



***Mining Taxation: Transforming
mineral resource wealth into
sustainable development***

Study on Transfer Pricing and Developing countries

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OUTLINE

- **Purpose of the study**
- **Preconditions for TP reform**
- **Recommendations**
- **Follow up**



Purpose of the study - Background

- **April 2009 Commission Communication on Good governance in the tax area**
- **April 2010 Commission Communication on Tax and Development:**
 - ✓ Need for developing countries (DCs) to progress in a number of areas, particularly
 - increasing capacity to raise tax revenues
 - adopting international standards in the tax area
 - ✓ At the same time, need to promote transparency and accountability in the international tax environment.



Purpose of the study – Background (2)

- ✓ One area of particular focus reflecting this twin concern: Transfer pricing
 - Identified as key issue for both Domestic Resource Mobilization and reducing barriers to FDI
 - Encouragement to adopt and apply Transfer Pricing [TP] legislation, in line with OECD TP guidelines.
 - Challenge: knowledge and expertise gap
- ✓ EC took a commitment to assess specific needs and to support DCs in this area – hence, the TP study by independent consultants
- **Strong support from the EP** [Resolution of 8 March 2011 and creation of a Budget Line for promoting governance in the tax area]
- Aligned with other international efforts: **G-20, OECD** etc.



Purpose of the study

Objectives

- ✓ Identify challenges to, and benefits from, TP reforms for developing countries
- ✓ Assess options and table recommendations on:
 - suitable approaches for TP reform
 - best forms of assistance
- ✓ Four countries were selected for in-depth analysis:

Kenya	[TP legislation since 2006]
Vietnam	[TP Circulars since 2001]
Honduras	[at the verge of adopting TP legislation]
Ghana	[no TP legislation]



Process

- Broad spectrum of **stakeholders** [international donors and organisations, government officials, civil society organisations, think-tanks and respective developing countries] **consulted** in the preparation.
- Consultants took most stakeholders' comments into account.
- Process enabled to largely ensure a well balanced study based on shared TP knowledge available in the international community.
- **Study presented at a number of events:**
 - ✓ **February-Sept.** ITC Workshops in Brussels and Bonn
OECD Task Force on Tax and Development
 - ✓ **June** UN Meeting on Practical Transfer Pricing Issues for DCs in NY



Why and how TP reform?

- 2/3 of all business transactions worldwide take place within a group
- DCs are opening up to foreign direct investment (about 1/5 of GDP in the four pilot countries)
- Potential increase in tax revenue > anticipated costs of TP reforms
- Necessary legal framework to enforce TP



Preconditions for TP reform

- Economic and political preconditions
- Legal preconditions
 - ✓ Comprehensive accounting rules
 - ✓ Comprehensive income tax law
 - ✓ Existing network of tax treaties [to provide a legal mechanism to address double taxation and set exchange of information]
- Tax administration
 - ✓ Staff capacities
 - ✓ Tools for exchange of information within the tax administration
 - ✓ Information technology



Recommendations

Recommendations for future donor support

Universal recommendations

- ✓ Planning of TP reform processes should take ongoing initiatives of donor support into consideration
- ✓ Donor support should be tailored to individual needs of different countries
- ✓ However, all developing countries concerned could welcome assistance in four specific areas:
 1. Broadening of treaty networks and gaining practice in application
 2. Identification and pooling of local comparables
 3. Building TP expertise, HR policy and adequate control mechanisms
 4. Developing risk-based audit procedures



Recommendations (1) ***Cooperation - Broadening of treaty networks and gaining practice in application***

- Development of DTCs networks to foster local investment climate
- Creation of appropriate domestic framework for exchange of information
- Assistance in negotiating treaties
- Encouragement to join international structures and processes [e.g. Global Forum]



Recommendations (2)

Comparables - *Identification and pooling of local comparables*

- Ensuring the implementation of TP provisions and tackling the lack of local comparables
- Developing data bases that contain information on comparables on a local or pan-regional level



Recommendations (3)

Capacity - Building TP expertise, HR policy and adequate control mechanisms

- Setting up TP unit/team
- Tailoring strategic HR policies to attract and maintain core staff, mid/long-term revenue targets
- Developing and implementing suitable internal policies [compliance checks, quality reviews, learning programmes, etc.]



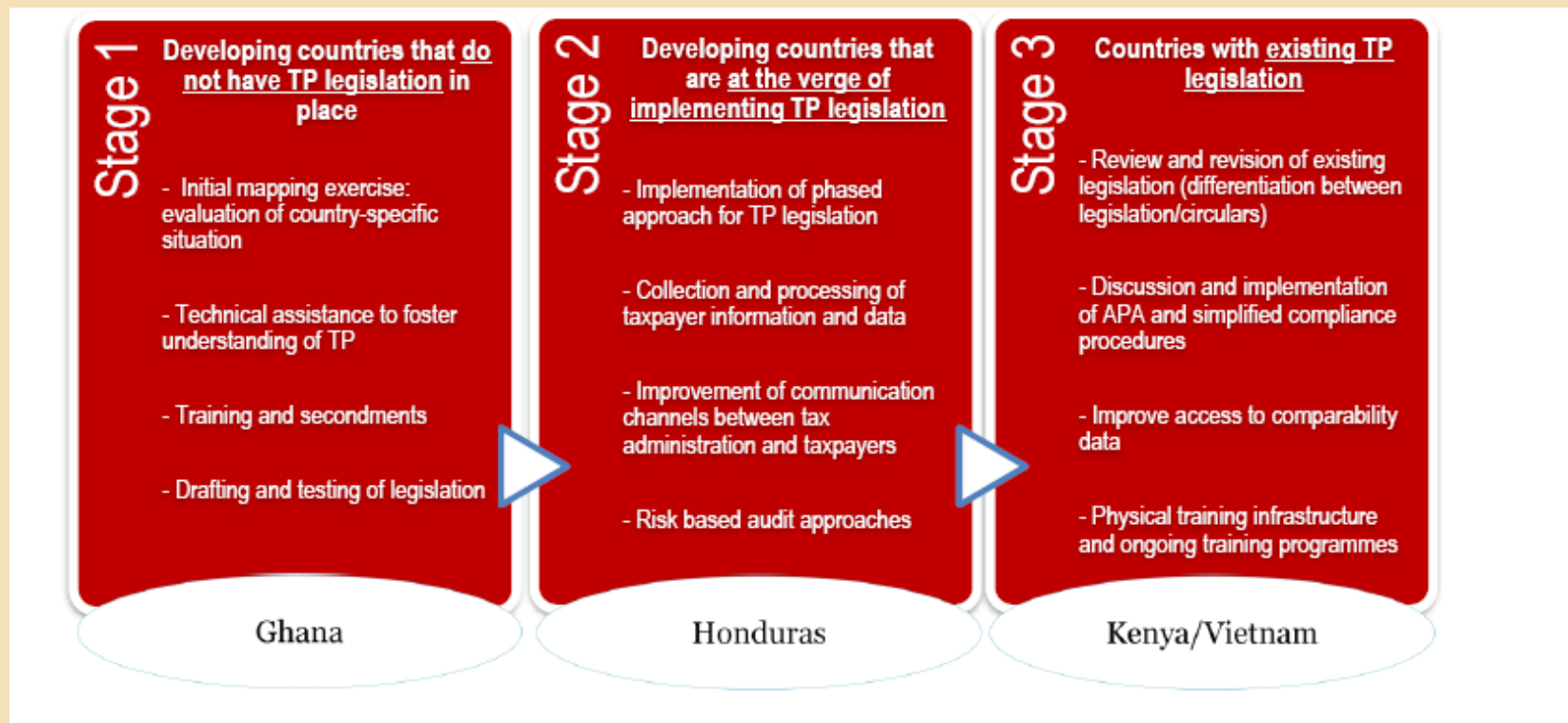
Recommendations (4)

Audit - Developing risk-based audit procedures

- Shaping audit strategies
- Mapping of local economy and industry sectors to facilitate risk-based selection procedures
- Taxpayers' features: size, structure, complexity of the business, transparency
- Other risk-based selection criteria [transactions with so-called « tax havens » and low tax jurisdictions]

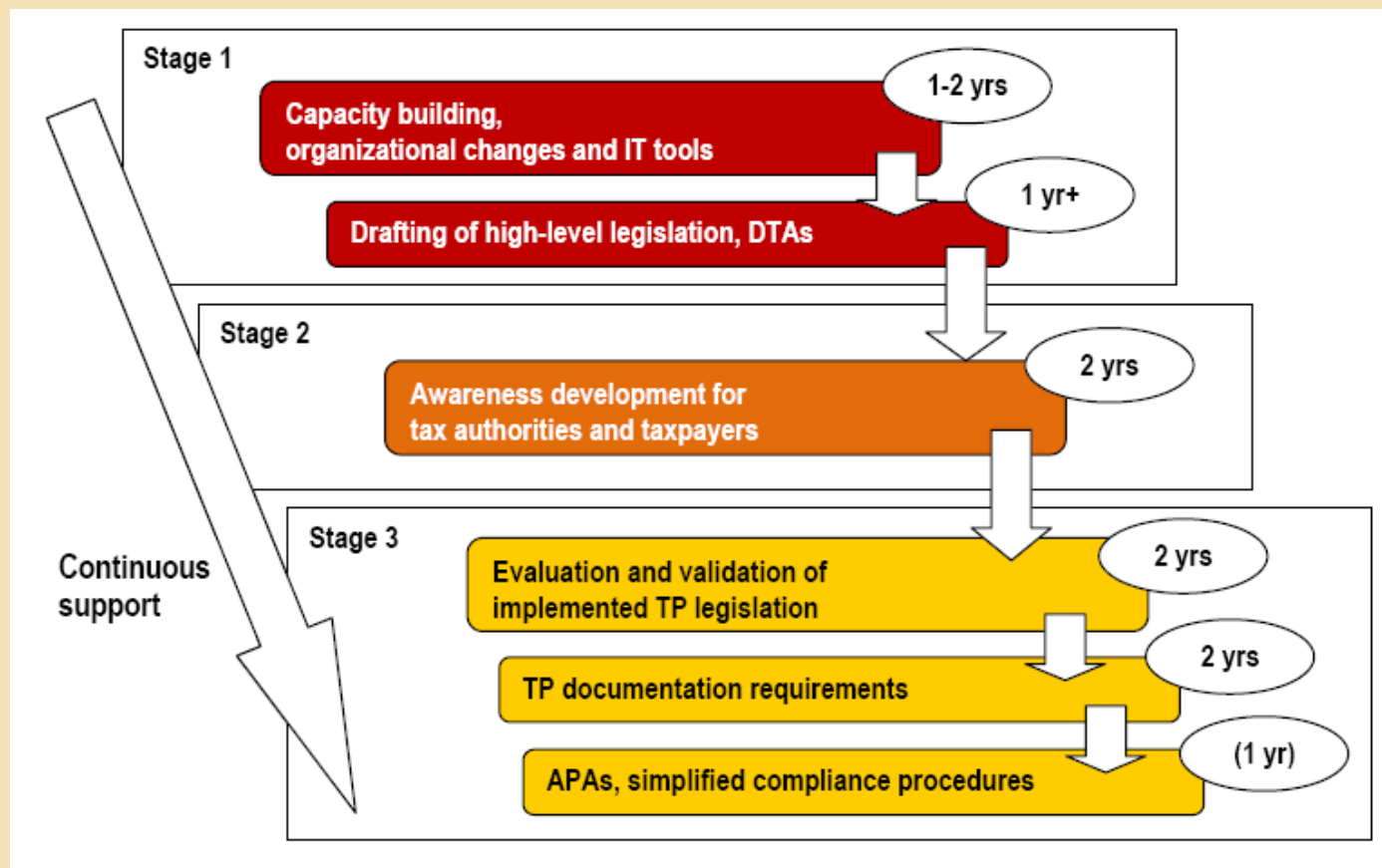


Staged approach to TP reform





Roadmap to TP reform





Follow up (1)

- Study is being used to shape EC's support to DCs in the adoption and implementation of TP legislation in order to:
 - enhance domestic resources mobilization by processing tax information better and ensuring tax compliance for all economic actors,
 - strengthen implementation of international standards and particularly the principles of good governance in the tax area,
 - attract further investments by multinational companies by providing a tax system based on international standards.
- Other partners (namely, EU Member States, international partners and developing countries) are encouraged to make the most of the Study.



Follow up (2)

INITIAL EC EFFORTS

- Objective:
 - place TP high on EC agenda of cooperation with DCs on tax matters
 - enhance transfer pricing capabilities of a DCs
 - focus efforts on some of the study's pilot countries
- Means:
 - work, to the largest extent possible, in tandem with regional and international partners
 - EC already in cooperation with...



Follow up (3)

- **ATAF** (2 workshops on TP foreseen for 2012 in planning stage)
- **UN** (support for the finalization of the TP Manual)
- **OECD** and **WB: Joint Tripartite Initiative on TP** adopted in July 2011 (ToRs already adopted, Steering Committee already established, conversations ongoing to align joint efforts)



Follow up (4)

- In 2011 EC launched exploratory bilateral talks on how to assist:
 - **Ghana**, particularly as regards:
 - Implementation of the legislation foreseen to be in force from January 2013
 - Establishment of data base for comparables
 - Building negotiation expertise (with MNEs and for Treaties)
 - Establishing auditing capacities



Follow up (5)

- **Vietnam**, particularly as regards:
 - Establishing full-fledged TP legislation
 - Introducing provisions for the implementation of legislation
 - Improving accounting practices
 - Establishing auditing capacities
 - Designing documentation requirements



The Study is available at the European Commission website.

- http://ec.europa.eu/taxation_customs/common/publications/studies/index_en.htm
- http://ec.europa.eu/europeaid/what/economic-support/taxation/index_en.htm



Merci!

Thank you!