

# *Capital Gains in Extractive Industries*

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# *Agenda*

1. Indirect disposals
2. Direct disposals
  - Context
  - Taxation rate
  - Background
  - Accounting aspects
  - Common structures
3. Trends

# *Indirect disposals*

# *1*

## *Indirect disposals*

- ***Domestic regime does not regard them as taxable (Articles 24 and 265)***

- Draft law (2012)

*"Profits from operations that lead to the internationalization of ownership of assets located in the country, regardless of the legal means employed for that purpose in the country or abroad."*

- Exception for domestic corporations with respect to taxes (Article 12.1)



They are not  
very common



Fiscal disadvantage of  
the purchaser

# *Direct disposals*

# 2

# ***Direct disposals***

## *Context*

- *Total or partial transfers of rights in exploration and production, partnership and other contracts (private participations).*
- *Very common at the exploration stage and in special times for the industry (price crises)*
- *Absence of a fiscal regime for the industry. General rules*
- *Few precedents due to fiscal disputes*

# ***Direct disposals***

## *Taxation rate*

Positive or negative net earnings may qualify as:

**A.** *Regular income or loss.*

**B.** *Occasional profit or loss (additional).*

### ***A. Regular income or loss***

- *Rights or participations possessed for less than 2 years.*
- *Profit can be set off against regular tax losses (they do not expire).*
- Net tax base versus sales price (Article 90- Commercial Value).

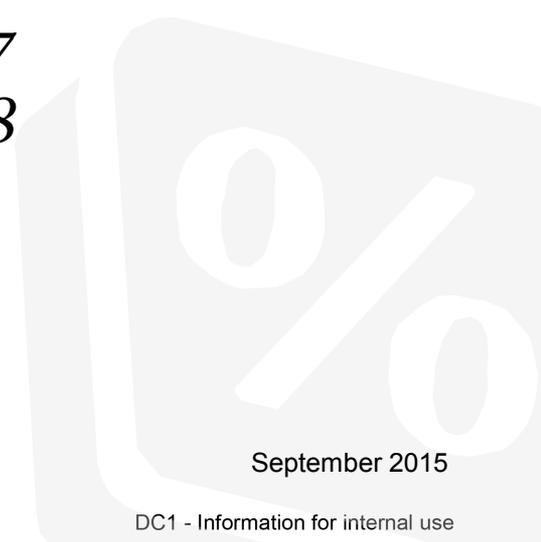
# Direct Disposals

## Taxation rate - cont.

### A. Regular income or loss

- *Taxable income \* 25% (income) + 9% (“income tax for equality” or CREE)*
  
- *Incremental rate of CREE*

5%	2015
6%	2016
8%	2017
9%	2018
  
- *Recapture of depreciations allowed*
  - From 2012 backwards?
  - Constitutional Court
  - DIAN (Colombia's Taxes and Customs Directorate)



# **Direct Disposals**

## *Taxation rate - cont.*

### **B. Occasional profit or loss (additional).**

- *Rights or participations possessed for 2 or more years, provided they are fixed assets.*
- *Profit can only be set off against occasional tax losses (of the fiscal year)*
- Net tax base versus sales price (Article 90- Commercial Value).
- *10% occasional profits tax*
- **Recapture** of depreciations already allowed (*from 2012 backwards?*)

## ***Direct Disposals***

### *Taxation rate - cont.*

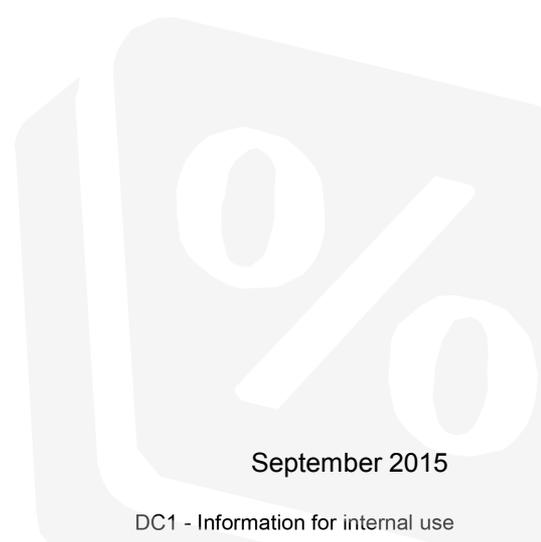
#### **C.** Sales price must be no less than 75% of the commercial value

- Recoverable reserves as a measurement item (Judgment of 2003).
- Costs incurred as a measure of the value of the right/claim (Judgment of 1994).

#### **D.** "Carry" as an assessment factor

#### **E.** Absence of VAT and other taxes

#### **F.** Business restructurings



# *Disposals of rights in petroleum contracts*

## *Regional Comparison*

<i>Country</i>	<i>Rate</i>	<i>Recapture</i>	<i>Offsetting losses</i>
Argentina	35%	No	Yes
Ecuador	22% to 25%	No	Ring Fencing
Colombia	10% to 39%	Yes	Yes*
Peru	28%	No	Yes*
Mexico	30%	No	Yes*

# ***Direct Disposals***

## ***Accounting Aspects (IFRS)***

### ***Contracts with unproven reserves (exploration)***



- Treat money received as less value of the investment (without profit unless it exceeds the value of the asset).
- There is no accounting income, but there is tax income.
- Withholdings at source/down payments unnecessary.

# ***Direct Disposals***

## *Commonly found structures*

### ***Commonly found structures***

- A** Transfer for a price in cash and/or kind.
- B** Transfer without a price but with "carry."
- C** Transfer with price in cash and/or kind plus carry.
- D.** Transfer without price with the assignor required to pay

# *Trends*

# 3

PwC

September 2015

DC1 - Information for internal use

# *Direct Disposals*

## *Trends*

### *Trends*

***Streaming*** (originally mining, but gaining ground in hydrocarbons)

***Overriding royalties***

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# *Thank you*