# Securing a Fair Share of Uganda's Oil Revenues

## DTAs and Uganda's Petroleum Revenue Risks

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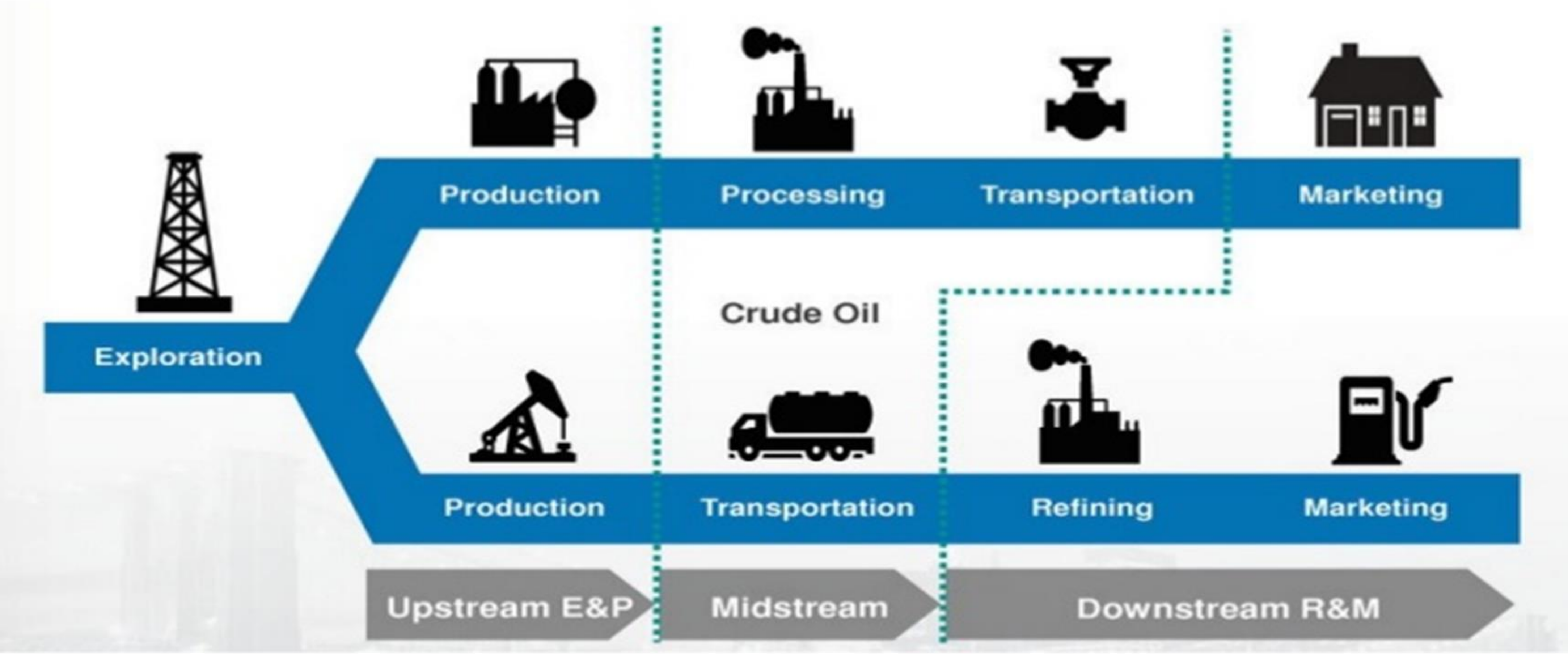
# Overview of the Oil and Gas Value Chain



# Treaty Shopping and Uganda's Oil Revenues

## The basics

- Multi-national companies commonly seek to improve on the tax deal set out in the contract (production sharing agreements) by establishing subsidiaries (shell companies) in specific jurisdictions to take advantage of Double Taxation Treaties (DTAs).
- The process is known as "treaty shopping".

# Cont'd

- In Uganda, withholding taxes on interest and dividend payments are set at 15%.
- The PSAs assert the applicability of all central taxes, duties, and levies.
- Section 83 of the Income Tax Act indicates that a withholding tax will be "calculated by applying the rate prescribed in Part IV of the Third Schedule to this Act to the gross amount of the dividend, interest, royalty, natural resource payment, or management charge derived by a non-resident person".11.

# Cont'd

- These provisions are further clarified in Section 89H: Withholding Taxes in the Special Provisions for the Taxation of Petroleum Operations
- The rate of tax for the payments of both interest and dividends is confirmed at 15%.

# Uganda’s Oil Rights and DTAs

- Uganda currently has Double Taxation Treaties in place with ten countries: Belgium, Denmark, India, Italy, Mauritius, the Netherlands, Norway, South Africa, the UK, and Zambia.
- One of the three upstream partners has its parent company in a tax treaty country; Tullow Oil Plc. is a tax resident of the United Kingdom.
- However, both TOTAL and Tullow own their petroleum rights in Uganda through subsidiaries based in the Netherlands.

# Uganda’s Oil Rights and DTAs

- TOTAL SA owns its rights through TOTAL E&P Uganda B.V. (Netherlands).
- Tullow owns the rights to its Ugandan assets through Tullow Overseas Holdings B.V
- CNOOC owns their Ugandan petroleum rights through the British Virgin Islands, a notable tax haven

# Uganda’s Oil Rights and DTAs

- The Netherlands remains a highly attractive location for multinationals to establish subsidiaries.
- Having concluded tax treaties with more than 90 countries, routing money through a subsidiary in the Netherlands allows companies to minimize withholding taxes on interest and dividends.

# Uganda-Netherlands DTA

- Although Uganda has DTAs with UK and Netherlands, the provisions on repatriation of interests and dividend payments vary.

| Table 5: Terms of the Uganda Netherlands Double Tax Agreement | | | |
|---|---|---|---|
| | Uganda Tax Law | UK Tax Treaty | Netherlands Tax Treaty |
| Interest | 15% | 15% | 10% |
| Dividends | 15% | 15% | 0% |

# Uganda-Netherlands DTA

## A Look at Block EA1 (holds estimated 600mmbbls)

- In order to quantify the revenue risks, Oxfam and RD developed a base case/fiscal model bases on PSA provisions for block EA1.
- Variables in our fiscal model include;

**-Start-date of production -2022**

**-Base reserves-600mmbbls**

**-Field Production Life-25 years**

**-Production Profile-120mbd at plateau maximum**

**-Brent crude price estimate-$60**

**-Discount to Brent-$8/bbl**

**-Pipeline Tarrif-$12**

**-Transit fees-$0.0**

**-Exploration cost-$460**

**-Development-$6/bbl**

**-and several other key variables**

**-We then estimate interest rate payments on capex and on dividends based on the Profit Oil split and therefore what is available for Total and Tullow.**

(Model separately available)

# Uganda-Netherlands DTA

## A Look at Block EA1

| Table 6: Withholding Taxes without DTA Reductions/Exemptions (USD millions) | | |
|---|---|---|
| | Repatriated Funds | WHT Assessed at 15% |
| Interest | $782 | $117 |
| Dividendsww | $3,892ww | $597 |
| **Total** | **$714** | |

Block EA1

# Economic Benefits to IOCs from DTA (USD millions)

| | TOTAL 15% | Tullow 15% | Combined 15% |
|---|---|---|---|
| Interest | $52 | $14 | $66 |
| Dividends | $263 | $70 | $333 |
| Total | $315 | $84 | $399 |

# Preventing Treaty Shopping

- OECD initiative on base erosion and profit shifting (BEPS) suggested the adoption of a “principal purpose test”,

-where “the benefits of a double taxation convention should not be available where a main purpose for entering into certain transactions or arrangements was to secure a more favourable tax position.

- Zambia signed a revised Double Taxation Treaty with the Netherlands in 2015 that would deny treaty benefits to companies where the main purpose was to secure tax reductions.
- Malawi has added anti-abuse provisions to its DTA with the Netherlands-after Paladin, an Australian mining company, managed to avoid withholding taxes on interest payments and management fees through the creation of Dutch subsidiaries.

# For Uganda,

- MoFPED initiated a review of the existing DTAs
- Revised Uganda-Netherlands could include anti-abuse clause provisions like those of Zambia and Malawi

Challenges still;

- Can the revised Uganda-Netherlands DTA act retroactively, to deny Total E&P Uganda B.V and Tullow Oversees Holdings B.V treaty benefits?

(1)Stabilization in the existing PSA

(2)Uganda would have to prove that the purpose of creation of the Dutch Subsidiaries is to minimize withholding tax.

# Ends

Thank you!