

**International Fiscal Stability Concepts**  
**July 22, 2005**  
**Pedro van Meurs**

## **INTERNATIONAL USE OF FISCAL STABILITY PROVISIONS**

It should be noted that the use of fiscal stability provisions in international oil and gas arrangements is limited.

Broadly, the types of arrangements in the world can be divided in the following groups:

- Concessions, leases, licenses (here called "Concessions")
- Production Sharing Agreements
- Joint Venture Agreements
- Service Agreements, and
- Hybrid Agreements (these are a mixture of the previous four).

Typically one finds fiscal stability only under some of the Production Sharing and Service Agreements. No fiscal stability is usually offered under Concessions, Joint Venture Agreements or Hybrid Agreements.

Following is a review of the international practice.

### **CONCESSIONS AND JOINT VENTURES**

Fiscal stability is usually not granted as part of fiscal systems under Concession or Joint Ventures. These are the main petroleum arrangements in a wide variety of countries. Following is a review of the most important countries.

#### North America

**Canada.** Provinces in Canada or the Canadian Federal Government do not offer fiscal stability. This is true for conventional oil and gas but also for "frontier" developments. The important developments offshore Newfoundland, the gas developments of the Mackenzie Delta and the oil sands development in Alberta, despite the considerable risk associated with these projects.

**United States.** States in the United State or the US Federal Government do not offer fiscal stability. **The Alaska Stranded Gas Development Act is a highly unique document in the North American context.**

#### Europe

**CONFIDENTIAL**

SGI\_007787

**United Kingdom, Norway, the Netherlands and Denmark.** The North Sea countries do not offer fiscal stability. Norway is in the process of developing fields with a relatively low rate of return, similar to Alaska, such as the Ormen Lange field. This large development is not subject to fiscal stability. Britain increased the government take unilaterally with a special 10% surtax when the Labor Government came in. Norway introduced the carbon tax.

**Other European Union countries.** None of the other European Union countries offers fiscal stability.

### Latin America

**Colombia, Venezuela, Brazil, Argentina, Trinidad & Tobago.** These important petroleum countries of Latin America do not offer fiscal stability. It should be noted that Venezuela, Argentina and Trinidad and Tobago have recently increased the government take under their fiscal terms. **Venezuela is currently forcing companies to completely change their contractual arrangements with Venezuela to the new 2002 Concession Law, with involves a partial re-nationalization of the assets.**

**Bolivia.** Bolivia did have officially a degree of fiscal stability under their so called risk sharing contracts (which really had the nature of a concession), but there was no absolute guarantee against changes in corporate income tax. **Despite the Bolivian fiscal guarantees, the new political situation in Bolivia will result in changes anyway.**

**Peru.** Peru offered absolute fiscal stability in its Concessions and is honouring this stability.

### Africa

**Algeria.** Under the new hydrocarbon law of 2005, Algeria does not commit to absolute fiscal stability on its concession agreements. However, the model contract has not yet been published and may include certain stability concepts.

**Nigeria.** Does not officially grant fiscal stability, but has traditionally created some stability through the negotiations of so-called MOU's, which provide stability for a period of time (I understand usually 10 years) and are subsequently renegotiated. **Nigeria is currently changing its fiscal regime for gas.**

**Gabon.** The original concession agreements in Gabon were subject to fiscal stability. Nevertheless, Gabon has traditionally amended its detailed calculation procedures for corporate income tax, for instance with respect to the tax reference prices.

**Mozambique.** Under the new petroleum law, Mozambique does not provide fiscal stability.

## Asia

**Pakistan.** Pakistan does not offer fiscal stability on its concessions.

**Thailand.** Thailand does not offer fiscal stability on its concessions.

**Russia.** Russia does not offer fiscal stability, except for its production sharing agreements (which Russia no longer enters into). It should be noted that the absence of fiscal stability on petroleum agreements (other than PSC's) was a serious impediment to investment in Russia.

**Saudi Arabia.** Saudi Arabia offers fiscal stability on its Concessions which are part of the gas development initiative in the Empty Quarter. However, no specific procedures are provided for what happens if fiscal stability is breached.

## Australia & Oceania

**Australia, New Zealand and Papua New Guinea.** The States and the Commonwealth of Australia do not offer fiscal stability, nor do New Zealand or Papua New Guinea.

## **PRODUCTION SHARING, SERVICE CONTRACTS AND HYBRID AGREEMENTS.**

Under Production Sharing, Service and Hybrid Agreements there is usually a degree of fiscal stability. Following is a description of the most important contracts.

### Latin America

**Mexico.** Just as Alaska, the Mexican service contracts are gas only contracts. Pemex provides stability with respect to the service contractual relationship (this means the service fees and payments to the contractor). **The Government of Mexico does not provide stability with respect to any taxes, however, contractor may seek an adjustment of the fees if additional taxes are being imposed.** It should be noted that the Mexican service contract was considered relatively unfavourable and was only accepted by a limited number of petroleum companies.

**Trinidad&Tobago.** The Production Sharing Contracts of Trinidad and Tobago provide for fiscal stability on the production sharing arrangement under the contract. Furthermore, the government provides stability with respect to taxes in income and profits. These taxes will be paid by government on behalf of the contractor. **There is no stability with respect to other taxes of typical general application, such as import duties or excise taxes.**

**CONFIDENTIAL**

SGI\_007789

## Africa

**Angola.** Angola commits to a high degree of fiscal stability. Any increases in any tax will be paid by Sonangol on behalf of the Contractor. Angola has also a renegotiation provision with respect to significant economic changes. In other words, there is a degree of economic stability in addition to fiscal stability.

**Egypt.** Egypt provides a considerable fiscal stability. EGPC, the national petroleum company, pays on behalf of the contractor all taxes on income and profits. Contractor is furthermore specifically exempt from any income and export duties. **However, Contractor is subject to other taxes of general application.**

**Gabon.** Gabon provides for a high degree of fiscal stability. Gabon pays corporate income tax on behalf of the contractor and makes the contractor specifically exempt from a range of taxes. **However, no fiscal stability is provided on property tax.**

**Libya.** Under the EPSA III agreements Libya provides rather extensive fiscal stability. Libya pays corporate income taxes and royalties on behalf of the contractor. Contractor is exempt from a variety of other taxes. Nevertheless, there is no absolute fiscal stability under the contract. I have not yet been able to study the more recent EPSA IV contracts.

## Asia

**Azerbaijan.** Azerbaijan provides near absolute fiscal stability. Contractors are exempt from all taxes, except profit tax. Profit tax is paid on behalf of the contractors by SOCAR. However, if SOCAR fails to pay some special agreement needs to be negotiated.

**Bangladesh.** Bangladesh Governments holds contractors harmless from most taxes. However, a variety of taxes is excluded, these include: **property tax, income tax on subcontractors and employees, non-discriminatory taxes on locally purchased goods and services and import duties and VAT on certain imported goods.** Profit oil and gas includes corporate income tax.

**China.** China does not provide fiscal stability for taxation under its PSC's. It only provides stability for the contractual provisions on production sharing itself.

**India.** Under its PSC's India only provides limited fiscal stability. Fiscal stability is provided for taxes on income and profit and certain import duties. **No fiscal stability is provided on a variety of other taxes of typical general application.**

**Indonesia.** Indonesia provides full fiscal stability, except for corporate income tax. Pertamina discharges all other taxes on behalf of the Contractor.

CONFIDENTIAL

SGI\_007790

**Iran.** Iran provides absolute fiscal stability through the compensation by NIOC for all taxes and levies.

**Kazakhstan.** Under the past PSC's contractors had a high degree of fiscal stability. Profits tax was guaranteed by a "frozen law" and provisions under the contract. Contractor was exempt from most other taxes. **However, Contractor is subject to VAT of general application.** I do not have the text of the latest contracts.

**Malaysia.** In general there is no fiscal stability under the Malaysian PSC's. **However, Petronas and the Contractor agree to renegotiate the contract if taxes are imposed that specifically target the petroleum operations and have a material impact on the government take.**

**Oman.** Provides near absolute fiscal stability. Corporate Income Tax is paid as a share of profit oil and gas, which is fixed. Contractor is exempt from all other taxes and levies.

**Qatar.** Provides near absolute fiscal stability. Corporate Income Tax is discharged on the PSC's by the Qatar Government Company and contractor is exempt from all other taxes.

**Turkmenistan.** Provides near absolute fiscal stability. Corporate Income Tax is defined in the agreement. Contractor exempt from all other taxes.

**Vietnam.** Provides near absolute fiscal stability. Petro-Vietnam discharges all taxes and duties on behalf of the contractor. Note: there have been problems with this, since Petro-Vietnam occasionally did not have the cash flow to fulfill these obligations.

## FISCAL STABILITY CLASSIFICATION

The "quality" of the fiscal stability offered around the world can be classified as follows from absolute to no fiscal stability:

Near Absolute Fiscal Stability - This is being offered by Peru, Angola, Azerbaijan, Iran, Oman, Qatar, Turkmenistan, Saudi Arabia and Vietnam.

*This is the type of fiscal stability proposed by the Three Sponsors in Alaska.*

Fiscal Stability on most taxes, except for some taxes which are typical of general application and not targeted to the petroleum industry - This is being offered by Trinidad&Tobago in their PSC's only, Egypt, Gabon, Libya, Bangladesh, India, Kazakhstan and Malaysia.

*This is the type of fiscal stability that is proposed by the State of Alaska to the Sponsors. In fact Alaska would be relatively "high quality" within this group.*

CONFIDENTIAL

SGI\_007791

**Partial Fiscal Stability: - This is offered by Bolivia, Mexico and Indonesia**

**No fiscal Stability: - All other jurisdictions.**

**In general it can be concluded that the "quality" of the fiscal stability offered by the State of Alaska would rate among the top 15 jurisdictions in the world in terms of degree of strength of the fiscal stability proposed.**

**There are no nations in the world that offer retro-active fiscal stability on petroleum that is external to the contract, as the Producers are seeking from Alaska.**

**CONFIDENTIAL**

**SGI\_007792**