

TO: Katarina Kuai, Revenue Watch
Cc: Juliana Stoyanova, Nick Leffler
FROM: Mary Louise Vitelli, Esq.
DATE: April 1, 2011
RE: Review of EITI Reporting Templates

I have reviewed the EITI template and Revenue Watch comments and provide the following.

1. General Findings

- a. EITI focus on Costs. Apparently EITI is primarily focused on mine operation “payments”, not “operating costs” – this is not clear from this template and a clear statement up front on the objective of this reporting template would be helpful.
- b. Not all extractive industry in Afghanistan is the same. The template does not distinguish between some important factors that impact financial status of extractive operations.
 - i. Type of mine product
 - ii. Type of contract
 - iii. Financial structure (royalty schemes, financial structures, etc.)
 - iv. Level of production
 - v. Whether operation is state, private or quasi-state
- c. Need to review template terminology vis-à-vis extractive industry financial record-keeping. The template refers to items that are not known to the sector or are unclear, e.g.,
 - i. Land fee (this may refer to Surface rents?)
 - ii. Rental fee – some of the larger extractive industry operations are renters and rentees – should this be distinguished?
 - iii. Penalty – this is a very all-encompassing term in mining and would need more clarity/definition
 - iv. Bid Fee – wouldn’t this be considered as an operating cost?

- d. Little use of US\$. For these operations, financial record keeping is in afghanis, the use of US\$ is not relevant; if the EITI wants to insert these figures as dollars later that would probably be more practical.
- i. This is with the exception of the Aynak copper mine contract where US\$ are used.
 - ii. The gold mine contract will also likely be tracked using \$ and afghanis.
- e. Financial processes are not captured here – how payments are determined, how they are made. This would be very useful information.
- f. Distinction between state and private operations essential. The corporate structure of an extractive industry in Afghanistan will completely impact its financial record keeping, payment transfer processes and which laws are applicable.
- g. Some distinction of payments. Those that are legally required (taxes, royalties) and those that are simply made (community support, etc.)
- h. Some definition of which extractive industry operations must report needed. There has been discussion of establishing a financial threshold (e.g., revenues exceeding \$200,000 per annum) but also consideration of whether tracking sector activity would be more practical and useful should be given – e.g., the copper sector, the coal sector, the emerald sector, the gold sector.
- i. Measuring and monitoring socio-economic benefits value – more information on commitments made, baseline expectations would be useful.

2. Revenue Watch comments

- **Baseline Study** – speaking to revenue streams – this is important but does not seem to be part of the EITI mandate or reflected in the templates?
- **Audited Data** – most of the operations do not have a balance sheet; audited data will take time if to be meaningful. Other than Aynak copper and Marble (a bit) there are no “CFO”s in place, rather, the “senior accountant” who operates more or less as a bookkeeper.
- **Who fills out the Data** – with the private operations, they are already reporting to the Cadastre and Inspectorate at Ministry of Mines (MoM) and to the revenue and tax authorities at the Ministry of Finance so need to be careful not to overload them with more reporting. With SOEs, they will have to have their information first reviewed by MoM.

- **NCE as an SOE** – along with the Afghan State Gas Enterprise has a very different financial arrangement than private extractive industries. I am happy to present to EITI any time and we have brought NCE managers to EITI and can do again if useful?
- **General Formatting**
 - Type of Extraction – does this simply mean the mine product? Or perhaps type of technology used? Why not include?
 - In addition to instructions, actual training and a person to regularly consult/call will be needed.
 - Most of the gemstone and coal/gas operations do not have computers, never mind excel – perhaps hand filled forms to begin with? This is what the tax office uses in carbon copy format.
- **Revenue Streams Chart**
 - **PART 1 – applicable to all templates**
 - Taxes – there are four types: (1) income; (2) rental; (3) withholding (on employees and contractors); (4) business receipts. The May 2009 is in effect and each tax has a different due date throughout the fiscal year.
 - Bonuses – other than Aynak there is no such arrangement – this was contract specific and is not referred to as a bonus but as a “premium payment”. There are three tranches based on certain technical triggers. Some of those triggers have not been met but the License holder and Mom have made amendments in favor of assuring that some level of premium payments are still being made. The figures here are not correct (e.g. 30% was 20% and is miscalculated)
 - The extractive industry sector in Afghanistan is not sufficiently sophisticated yet to have divided equity – holdings to date are either 100% private or 100% state. This may be stated on the template.
 - Price – there are variations depending on the mine product; with coal the price is fixed by the Cabinet of Ministers. Royalties to date have been levied almost as a “best guess” but if able to capture this methodology in the template would be useful.
 - Capturing by mine product would be useful; the idea of multiple purpose companies is starting – for example the Afghan Gas company sells natural gas as well as condensate.
 - The QEIT tax advantage is not sufficiently used in Afghanistan – there are other requirements but mine operators should be educated on this and how to use it.
 - Customs usually has a 2% on mine products, I have not heard about the 3% on marble and wonder its genesis?
 - Donations is an interesting name! It might be broken into:
 - Community and social support
 - Cash transfers

- Collecting agencies and destination funds – yes, this gets to process which is essential if to really understand where the cash is going.
- What is bid fee – to cover the cost of buying tender documents, etc.?
- **PART 2 – Applicable to Company Template**
- Yes, mine production would be important to reconcile fiscal payments
- Social payments break out is good, will also be useful to understand:
 - Were these contractual (ancillary agreements) as part of the mine award?
 - Were these ad hoc payments?
 - Were these payments given at the direct request of authorities (e.g., local government asking to build a road, school, etc.)
 - Extra payments to workers not included in salary or state benefits
 - Cash and in-kind payments

3. MLV Recommendations re: Extractive Industry Companies

- a. *Two templates.* At least for phase 1 of AEITI work, since dividing templates per mine product is unlikely:
- i. One template for SOE Extractive Industry (see attached sample)
 - ii. One template for Private Extractive Industry
- b. *Priority areas.* Work together at MoM to better define priority extractive industry operations and/or thresholds for reporting. It might be worth considering whether instead of a dollar threshold, we use categories of commodity for this next year, for example:
- i. Aynak Copper
 - ii. Marble Enterprises
 - iii. Northern Coal Enterprise
 - iv. Khoshak Brothrs (formerly Sabzak) Coal enterprise
 - v. 5 Private Coal Mines
 - vi. Gold Mine (being tendered)
 - vii. Chromite Mine (being tendered)
 - viii. Lithium (may be tendered)
 - ix. Hajigak Iron Ore (being tendered)

Other aspects to consider for Afghanistan Extractive Industries:

1. *Natural Gas*. Afghan Gas is barely operating; it would seem premature to begin tracking
2. *Precious gems* are highly functioning but EITI would need to devise a very good and safe strategy to begin to implement EITI reporting. If so, it might be useful to address by specific sector, e.g.,
 - a. Panjshir Emeralds
 - b. Badakhshan Lapis
 - c. Jegelek Rubies
3. *Cement*. There are three cement operations that include the various extractive industries attached to them (e.g., limestone, clay, gypsum, etc.) – Puli-Khumri (Ghori); Heart and Jebal Seraj. At least the Puli-Khumri operation is working and perhaps should be reporting on EITI.
4. *Oil*. It is anticipated that a tender shall be conducted this year; will this be included in EITI?

**Sample Reporting Template
SOE Extractive Industry¹**

Name of Company _____
Type of Mining _____

This Reporting template only seeks information on payments made by the Company during the reporting period.

Reporting Period _____

1. General Company Information for this Reporting Period

Company Information	Amount
Tons ² / Produced	
Tons/ Sold	
Price per Ton/	
New non-tashkeel staff hired	
New contractors hired	

2. Tax Payments Made by the Company for this Reporting Period

Type of Tax	Paid to Which Entity?	Total Amount Due	Amount Actually Paid
Federal Tax			
i. Income Tax			
ii. Business Receipts Tax			
iii. Withholding Tax			
iv. Rental Tax			
Provincial Tax			
District Tax			
i. Social Tax			
Total Tax Payments			TOTAL

¹ At present the only SOE extractive industries are in coal and natural gas.

² For gas can use cubic meters measurement; for oil can use barrels.

3. SOE Legally Required Payments Made by the Company for this Reporting Period

Legally Required Payment	Paid to which Entity?	Total Amount Due	Amount Actually Paid
i. Surface Rent	<i>MoM</i>		
ii. Royalty			
iii. SOE Payment	<i>MoF</i>		
Total Paid			TOTAL

4. Penalties Paid by the Company for this Reporting Period

Type of Penalty	Paid to which Entity?	Total Amount Due	Amount Actually Paid
i. Inspectorate Penalties	<i>MoM</i>		
ii. Environmental Penalties	<i>NEPA</i>		
iii. Late Payment Tax Penalties	<i>MoF</i>		
iv. Late Filing Tax Penalties	<i>MoF</i>		
v. Other Penalties (explain)			
Total Penalties Paid			TOTAL

5. Other Payments Made by the Company for this Reporting Period

Payment Item	Payment made based on what Decision?	How was payment made – cash? In-kind?	Total Amount or value of payment	Actual Amount Paid
Contractors				
Non-tashkeel workers				
Transfer Funds to other SOEs				
Transfer Funds to Government Agency				
Rent (for buildings, use of property)				
Total Other Payments Made				TOTAL

**Sample Reporting Template
Private Sector Extractive Industry³**

Name of Company _____
Type of Mining _____

This Reporting template only seeks information on payments made by the Company during the reporting period.

Reporting Period _____

1. General Company Information for this Reporting Period

Company Information	Amount
Tons/ounces/barrels Produced	
Tons/ounces/barrels Sold	
Price per Ton/ounce/barrel	

2. Tax Payments Made by the Company for this Reporting Period

Type of Tax	Paid to Which Entity?	Total Amount Due	Amount Actually Paid
Federal Tax			
i. Income Tax			
ii. Business Receipts Tax			
iii. Withholding Tax			
iv. Rental Tax			
Provincial Tax			
District Tax			
i. Social Tax			
Total Tax Payments			TOTAL

³ At present the only SOE extractive industries are in coal and natural gas.
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3. License Payments Required and Payments Made for this Reporting Period

Legally Required Payment	Paid to which Entity?	Total Amount Due	Amount Actually Paid
i. Surface Rent			
ii. Royalty			
iii. License Fee			
iv. Permits			
v. Investor dividends			
vi. Other			
Total Paid			TOTAL

4. Penalties Paid by the Company for this Reporting Period

Type of Penalty	Paid to which Entity?	Total Amount Due	Amount Actually Paid
i. Inspectorate Penalties			
ii. Environmental Penalties			
iii. Late Payment Tax Penalties			
iv. Late Filing Tax Penalties			
v. Other Penalties (explain)			
Total Penalties Paid			TOTAL

5. Ancillary Contract or other commitments and Payments Made for this Reporting Period

Payment Item (examples below)	Contract Requirement? (yes or no)	If not Contract requirement, how did commitment develop?	Total Amount or value of payment	Actual Amount Paid
i. Community support funds				
ii. Seconded workers to help on local project				
Total Ancillary and Other Payments Made				TOTAL