, 110M below poverty line
  (after $ 500 billion of oil revenue)

Zambia:
- In 2010, 700,000 tons copper sold
  Revenue should be $ 5.2 billion
- $400 million revenue declared by Govt.
  (Only 7.7% of what it should be)

Tanzania:
- In 2010, only one mining company paid any corporate tax;
  Gold price increased six fold in previous decade
A close look at Tanzania's transfer pricing system:

- Follows the Arm's length standard, Section 33 of IT Act, 2004
- Transfer pricing laws are vague and largely untested
- Most MNC's have related companies in no or low tax jurisdictions
- Estimated annual revenue loss, 5% of GDP of $28 bill, or $ 1.3 bill a year
- Has agreed to adopt EITI, but no legislation yet, and no civil society pressure
If the Goal is Transparency and Accountability, how best can it be achieved?

Case for Country by Country Reporting, leading to a Unitary Taxation Approach

Top Ten Reasons Follow....
Reason # 10: Information required by C/C reporting is more detailed than either Dodd Frank or the EU Legislation

- DF and EITI focuses on revenue flows (taxes, royalties, and other fees)
- C/C will do BOTH revenue and expenditures, including all categories of expenses charged
- It basically exposes the entire financial arrangement to public scrutiny
Reason # 9: MNC's will not VOLUNTARILY disclose this information unless required by law

- They will close ranks behind the common enemy (generally, civil society and national tax administrations)

- C/C will make it mandatory, removing the element of choice
Reason # 8: A light will automatically shine on contract provisions that are otherwise confidential or secret

- Tax avoidance starts with negotiation of contracts that are generally not public or not transparent
- It will also become clear if local partners or local elite are receiving any payments
- Basically, C/C moves information from the shadow of secrecy and into the public domain
Reason # 7: C/C reporting reduces the burden on the tax authorities to determine if contract is being properly followed or not

- MNC's take advantage of uneven and inadequate enforcement by the tax authorities
- This temptation is taken away by automatic and full disclosure as required under C/C reporting
Reason # 6: To the extent that payments are made to related parties in tax havens, this will become evident in C/C reporting

- This is where real tax avoidance happens through expenditures and incentive payments to recipients in tax havens
- It will also bring the use of shell companies into the public eye, a common technique under the ALP
Reason # 5: In C/C reporting, the entire value chain is subject to transparency and accountability

- It is in the value chain that more opportunities for integrated businesses can be identified.
- Vertical and horizontal value chains promote a more balanced development, and not just in extractives.
- Good governance and an entrepreneurial citizenry needs this information for long-term growth.
Reason # 4: Good governance requires that contracts be renegotiated as and when circumstances change

- C/C reporting provides the government with additional information and data to revise future contracts
- This data can also be helpful for future new contracts with other parties (Under the Arm's Length Principle, their access to data is always at the company's discretion)
Reason # 3: A more open and transparent process is also favorable to MNC's that wish to play by the rules

- It ensures greater legitimacy to extractive companies in the eyes of citizens
- It reduces their risk of losing out to corrupt rivals on bidding for contracts
- It stabilizes the stability of supplies which may be important in the home country
Reason # 2: C/C reporting sets the stage for inter-generational equity. Why?

- Because, one day the revenues from the extractive sector will be depleted
- Having full transparency now enables countries to set aside reserves for future generations
- This requires good governance, but is the only way to unmask Africa's true natural wealth
Reason # 1: Adoption of C/C reporting is the ONLY way to move from VOLUNTARY to MANDATORY transparency

And it is the ONLY way to translate TRANSPARENCY into ACCOUNTABILITY