

# Guyana's Tax Giveaway: Country Pays Exxon, Hess and CNOOC's Annual Income Taxes

*Guyana's Profits Are Lower Than Reported; More Openness Is Needed*

## Executive Summary

The Guyanese government has granted a tax concession to three companies (ExxonMobil, Hess and the China National Offshore Oil Company) that are drilling under the Stabroek oil profit-sharing agreement. The tax concession absolves the companies from paying annual income taxes to the Guyana government—taxes that other Guyanese companies and citizens would be required to pay.

The agreement with the companies establishes that the income made by the companies in Guyana is taxable under Guyana law. The normal corporate tax rate is 25%. The contract, however, requires the government of Guyana to pay the annual tax for the companies.

This study finds that:

1. The tax concession lowers Guyana's oil take from 12.5% to 9% of gross revenues from the sale of oil.
2. The government recently announced a seventh oil lift and that Guyana has been paid USD\$388 million since December 2019. This is a pre-tax number. IEEFA assumes that the taxes on this amount are USD\$97 million. How much of the oil payments currently in the Natural Resources Fund (NRF) are actually available for the budget?
3. There do not appear to be any withdrawals from the Natural Resources Fund to pay the taxes for 2019 and 2020 or other expenses that may be owed. How is the government paying for these expenses?
4. Over the next five years, IEEFA estimates the tax payments by Guyana will amount to roughly USD\$1.7 billion, or approximately USD\$340 million per year. The budget deficit for FY2021 is USD\$525 million.

The tax concession is part of the profit-sharing agreement between the companies and Guyana. The contract contains a series of incentives provided to the companies in exchange for a 50% share in the profits from the oil for Guyana. Recently, Vice President Bharrat Jagdeo has acknowledged that the expectations of fast revenue to Guyana were overstated.

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The government has made a pledge to be transparent about the amount of money the country receives from the oil agreement. The amount announced by the government (USD\$388 million) is implied to be the amount available to Guyana’s budget. Greater clarity and improved reporting are needed. The government reporting would be more transparent if it accounted for expenses that are incurred against the revenue received.

U.S. tax law allows ExxonMobil and Hess to claim the tax payments against their U.S. income tax. This is not a matter for Guyana officials. However, additional disclosures might reveal that ExxonMobil and Hess have received an enhanced benefit that is not being considered as part of the profit-sharing agreement.

## Background

On June 27, 2016, Guyana signed an agreement with Esso Exploration and Production Guyana Limited (referred to in the contract as “Esso”), CNOOC Petroleum Guyana Limited (referred to as “Nexen”) and Hess Guyana Exploration Limited (referred to as “Hess”),<sup>1</sup> defined in the contract as “the contractor.” The contract is drawn between the three parties and the government of Guyana.

Esso is the operator charged with the day-to-day activities of the contractor.<sup>2</sup> The contract sets forth the terms and conditions of a production-sharing agreement. The agreement details how oil production will take place, how costs are calculated, and how “profit oil” is divided among the parties. “Profit oil” is the amount of oil left over after the oil is extracted and sold, and recoverable contract costs have been satisfied.<sup>3</sup>

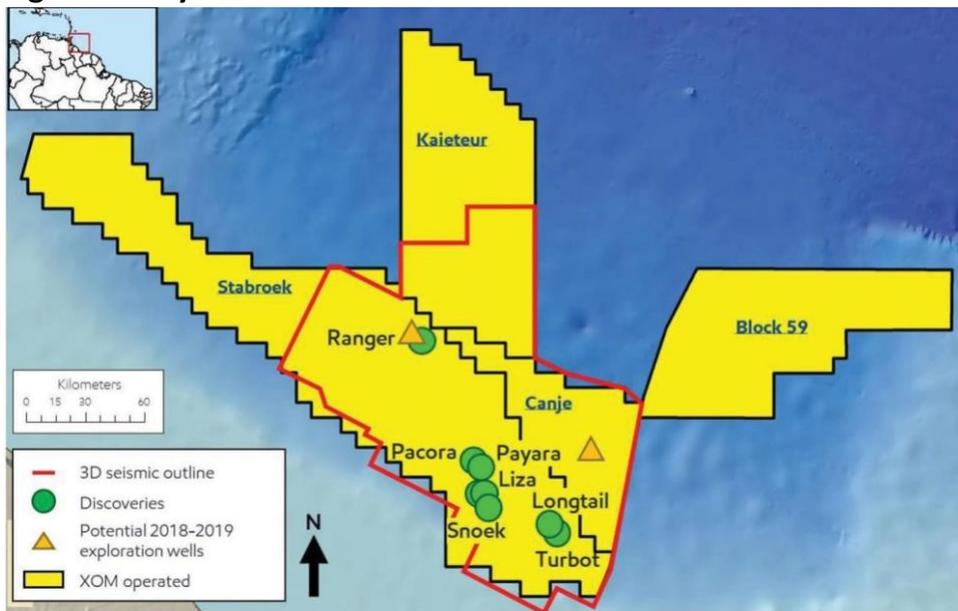
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<sup>1</sup> Petroleum Agreement (the “[Agreement](#)”) Between the Government of the Cooperation of Republic of Guyana and [Esso Exploration and Production Guyana Limited](#) (for purposes of this paper, “Esso”), an ExxonMobil affiliate CNOOC Petroleum Guyana Limited ([China National Offshore Oil Company](#), for the purposes of this paper “CNOOC”), and Hess Guyana Exploration Limited (for the purposes of this paper, “Hess”). They are identified individually in the contract as the “Contractor.” (See: The Agreement, Article 1.1, Definitions). The contractor also will be referred to as “ENH” for the purposes of this paper., The companies will be identified individually as they are in the contract when being discussed individually. The Guyanese government and the three companies will be referred to as “the parties” to the agreement.

<sup>2</sup> [Agreement](#), Liabilities and Indemnities, Article 2.2 (a).

<sup>3</sup> [Agreement](#), Cost Recovery and Production Sharing, Article 11.4.

Figure 1: Guyana's Identified Oil Reserves



Source: *Stabroek News*.

The contract area is 26,800 square kilometers and extends over 300 kilometers in width, all the way from the border with Venezuela to the Suriname border.<sup>4</sup> This is a contract area of extraordinary size. For example: As of 2019, there were 159 million acres under lease in 2,451 leases, which equates to 53,000 acres each, or 214 square kilometers for each block in the U.S. federal waters in the Outer Continental Shelf of the Gulf of Mexico.<sup>5</sup> If you compare that to the ExxonMobil acreage in Stabroek of 26,800 square kilometers for one lease, it means the Guyana lease is more than 100 times the size of the average U.S. Gulf of Mexico lease.

Successful execution of the project is meant to bring Guyana substantial, long-term financial benefits in the form of annual profit payments from oil development. The drilling and extraction project is meant to bolster Guyana's economy. The revenues are meant to 1) close Guyana's annual budget deficit; 2) fund new needs; 3) build national wealth; and 4) retire Guyana's debt. Government officials are confident these goals can be achieved, even as they warn the public that the future of oil and gas development is risky.<sup>6</sup>

<sup>4</sup> ExxonMobil. [ExxonMobil announces Redtail discovery offshore Guyana](#). September 8, 2020.

<sup>5</sup> U.S. Bureau of Ocean Energy Management. [BOEM Gulf of Mexico OCS Region Blocks and Active Leases by Planning Area, September 1, 2020](#). September 26, 2020.

<sup>6</sup> Ashni K. Singh. [Budget Speech](#). February 12, 2021.

## A. General Terms and Conditions

The agreement continues in full force and effect as long as the contractor holds a petroleum prospecting license or a petroleum production license. Each petroleum production license is granted for 20 years. The agreement ends when the last petroleum production license expires. The basic formula is:

**Table 1: Contract Formula To Establish Level of Profit Oil From Development**

$$\text{Oil Price} \times \text{Gross Production}^7 \text{ (barrels of oil)} = \text{Gross Revenue} - \text{Total Recoverable Costs} = \text{Profit Oil}$$

Gross Revenue is the cash amount received for the sale of gross production. The first 75% of gross revenue goes to pay for total recoverable costs. The remaining 25% of gross revenue is considered the dollar value of "profit oil." The contractor and Guyana share "profit oil" on the basis of a 50-50 split. In total, each party receives at minimum 12.5% of gross revenue as their share of the profits. This is the floor, or minimum amount each party receives from the sale of oil. Guyana also receives a 2% royalty on gross production and sale.<sup>8</sup>

Recoverable costs include 100% of all exploration and development costs, pre-contract costs, operating expenses, estimated cost of future abandonment, interest and parent company expenses. Annual recoverable costs are capped at 75% of revenues, and any balance in recoverable costs is carried over until the next month.<sup>9</sup>

Since recoverable costs include 100% of all development costs (initially USD\$33 billion over the first five years),<sup>10</sup> the project carries a substantial balance that accrues to the contractor through at least 2028. The substantial balance of outstanding development costs could take even longer to satisfy, since new investments, pre-contract costs, operational delays and volatile oil prices can disrupt financial plans. Repayment of the development and other recoverable costs diminishes the size of Guyana's annual cash receipts from profit oil. Until total recoverable costs are paid in full, Guyana receives only the minimum payment of 12.5% of gross revenues.

IEEFA has produced two reports on the contractual arrangement among ExxonMobil, Hess and CNOOC. The first report was an overview that focused on the amount of revenue likely to be collected by Guyana.

<sup>7</sup> Agreement, Cost Recovery and Production Sharing, Article 11.9 – gross production is minus any oil used by the operator for project needs which are determined by the operator.

<sup>8</sup> Agreement, Taxation and Royalty, Article 15.6. The focus of this paper is on Guyana's profit oil and does not discuss the royalty payment in any depth. The Royalty payment will be the subject of future IEEFA commentary.

<sup>9</sup> Agreement, Cost Recovery and Production Sharing, Article 11.3.

<sup>10</sup> IEEFA. [Guyana's Oil Deal: Promise of Quick Cash Will Leave Country Shortchanged](#). October 2020. The USD\$33 billion comprises of the total Pre-Effective Date Costs, Exploration Cost and Total Development Costs (Pre-2020 through 2024).

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The second report focused on a specific provision of the contract that related to "ring fencing." The provision allowed the contractor to pass along a broad range of development costs for non-producing wells.

## **Income Tax Provision**

This report focuses on another provision of the contract. The agreement relates to income tax owed by ExxonMobil, Hess and CNOOC. The agreement establishes that income gained by the contractor and the other parties is taxable under Guyanese law. The contract requires each member of the consortium to file income tax returns. The return establishes the amount of tax liability owed by each company.

The specific income tax contract provision is as follows:<sup>11</sup>

15.4 The Minister hereby agrees:

- a) that a sum equivalent to the tax assessed pursuant to Article 15.2 and 15.3 will be paid by the Minister to the Commissioner General, Guyana Revenue Authority on behalf of the Contractor and that the amount of each sum will be considered income of the Contractor: and
- b) that the appropriate portion of the Government's share of Profit Oil delivered in accordance with the provisions of this Agreement shall be accepted by the Minister as payment in full by the Contractor of Contractor's share of each of the following levies, whatsoever the applicable rate of such levies may be, which the Minister shall then pay on behalf of the Contractor under Article 15.4 (a) to the Commissioner General, Guyana Revenue Authority or such successor authority.
  - I. the Contractor's share of the income taxes imposed by the laws of Guyana, including, but not limited to, income tax imposed by the income Tax Act and corporation tax imposed by the Corporation Tax Act and payable at the date hereof, or from time to time thereafter, and any other levy or charge on income or profits which may become payable from time to time under any laws, acts, statutes, regulation or orders by the Government; and
  - II. any other similar charge imposed and payable in respect of Petroleum Operations at the date hereof, or from time to time hereafter except charges of the type specified in Article 15.1 (a-b)

15.5 The Contractor shall provide the Minister with the Contractor's income tax returns to be submitted by the Minister to the Commissioner General, Guyana Revenue Authority so the Minister can pay income tax on behalf of the Contractor as provided under Article 15.4 (a). On such returns, the Minister shall note that he is paying the income taxes on behalf of the Contractor, so that the Commissioner General, Guyana Revenue Authority

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<sup>11</sup> [Agreement](#), Taxation and Royalties, Article 15.

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can properly prepare the receipts required under this Article 15.5. Within one hundred and eighty (180) days following the end of each year of assessment the Minister shall furnish to Contractor proper tax certificates in Contractor's name from the Commissioner General, Guyana Revenue Authority evidencing the payment of the Contractor's income tax under the Income Tax Act and corporation tax under the Corporation Tax Act. Such certificates shall state the amount of tax paid individually on behalf of Contractor or parties comprising the Contractor and other particulars customary for such certificates.

The agreement establishes that the payment of the government's share of profit oil shall be accepted by the minister as payment in full for the contractor's income tax obligation. The petroleum minister is then contractually obligated to pay the tax liability to Guyana's Revenue Authority (GRA) on behalf of the contractor (Section 15.5). The minister is then responsible for taking steps necessary to have the GRA supply receipt of payment documents that reflect credit for the payment to the contractor and the other parties.

For U.S.-based companies like ExxonMobil and Hess, tax returns are also filed under U.S. tax law. Taxes paid by ExxonMobil or Hess to Guyana's government are deductible under the U.S. tax code. U.S. tax policy is designed to prevent double taxation of oil company income and to prevent the U.S. tax code from becoming a disincentive to overseas investment. The right of ExxonMobil or any company to write off tax payments to host countries is designed to be tax neutral. The write-off is taken as a dollar-for-dollar tax credit against existing tax liabilities.<sup>12</sup>

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<sup>12</sup> Cornell International Law Journal. [The Foreign Tax Credit for American Oil Contractors in Indonesia: An Allocation Approach](#). 1977.

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## What Is the Revenue Impact on Guyana?

The recent announcement by the natural resources minister states that Guyana has received seven oil lifts since December 2019. The total amount from those lifts has been USD\$388 million.<sup>13</sup>

This analysis looks at the tax issues related to profit oil in three different ways to provide a proper context.<sup>14</sup>

### *1. Guyana's After-Tax Profit Leaves the Country With 9% of Gross Revenue and Not the 12.5% That Is Presented in Most Descriptions of the Fiscal Benefits of the PSA.*

First, the reported income in the Natural Resources Fund and in lift statements assumes that Guyana is splitting profits with the contractor and partners. Profit oil is derived after 75% is reduced from gross revenues. This portion goes to the contractor as reimbursement for expenses incurred. The remaining 25% is profit oil. Guyana and the contractors split the 25% profit oil, leaving each party with 12.5% of gross revenue.

The 12.5% is a pre-tax calculation. When the tax provision is included in the calculation, Guyana's percent of profits are reduced.

For illustration purposes, we assume a USD\$60 barrel of oil and then apply the basic contract provisions to derive a pre-tax profit. The contract-based 75% cost recovery is deducted from the gross revenue received from a barrel of oil. The remainder USD\$15 per barrel is split so that each party receives USD\$7.5 dollars as their share of the profit oil.

The minister pays the tax amount owed by the contractor for taxes to the Guyana Revenue Authority. The payment is considered revenue for the contractor (Section 15.4).

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<sup>13</sup> Government of Guyana. [Government of Guyana receives payment for the seventh oil lift](#). August 9, 2021.

<sup>14</sup> This analysis is driven by the contract provisions identified above. The calculations used in this report are based on basic fiscal assumptions about the expected revenues that might accrue to Guyana. This report by necessity interprets both the contract and the way in which each company might apply the contract provisions to the tax codes in the United States and Guyana. Corporate tax accounting is a highly specialized discipline and specific tax strategies are usually kept confidential by companies and their consultants. Given that there is very little transparency regarding this contract, IEEFA's assumptions and bottom line numbers would be greatly improved by more transparency.

**Table 2: Model of Percentage Take: Government of Guyana Versus Contractor After Tax Take On a USD\$60 per Barrel of Oil (USD\$ in millions)**

|                                 | Government |         | Contractor |
|---------------------------------|------------|---------|------------|
| Gross Revenue (\$/bbl)          |            | \$60.00 |            |
| Costs Recovery 75%              |            | \$45.00 | \$45.00    |
| Profit Oil                      |            | \$15.00 |            |
| 50%/50%                         | \$7.50     |         | \$7.50     |
| Pre-Tax Revenue                 | \$7.50     |         | \$52.50    |
| Pre-Tax Take                    | 12.5%      |         | 87.5%      |
| Tax (25% of profit)             | (\$1.88)   |         | \$1.88     |
| Gross Revenue                   | \$5.63     | 60      | \$54.37    |
| Take: % Gross Revenue After Tax | 9%         |         | 91%        |

Table 2 demonstrates that the impact of the tax payment by the minister to the Guyana Revenue Authority would reduce the actual cash amount received by the government from 12.5% to 9% of profit oil.

## 2. How Large Is the Tax Liability, Given the Disclosures Based on Seven Oil Lifts?

According to the seventh lift announcement made in August 2021, USD\$388 million is Guyana’s share of profit oil.<sup>15</sup> Presumably the contractor and other parties have the same share from profit oil. The current corporate tax rate is 25% of “chargeable profits.”<sup>16</sup> IEEFA estimates that Guyana’s tax liability thus far is approximately USD\$97 million (25% of USD\$388 million).<sup>17</sup>

This liability will presumably be spread across three tax years: 2019, 2020 and 2021, consistent with when the extraction and sale took place.

Section 15.4 (b) states that the tax liability owed by the contractor is satisfied by the payment of the profit oil. Is it accurate for the government to declare that the seven

<sup>15</sup> Government of Guyana, *op. cit.* Also see: Bank of Guyana. [Natural Resource Fund Quarterly Report, April 1-June 30, 2021](#). June 30, 2021. Also: Government of Guyana. [Guyana – Natural Resource Fund. Summary of Financial Position and Performance](#). July 31, 2021.

<sup>16</sup> Guyana Revenue Authority. [Rates & Calculations](#).

<sup>17</sup> Without full access to the corporate tax returns or a formal financial presentation by the government, the USD\$97 million is an assumption based on the contract documents and the additional disclosures made by the Minister of Natural Resources.

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lifts have accumulated USD\$388 million if there is an outstanding liability of USD\$97 million that offsets this amount? Is the actual amount USD\$291 million?<sup>18</sup>

### **3. How Has the Tax Liability Been Handled?**

According to the monthly and quarterly summaries of the Natural Resources Fund, there have been no withdrawals or expenditures posted against the accounts to pay for either the taxes or other expenses.<sup>19</sup>

The question arises:

1. Have ExxonMobil, Hess and CNOOC provided tax returns to Guyana for 2019 and 2020, pursuant to Section 15.4?
2. Has the minister made payment, or prepared and made proper filings to the Commissioner General, Guyana Revenue Authority on behalf of Hess Corporation, CNOOC and ExxonMobil?
3. Has the General Revenue Authority issued letters or such other instruments that payment has been satisfactorily made to ensure the companies and minister are complying with Guyana tax law?
4. Has there been a long-term fiscal impact assessment conducted related to revenue loss based on this provision?

IEEFA estimates that Guyana may receive annual oil payments that amount to approximately USD\$6.8 billion in pre-tax revenue from 2021 to 2025.<sup>20</sup> This is the approximate amount that the contractor and partners would receive as their share of 50/50 partnership.

Using the current tax rate, the minister would be required to pay at least 25% of this amount, or USD\$1.7 billion. The FY 2021 Guyanese annual budget is USD\$1.7 billion.

It is also not certain whether the contractor and other parties' income that is subject to Guyana's tax laws is limited to the profit oil payment.

## **Observations**

1. Guyana's actual take from oil profits is expected to be 12.5%. The facts provided in this study suggest it will be 9% and perhaps lower. Recently,

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<sup>18</sup> The Operational Agreement with the Bank of Guyana for the administration of the Natural Resource Fund also makes provision for payments of an Operational Fee (Paragraphs 8-12). These fees are incurred as an expense for managing the fund Since December 2019. See: Government of Guyana. [Operational Agreement for the Management of the Natural Resource Fund](#). December 11, 2019.

<sup>19</sup> Government of Guyana. [Monthly Reports](#).

<sup>20</sup> IEEFA has outlined its methods as to how it calculates the costs and revenues related to the contract. This paper assumes for illustration purposes a USD\$60 barrel except where otherwise noted. See: IEEFA. [Guyana's Oil Deal: Promise of Quick Cash Will Leave Country Shortchanged](#). October 2020

Jagdeo acknowledged that initial expectations of a rapid infusion of cash to Guyana from the oil drilling were overstated.<sup>21</sup> He said that the revenues would take some time to materialize. Absolving the contractor of annual income taxes decreases Guyana's take of oil proceeds at a stage in project development where lost revenue is important. IEEFA has outlined in detail some of the financial risks that might impair Guyana's receipt of expected revenues.<sup>22</sup>

2. The amount identified by the Guyanese government, USD\$388 million, does not appear to reflect the actual amount that is in the NRF and is available for the budget. The current presentation by the Guyanese government that USD\$388 million has been received by the government implies that this money is available for the budget. This is a pre-tax amount. Further clarification needs to be made that accurately describes how much of the NRF is for available for actual budget needs.
3. The lack of any withdrawals from the NRF to date should be clarified, as it appears there may have been charges that the government has paid to comply with tax law and other operational fees.<sup>23</sup> Each oil lift announcement contains a statement from the government regarding its pledge of transparency in the receipt of oil lift revenues.<sup>24</sup>
4. The full tax benefit to ExxonMobil and Hess is unknown. As a consequence, it is unclear how much profit each company is actually receiving under the contract. The contractor and the other parties are required to furnish the minister with a copy of their Guyana tax return. The minister is then responsible for supplying to the Guyana Revenue Authority sufficient information that allows the GRA to prepare an appropriate receipt that demonstrates that the contractor has paid its taxes and otherwise complied with Guyana tax law. (Section 15.5).

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<sup>21</sup> Kaiteteur News. [VP Jagdeo tells Diaspora no high paying jobs in Govt](#). August 22, 2021.

<sup>22</sup> IEEFA. [Guyana's Oil Deal: Promise of Quick Cash Will Leave Country Shortchanged](#). October 2020.

<sup>23</sup> [The Natural Resources Fund Act No, 129 -2019](#), Sections 17, 18, 19 and 22 allow the Bank of Guyana to conduct procurements and make payments for investment advisors, custodians and other banking services. The Bank is also allowed a fee for its services. Recently, the government has announced hiring Saudi Aramco to facilitate the sale of its profit oil on the open market. The payment to Aramco is 0.025 percent of each barrel of oil. See: S&P Global Platts. [Guyana chooses Aramco Trading Limited to market Liza crude](#). September 4, 2021. Also see: Kaiteteur News. [Saudi Aramco chosen to market Guyana's next oil lift](#). September 4, 2021.

<sup>24</sup> Government of Guyana, *op. cit.* "As the Government of Guyana manages the nation's patrimony to the benefit of all Guyanese, it remains committed to providing updates on oil lifts and sales as may be necessary to ensure that all stakeholders and members of the public are informed. A fully transparent presentation would also include expenses incurred by the fund.

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The U.S. parties, Hess and ExxonMobil, may use these receipts to claim a credit on their U.S. tax returns.<sup>25</sup> It is uncertain if the receipts are used in this manner and, if so, their value to ExxonMobil and Hess. Two observations:

- a) ExxonMobil and the other companies receive a cash benefit because they are not required to pay taxes that other similarly situated companies in Guyana are obligated to pay. This is a component of the contract and part of the overall incentive package contained in the profit-sharing agreement and agreed to by the Guyanese government.
- b) ExxonMobil and Hess doing business overseas run the risk of paying double taxation (to the host country and their tax home). U.S. tax law supports overseas investment by protecting companies from this risk. U.S. tax law allows companies to claim a tax credit for these expenditures. It is unclear, what, if any additional profit accrues to ExxonMobil and Hess from a tax benefit that appears to allow them to collect even if they have not actually paid the tax.

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<sup>25</sup> Hollis Forbes Russell, [The foreign tax credit for American oil contractors in Indonesia: An allocation approach](#), Cornell International Law Journal 10(2), May 1977; U.S. General Accounting Office, [Report to the Congress: The Foreign Tax Credit and U.S. Energy policy](#), No. EMD-80-86, September 10, 1980; Frank Burke, Jr., [Taxation of International Petroleum Exploration and Production Activities](#), Tulsa Law Review 27(4):525, Summer 1992.

## About IEEFA

The Institute for Energy Economics and Financial Analysis (IEEFA) examines issues related to energy markets, trends and policies. The Institute's mission is to accelerate the transition to a diverse, sustainable and profitable energy economy. [www.ieefa.org](http://www.ieefa.org)

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