CIP CENTER FOR PUBLIC INTEGRITY
Good Governance-Transparency-Integrity

Press Release

August 18, 2013

Questions Raised about the $400 Million Payment from ENI

Due to uncertainty over the legal status of Mozambique's capital gains tax, ENI payment appears to be based on negotiations rather than an impartial tax assessment.

A press release from the Italian oil company ENI, issued following a meeting between President Guebuza and CEO Paolo Scaroni in Changara, indicated that the company has agreed to pay $400 million in capital gains tax for the sale of a 20% of their stake in Rovuma Basin Area 4. Under the agreement, ENI also committed to construct a 75 mega-watt gas fired power station in Cabo Delgado.

In March 2013, ENI announced the sale of part of its stake in the Rovuma Basin to the China National Petroleum Corporation, subject to the approval of the Mozambican government. Determining the amount of capital gains tax to be paid on the $4.21 billion sale was a key issue in securing government approval.

Mozambique's taxation of capital gains on the sale of mining and petroleum rights has been inconsistent. No tax was levied on past transactions including the sale of 8.5% of Area 1 Rovuma Basin by Artumas in 2009 or the sale of 100% of the Riversdale Benga mine by Rio Tinto also in 2009.

And there have been no reports of tax paid on the recent transfer of 40% of the Petronas stake in the Rovuma Basin to Total or the transfer of half of Statoil's stake in the Rovuma Basin with 25% to Tullow and another 25% to INPEX.

A capital gains tax of $175 million (12.8%) was imposed on the 2012 sale of Cove Energy's 8.5% stake in in Rovuma Area 1 to the Thai Energy Company PTT. The imposition of this tax caught investors by surprise and resulted in a drop in Cove Energy's share price of more than 8%.

The legal basis for the imposition of a capital gains tax is unclear. Rules for resident companies are explicit, but this is not the case for non-resident (foreign) companies. A combination

Ficha Técnica

Director: Adriano Nuvunga

Edição: Centro de Integridade Pública

Endereço: Rua Frente de Libertação de Moçambique, Nº 354

Maputo - Mozambique

Tel.: +258 21 492335

Cel.: +258 82 301 6391

Fax: +258 21 492340

Caixa Postal: 3266

E-mail: cip@cip.org.mz

Website: www.cip.org.mz

Parceiros

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Agency for Development and Cooperation SDC

IBP INTERNATIONAL BUDGET PARTNERSHIP Open Budgets. Transform Lives.

DFID Department for International Development

FORDFOUNDATION

Koninkrijk der Nederlanden

ROYAL NORWEGIAN EMBASSY

SUÉCIA

Ibis Education for development

agir PROGRAMA DE ACÇÕES PARA UMA GOVERNAÇÃO INCLUSIVA E RESPONSÁVEL

DANIDA ROYAL DANISH EMBASSY IN MAPUTO

of provisions in both the corporate income tax law (IPRC) and the personal income tax law (IRPS) from 2007 was used resulting in a complex formula where the percentage of tax owning declines as the length of time of ownership increases.

In 2012, Parliament sought to clarify capital gains tax provisions in a new corporate income tax law (IRPC). They proposed a straight 32% tax, consistent with the current rate of tax on corporate income, with no reduction based on the length of ownership.

The law was passed by Parliament in December 2012 and sent to the President for signature. Citing concerns about the constitutionality of the law with retroactive effects, the President declined to sign the law. In January he asked the Constitutional Council to review the law. The Council provided an analysis of the issues but declined to rule on whether the law was unconstitutional. Parliament revisited the law and in May voted to revise the law making it effective only on 1 January 2014.

The taxation of capital gains in 2013 will be based on existing IRPC and IRPS laws of 2007. This lack of clarity is unfortunate given the scale of transfers.

ENI has already sold a 20% stake in Rovuma for $4.21 billion and is reported to be considering further sales. At the same time, 20% of the Anadarko-led concession is being sold – 10% from Anadarko and another 10% from the Indian company Videocon. Reports indicate that an Indian bid, if approved by the Government of Mozambique, could be valued at more than $5 billion.

The sale value of future rights in the Rovuma Basin in 2013 alone is likely to be nearly $10 billion. This is more than half of the GDP of the entire country. The impact on government revenue will be unprecedented. Government taxation on the sale of future rights to Rovuma Gas is worth many times more than all other payments by all extractive companies in Mozambique's history combined.

This makes the process by which ENI agreed to pay $400 million all the more important. ENI first sought to avoid the tax altogether claiming that it was merely selling a portion of ENI East Africa, a subsidiary registered in Italy. However, given that Rovuma Basin concession was ENI East Africa's only asset, the Government of Mozambique rejected this approach.

In early April, the Minister of Finance indicated that negotiations with ENI on the payment of a capital gains tax were difficult. This seemed to change following meetings between Prime Minister Vaquina and CEO Paolo Scaroni in Italy later in April. What happened between those discussions and the ENI press release in August is unknown.

What is clear is that decision-making is once again happening behind closed doors with no public explanation. A lack of transparency fuels speculation of wrongdoing.

Questions need to be answered, including:

- Why has there been no public explanation on how the 12.8% capital gains assessment levied against Cove Energy was determined?
- Why was there no assessment of a capital gains tax in the recent transfers of rights to the Rovuma Basin by both Petronas and Statoil?
- What was the formula for determining that the capital gains tax assessed on ENI would be $400 million (9.5%) and when was this assessment completed?
- How did the ENI commitment to build a 75mw power station impact on the amount of capital gains tax paid?
- What rates will apply to the sale of 20% of the rights to Rovuma Area 1 by Anadarko (10%) and Videocon (10%) and why can these rates not be announced in advance?