Precept 4: Taxation and Other Company Payments

Tax regimes and contractual terms should enable the government to realize the full value of its resources consistent with attracting necessary investment, and should be robust to changing circumstances.

–Precept 4, Natural Resource Charter

Resource extraction can be a significant source of revenues for a government. But for this to happen, the government must balance obtaining a share of the value of the resource with terms attractive enough for capable companies to invest. Finding this balance is tricky and requires effective governance on four tasks. The first is setting fiscal terms that are neither too high nor too low and that provide a suitable share of both the risk and return of extraction operations (Q4.1). The second is creating a legal framework that provides sufficient assurances to investors, but is not so rigid that the assurances prevent the government from responding if economic circumstances change significantly (Q4.2). The third is ensuring that authorities collect the full amount of revenue set by the fiscal terms (Q4.3). The fourth is to ensure that government officials are held to account for each of these tasks (Q4.4).

The following questions are applicable to all types of fiscal regime design, including production sharing arrangements, concessionary regimes and service contracts. While these regime types have different terms, the government can design a tax-royalty regime to have similar economic properties to a contractual regime, and vice versa. Many of the governance principles described in this section are applicable to all types. Unless specifically stated, the terms "tax" and "taxation" refer to both tax and non-tax instruments (e.g., royalties) that transfer revenue from a company to the government.

PRIMARY QUESTIONS

4.1 | Setting fiscal terms

Does the fiscal regime secure a reasonable return for the government while still attracting sufficient investment?

4.2 | Legal framework of fiscal terms

Does the legal framework of fiscal terms provide sufficient accountability to citizens, stability for investors and flexibility to respond to changing circumstances?

4.3 | Tax administration

Do government authorities collect the full value of taxes and other payments owed to the state?

4.4 | Accountability and transparency of fiscal regimes

Is the government held to account for setting and collecting taxes and other company payments?

4.1 | Setting fiscal terms

Does the fiscal regime secure a reasonable return for the government while still attracting sufficient investment?

A fiscal regime comprises a set of terms that dictate how much companies should pay to a government in taxes and other types of payments such as royalties and production shares. A well-designed fiscal regime ensures that companies pay as much revenue as possible while ensuring that investors find that country attractive to invest in, through payments that are timed according to the country's needs and consistent with the government's desired rate of exploration, development and production. A well-designed fiscal regime also attracts capable investors, promotes greater resource discoveries, controls production costs, and creates competition for resource licenses—which in turn promote greater revenues.

The optimal design of a fiscal regime depends on a country's circumstances and the government's revenue collection objectives. The three principles below are a condensed version of a substantial body of thought on this subject (Natural Resource Charter precept 4; IMF 2012; Nakhle 2010).

Three principles of resource taxation

A. **Obtain the highest return for the state for the depletion of its resources.** The value of extracting a resource—over and above the costs of extraction, including the minimum required financial return for investors (the competitive cost of capital)—is called rent (Daniel et al. 2010). Rent provides an opportunity to tax a company without damaging its incentives to operate. In other words, taxing just the rent is neutral. However, determining the amount of rent is difficult. How much rent a project will produce in the future is highly uncertain, and difficult to measure when it does. If a government taxes companies more than the available rent, some investment would be deterred, and if a government taxes less than the available rent, a country does not realize the full revenues from extraction.

B. **Expose the government to only so much risk as the government's ability to manage volatile revenue.** Resource projects are subject to risks from volatile commodity prices, uncertain geology and changing costs. These result in an uncertain income for investors and the government. The fiscal regime determines in part how the government and the company share this risk. Both parties naturally wish to receive more income and less risk, so to take on more of the risk, either party will seek to gain a higher share of the income.

   In designing a fiscal regime, a government should only expose itself to a variance of revenues that it can manage. Given the magnitude of commodity price swings, much of this risk of varying revenues should be managed by reserves or stabilization funds (see precepts 7 and 8) and reliance on other sources of government income, provided the country's economy is sufficiently diversified. However, many governments do not have such policies in place or have yet to diversify their economies. In these cases, the fiscal regime becomes an important first line for managing revenue risks.

   The terms progressive and regressive regimes relate to risk sharing. Progressivity means that the government share will rise as the rate of return rises. Progressivity implies that in periods of low profits, the government receives a lower share. Therefore, progressivity may be less desirable in countries where the government cannot manage the risk of low or zero revenues for extended periods of time. However, limiting progressivity will often conflict with an objective of taxing rent (see first principle, above) and the political desire for revenues to increase with prices. Governments can change the fiscal regime as prices or other economic conditions change, but investors generally prefer to invest in countries in which future tax terms are stable and predictable. Therefore, some automatic flexibility of terms—via progressivity—may be desirable to avoid changing terms too often. (See question 4.2.1.)

   Part of risk sharing also relates to the expected timing of payments, which is influenced by the fiscal regime and is also a matter of preference. Most governments aim to gain income sooner rather than later; this is particularly true of those with limited access to credit markets or an undiversified revenue base. However, other things being equal, earlier payments to governments mean delayed income for the company, which is also seeking as quick a payback of its capital commitment as possible. So the company will seek to gain compensation for any delay via lower overall tax payments over the life cycle of the project, or instead will invest elsewhere.

C. **Make the fiscal regime as simple as possible—but not too simple.** Achieving the first two principles requires the practical step of actually collecting revenues, often when dealing with companies proficient at minimizing their obligations and keen to avoid unnecessary compliance costs. The government should set terms and procedures that limit the costs of company compliance, and be as easy as possible for authorities to administer (see Q4.2). However, the simplest of tax instruments and rules are not necessarily the best for achieving the first two principles listed here, so some balance is required.

It is difficult to set a fiscal regime that meets these three principles perfectly—instead, a government must compromise. For instance, taxing rent may require tax terms that are difficult to administer, but terms that are easier to administer may not be as effective for taxing rent. The most appropriate balance will be different for each country. For most situations it is only possible to identify minimum qualities that a fiscal regime should feature. The first five secondary questions in this section cover these principles.

Not covered in these principles is the appropriate rate and base for each fiscal instrument. Ascertaining this requires advanced analytical techniques and difficult-to-obtain data. Instead of requesting researchers to undertake these analyses, Q4.1.6 assesses instead whether the government has the right tools and skills to do so.

A government may have a single set of fiscal terms that applies to all companies, or different sets for different companies. If the latter, the researcher should try to comment on all fiscal regimes applicable in the country. At a minimum, researchers should focus on the most economically relevant ones. (Often, these will be the largest projects.)

Researchers can find useful information for these questions in the following:

- For copies of legislation and government documents, government websites, or summaries of legislation are also available by third party providers. For instance, the global accounting and consulting firm EY produces a regularly updated summary guide for oil and gas fiscal regimes. PricewaterhouseCoopers produces one for mining.
- If publicly disclosed, contracts between governments and companies may be hosted on www.resourcecontracts.org and EITI country sites.
- EITI reports can be useful for basic descriptions of fiscal regimes. Requirement 3.2 of the EITI standard asks for a “description of the legal framework and fiscal regime governing the extractive industries.” This includes “a summary description of the fiscal regime, including the level of fiscal devolution, an overview of the relevant laws and regulations,” and a “description of each revenue stream, related materiality definitions and thresholds.”

Secondary question	Guidance
4.1.1 **Royalty or cost limit** Does the fiscal regime include a tax on gross sales—a royalty or equivalent—to ensure the state receives some payments despite changes to profitability?	A tax on gross sales can, combined with other terms, help meet the three principles described above. Terms equivalent to a gross sales tax are a royalty, a minimum production share or a cost limit/recovery provision within a production sharing arrangement (most common in petroleum), or an economically equivalent term in a service contract. A signature or production bonus also has similar properties. These types of fiscal provisions are not strictly necessary, but are very useful for countries in urgent need of revenue, are reliant on resource revenues for the budget (see precept 7), or have poorly functioning tax administrations (Q4.3). In these cases, a gross sales tax or the equivalent is useful for two reasons. First, such a tax typically brings forward the timing of payments to the government, and makes it more likely that payments are made even in periods of low profits. For revenue-starved and risk-averse governments (potentially many developing countries) this can be an important characteristic. Second, royalties can, if simply designed, reduce the risk that a company avoids payments. For instance, an *ad valorem* royalty using a global price benchmark is comparatively easier to administer than taxes based on profits (such as corporate income tax). Measuring sales revenue, however, remains a difficult task (Calder 2014). More complex provisions, such as royalties with net-back provisions that require calculations of transport, refining and other costs, are not of this type. Although they share some of the characteristics of a tax purely on gross sales, the calculation of transport, refining and other costs can make administration more difficult. The desirable royalty rate and base depends on the level of risk the government and company wish to share. A higher royalty, without other compensating mechanisms, means a more regressive fiscal regime but assures a minimum return to the government. In extreme cases, a high royalty payment may push the company into a loss-making position during periods of low prices, limiting investment or discouraging a company from extracting high-cost or lower-quality resources (a practice called high-grading).
4.1.2 **Variable tax on rents** Does the fiscal regime include a variable rate tax (rent tax or excess profits tax) targeted explicitly at rents?	In addition to a gross sales tax, a good way to design a fiscal regime with the three principles of resource taxation described above is to use a tax explicitly designed to target rent using a variable rate structure. This is a tax whose rate changes according to the estimated rent produced by the project. A variable tax can often help a regime tax rent more effectively than just a royalty and corporate income tax with fixed rates. It can make a fiscal regime more progressive, which can ensure a better capture of rent and risk sharing (principles A and B above). Further, the government can design variable taxes to be no more complex than a standard corporate income tax provision. There are a variety of taxes of this type including a brown tax, R-based cash flow tax, and allowance for corporate equity or capital (Land 2012). Excess profit taxes are also variable taxes.
4.1.3 **Corporate income tax** Does the extractive sector fiscal regime include the generally applicable corporate income tax in the country?	The standard corporate income tax (CIT), applicable to all other sectors of an economy, should also apply to resource companies. A CIT can tax some rent in combination with a gross sales tax (Q4.1.1) and a variable tax (Q4.1.2), but CIT is important for two other reasons. First, it reduces the opportunities for tax avoidance. If an extractive company faces a different corporate income tax than other businesses in the country, there is an opportunity for the owner to shift profits from the sector with the higher tax rate to a subsidiary business in a sector with the lower tax rate. Second, it is common for those few countries with worldwide taxation rules to offer tax credit for payments on standard business taxes. Therefore, resource companies are likely to receive a tax credit on their CIT payments in their home country, which reduces the burden of taxation without harming revenues for the host country government.

4.1.4 **Investment incentives** Has the government avoided the use of costly or non-essential investment incentives?	Governments can provide individual companies or groups of companies with *investment incentives* or *tax incentives* which serve as additions or amendments to the legislated fiscal regime. These alterations may attract some investment and provide government revenue, and are sometimes used to encourage companies to continue extraction during the mature stage of the project life cycle. However, such incentives can be problematic for four reasons. First, tax competition between countries is a growing phenomenon in which governments try to attract capital away from their peer countries. However, as all countries "race to the bottom," the result merely reduces global tax rates, without necessarily attracting more capital. Second, there is a risk that a government gives too much away. Economic conditions are constantly changing: a project that is profitable one year may not be the next, and vice versa. Investment incentives do not usually take this into account and risk sacrificing revenue on a project that would have been profitable even without the incentive. Third, there is a risk that investment incentives are not given on a purely economic basis, but as a result of lobbying. Fourth, investment incentives create multiple fiscal regimes, making tax administration more difficult. Investment incentives are best avoided, but if a government does use them it is better to make changes to the overall fiscal regime than provide incentives to individual companies. Taxation in accordance with legislation makes it more likely that changes are being made in the interests of the country rather than as a result of company lobbying of individual officials. Furthermore, it is better that investment incentives are limited to deductions from the tax base rather than consisting of complete exemptions from taxes, such as tax holidays. This ensures that the authorities still collect information on the taxpayer that is useful for the administration of other taxes. For example, information on royalties is useful for the collection of corporate income tax, and vice versa. Investment incentives sometimes proliferate when different government agencies, such as the ministries of finance, commerce or investment, are able to give incentives. Limiting discretion to one authority can be helpful (Q4.3.3). *Researchers should consider:* • Has the government avoided exempting resource companies entirely from paying certain taxes? • Has the government avoided giving tax holidays to companies? • Can only one government authority grant investment incentives to resource companies? • If the government has given an incentive, has it demonstrated the net benefit taking into account the loss of revenue, and costed out in annual budgets?

4.1.5 **State equity** If the state holds equity shares in resource companies, are the expected fiscal and non-fiscal benefits of the equity greater than the costs of acquiring it?	Many governments of resource-rich countries elect to hold equity shares in resource companies or projects. It can be in the form of: • **Paid equity:** The government pays upfront for the equity. • **Carried equity:** The company lends the government the capital to purchase the equity and recoups the amount plus interest via a tax reduction. • **Free equity:** The company provides equity for free, equivalent to a tax for the company. A state share may allow the government to benefit when the company declares a dividend and may give the state a position on the governing board, although tax terms and regulations offer similar, and sometimes better, benefits than a state share. First, a state share as a revenue raising instrument is no different from a profits tax, except that dividends from equity are typically paid later than profit tax payments, if at all. Second, equity allows the government to gain information by having a seat on the corporate board, although in theory much of the informational benefits can also be achieved through equivalent regulation. For instance, an alternative is to use a "golden share," which gives the government a position on the governing board with less cost to the government. Further, there are often significant downsides to obtaining a share of company equity. First, whichever form it takes, equity is costly for a government. Paid equity results in a payment upfront and calls on the government equity holder for addition cash during project operations. Carried equity leads to a reduction in government revenue during the project. Free equity may result in the company offering a lower bid price or negotiated set of terms (or the company may altogether avoid investing the country because the free equity provision lowers their total return.) See Precept 6 on matters relating to states owning a majority share in extractive companies. *Researchers should consider:* • What equity shares does the government own in resource companies? • How has the government acquired these shares? Through paid, carried or free arrangements? What interest is charged on carried arrangements? • What dividends has the company paid to the government shareholder? • Does the government hold any golden shares or otherwise controlling shares in companies? • Has the government used its shareholdings to positively influence corporate decisions?

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<td>4.1.6
Fiscal regime evaluation techniques

Do government officials have the expertise and information to evaluate and design fiscal regimes?</td>
<td>A strong fiscal regime requires several ingredients. The first is a team of skilled experts, which can include geologists, accountants, lawyers and economists. Second is information on the extraction projects, the companies, and the global commodity and capital markets. This includes accurate data on project costs, a well-established discount rate used for government project assessments, and realistic and established assumptions on prices. Some of this information can be purchased from global data providers, other information is sourced from the companies themselves, the tax authority and other government agencies. Third is a methodology to analyze the combined effects of different tax terms on the company and government. Discounted cash flow models (such as the IMF's FARI model) are generally considered the best available such tools.

If the government manages these ingredients correctly, the government can produce a range of evaluation metrics on fiscal regimes to assess whether a regime adheres to the three general principles detailed in Q4.1. Metrics include: net present value of the project, payback period for the investor, internal rate of return for the investor, average effective tax rate and marginal effective tax rates, net present value of government revenue, and the profile of revenue payments over time. Together, they help a government set fiscal regimes that:

• Provide a minimum return to attract investment while maximizing government take.
• Understand when a company might start to pay taxes.
• Consider the impact of a range of factors, such as changes in commodity prices.

These metrics are particularly useful when negotiating with companies in possession of their own highly sophisticated models.

Researchers should consider:

• Does the government operate spreadsheet models to analyze its fiscal regime reforms?
• Are there a skilled civil servants with the skills to operate spreadsheet models and interpret the results?
• Are there data on taxpayers, particularly their costs, available to use in to the model?</td>
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4.2 | Legal framework of fiscal terms

Does the legal framework of fiscal terms provide sufficient accountability to citizens, stability for investors and flexibility to respond to changing circumstances?

How fiscal terms are set within the law is important for two reasons. First, the legal structure can assure investors that the fiscal regime they invest under will not change significantly over time. Second, setting terms in legislation or regulation that is generally applicable and transparent reduces discretion and helps prevent officials from setting terms that are in their own interests, rather than in the interests of the country. Legislation also provides equality between taxpayers, can significantly reduce transaction costs, and helps ward off claims of special treatment. While these two objectives are important, there is a balance between fixing fiscal terms within the law and allowing enough flexibility to change terms as circumstance evolve.

Secondary question	Guidance
4.2.1 **Scope of law** Does the government set all fiscal terms using legislation or model contracts, with a minimum number and defined scope for bidding or negotiation terms?	By establishing as many fiscal terms as possible within legislation, a government can limit the discretion of individual officials to set terms with companies. Some terms must be left open for negotiation or bidding in an auction, but the government should ensure the scope of these is limited. For example an auction could use a signature bonus or production share as the bidding variable. *Researchers should consider:* • How much of the extractive sector fiscal regime is set within legislation or regulation, and how much within contracts? • If the government uses long contract documents to govern specific extraction projects, does it follow a model contract? • Is this model contract publicly available? • Are there only a minimum number of terms (fiscal and non-fiscal) that are left variable? (This could be for auction or negotiation purposes.)
4.2.2 **Stability clauses** If there are legal clauses that stabilize legal terms governing an extractive project, do these clauses limit stabilization to key fiscal terms, and is stabilization limited in duration?	Investors are usually attracted to countries that offer stable tax regimes. This is partly because investors want to be assured that the government will not raise taxes once investment is "sunk" (Hogan and Sturzenegger 2010). To assuage investors' concerns, governments sometimes use measures to provide some predictability. One common measure is a stabilization clause, which prevents a government from changing taxes or other regulatory terms for a set period of time after a contract has been signed, or ensures that the investor is compensated for changes which adversely affect it. This offers stability to investors, but prevents governments from responding to changes in economic conditions. If a government offers these clauses, it is best to limit their scope to only a few necessary terms, to tax rates rather than the definition of the tax bases (for example, what constitutes profits for the purposes of corporate profit taxation), and their duration to only a few years. (See Mansour and Nakhle, 2016 for three common approaches to choose from.) Another approach is to offer stabilization at a price, for example at two percentage points higher than corporate income tax. Stabilization clauses are no panacea for investors, with governments often changing fiscal terms despite such clauses. Stability clauses alone are insufficient and should be replaced, or at least reinforced, by fiscal mechanisms that provide inbuilt flexibility. Progressive fiscal regimes, sometimes using resource rent taxes or similar terms, ensure the fiscal burden automatically adjusts to changes in prices and profitability. (See Q4.1.2.) Better revenue management systems in general also ensure that government budgets are more insulated from commodity volatility and alleviate the pressure on the government to change taxes. (See Q7.3.) Researchers may find evidence of stabilization clauses in contracts (see www.resourcecontracts.org), or summary tables (such as Mansour and Nakhle 2016). *Researchers should consider:* • Is the scope of stabilization clauses limited to only a few terms and a few years? • Do companies face a progressive fiscal regime that responds automatically to changes in profitability? Researchers can use government or third-party analysis to calculate progressivity. Researchers can also check answers to Q4.1.2 to ascertain whether variable taxes are used in the fiscal regime, as these provide some degree of progressivity.

4.3 | Tax administration

Do government authorities collect the full value of taxes and other payments owed to the state?

The administration and collection of taxes is often the weakest link in an otherwise well-functioning fiscal system. Companies may actively evade taxes they are legally obligated to pay, or avoid paying taxes by legally acting in a way to minimize their tax bill. While resource-related fiscal regimes are not necessarily more difficult to administer than generally applicable tax regimes, the task can still be challenging, and the cost of failure significant for resource-dependent countries.

Fiscal regimes with non-tax payments such as production sharing arrangements are just as exposed to tax evasion and avoidance as tax-royalty regimes. Production shares are based on a measure of costs, so companies can just as easily seek to inflate reported costs. The cost limit provisions often associated with production sharing arrangements can put a cap to how much costs a company can report for these purposes, but this is economically equivalent to charging a royalty in a tax-royalty regime. An important exception are production sharing agreements (PSA) that are joint ventures (a common situation in the oil and gas industry) where the company is responsible to the other participants.

All governments face tax administration problems, and no government has been able to completely prevent companies from avoiding and evading taxes. The most governments can do is put in places rules and processes to minimize these practices. The following questions address the most important rules and processes.

Secondary question	Guidance
4.3.1 **Fiscal regime simplicity** Are the definitions of tax bases similar to one another, and is there a reasonable limit on the number of tax types?	A tax base is the value to which a tax rate is applied. For example, the base for most royalties is the gross sales value of a company's production, while the base of corporate income tax is the profits of a company. A fiscal regime with many tax types and complex definitions of tax bases hinders effective administration. Such fiscal regimes can be improved in three ways: First, having a large number of tax types with different bases multiplies the tasks administrators must perform and the expertise they need. To avoid this, officials can ensure that different taxes use similar definitions for tax bases. For example, the sales revenue definition for a royalty could be the same as the one used for the resource rent tax, or the definition of costs used for a resource rent tax could be used for corporate income tax. Second, applying a large number of different taxes is problematic. So-called "nuisance taxes" including regional levies or fees for different agencies should be avoided where politically possible, or at least made easier for companies to comply with and for the tax authority to administer. Further, some tax regimes have multiple taxes that achieve similar economic outcomes. In many cases, just one tax would achieve the same economic result. For instance, a regime may not need both a royalty and cost limit provision in a production sharing contract as these perform similar financial functions. Third, the government can achieve simplicity by ensuring that tax laws are clear and easy to follow, not open to technical disputes, and accessible to taxpayers, administrators and the wider public. It is also useful to limit the array of legal documents that describes the tax regime, and to publicly disclose contracts, addendums and amendments. (See Q4.4 and Q2.1.1.) *Researchers should consider:* • Are there a limited number of fiscal terms set for each company? Researchers may look out for instances of local taxes, the existence of both royalty and cost limit provisions, and other instances where there may be taxes with similar functions. • Which fiscal terms use similar bases (for example, the corporate income tax and rent tax)? • Are the fiscal rules and taxpayer guidance given by tax authorities accessible on an official website, and are they are up-to-date and understandable?

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<td>4.3.2
Anti-tax avoidance measures

Does the fiscal regime include a set of provisions to limit tax avoidance practices?</td>
<td>Governments can reduce opportunities for tax avoidance by implementing a variety of measures. None of these is perfect, and some may impose certain costs on the administration of taxes that makes them unsuitable for the country. However, authorities should consider implementing these measures wherever possible.

Researchers should look for the following measures in the fiscal regime:

• strong anti-abuse legislation allowing revenue authorities to reallocate items of income and expense
• clear definitions and procedures concerning the treatment of transfer pricing
• cost limit provisions (including thin capitalization or debt-to-equity provisions)
• separation of hedging derivatives income and operating income
• advance pricing agreements
• mechanisms for the government to obtain and exchange taxpayer information from other governments</td>
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<td>4.3.3
Tax authority organization

Is the number of collecting organizations minimized, and do tax administrators coordinate with other government agencies?</td>
<td>The organization of the authorities responsible for collecting payments from resource companies is a key determinant of how much revenue the government collects. A government can improve tax authority organization in three ways:

First, the government should limit the number of organizations administering the fiscal regime and ensure that their role is clearly defined and understood. Unfortunately, fragmentation of tax administration is common. In many resource-rich countries, the tax authority might collect most tax payments, but a state-owned enterprise might manage the state’s share of production, while a sector ministry and local agencies could also collect some taxes and fees. Such arrangements place a burden on taxpayers who must learn to report to and pay the system’s multiple organizations, and they weaken accountability and risk the duplication of work. There may also be conflicts of interest, arising for example if an agency is responsible not only for revenue collection but also with attracting investment to the country.

Second, in addition to minimizing the number of agencies collecting payments, other ministries and agencies in the government should coordinate with the tax agency by sharing information on taxpayers and harmonizing regulation and processes that impact the taxpayer.

Third, as is becoming increasingly common, the government should consider organizing the tax authority around taxpayer type with teams specializing in large taxpayers and the resource sector in particular.

Researchers should consider:

• What agencies are responsible for collecting payments from companies? Agencies could include: the national tax authority, state-owned enterprises, local government authorities, customs departments, and mining or petroleum regulators.
• What types of extraction sector taxes does each agency collect?
• Does the main collecting agency—usually the tax authority—have a specialized unit for large taxpayers and extractive sector companies?
• Do the collecting agencies and other agencies responsible for monitoring aspects of the extractive sector coordinate with each other? (By sharing information and expertise, for instance.)</td>
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<td>4.3.4
Administrative procedures

Are tax administration procedures simple, effective and harmonized, reflecting principles of self-assessment, with a risk-based compliance strategy?</td>
<td>It is useful to have common routines across all tax types including:
• consolidated returns for taxpayers
• common accounting periods
• common installment or payment dates and procedures for making payments
• an established bank account for electronic payment with receipt to evidence such payments
Tax authorities can also allow single annual self-assessments of taxes (aided further by the use of common base definitions—see Q4.3.1).

Non-routine tasks can be improved by ensuring there are:
• risk-based taxpayer audits
• use of physical audits
• clear publication of reference prices (where relevant provisions are in force)
• use of advance pricing agreements where possible
• procedures for resolving taxpayer disputes
Integrated administrations facilitate simplified administrative procedures (see Q4.3.3 above).</td>
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<td>4.3.5
Tax administration capacity

Are tax administrators competent and well-resourced?</td>
<td>Tax administrators often face highly skilled and well-resourced company counterparts, while the administrators themselves often rely on comparatively weak systems and low pay. One solution to this disparity is to make tax authorities independent from civil service staffing and pay requirements, and allow them to set their own personnel systems and compensation levels.
Researchers should check the capacity of the taxing authorities with the PEFA rating (PEFA PI-15). This assesses:
• the collection ratio for gross tax arrears, being the percentage of tax arrears at the beginning of a fiscal year, which was collected during that fiscal year (average of the last two fiscal years)
• the effectiveness of the revenue administration’s transfer of tax collections to the treasury
• how often the treasury conducts complete accounts reconciliation between tax assessments, collections, arrears records and receipts.</td>
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4.4 | Accountability and transparency of fiscal regimes

Is the government held to account for setting and collecting taxes and other company payments?

Taxation can be intrinsically opaque and difficult for outsiders to understand. Information may not be public, often limited by concerns over taxpayer confidentiality. Further, what data is available can be difficult to analyze. These factors limit accountability.

The three important elements of accountability for fiscal governance are:

- transparency of government activities
- well-resourced, independent and committed government organizations that can scrutinize this information and bring officials to account
- public, particularly civil society representatives, who understand complex issues of fiscal policy and administration and can put pressure on these oversight bodies and the government to perform

Secondary question	Guidance
4.4.1 **Tax transparency** Does the government disclose fiscal terms and company data to inform oversight?	Researchers should check that the government has publicly disclosed and made easily accessible: (1) fiscal terms in contracts and accompanying clauses and appendices (in online form); (2) machine-readable data on production, sales, company payments for each tax type, and capital expenditure for each taxpayer. See the transparency table in annex 4 on which Resource Governance Index questions relate to transparency of taxation. See also precept 2 on further questions related to transparency.
4.4.2 **Public consultation on tax.** Does the government consult with businesses and civil society before reforming the fiscal regime?	Regular consultations with different stakeholders (such as companies, academics, trade associates and NGOs) ensure that government officials have a deeper pool of knowledge to inform tax policy, and may help prevent erratic policy changes by building public trust. *Researchers should:* • Check the proportion of tax policy reforms that have been open to consultation. • Look for instances in which the submission by public groups has been disclosed to assess to the extent to which government officials took their advice.

4.4.3 **Oversight of taxation** Do official agencies perform strong oversight of the fiscal regime?	A range of authorities working together can provide effective accountability on tax matters: • A *national audit office* or auditor general may audit the performance of the tax authority and assess the deals made by the government. • *Tax authorities* themselves may have internal audit offices that seek to be independent of other operational staff and report on performance directly to senior management. • *Taxpayer tribunals* and ultimately the country's court system allow both taxpayers and the tax authority to seek legal redress in cases of disputes. These authorities should not only be knowledgeable about the issues, but also effective enough to make decisions quickly. • *A legislature* will not typically have highly specialized knowledge and will need to focus on high-level performance issues or work through expert bodies, considering their audits or reviews. A legislature is unlikely to have the capacity to review each and every contract with fiscal terms (it is also not necessary that it has this capacity). However, the existence of a specialist select committee or similar body within the legislature dedicated to extractive fiscal matters is often advisable. See also precept 2 for further questions on oversight institutions. *Researchers should:* • Check which of these authorities oversee the setting of resource fiscal terms and the administration and collection of payments. • Assess whether each authority is competent and well-resourced. • Identify cases in which government officials have been held to account and judge the effectiveness of the authority in each case.

ANNEX 4. PRECEPT 4: TAXATION AND OTHER COMPANY PAYMENTS

This transparency table has been designed to assist with Q4.4.1. It summarizes the specific disclosures needed to help build effective accountability around precept 4 taxation. (General transparency requirements that support this precept are covered in the transparency table for precept 2.) Unless otherwise stated, disclosures should be made by government in line with the standards of open data outlined in Q2.1.4. Existing country-specific research on some disclosure items may be available in the Resource Governance Index (RGI) country questionnaires using the indicated question numbers.

For each disclosure, researchers should consider the following questions:

- Is *all* latest information available? If not, what are the exceptions?
- Is *all* historical information available? If not, what are the exceptions?
- Is information provided in sufficient time to enable effective monitoring and scrutiny of activity?
- Is information available in a machine-readable format? Are there any other barriers to access to information? (See Q2.1.4 for background.)

Disclosure item	Guidance
Tax terms in legislation or regulation	Documents/text detailing the legislative and contractual terms governing company payments to government. Typically terms are separately written into separate legal documents (e.g. the Income Tax Act, Mining or Petroleum Act).
Tax terms in contracts or licenses	Documents/text including the contract or license detailing the terms that govern company payments to government. In some but not all cases, terms with the contract or license detail certain tax obligations in addition to those established in legislation or regulation. **Related standards:** EITI 2016, 2.4 **Resource Governance Index:** 2013: question 1.2.007
Details on how companies' tax and non-tax liabilities should be calculated	Documents/text setting out how the tax base of each tax levied on companies. Usually given as guidance to taxpayers in calculating their tax liabilities.
Company payments to government	A table containing the value of company payments to government. This should be disaggregated by: • Taxpayer • Payment type (income tax payment, production share, etc.) • Applicable tax period **Related standards:** EITI 2016, 4.1 to 4.4, and 4.8 and 4.9 **Resource Governance Index:** 2013: question 2.2A – 2.2.E

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