

# Global Day of Action on Tax Justice in Extractives: Stop tax dodging and plundering!



Tax justice in the extractives sector! The call rings across countries of Latin America, Europe, North America, Africa and Asia today as CSOs and movements highlight and demand stronger, more effective actions against tax abusive behavior of mining corporations and other extractives firms.

The extractives sector is one of the most concentrated and lucrative enterprises anywhere in the world. Limited competition raises questions of transparency and accountability with regard their profits, structures and systems. Revenues of the biggest mining multinational firms run to the billions of dollars, while they leave environments in often irreversible ruin, poison water and land, dislocate communities and destroy local livelihoods.

But these are not all that they extract from developing countries. Mining companies are also implicated in attempts to exploit generous fiscal incentives and loopholes in the law to dodge their tax obligations and thus further boost profits. The Philippines first awarded a Financial and Technical Assistance Agreement (FTAA) license in 1994 to the Australian-Canadian firm, OceanaGold Philippines Inc. (OGPI), a subsidiary of the global conglomerate. The only mining fiscal regime that allows 100% foreign ownership, this 25-year form of tenure grants holders extensive concessions, such as tax holidays, accelerated depreciation, tax credits, import duty relief and withholding taxes relief on interest expense, dividends, services (e.g., management fees).

Because of fiscal incentives, OGPI significantly reduced its income tax bill. Based on estimates using EITI<sup>1</sup> data, this translated to over P2.25 billion in forgone revenues in 2014, P32.5 million in 2015 and about P42.4 million in 2016 (Bantay Kita). The start of commercial operations in 2016 should have triggered income tax liabilities but the firm still did not report any revenue stream in the form of Additional Government Shares.

In 2013, OGPI asked the Court of Tax Appeals (CTA) to be refunded of several excise payments made in 2013 totaling more than P68.6 million which had allegedly been “erroneously paid and illegally and wrongfully collected”. However, the CTA denied the petition, and also upheld the Bureau of Internal Revenue’s ruling that removed the excise tax exemptions for FTAA holders. OGPI complied, but under protest.

Other red flags representing possible opportunities for profit shifting and illicit financial flows fly over OGPI. The company is fully owned by OceanaGold Pte. Ltd. registered in Singapore, a well-known tax haven, to which OGPI sells its gold-copper concentrate. Multinational corporations, with their vast resources, are known for reportedly manipulating transactions and transfer prices of good and services among their subsidiaries worldwide to reduce or avoid tax obligations. For instance, profits may be shifted by raising administrative and R&D payments to affiliates based in low tax jurisdictions.

Despite the expiration of the 25-year in June 2019, OGPI continued to operate based on mere endorsement by the Mines and Geosciences Bureau (MGB) of its renewal application to the Office of the President. Only vigorous local opposition succeeded in pressuring OGPI to temporarily suspend operations. A groundswell of protest is also rising in Mindanao against another FTAA holder – Sagittarius Mines Inc. (SMI) of the Tampakan gold-copper project in South Cotabato – especially with DENR suggesting the lifting of its suspended environmental clearance and with the recent earthquake damaging surrounding areas and possibly compromising the mine’s stability.

But preferential tax treatment will remain by virtue of incentive-laden agreements, which lopsidedly benefit big-ticket mining investors. The Environment and Natural Resources Department, for one, is expected to help contractors negotiate with the Investments Board and other agencies for corporate tax and duty holiday or other incentives,

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## Mining taxes

**Rio Tinto's tax schemes lead to nearly \$700 million tax revenue losses for Canada and Mongolia**

The publication "Mining taxes" explains how the mining giant Rio Tinto, and its Canadian subsidiary Turquoise Hill Resources, avoided nearly \$470 million in Canadian taxes by using mailbox companies in two tax havens, Luxembourg and the Netherlands. The publication also shows how an abusive investment agreement covering the Oyu Tolgoi copper and gold mine has resulted in a \$230 million tax revenue loss for Mongolia.

Source:

<https://www.somo.nl/riotinto-taxschemes-mongolia/>

<sup>1</sup> Extractives Industries Transparency Initiative, the global standard promoting the open, accountable management of oil, gas and mineral resources.

including the “appropriate legislation”. The FTAA further declares that debt will be part of OGPI’s financing, but does not set limits on excessive debt financing. If the project is heavily funded by debt rather than equity, the Philippine government cannot subject profits to corporate income tax, but the company would be able to claim deductions on interest payments and reduce dividend withholding taxes.

Until its exit in 2015, Glencore held the controlling stake SMI. It was one of several other mining companies implicated in the Paradise Papers, the record-breaking leak of millions of documents spanning 1950-2016. The files from leaked from the offshore law firm Appleby, corporate services providers and business registries in 19 tax havens involving Glencore “...shed light on how a global colossus, aided by a trusted offshore law firm, uses financial havens to cloak its lucrative dealings in secrecy even as it wields vast influence in resource-rich but corruption-plagued parts of the world. The Appleby documents show that Glencore diverted millions of dollars through Bermuda and other tax havens and fought off lawsuits and tax bills in Europe and the Caribbean,” wrote the International Consortium of Investigative Journalists in 2017.<sup>2</sup>

Another mining company that clearly illustrates substantial revenue losses from tax incentives in extractives is the Semirara Mining and Power Corp. (SMPC). Under SMPC’s revenue-sharing agreement with the government, it can deduct as much as 90% from gross proceeds as expenses. After being granted an income tax holiday, the effective rate fell to an average of 0.67%, against the statutory tax rate of 30%. Overall, estimated forgone revenues from the ITH granted to SMPC amounted to PHP5.7million from 2008-2012.<sup>3</sup> Consistently refusing to participate in the EITI, the coal firm is the Philippines’ largest user and producer of coal, scientifically proven as the single biggest human-activity related contributor to climate change.



Source: <https://af.reuters.com/article/worldNews/idAFKCN1100GG>



Source: <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/indonesias-shifting-coal-money-3-taxing-times-for-adaro/>

Today, November 19, is only the start of efforts worldwide to shed a light on tax dodging, profit-shifting and illicit financial flows in the extractives industries. We are one with economic justice, environmental, climate justice and human rights movements and organizations fighting for an end to the long list of abuses and violations linked to this billion-dollar global enterprise. The struggle is even more urgent for resource-rich but impoverished countries of the South especially targeted by extractives firms.

From our region, the Tax and Fiscal Justice Asia raises the global call to unmask the extractive companies’ grand theft of taxes and to demand for tax justice in the extractive industry, as its contribution to the struggles for democratization and redistribution of wealth and to strengthen the existing fights for economic, social and environmental justice.

***Join us on 19 November 2019, as we hold the Global Day of Action on Tax Justice in the Extractive Industry. This is only the first of many to expose the tax abuses of corporations engaged in extractive activities and seek tax and fiscal justice for tax abuses in mining and other extractivist activities.***

***Stop tax dodging and plundering! Tax justice in extractives!  
No to burdensome taxes! Reclaim public money from corporations for human rights and social services!  
Tax and Fiscal Justice Now!***

**Tax and Fiscal Justice Asia | Asian Peoples’ Movement on Debt and Development**  
in collaboration with the  
**Global Alliance for Tax Justice**

<sup>2</sup> “Corporate Titans: Room of Secrets Reveals Glencore’s Mysteries”. <https://www.icij.org/investigations/paradise-papers/room-of-secrets-reveals-mysteries-of-glencore/>.

<sup>3</sup> Ragos, Anton. “Inequitable Share”. < <https://www.bantaykita.ph/for-publications/inequitable-share3469340>>