Dear Editor

The Minister Pays Exxon US$15 Billion Tax Bill

The ExxonMobil Petroleum Agreement purports to provide Guyana with 2% royalty commission and 50% of the profits. At the upper-cost ceiling of 75%, Guyana is expected to receive 12.5% of the oil revenues. With Exxon's discovered eight billion barrels plus a projected additional find of two billion barrels, Exxon is expected to produce and sell ten billion barrels. This will yield $600b at a current price of $60 per barrel. Thus, Exxon's and Guyana's shares of the net profit would be $75b each. Exxon gets its $75b tax-free. If Exxon were to pay corporate income tax at 20%, Guyana would have received an additional $15b. In other words, Guyana loses $15b.

The careless way in which the Agreement is drafted denies not only Guyana revenues but also facilitates potential international tax evasion. Article 15 of the Agreement provides that no tax, value-added tax, or duty shall be levied in respect of incomes derived from the Petroleum Operations or any property held by the Parties. At a conservative estimate, Guyana is being deprived of another $5b in value-added tax and duty and capital gain taxes.

This Agreement has the potential for causing Guyana to be mired in one of the largest international tax scandals. The Agreement states at article 15.5 "….The Minister shall note that he is paying the income taxes on behalf of the Contractor, so that the Commissioner-General, Guyana Revenue Authority can properly prepare the receipts required under this Article 15.5". The activity is evident here; Exxon pays no income tax, but the Guyana Revenue Authority will issue a receipt that shows that Exxon has been issued with an Income Tax Assessment that has been paid. It is left to speculation as what purpose this receipt will serve. One such use is to avoid double taxation in other taxing jurisdictions. This arrangement is fraught with contentious legal implications. Is Guyana aiding and abetting international tax evasion?

The more immediate question is: under what law and authority are the Minister authorized to pay the Contractors' Tax Assessments and the Commissioner-General of Guyana Revenue Authority authorized to issue a tax receipt for taxes purported to be paid but not actually paid? I am unable to find any law of Guyana, including the Income Tax Act and the Corporation Tax Act that permits these actions. The Minister and the Commissioner-General run the risk of acting contrary to law and may be held personally liable for damages to the Guyanese people, in addition to criminal charges.

The big picture of this anomaly in the Agreement is that the Contractors are not paying any taxes, but they are being assessed for income tax, and they are given receipts evidencing that the tax is paid. Also, there is no law or legal authority to permit these transactions. Does this render some or all of the taxing clauses in this Agreement void? Given the seismic impact of the taxes and revenues involved, does this go to the root of the Agreement and renders the whole Agreement void ab initio?

This exposé represents just one aspect of the many perils of the Guyana-ExxonMobil Petroleum Agreement. In the interest of a clean and healthy relationship between Guyana and the Contractors going forward, I am proposing that this Agreement be revisited and revised to produce a fair, equitable and legally binding Agreement.

Yours truly

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