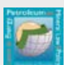
OGEL
Oil, Gas & Energy Law
www.ogel.org

Table of Contents

» Editorial

» Taxation


OGEL is supported by the **IBA** and **CEPMLP**

»»» Oil, Gas & Energy Law Intelligence
Volume 13 – Issue #04 – July 2015
ISSN 1875-418X

EDITORIAL

Special issue on International Taxation in the Energy Sector

Editorial

It is now eleven years since the founding editor, Thomas W. Wälde, edited OGEL's first special issue on taxation and his opening statement at that time was that the taxation of oil, gas and energy had become a very specialised business. The message back then was that taxation in the energy sector was complex, with very difficult tax questions, ongoing tax disputes, complex interactions between national tax legislation and operating contracts and the absence of in-depth examination of topics like decommissioning.

Since then, the tax climate has been changing - for the worse. Multinational corporations are exposed to sky-high tax risks internationally and the cumulative risks are increasing day by day. The compliance requirements are increasing and the daily administrative burdens and requirements for more detailed and thorough documentation continue to apply. The OECD, EU, UN, and of course every single country, are exerting more pressure on multinational corporations.

The tax authorities are becoming increasingly tougher, they are more trained, they are challenging large corporations and they are showing a willingness to fight and exercise the use of resources and power in order to collect the right amount of tax. Multinational corporations are now frequently facing tax adjustments and penalties, which often amount to millions or billions of USD. Unfortunately, we have not seen the worst of it yet: the tax climate *will* become much tougher and corporations need to be prepared.

This special tax issue covers a large variety of tax topics within the energy sector and topics from all over the world:

Uğur Erman Özgür's article *Taxation of Foreign Investments under International Law: Article 21 of the Energy Charter Treaty in Context* discusses limits to states' sovereign prerogatives to tax foreign investments under customary international law and international treaties. It considers care-out mechanisms on taxation in general and focuses on mechanisms under some Bilateral Investment Treaties, Double Taxation Treaties and FTAs. The paper reviews arbitral cases in which care-out provisions in various international treaties were invoked and it reviews the Tribunals' interpretations of Article 21 and outlines the scope of the general carve-out provisions. It argues that Article 21 provides a fair balance between the conflicting objectives of host states and foreign investors. The author emphasises that the rather incautious drafting gives rise to concrete problems in its application and interpretation.

In the next article, *Global oil price plunge shakes up the way governments do taxes*, Meredith McBride analyses how authorities around the world have responded with sectorial tax changes. W ith prices hovering around a possible 'new normal', governments are drastically reassessing how they collect revenues - but opinions are split. In a recent Fitch Ratings poll, 50% of the respondents said that the decline in oil prices would be temporary, while 50% said that oil price plunges have redefined the economics of the oil market and will persist. Countries have to cut costs and look to other methods to recoup lost revenue.

A.A. Konoplyanik's article *Economic Growth and Investment Regimes in Subsoil Use and its consequences for Russia* discusses the idea that countries at the earlier stages of formation of their investment legislation, which usually corresponds to a lower level of economic development of such states and, therefore, to a wider range and higher level of non-commercial risks relating to project development within such countries, usually choose PSA as a mechanism for minimizing the investment risks of their subsoil (upstream) projects.

Jędrzej Górski discuses in his article *From ownership by state treasury to taxation of private business in times of austerity: Remodelling governments' rents from the production of hydrocarbons in Poland* the reform of the Polish system of taxation for oil and gas upstream businesses, and assesses the reform against how the above premises have been balanced. He concludes that it is obvious that the new system will be neither exclusive nor simple and that the reform does not meet the postulate of equity and universality of taxation.

The next article by Oluseye Arowolo, *Marginal Field Operations in Nigeria and the Challenge of Uncertain Tax Regimes: What Are the Available Options* draws attention to critical matters that will effect on the economics of the operations' post-acquisitions for the bullish, idealist or purely unsuspecting purchaser. The focus of this article examines the angles of the uncertainty in the applicable tax regime on MFO and evaluates what options may be available for existing indigenous concession holders to pursue and the lessons for those who will participate in the fresh licensing round. He concludes that the oil and gas sector is already highly capital intensive and the economics of its projects and/or operations cannot be left exposed to the vagaries of fiscal uncertainty.

Mexico - New Oil and Gas Tax Regime by Enrique Perez Grovas considers the Mexican Constitution amendment designed to allow private investors to carry out, among other things, the exploration and production of hydrocarbon activities in Mexico. This amendment represents the much expected and awaited end of the Mexican Government's monopoly to carry out such activities that lasted for almost eighty years. However, reform loosened control of other aspects of the energy industry including midstream, downstream and all the electricity industry, allowing private investment in almost all areas in a fairly free environment.

Petroleum contracts and taxation: Is East Africa prepared by Thuo Njoroge Daniel raises the enormous challenges that are faced by oil and gas exploration and production companies in Africa, ranging from gang extortion in local communities to government regulation and taxation. This makes it crucial for any company in the oil and gas sector to have long-range and strategic planning to counter the various risks encountered in the sector. The major challenges faced by oil and gas companies that are linked to regulations and taxation include delays in passing important laws and legislation and having segmented and uncoordinated tax regimes. These challenges deter investment and growth in the oil and gas sector.

Chad O'Hare demonstrate in his article *Petroleum taxation in the Canadian arctic: unlocking quiescent hydrocarbons through fiscal reform* that Canada lacks a competitive fiscal regime relative to its Arctic brethren. Neighbouring jurisdictions typically offer more attractive investment opportunities due to higher geological prospectively, lower development costs, closer proximity to markets and access to infrastructure. In order for Canada to rekindle interest in its northern hydrocarbons and maximise its resource potential, the government must embrace fiscal reform and enact a bespoke Arctic taxation policy in order to promote investment.

Tax Implications of Petroleum Arrangements in Nigeria by Kamoru Taiwo Lawal examines the various taxes as they relate to individual arrangements in the oil sector. The article further examines the various oil and gas contracts and/or arrangements. Further, a comparative analysis is made, with reference to the proposed Petroleum Industry Bill, 2012, to show the fiscal innovations contained in the proposed bill.

Matthew A. Skelton points to the fact that problems have arisen when international oil companies have tried to sell their interests in Product Sharing Agreements, as the companies believe that they are protected either from or not subject to local tax laws. *The Trend in Taxing Capital Gains on Transfers of Interests in Production Sharing Agreements* explains that t he Emerging Market Countries unexpectedly apply capital gains taxes in a legally questionable manner. Emerging Market Countries have been doing this on a more frequent basis in recent years. This trend is a manifestation of the current cycle of resource nationalism and illustrates the competing goals between governments and investors. The trend is of concern because, if it becomes widespread, it has the potential to increase uncertainty, discourage investment and adversely affect the global energy market.

João Dácio Rolim's and Frederico Fonseca's article *The international convergence of the Brazilian legal and accounting standards and the tax effects arisen from the new accounting method of the electricity sector concessions* analyses the

changes arising from the international accounting alignment that impacted the concessionaires in the Brazilian electric energy sector. The authors state that the globalization process and increase in commercial transactions involving different jurisdictions resulted in the necessary international alignment of the corporate, legal and accounting practices, because the different standards adopted by each country reduced the comparability, transparency and reliability of the financial statements.

The next in line is Josh Lom and Aurell Taussig with their article entitled *The use of contractual and legislative measures to provide stability in relation to the taxation of energy projects: developments in the UK energy sector and signs of a new emphasis on bilateral stability.* The auditor emphasises that the existence of a stable fiscal regime is often a key concern for investors in energy projects. Further, the article describes how contractual protection against changes to fiscal regimes is typically framed, before considering in more detail two recent UK legislative measures aimed at promoting investments on the UK Continental Shelf, the introduction of Decommissioning Relief Deeds and the provision of the Investment Allowance.

Oliver Treidler's article, *The OECD BEPS Action Plan - Implications for the Tax Viability of Centre-Led Transfer Pricing Structures* states that the Base Erosion and Profit Shifting (BEPS) will have a significant impact on international taxation. It states that the BEPS reform will be comprehensive, adopted and rigorously enforced by (most) national tax authorities, affecting the tax viability of existing transfer pricing structures and resulting in an additional compliance burden as well as potential tax risks for taxpayers.

Moritz Wüstenberg's *Border Tax Adjustments for Energy Intensive Goods: Case Study of Iron and Steel Imports from the Russian Federation* present a methodology to adjust energy intensive products at the border by applying an energy-based tax. This is argued to be trade law compliant and practical as it is product based and can be calculated for most goods, contributing a possible avenue to reducing the negative effects of carbon leakage.

The article *Tax Transparency in the Energy Sector,* by Evelyn Dietsche discusses the call for greater tax transparency, which has been underpinned by several questions, including ' *what resources revenues have governments been paid'*; *'are host countries getting a fair share'*; and *'how are resources revenues distribute*d'. Touching on each of these three questions, this article summarizes recent developments and discusses some challenges and options. She also raise the important question whether the potential benefits of additional reporting is outweighed by the costs associated with collecting, collating and presenting additional data.

Finally, J. O. Spieler's and T. Monge Øia's article *Plug and abandonment status on the Norwegian continental shelf inclusive tax consequences* focuses on the plugging and abandonment obligations petroleum operators face. In additional, the article covers the financial & tax consequences of these obligations for both the operators and for the Norwegian Government, and estimates the total cost of plugging and abandonment of the wells to be between 43 and 76 USD billion. A consequences of the high petroleum taxation in Norway, is that the Government will have to bear 78 % of these cost, which constitutes up to 59 USD billion or up to10 % of the Government Pension Fund.

I would like to thank all the contributors for their contributions. Without them, this special issue would not have been possible.

Guest editor
Global Tax Practitioner,
Dr. K. Olsen
Dr. K. Olsen Global Tax Consultants
www.knutolsen.com

TAXATION

Taxation of Foreign Investments under International Law: Article 21 of the Energy Charter Treaty in Context

Uğur Erman Özgür
CEPMLP, University of Dundee

Background

Taxation of foreign investments is a key regulatory exercise in every sovereign State. Inasmuch as it is not "designed to effect a dispossession outside the normative constraints and practices of the taxing powers", the right to tax foreign investments is also a legitimate regulatory exercise. Investment treaty arbitration (ITA) tribunals often examine whether taxation measures by host States are discriminatory, confiscatory and/or tantamount to expropriation in the light of applicable standards under a vast network of international investment agreements (IIAs). Drawing on its drafting background and interpretation by arbitral tribunals, this paper aims to explore and shed light on the significance, scope and application of the "carve-out" mechanism on taxation under Article 21 of the Energy Charter Treaty (ECT). In this, it takes a comparative approach aiming to spot similarities and differences in drafting methodologies of some IIAs, Free Trade Agreements (FTAs) and the ECT. It

provides a detailed analysis of the drafting background of Article 21 based on travaux preparatoires as well as interviews with former negotiators/delegates involved in the making of the taxation provision. The paper also focuses on the application of Article 21, and outlines a general guideline in reading the provision.

Copyright Energy Charter Secretariat, 2015 - republished with kind permission.

Full article here

Global Oil Price Plunge Shakes Up the Way Governments Do Taxes

Meredith McBride
Legal Media Group

Abstract

An unexpected plummet in prices in the second half of 2014 left governments and the oil industry scrambling to maintain production levels, even at a loss, to keep market share. Saudi Arabia has enough reserves to maintain production - at least for now - as do many of its counterparts in OPEC, though this hasn't stopped the IMF from calling on oil-producing countries to introduce more taxes. Russia's pocketbook has been noticeably lighter and the country has cut spending and export duties on oil.

For net importers of oil, especially developing countries, the price drop has been a welcome way to offset costly subsidies that governments have been providing to consumers. India and Indonesia have cut such payments, while China is pocketing revenues by maintaining the oil price at the pump while increasing taxes on sales.

More developed economies have also changed policy. The UK has cut its Petroleum Revenue Tax and reduced the supplementary charge on North Sea oil production, while lobbyists in the EU and the Americas are pushing for the introduction of green taxes on the industry. Stakeholders are split on how long low oil prices will last - 50% say these changes are temporary, while the other half think the prices represent the new normal.

Every country in the world has a stake in the future of oil. No matter how long prices stay low, clear winners and losers have already emerged from one of the most volatile markets of 2014 and the price drop will have an impact how governments levy taxes on the industry for years to come.

This article was first published in the April 2015 issue of International Tax Review and on www.internationaltaxreview.com.

Full article here

Economic Growth and Investment Regimes in Subsoil Use and its consequences for Russia (Results of Cross-Country Comparison)

Professor Dr. Andrey A. Konoplyanik
www.konoplyanik.ru

Introduction

International practice has the following regimes of subsoil use and related types of investment agreements for the right of subsoil use between the host-state (the owner of subsurface resources) and an investor that has received rights for subsoil use (according to simplified classification of the author): concession; production-sharing agreement (PSA); and license. The analysis covers tax patterns applied within these regimes, such as: generalized/unified pattern or "tax plus royalty" scheme, on the one hand, and individualized/differentiated pattern or "production-sharing" scheme, on the other hand.

Full article here

From Ownership by State Treasury to Taxation of Private Business in Times of Austerity: Remodelling Government's Rents From Production of Hydrocarbons in Poland

Jedrzej Górski
Faculty of Law, Chinese University of Hong Kong

Abstract

Especially after 2008, the vicious circle of surging public debt and surging expenditure with very little efforts to cut public spending in Poland forced the government to seek for new sources of revenue, including further privatisation of companies in energy sector. Since 2011, the hopes were also high for revenue bearing shale revolution. Those factors combined drew the government's attention to still partly state-owned domestic giants engaged in mining/upstream operations, over which the treasury had been gradually losing control but still kept a significant equity-stake therein. The initial idea was to impose higher exploitation royalties, firstly on copper and silver (since Poland is one of the world's top producers of both) which happened in 2012, and then on gas and oil in order keep adequate level of economic rent from hydrocarbons' exploitation, despite selling equity to mostly foreign investors. This article presents and critically assesses the reform of the Polish system of taxation of oil and gas upstream business of 2014 which is scheduled to fully enter into force in 2020.

Full article here

Marginal Field Operations in Nigeria and the Challenge of Uncertain Tax Regime: What Are the Available Options?

Oluseye Arowolo
Akintola Williams Deloitte

Abstract

The announcement by the Minister of Petroleum Resources (MPR) of the 2013 Marginal Field Licensing Round, 10 years after the first round, represents an opportunity to acquire a marginal field as well as the sobriquet of an "oil and gas player" for many Nigerians.

According to NOG intelligence, if the number of the people that attended the kick-off of the road show for the licensing round is anything to go by, the DPR is likely to receive quite a number of bid applications because "it seems like everyone wants a marginal field".

The concern of many would hardly be about the unsettled and uncertain applicable tax framework for marginal fields operations.

The objective of this paper is not to become the "party pooper" or dampen the enthusiasm to "acquire" or the optimism that the opportunities in MFO represents but to draw attention to critical matters that will impact on the economics of the operations post-acquisition for the bullish, idealist or purely unsuspecting purchaser.

The focus of this paper therefore is to examine the angles to this uncertainty and evaluate what options may be available for existing indigenous concessions holders to pursue and the lessons for those who will participate in the fresh licensing round.

✎ Full article here

Mexico - New Oil and Gas Tax Regime

Enrique Perez Grovas
EY

Background

In December 2013, the Mexican Constitution was amended to allow private investors to carry out, among other, exploration and production of hydrocarbon activities in Mexico. This amendment represented the so expected and awaited end of the Mexican Government's monopoly to carry out such activities that lasted for almost eighty years. In addition, the reform loosened control of other aspects of the energy industry including midstream, downstream and all the electricity industry, allowing private investment in almost all areas in a quite free environment.

Despite the amendments to the Mexican Constitution carried out in December 2013, legislation was still required in order for the Energy Reform to be operational. In this regard, in August 2014 the secondary legislation of the Energy Reform was enacted, which comprised of 13 existing laws that were modified and 8 new laws that were prepared.

✎ Full article here

Petroleum Contracts and Taxation: is East Africa Prepared?

Thuo Njoroge Daniel
School of Business, Karatina University

Summary

The challenges that are faced by gas and oil exploration and production companies in Africa are enormous, ranging from gang extortion in local communities to government regulation and taxation. The East African region (Kenya, Uganda and Tanzania) have not been traditional producers of oil and gas. However, with the recent developments in the discovery of oil and gas deposits and commercial extraction slated in the near future, these countries need to be preparing for changing manpower requirements, fiscal policies and new regulations to exploit the benefits brought about by oil and gas production. At the same time the governments must seek to prevent the oil curse from afflicting the region. The governments in the region have been at the forefront in awards of contracts and improving the oil and gas policy and legislation. It is therefore important for these three countries to learn from countries with efficient regulatory and taxation policies to fossil fuel development in the energy exploration and production sector. The model countries discussed herein include Trinidad and Tobago, Indonesia and Norway. These countries provide learning points that can be used in developing fiscal policy conducive for oil and gas exploration and production.

✎ Full article here

Petroleum Taxation in the Canadian Arctic: Unlocking Quiescent Hydrocarbons Through Fiscal Reform

Chad O'Hare
Centre for Energy, Petroleum & Mineral Law & Policy (CEPMLP)

Abstract

In the Arctic Ocean, multi-year ice sheets are receding at an unprecedented rate, allowing modern day explorers access to an underexplored hydrocarbon frontier. However, given the unique commercial challenges associated with Arctic resource exploration, governments are required to mitigate economic and political uncertainties to

attract the requisite investment needed to monetise these high-latitude hydrocarbons.

This study undertakes a comparative and analytical review of the five littoral circumpolar countries to demonstrate that Canada lacks a competitive fiscal regime relative to its Arctic brethren. Neighbouring jurisdictions typically offer more attractive investment opportunities due to higher geological prospectivity, lower development costs, closer proximity to markets and access to infrastructure. Moreover, the lowering of government take and increasing differentiation of fiscal terms are global trends intended to attract private investment amid intense rivalries for foreign investment.

While Canada has made a diffident attempt to encourage investment in its northernmost frontier, Russia is the latest circumpolar nation to propose a new offshore fiscal regime to buttress its dominance of the Arctic. In order for Canada to rekindle interest in its northern hydrocarbons and maximise its resource potential, the government must embrace fiscal reform and enact a bespoke Arctic taxation policy to promote investment.

Full article here

Tax Implications of Petroleum Arrangements in Nigeria

Kamoru Taiwo Lawal
G. Elias & Co.

Abstract

There are many arrangements in the Nigeria's oil sector. These arrangements are diverse with each having its tax implication. This article examines the various taxes as they relate to individual arrangements in the oil sector. The article further examines the various oil and gas contracts and/or arrangements.

The examination of these various contracts is followed by reviewing the various taxes that are applicable to the sector. A proper understanding of various arrangements will go a long way in assisting contracting parties in assessing the tax implication of the various options as well as in determining which arrangement is appropriate in a particular situation as well as how to go about it. In doing this, a comparative analysis is made, with reference to the proposed Petroleum Industry Bill, 2012, to show the fiscal innovations contained in the proposed bill.

Full article here

The Trend in Taxing Capital Gains on Transfers of Interests in Production Sharing Agreements

Matthew A. Skelton
University of Houston Law Center

Abstract

A recent trend has been identified among various Emerging Market Countries (EMCs) whereby capital gains taxes have been applied to transfers of interests in production sharing agreements (PSAs). The PSA is the instrument of choice when investing in EMCs because it seems to provide a balance between the competing interests of investors and host countries. Nevertheless, both a strong sense of resource nationalism and the perception that international oil companies (IOCs) are gaining unfair windfall profits often causes EMCs to impose taxes in a fashion that is either contrary to existing law, or in such a way that the PSA inadequately protects the investor.

A typical dispute arises when a small to midsize exploration company signs a PSA with an EMC, makes a significant petroleum discovery, and attempts to sell its interest in the PSA to a larger IOC for a considerable amount of money. The EMC might block the transfer altogether, as demonstrated in an attempted Kosmos-Exxon deal in Ghana. Alternatively, the EMC might impose a previously undocumented and unexpected capital gains tax on the deal, as demonstrated in the recent disputes involving the Tullow-Heritage deal in Uganda. Other EMCs are catching on to the trend and are changing their tax laws in anticipation of the occurrence of such transfers.

Full article here

The International Convergence of the Brazilian Legal and Accounting Standards and the Tax Effects Arisen From the New Accounting Method of the Electricity Sector Concessions

João Dácio Rolim
Frederico de Almeida Fonseca

Rolim, Viotti & Leite Campos Advogados

Abstract

The article analyzes the tax effects arising from the international legal and accounting standards convergence that impacted the concessionaires in the Brazilian electric energy sector, more specifically the tax impacts from the adoption of Technical Interpretation ICPC 01 - Concession Agreements, which corresponds to the international accounting standards denominated IFRIC 12 - Service Concession Arrangements.

In summary, the ICPC 01 changed the accounting method of the assets related to the public service concession, which assets were no longer classified as fixed assets and started to be stated as financial or intangible assets.

Although ICPC 01 provides a more accurate representation of the transaction carried out in connection with the concession agreements in the electric energy sector and improves the identification of the economic and financial balance set forth in the concession agreements, the model is not exempt from questions and, according to the Authors opinion, it does not accurately reflect the concession 'legal nature'.

In relation to the tax effects arisen from the new standards, over the effective period of the Transitional Tax Regime (RTT), in force in Brazil over the last seven years (2008-2014), such effects were neutralized, in which period the concessionaires also carried out the tax accounting separated from the corporate and regulatory accounting.

Upon discontinuity of the RTT, Law 12973/2014 set forth specific rules for the public service concessionaires in view of the mandatory adoption of ICPC 01. Such rules provide for the tax effects in accordance with the corporate and accounting standards, and according to the Author's opinion they are aligned with the international standards, eliminating the distortion of the legal and accounting criteria for purposes of compliance with the tax requirements.

Keywords: accounting standards, convergence, ICPC 01, concession, electric energy sector, IFRIC 12, fixed assets, financial assets, intangible assets, taxation basis and transitional tax regime.

Full article here

The Use of Contractual and Legislative Measures to Provide Stability in Relation to the Taxation of Energy Projects: Developments in the Uk Energy Sector and Signs of a New Emphasis on Bilateral Stability

Josh Lom
Aurell Taussig

Herbert Smith Freehills LLP

Abstract

In an increasingly competitive and global market for investment, states recognise that the existence of a stable fiscal regime can be a key concern for investors in energy projects.

There are many ways in which states attempt to stabilise or improve the fiscal regime applicable to energy projects in order to promote investment. In this article we focus on some of the more significant ones. We describe how contractual protections offered to investors by states against changes to fiscal regimes are typically framed. We then consider in more detail two recent UK legislative measures aimed at promoting investment in the UK Continental Shelf. The first of these measures is a statutory regime that provides for the UK government to enter into individual contracts, known as Decommissioning Relief Deeds, with energy producers that effectively guarantee minimum levels of tax relief to energy producers. The second is a relief from UK taxation called the Investment Allowance. The article draws comparisons with similar measures that have been implemented in other jurisdictions. It also takes note of states' concerns with the techniques employed by some energy producers to reduce their exposure to taxation in jurisdictions where projects are located, and discusses some of the counteractive measures at states' disposal.

Full article here

The OECD BEPS Action Plan - Implications for the Tax Viability of Centre-Led Transfer Pricing Structures

Dr. Oliver Treidler

Abstract

The current debate on Base Erosion and Profit Shifting (BEPS) will have a significant impact on international taxation. One of the main targets of the OECD reform agenda is to address the challenge of valuating intangibles in the context of transfer pricing in order to ensure that transfer pricing outcomes are in line with value creation.

This paper illustrates the fundamental impact of reform agenda on the viability of established transfer pricing structures. The OECD's proposal to extend the scope for applying the profit split method is particularly likely to impair the viability of 'principal' or 'centre-led structures'. In order to document the arm's length nature of allocating profits to a specific MNE entity with central ownership of intangibles and high value added functions taxpayers will have to adopt transfer pricing policies that are focused on the economic substance of a specific transaction rather than on legal ownership.

For industries characterized by highly integrated value chains the respective impact will be most pronounced. Case studies from the oil and shipping industry are utilized to highlight potential tax risks.

Full article here

Border Tax Adjustments for Energy Intensive Goods: A Proposal for an Exergy Tax - Case Study of Iron and Steel Imports from the Russian Federation

Moritz Wüstenberg
UEF Law School

Abstract

Climate change policies, applied regionally to globally trading industries, are incentivizing these to relocate to regions with laxer climate policies. This results in an overall diminished effect of climate policies and also has economic repercussions for the countries implementing strict climate policies. A number of approaches to prevent the phenomenon of carbon leakage have been suggested, but most of these would run afoul with international trade law which is designed to remove barriers to trade, restricting the introduction of tariffs and taxes. The majority of previous work in this area has focused on taxes based on the amount of emissions generated during production. These approaches are impractical to enforce, for one, as taxing countries (or regions) would have to receive emissions data from producing countries, for another, these may be incompatible with international trade law, as a common notion is that only product related (incorporated) properties can be taxed.

Developing a trade law compatible method to tax energy intensive goods at the border would help to slow global climate change whilst also levelling the playing field in the competitive manufacture of energy intensive goods. The aim of this Article is to present a methodology to adjust energy intensive products at the border by applying an exergy based tax. This is argued to be trade law compliant and practical as it is product based and can be calculated for most goods, contributing a possible avenue to reducing the negative effects of carbon leakage.

✎ Full article here

Tax Transparency in the Energy Sector

Dr. Evelyn Dietsche
Dietsche Policy Analysis Ltd.

Abstract

Several questions have underpinned the quest for more tax transparency in the energy sector. These have included 'what have governments been paid'; 'are host countries getting a fair share'; and 'how are revenues from the resources sectors distributed'. This article discusses the recent shift in the tax transparency agenda from the Extractive Industry Transparency Initiative (EITI) to a new regulatory approach led by the governments of Western home countries, including Chapter 10 of the EU Accounting Directive. It argues that the voluntary approach of the EITI has been successful in raising broader awareness on how the energy sector works and it has helped host countries to wise up on their fiscal dependence on the sector. But the new regulatory approach will provide more detailed and timely information on the sources and recipients of corporate payments. Companies have several options for reporting beyond the new regulatory requirements. However, for host countries the developmental challenges associated with the energy sector remain largely unchanged.

✎ Full article here

Plug and Abandonment Status on the Norwegian Continental Shelf Inclusive Tax Consequences

Jon Oscar Spieler
Thomas Monge Øia

University of Stavanger

Abstract

The discovery of hydrocarbon resources on the Norwegian Continental Shelf (NCS) has been almost like a fairy tale for Norway the past half a century. Oil and gas has made Norway to one of the wealthiest societies in the world. Although the discovery has been outstanding for Norway, there are certain obligations we need to fulfil when exploring for hydrocarbons on the NCS. We need to clean up after ourselves. There is a "plug wave" heading for the NCS. Some say it is already here, whilst others are more pessimistic. The focus on plug and abandonment (P&A) is increasing and the operators are aware that a lot of the old wells on the shelf are reaching the end of their life cycle.

P&A operations have been conducted on the NCS for decades. Technology within the petroleum industry has grown rapidly during the last decades resulting in new, more complex wells due to its completion, length and deviation. This makes P&A operations more time consuming and requires higher costs. Norway has one of the most extensive taxation acts worldwide making oil companies pay 51% surtax on top of the 27% regular business tax of all revenue related to the production of hydrocarbons. The Norwegian Government on the other hand is required to give oil companies a tax relief on the corresponding amount, 78% of all their expenses, including P&A costs. Most of the potential costs associated with P&A operations will consequently accrue to the Norwegian society.

PSA and the NPD are the legislated authority to control and monitor the operations conducted on the NCS. Nevertheless, there has been insufficient information about the remaining work to be conducted regarding P&A on the NCS. The reason may be that the Norwegian government separated PSA from the NPD in 2004 and gave oil companies the responsibility to report their offshore operations to the authorities.

This study has been written to get a better overview about the remaining work to be done in terms of P&A on the NCS. The data will be used to make an estimate of the potential expenditures that operators and the Norwegian government would face if all present wells on the NCS were to be P&A'ed. The estimate does not include the removal costs of subsea facilities, infrastructure or platform. The expected total money to be spent to P&A the present wells on the NCS is between 43 and 76 billion USD. The Norwegian Governments will cover 78% of all the expenses related to P&A of wells, which might be up till 59 billion USD. This amount of money represent almost ten percent of Norway's saved capital in the Government Pension Fund of Norway. The writers hope the results from this study can be used to increase the focus to enhance P&A operations.

This study is conducted with inspiration from a presentation held during the 4th Plug & Abandonment (P&A) Seminar. Martin Straume, Lead P&A Engineer in BP and Chairman of Norwegian P&A Forum (PAF), gave the presentation, elucidating the potential expenditures on P&A operations the next decades. The presentation announced overwhelming costs and promoted the importance of doing more research within P&A. The presented expenditures where based on very rough estimates, making the total sum fairly unreliable. This gave us inspiration to do a study on the same subject with a target to present more accurate numbers. The idea was presented to the Petroleum Safety Authority (PSA), the Norwegian Petroleum Directorate (NPD) and PAF who encouraged us to proceed with the study.

↳ Full article here

Subscriptions

For subscription info (fees, single and multi user licences) visit our website.

Copyright & Disclaimer

© Copyright OGEL 2015. Please visit our website at www.ogel.org for our terms & conditions notice.

About OGEL (ISSN 1875-418X) - Oil, Gas & Energy Law (OGEL) is a peer-reviewed academic journal covering all aspects of law pertaining to oil, gas, and energy in general. Since the first issue was published in 2003 it has gained popularity with a large number of (international) energy companies, governmental organisations, law firms, international agencies, academic and think-tank institutions in the field of energy policy and various NGOs.

2015

- OGEL 3 (2015) – Renewable Energy Disputes
- OGEL 2 (2015) - Laws Regulating the Polish Energy Sector - Transition
- OGEL 1 (2015) - Natural Gas Developments: An International and Challenging Legal Framework

2014

- OGEL 4 (2014) - Regular issue
- OGEL 3 (2014) - OGEL Special: Governance of Unconventional Gas outside the United States of America
- OGEL 2 (2014) - Energy Community
- OGEL 1 (2014) - Special: Offshore Petroleum Exploration and Production: Challenges and Responses

2013

- OGEL 5 (2013) - Regular issue
- OGEL 4 (2013) - Joint Operating Agreements & National Oil Companies: Challenges and Dynamics
- OGEL 3 (2013) - Eastern Mediterranean Oil and Gas
- OGEL 2 (2013) - Risks and Responses to Risk in the Energy Sector
- OGEL 1 (2013) - Nuclear Law and Policy

2012

- OGEL 5 (2012) - Regular issue
- OGEL 4 (2012) - The Interface between EU Energy, Environmental and Competition Law - A Survey
- OGEL 3 (2012) - OGEL Ten Years Special Issue: Internationalisation of Energy Law
- OGEL 2 (2012) - Arctic Region: Boundaries, Resources and the Promise of Co-operation
- OGEL 1 (2012) - A Liber Amicorum: Thomas Wälde - Law Beyond Conventional Thought

2011

- OGEL 6 (2011) - Regular issue
- OGEL 5 (2011) - Regular issue
- OGEL 4 (2011) - Indigenous People and Resources Development
- OGEL 3 (2011) - Cross-Border Pipelines
- OGEL 2 (2011) - Comparative Energy Law
- OGEL 1 (2011) - Regular issue

2010

- OGEL 4 (2010) - Host Government Contracts in the Upstream Oil and Gas Sector
- OGEL 3 (2010) - Oil Spills
- OGEL 2 (2010) - Kazakhstan

- OGEL 1 (2010) - Antitrust in the Energy Sector

2009

- OGEL 4 (2009) - Regular issue
- OGEL 3 (2009) - Student special
- OGEL 2 (2009) - EU - Russia relations
- OGEL 1 (2009) - Middle East With a Focus on Buy Back Contracts

2008

- OGEL 3 (2008) - Eurasian Energy
- OGEL 2 (2008) - Venezuela: The battle of Contract Sanctity vs. Resource Sovereignty
- OGEL 1 (2008) - China's Energy and Environmental Challenges

2007

- OGEL 4 (2007) - Energy Security
- OGEL 3 (2007) - Energy Litigation and Arbitration - Expert Perspectives
- OGEL 2 (2007) - Unisitation
- OGEL 1 (2007) - Electricity Interconnectors (2nd special) - Regular issue

2006

- OGEL 4 (2006) - Pipelines
- OGEL 3 (2006) - Africa
- OGEL 2 (2006) - Electricity Interconnectors
- OGEL 1 (2006) - Liquefied Natural Gas (LNG) - Regular issue

2005

- OGEL 4 (2005) - Asian Energy Law and Policy
- OGEL 3 (2005) - Coal
- OGEL 2 (2005) - Windpower
- OGEL 1 (2005) - Production Sharing Contracts

2004

- OGEL 5 (2004) - Energy Charter Treaty
- OGEL 4 (2004) - Corporate Social Responsibility (CSR) - Regular issue
- OGEL 3 (2004) - Taxation / Latin America
- OGEL 2 (2004) - Renewable Energy
- OGEL 1 (2004) - Climate Change

2003

- OGEL 5 (2003) - Corruption / Geopolitics of Oil and Gas
- OGEL 4 (2003) - Natural Gas
- OGEL 3 (2003) - Energy and Electricity Regulation
- OGEL 2 (2003) - Dispute Management in the Oil, Gas and Energy Industries
- OGEL 1 (2003) - Regular issue