

DEVELOPMENT OF AN INTEGRATED FINANCIAL ACCOUNTABILITY TOOLKIT
THAT WILL FOCUS ON INTEGRATED ANNUAL FINANCIAL REPORTS
ANALYSIS WITH SPECIAL FOCUS ON GOLD, GREEN ENERGY TRANSITIONAL
MINERALS AND RARE EARTH MINERALS.

Expression of Interest (EOI)

PRESENTED

TO

GLOBAL FINANCIAL INTEGRITY (GFI)

PREPARED

BY

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BRIEF BACKGROUND OF ILLICIT FINANCIAL FLOWS IN THE EXTRACTIVES SECTOR IN KENYA – MORE PARTICULARLY MINING SECTOR

Though there has been steady growth and development in the amount of foreign direct investments in Africa, the same has not translated into an equally steady growth in tax revenue. This unfortunate occurrence is as a result of illicit financial flows from African countries to other jurisdictions through tax evasion, aggressive tax avoidance schemes, money laundering and corruption.

In respect to the extractives sector, Africa as a continent is privileged to have abundant natural resources including minerals, precious stones as well as oil which form a substantial portion of their total exports. It goes without saying that mining and/or extraction of natural resources is a highly profitable activity that is more often than not carried out by foreign entities with holding companies in tax favourable jurisdictions. As a result of aggressive tax avoidance or planning structures, coupled with corruption and porous legal frameworks, these same entities pay minimal taxes in the African countries.

Kenya has substantial deposits of precious metals including gold, titanium, coal, nickel-cobalt, copper, manganese, niobium, lead, zinc, lithium, uranium, thorium, iron ore, coltan, chromite, soda-ash as well as precious stones including amethyst, Ruby, tsavorite and zircon. As is the case with its sister African countries, though Kenya exports a substantial portion of its extracted minerals, the revenue impact of such exports has not been felt in the country. It seems there is grave revenue leakages which have been as a result of tax avoidance, tax evasion, money laundering, corruption and lack of a robust legal framework governing the extractive sector.

In the result, the mining activities have had little or no tangible benefit to the local communities and to the wider population, there is a deficit in the resources needed by the Kenyan government to finance and achieve the sustainable development goals.

This calls for urgent action, including the development of a robust legal and regulatory framework by Kenya as a country, and Africa as a whole, to mitigate the loss of revenue through illicit financial flows. In addition, there is need to have uniformity, transparency and accountability in the governance policies especially considering the fact that the mining sector has a number of players including public officials, community leaders, multinational corporations, national corporations.

The Global Financial Integrity ('GFI') has been instrumental in the fight against illicit financial flows in Africa. This is has achieved by providing support the African governments with advice on policy formulations, encouraging transparency in international financial system. This is key to GFI as it aims at mitigating illicit financial

flows through tax evasion and trade mis-invoicing. It is against this backdrop that GFI has always undertaken studies and now intends to develop an integrated financial accountability toolkit which will aid stakeholders in their review of the annual financial reports of mining companies. It is this toolkit that will be our deliverable.

OUR UNDERSTANDING OF THE ASSIGNMENT

It is our understanding that the consultants are expected to develop a toolkit that will be able to: -

- a) Identify possible illicit financial flows.
- b) Analyse financial statements of mining companies.
- c) Identify and assess the financial risks in the mining sector.
- d) Identify red flags on how the companies conduct their businesses and report their mining activities.

To achieve this, the consultants will be required to: -

- a) Carry out a comparative analysis of the impact of double tax treaties entered by different countries.
- b) Identify any anomalies and concerning trends on the companies' financial statements.
- c) Review the mining companies' financial policies.
- d) Analyse the financial statements of the companies and more specifically their cost of sales, cash-flow statements, financing arrangements, related party transactions.

MAIN OBJECTIVE

The main objective of the consultancy is to prepare and develop a comprehensive toolkit that will be used in analysing the financial statements of mining companies and identifying any actual or potential red flags or gaps that are being used in tax evasion and tax avoidance ultimately resulting in illicit financial flows out of Kenya. The consultants will employ innovative approaches to ensure that an all-inclusive approach to the assignment.

CONSULTANTS' KEY RESPONSIBILITIES AND DELIVERABLES OF THE PROJECT

In the course of and at the conclusion of the assignment, the Consultants shall: -

- a) Prepare an inception report in which they shall provide a detailing understanding of the assignment, work plan with clear timelines, and methodology to be employed 7 days upon signing the contract.

- b) Share a draft of the report identifying the red-flags or gaps as well as provide recommendations for appropriate legislative provisions to be considered by stakeholders.
- c) Share a detailed final report setting out the research findings.
- d) Prepare a risk and mitigation matrix.
- e) Prepare a comprehensive toolkit addressing the issues or fall-gaps identified during the research.

PROPOSED METHODOLOGY

The study will adopt a qualitative research approach. This will mainly comprise of desk review research. The roadmap will be as underlined below.

Activity	Comments
Inception meeting	The consultants propose to hold an inception meeting with GFI with the intention of agreeing on the scope and overall objectives of the assignment for purposes of avoiding delays. During the meeting, the consultants will also obtain detailed background information as well as documents for better understanding of the assignment.
Preparation of the inception report	An inception report outlining the key steps/methodology, with specific deliverables, timelines, contextual analysis and any other information relevant to this stage of the consultancy will be prepared.
Presentation of the inception report	The inception report will be presented to GFI for comments, directions, and further input.
Preliminary desk research	Desk research and comprehensive review of existing literature on illicit financial flows from Kenya and more specifically from the extractives sector including media sources, governmental and non-government organizations' (NGOs) reports, journal articles and online sources will be conducted on the relevant materials and literature.
Interviews	After the desk research, the consultants will conduct interviews with various stakeholders including government agencies, mining companies and associations during which they will rely on non-probability sampling (purposive sampling), which entails the deliberate selection of interview partners due to their positionality within the research project/agenda. The interviews will be conducted using semi-structured interview guides that are useful in asking open-ended questions, probing for

	<p>additional clarity, controlling the process, and empowering respondents.</p> <p>The interviewing process will not only uphold international best practice but also ethical standards which require voluntary and free consent from all respondents, as well as provide anonymity for the respondents whenever they need it.</p>
Focus Groups	Conduct focus group sessions with mining companies' officials. The focus groups will be carried out subject to international best practises and on a voluntary basis.
Piloting Study	The Consultants will also carry out a piloting study with different sample sizes for the different stakeholders.
Data and information analysis	At this stage the consultants will analyse the data and information gathered and collected and if need be, carry out further or follow-up investigations.
Presentation to GFI Coordinating Team	The zero final assignment report detailing the methodology, and everything till completion of the assignment will be presented to the GFI team for their consideration and feedback

WORK PLAN AND TIME SCHEDULE

The time frame for the consultancy shall be Six Months (180) days. The Consultancy will commence as soon as the Consultant is contracted and is expected to be undertaken in the manner prescribed in the work and time schedule.

Activity	Duration (Days)
Inception meeting	1
Preparation of the inception report	2
Presentation of the inception report	1
Preliminary desk research	3
Interviews	3
Focus Groups	2
Piloting Study	2
Data and information analysis	6
Final Assignment report	4
Risk and Assessment Matrix	7
Tool Kit	8
Presentation to GFI Coordinating Team	1

Total (Days)	<u>40</u>

FINANCIAL PROPOSAL

Activity	Duration (Days)	Amount @ Kshs.58,000 per day
Inception meeting	1	58,000
Preparation of the inception report	2	116,000
Presentation of the inception report	1	58,000
Preliminary desk research	3	174,000
Interviews	3	174,000
Focus Groups	2	116,000
Piloting Study	2	116,000
Data and information analysis	6	348,000
Final Assignment report	4	232,000
Risk and Assessment Matrix	7	406,000
Tool Kit	8	464,000
Presentation to GFI Coordinating Team	1	58,000
Total	<u>40</u>	2,320,000
Less 5% Withholding Taxes		116,000
Total Payable		<u>2,204,000</u>

The proposed fees are negotiable. The resultant administrative costs will be borne by the client.

THE TEAM

Lena Onyango

Lena is a distinguished expert in law and taxation with an extensive record spanning over twelve years' experience in both domestic and international tax advisory and tax dispute resolution. She has deep experience in negotiations with the Kenya Revenue Authority and advocacy before the Tax Appeals Tribunal. Lena was recognised as a 'Leading Woman in Tax in Kenya' during the commemoration of International Women's Day in 2021 and 2022 by KRA as well as an "Up and Coming" figure by Chambers Global 2022, 2023 and 2024.

Lena holds a LLM in International and European Tax law from University of Maastricht, The Netherlands, Diploma in law from the Kenya School of Law, Bachelor of Laws (LLB) from the Catholic University of East Africa and she is also a Certified Public Accountant.

Lena started off her career in 2012 as a Tax Consultant at Viva Africa Consulting LLP. She later joined Oraro and Company Advocates as a Senior Associate in 2015 where she was promoted to Partner. Lena also worked at ANL Law from 2020 as a Partner prior to joining Cliffe Decker Hofmeyr - Incorporating Kieti Law in 2024 as a Partner in the Tax and Exchange Control Practice.

Lena is an avid researcher in tax matters and has written a number of research and academic papers including:

- “Tariff Revenue Implications of the AFCFTA: Tax Reform as a Remedy to Revenue Loss”, Africa Tax Administrators Forum, 7th ATRN Conference, 5th -7th September, 2022 Accra, Ghana.
- “VAT Reforms in Kenya” Africa Tax Dialogue, 2015, Maputo, Mozambique.
- Analysis of the 2018 Budget, KNCCI- Post Budget Analysis, Grand Regency June, 2018.
- On Taxation: The Common Reporting Standards and Automatic Exchange of Information
- A Tale of Two Countries: A Comparative Look at Trusts in Mauritius and New Zealand
- New in the Market: Share Buybacks Under the Companies Act, 2015
- Even More Changes: A Look at the New Tax Procedures Act, 2015
- Walking a Tight Rope: Thin Line Between Tax Planning and Tax Abuse
- ‘Tax-Acious’: When Tax Collection Becomes Rather Taxing
- “The Arm’s Length Principle, A blessing or Curse to Developing Countries?” Tax Justice Network Africa Tax Research Seminar, 25th -26th March 2013, Tunis, Tunisia.

Stephen Osedo

Stephen is a public sector expert with a wealth of experience in Public Finance Management, policy, research and advocacy, accountability and governance and gender mainstreaming. He has over eight years of experience working with different organizations including the Centre for Fiscal Affairs, the National Taxpayers Association, and currently serving as the head of county programs and SME Development at Kenya National Chamber of Commerce and Industry.

He holds a bachelor's degree in finance with Information Technology from Maseno University and pursuing Masters in Economics and Bachelors in Law from University and Mount Kenya University respectively. He has a proven track record of producing high-quality, professionally written materials under tight deadlines, and he possesses strong communication and public speaking skills.

Stephen has offered support to several organisations as highlighted below: -

- Supported PAWA254 to develop advocacy and communication strategy 2023- 2024 to strengthen their work advocacy efforts around human rights, governance, activism, social accountability among other areas.
- Successfully organized and participated in the Homa Bay International Investment Conference 2024 and the Kakamega International Investment Conference 2024 held between February and March 2024.
- I sit in the private sector technical team incorporated in collaboration with Ministry of Investment, Trade and Industry to review the business reforms and recommend policy changes for both ministerial and presidential consideration.
- Technical lead in the KNCCI-KCB Mining programme working to support and improve the lives of the artisanal miners in the Kenya.
- Organized and hosted the discussion around the resourcing for health care during the Transform Health Conference 2023.
- In collaboration with Twaweza East Africa we conducted a survey on the citizens perception about the Finance Bill 2023.
- In collaboration with Twaweza East Africa we conducted a survey on the status of devolution. I hosted the panel discussion to evaluate the progress of devolution-gaps and opportunities to strengthen devolution in Kenya.

Christine Kahema Muthui

Is the Founder and Director at Alpha Tax and Business Advisory Services, has over 20 years of experience in the tax sphere. At Alpha, she has actively engaged in diverse tax policy initiatives, collaborating closely with esteemed organizations such as ICPAK and LSK. Notably, Christine has spearheaded advocacy efforts for excise tax modifications within the manufacturing sector and conducted thorough reviews of interest restriction clauses.

Before starting Alpha, Christine worked as a Tax Manager at Coca- Cola Central East and West Africa (CEWA) for the East, Central and West African Markets for 9 years. Tanzania and Mauritius were among the entities that she managed. Before CEWA, she worked as a Tax Manager at KPMG for 8 years and supported various clients from a tax structuring, optimization, compliance and on mergers and acquisitions.

She holds a degree in Bachelor of Law from the University of Nairobi and is an Advocate of the High Court of Kenya. She is a Certified Public Accountant of Kenya (CPA-K) and also a Certified Public Secretary (CPS). She has an MBA for Executives from Strathmore Business School. Christine also lectures on a part time basis at Strathmore University.

She is a member of the Public and Tax Committee of the Institute of Certified Public Accountants (ICPAK), a member of the Tax Committee of the Law Society of Kenya (LSK) and a member of Centre for Studies in African Taxation (CSAT) and works closely with stakeholders in review of Tax Legislation aimed at shaping future Tax Laws. She is

also an External Technical Committee Member of IBDF Centre for Studies in African Taxation (CSAT).

Referees

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