Objective

- Reflection on the discussions from the

Specifics of the Industry

- Critical to economies of many developing countries – Domestic Resource Mobilization
- Long project life – see next slide on life-cycle
- Different players and actors
  - Large MNE's – subject to scrutiny, disclosures and reporting – stock-exchange and other
  - Local and regional players – lack of regulatory oversight – aggressive tax planning, abuse
- JV investment arrangements – see next slide

Specific JV issues

- Large projects – pooling assets and funding from independent players – consortia – element of internal checks and controls
  - Due to inherent conflict of interest – degree of arm's length scrutiny
- Cash-calls – no profit / no loss principle – no mark up?
  - Why not mark-up?–

Lifecycle of Extractive Industry Project

Issues Experienced

- Transfer Pricing Issues
  - – Exploration stage
    - Purchase of services from related parties
    - Financing arrangements – is loan reasonable?
  - – Development stage
    - Purchases of
      - – Materials,
      - – Equipment and
      - – Technical and other Services

      in relation to Development of Extractive Project with supplies from related parties
    - Financing Arrangements
      - – Loans for development and construction

Issues experienced - continued

- Transfer Pricing issues
  - Extraction Stage
    - Sales of natural resources during the extraction stage to related parties:
      - Domestically – processing – motivation – different tax regime or tax incentive – lower tax burden
      - Internationally – export – motivation – store, process and refine abroad – lower tax burden
    - Financial arrangements – Use of Derivative instruments
      - Forward contracts between related parties on purchase of the natural resource or using back to back arrangements via intermediary

Sale of Shares

- Sale of Shares and Transfer Pricing?
    - Sometimes countries limit the scope of TP rules or administrative focus on the transactions with goods and services
- Sale of shares between related parties
    - Motivation?
        - Transfer the shareholding to a jurisdiction with "suitable" tax treaty that takes away taxing rights from country of source
            - Sale for market price from the "suitable jurisdiction"
        - Utilize accumulated losses of related party and realize capital gains in the hands of the related party

Deactivation of Transfer Pricing Rules

- Using the Agency Structures
  - Using the Services of Independent intermediaries
  -

Solutions?

- Developing countries develop their specific approaches to deal with these challenges
  – Ring-fencing
  – Use of quoted prices (6^{th} method)
  – Application of TP rules to all
    - Both related and unrelated parties

6^{th} Method

- Developing Countries
  - Latin America (Argentina, Peru, Brazil, Equator,…)
  - Asia & Africa follow (KZ, South Africa, India)
- Debate
  - Is it a 6^{th} Method?
  - Is it a variation of CUP?
- What and how?
  - “Home grown” approach of Developing countries to deal with TP complexities and challenges?
  - Reference to quoted prices on the day of shipment
    - Adjustments or not?
      - Volume, quality, transportation costs, other factors?
  - Notable practice of Norway – Norm Price – Administratively set Arm’s length price to all transactions (related and unrelated)

Documentation and Disclosures

- Special disclosure rules
  - Dodd-Frank Act – Project by project disclosures
  - Country by Country Reporting

Next Steps

Thank you...

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