

REPUBLIC OF GUATEMALA

# Preliminary Scoping Report of the Reconciliation of Mining and Hydrocarbon Sector Payments and Revenues



EITI-Guatemala Executive Secretariat  
September 11th 2011

## FOREWORD

This report has been prepared by Ms Hilda Harnack, Oil, as and Mining Unit consultant at the Sustainable Energy Department at the World Bank. The report does not compromise the Government official version, nor that of the sector companies' or of the World Bank, , that financed it.

The author thanks the following people for the information supplied for the preparation of this report and for their patience in answering her many questions:

*Ministry of Energy and Mines:*

Engineer Oscar Rosal, Coordinator, Mining Development Department

Engineer Fernando Arevalo, Advisor, International Cooperation Area

Engineer Mario Rene Godinez Ortiz, Coordinator, Economic Development Analysis,  
Hydrocarbon General Directorate

*Superintendency of Tax Administration:*

Ms. Delia Castillo Elias, head, Management Department, Collection and Management  
Intendance

*Banco de Guatemala:*

Mr. Byron Leopoldo Sagastume Hernandez, Director, Accounting Department

*Ministry of Public Finances:*

Mr. Donald Eduardo Cuevas Cerezo, Director, Fiscal Analysis and Evaluation Directorate

Mr. Jorge Guillermo escobar Paz, Technical Advisor, Fiscal Analysis and Evaluation  
Directorate

Mr. Alvaro Enrique Samayoa Arana, Principal Expert in the SIAF-SAG Project  
Implementation, Accounts Comptroller's Office

Mr Juan Manuel López, National Treasurer

*Companies:*

Ms. Regina Rivera de Cerezo, Corporate Relations Manager, Compañía Guatemalteca de Niquel

Mr. Mario marroquin Rivera, Executive Director, Goldcorp Guatemala

Mr. Fredy Misael Gudiel Samayoa, Legal Department Manager, Perenco Guatemala Limited

Ms. Evelyn Vanessa Rodas Molina, Legal Assistant, Perenco Guatemala Limited

The author is especially thankful to Mr. Silvio Gramajo, representative from the Vice-presidency of the Republic to the EITI EITI- National Commission, for his time devoted to reviewing the document, as well as Mr. Mirko Kreibich, Project Officer, and Javier Aguila, Senior Operations Official at the World Bank for his advice and guidance during the preparation of this report.

## TABLE OF CONTENTS

1. EXECUTIVE SUMMARY .....	5
1.1 Background .....	5
1.2 Mining Industry .....	5
1.3 Hydrocarbon Industry .....	7
1.4 Scope of the EITI Report .....	8
2. THE MINING INDUSTRY .....	10
2.1 Background .....	10
2.2 Production .....	10
2.3 Mining Investment Projects .....	12
2.4 Illegal Exploitation .....	13
2.5 Legal Regime.....	133
2.6 Tax Regime .....	14
2.6.1 Tax Revenues .....	15
2.6.2 Non Tax Revenues .....	18
2.7 Revenue Flows .....	18
2.8 Sector Strategy.....	20
2.9 Mining Companies and Governmental Agencies .....	21
2.9.1 Mining Companies .....	21
2.9.2 Government Agencies .....	24
3. THE HYDRCARBON INDUSTRY .....	26
3.1 Background .....	26
3.2 Oil Production.....	26
3.3 Fields, Contracts and Operators .....	28
3.4 By-Product Industry .....	311
3.5 Strategy and Perspectives .....	31
3.6 Legal Regime.....	33
3.7 Tax Regime .....	335
3.7.1 Tax revenues .....	355
3.7.2 Non-tax Revenues .....	36
3.8 FONPETROL (Decree No. 71-2008) .....	366
3.9 Payment and Revenue Flows.....	37
3.10 Oil Company and Governmental Agencies.....	40
3.10.1 Oil Companies.....	40
3.10.2 Governmental Agencies .....	42
4. DECISIONS ON THE SCOPE OF THE EITI REPORT .....	444
4.1 Payments/Revenues Flows that Companies and Government Shall Disclose...	444
4.2 Companies that must disclose information .....	455
4.3 Government entities that must report .....	477
4.4 Period the report will cover .....	477
4.5 Aggregation or disaggregation of the EITI Report .....	47
4.6 Direct payments, transfers to local governments and social payments .....	488
4.7 EITI at the municipal level .....	49

5.	PAYMENT FLOWS .....	51
<b>5.1</b>	<b>Reconciliation</b> .....	<b>522</b>
6.	LEGAL IMPEDIMENTS.....	544
ANNEX I.	Forms for the reconciliation of payments and revenues	
ANNEX II.	Seismic areas map	
ANNEX III.	Statistical charts	
	A. Payments to the State by Montana Exploradora, S.A.	
	B. Guatemala seismic coverage	
	C. Payments to the State by Perenco Guatemala Limited	
	D. Mining companies at production and exploration stages	
	E. Information Disclosure Request. Peru	

# **1. EXECUTIVE SUMMARY**

## **1.1 BACKGROUND**

One of the important policies in the Government of Guatemala has been institutionalizing transparency through probity norms and fiscal control of public institutions. Following commitments the Government acquired concerning transparency, access to information and the fight against corruption, some proposals have been submitted to the Congress of the Republic aimed at strengthening the current legislation.

The Extractive Industries Transparency Initiatives (EITI) is framed within the State's policies as a mechanism that may lead to improve governance in the country's extractive industries through dialogue among government, companies and civil society as well as publication of payments to companies and government revenues. The better governance of revenues may induce a better management of said resources and promote a greater economic and political stability, decreasing social conflicts.

The Government of Guatemala requested – through the Vice-presidency of the Republic – EITI's candidacy on February 14<sup>th</sup> 2011. The EITI Board approved Guatemala's candidacy on March 1, 2011. The EITI National Commission was created to implement the Initiative. It prepared and approved a work program. Similarly, a broader civil society group is being organized in order to monitor the implementation and dissemination the EITI at department level.

### **First EITI Report**

One of the activities the National Labor Commission should undertake is the preparation of the first EITI Report on reconciliation of payments to companies and revenues received by government. To do so it will retain an accounting firm. The Commission will prepare said company's terms of reference, which define the scope of the EITI's Report.

This report is a brief analysis of both sectors and aims at laying the foundation to facilitate the debate of the EITI-GT National Commission and Civil Society focal group, which monitors the EITI, in its decisions regarding the scope of the reconciliation report and, in particular, in its decisions regarding the materiality of:

- i. Revenue flows that companies and government shall disclose
- ii. Companies that shall report
- iii. Governmental entities that shall report
- iv. The period to be covered by the report
- iv. The degree of aggregation or disaggregation of the information of the EITI's report
- v. The direct payments and transfers to local governments
- vi. The social payments

## **1.2 MINING INDUSTRY**

Guatemala is estimated to have a high mining potential, particularly gold and nickel, although production is still small and the country has been relatively unexplored. Mining

has a controversial history due to opposition from indigenous communities regarding its environmental impact and its contribution to State revenues.

The mining activity (including hydrocarbons) represents less than 2 percent of the Gross Domestic Product. Gold and silver projects of the Canadian Goldcorp Mining Company in Mina Marlin and Cerro Blanco have significantly pushed the industry since 2003. Nickel also has good commercial potential. The Guatemalan Nickel Company is developing a nickel project that could be one of the most important worldwide.

Metal mining production has substantially increased in the last 5 years. Almost all of this increase has been due to the growth in the production of the Marlin mine. In 2010, gold production reached 296.000 troy ounces and silver production reached 6.2 million troy ounces. The sale value of both metals was Q.4.019 million, while the value of non-metal mining was Q.165 million.

### **Legal and Tax Regime**

The Mining Law (Decree 48-97) and its Regulation (Governmental Agreement 176-2001) define the mining sector's legal regime. Mining rights are granted through appraisal, exploration and exploitation licences. The request for the first two licences needs an environmental mitigation study. The requests of exploitation permits need submission of an environmental impact assessment to the Environment and Natural Resources Ministry.

The Guatemalan mining sector's tax regime consists of royalties, privative funds and taxes.

- *Royalty.* The royalty rate is 1 percent of mineral exploitation, out of which the State takes 0.5 percent and the municipalities 0.5 percent.
- *Canons and fees.* These revenues are mining fees fines and interest allocated to the Ministry of Energy and Mine.
- *Taxes.* The main taxes are corporate income tax, ISR, value added tax, VAT, real estate, withholding taxes of residents and non-residents, taxes on dividends and import tariffs.

The corporate tax allows companies choosing between the *general regime* in which companies pay a fixed 5 percent tax on gross revenues and the *optional regime* of 31 percent on the net profit (after deduction of operating and capital costs).

The Mining Law has been under review since 2006 by the high level Commission for Mining, mostly in connection with the level of royalty and the permit granting regime. The new proposed Law is expected to be submitted to the Legislative Directorate of Congress in 2012. There has been a moratorium in licence granting since 2008. Once the new Mining Law is approved and the moratorium on new licence approval is raised, several mining projects (including gold, lead, nickel, silver and zinc) may be implemented.

### **Payment Flows**

In 2010 the mining sector contributed with 1 percent of State revenues. The sector generated a Q.351 million in 2010, as compared to Q.12 million in 2005 (Table 5). Out of all payments from mining companies to the State, 90 percent corresponds to Montana Exploradora de Guatemala S.A., a subsidiary of the Canadian Goldcorp Inc.

In 2010, the main payments made by mining companies to the State are:

- i. Corporate tax, ISR (67.9%)
- ii. Stamp tax (17.9%)
- iii. Solidarity tax (0.8%)
- iv. State Royalties (5.49%)
- iv. Municipal Royalties (5.49%)
- v. Canons (0.9%)

### **Companies**

According to Ministry of Energy and Mines data, in 2010, 102 mining companies were registered with 201 active exploitation licenses. Five were engaged in metal mining activities and the other in non-metal mining activities, mainly construction materials. The Mining, Quarries and Processors Association (GREMICAP) has 22 active members which have expressed their interest in participating in the reconciliation.

## **1.3 HYDROCARBON INDUSTRY**

Oil has been prospected in Guatemala for almost 60 years. Current production comes from the Peten Norte and Peten Sur oil basins and is transported through a pipeline to the Piedras Negras oil terminal in Santo Tomas de Castilla, Department of Izabal, where the crude is exported.

Ninety-three percent of oil production comes from the Xan field in the north of Peten, operated by the French company Perenco. National crude production has been constantly growing since 1990 and reached 9.2 million barrels in 1998. Perenco gave a boost to production in 2002 and 2003 but the Xan field started to show clear signs of depletion since 2004. Seven percent of production comes from other 7 small fields.

Seismic studies show that Guatemala has a good potential for oil development, in the Amatique watershed south of Peten and Belize.

### **Legal and Tax Regime**

The Hydrocarbon Law (Decree No. 109-83) of September 1983 and its Regulation (Governmental Agreement 1034-83) of December 1983 and the Hydrocarbon Exploration and Exploitation Contract (A.G. 190-2005) constitute the legal framework that regulates the hydrocarbon sector activities in Guatemala. The latter is a Production Sharing Contract.

The duration of the contract is 25 years and the exploration phase lasts up to 6 years. The work commitment concerning the number of exploratory wells is negotiable, but the contractor is obliged to drill an annual well in the development phase of the field.

The royalty rate is 20 percent when the crude has an API of 30° gravity. The percentage increases or decreases by 1 percent per for each degree above or below 30° API, and can never be lower than 5%.

The State share of the production is at least 30 percent, which increases according to a sliding scale based on daily production, e.g., 40 percent of the daily production that exceeds 5000 bpd up to 10.000 bpd, up to 70 percent of the production that exceeds 50.000 bpd.

Corporate tax is calculated on net profit after deducting costs and expenditures related to oil operations. Recoverable costs are all the disbursements in capital costs (prospecting, development and exploitation), operating and administrative expenditures incurred at the prospecting, development and exploitation stages.

### **Payment Flows**

In 2010 the oil industry contributed 2.3 percent to the State revenues. The sector generated Q.849 million to the State, as compared to Q.673 million in 2005. Most revenues are made up of royalties and State production sharing. In 2010 both of these reached Q.754 million. Revenues from ISR were Q.78 million in the same year. Payments by Perenco to the State accounted for 91 % of the total for the industry.

In 2010, material flows were the following:

- i. State Production Sharing (73.2%)
- ii. Royalties (15.6%)
- iii. ISR (9.2%) iv Revenues from the use of Transport infrastructure (oil pipeline) (0.7%)
- v. Privative funds (0.5%)

### **Companies**

There are 4 companies involved in crude exploitation activities and 3 companies with exploration contracts. The companies involved in production are: Perenco Guatemala Limited (Xan field); Empresa Petrolera del Itzmo, S.A. (Rubelsanto, Chinaja Oeste, Caribe and Tierra Blanca fields); Petro Energy, S.A. (Chocop and Yalmemech fields); and PetroLatina Corporation (Atzam field). The exploration companies are: PetroLatina (Las Casas/Huapán, Alta Verapaz); Compañía Petrolera del Atlántico (Izabal); and City Petén, S. de R.L. (Petén).

## **1.4 SCOPE OF THE EITI REPORT**

The first EITI criterion requires regular publishing of “all material payments by oil, gas and mining companies to government” and of “all material government revenues from the oil, gas and mining industries. A revenue flow is material if its omission or misstatement could materially affect the final EITI Report.

It is important that the National Commission has an opportunity to discuss and make decisions about the revenue flows to be included in the information templates. The EITI also recommends involving wider multi-stakeholder groups to give their opinion regarding materiality decisions.

**Materiality of flows.** In decisions on what flows and what companies shall participate in the Report, the Commission will take into account the relative importance of each one vis-à-vis the total and the cost of including two small flows.

**Materiality of companies.** Considering that a single company accounts for a very large percentage of the sector contribution to State revenues, the threshold of the flows should be sufficiently low to allow the inclusion of smaller companies.

In mining, where there are 102 active companies, the amount of sales could be a good criterion for deciding which companies should participate. Perhaps the most determining factor is the ability of the companies to disclose information originating from accounts audited according to international standards, at present or within a reasonable period of time.

**Governmental Agencies.** EITI requires that the government ensures that every governmental entity receiving material payments participates in the information disclosure process. Government entities that should report are:

- **The Ministry of Energy and Mines.** As receiver of mining royalties and privative funds from the mining and hydrocarbon sector
- **The Bank of Guatemala.** As receiver of oil royalties in privative funds
- **The Superintendency of Tax Administration.** As the entity that controls tax payments
- **The Ministry of Finance/ National Treasury:** As receiver of royalty deposits in the Common Fund and State Accounting, as the receiver of taxes
- **Municipal Directorate of Financial Administration.** As receiver of municipal royalties from mining companies

**Aggregation level.** The National Commission should also take decisions concerning the publication of a report with aggregate figures (revenue items representing all the companies) or disaggregated figures (revenue figures per company). The Commission should discuss the advantages and disadvantages of disaggregated figures. In the end, publishing disaggregated figures depends on the government's and the company's willingness to void confidentiality clauses. In Guatemala, this should not be a topic of much debate, considering the structure of each sector in which a single company prevails.

**Direct payments and transfers to local governments.** EITI rules specify that direct payments to local entities should be included in the Report. Wherever there are important transfers from the State to local governments, the Commission may decide to include them in the Report, for example Fonpetrol allocations to the Peten Department.

**Payments in cash and social payments.** EITI encourages multi stakeholder groups to make the effort to reconcile in-kind and social payments. Where this is not possible, the Commission should submit a separate report together with EITI's Report. The Commission shall be well informed about the nature of these payments in order to make these decisions.

## 2. THE MINING INDUSTRY

### 2.1 Background

The mining activity has existed in Guatemala since colonial times. Lead, silver and gold exploitation by the Spaniards was considerable and based upon indigenous labor. There was silver exploitation 12 km from Huehuetenango in the Almengor I and II Mines. Another famous mine was known as “El Sastre”, not far from the capital city, which was supposedly exploited during colonial times. Large amounts of gold are presumed to have been obtained from that mine. Other mines which were exploited at that time were the gold mine in Antigua Guatemala, the mercury mine in Zunil, the silver mine of Barreneche and the gold mine in Baca in Palencia.

More recently, between 1960 and 1980, there were several foreign private investment projects in extractive industries, especially nickel mining and oil production. A Canadian-US consortium, Exploraciones y Explotaciones Mineras Izabal (Exmibal) was the most important. After 5 years of exploration, the company received an exploitation concession from the government and built an extraction plant in Izabal. Nickel has not been exploited yet but has good commercial potential, particularly the Fenix deposit in Lake Izabal which, developed at the maximum capacity, could become one of the 10 largest nickel mines in the world.

Guatemala is estimated to have a high mineral production potential. However, production has been low due to its controversial history, particularly the opposition of indigenous communities in connection with its environmental impact and the amount of contribution to government and community revenues. Currently, besides gold and nickel, silver, coal, iron ore, cobalt, lime, sand and gravel, platinum and uranium deposits have been identified as minerals with good development possibilities.

According to estimates of the Mining, Quarries and Processors Association (GREMICAP), new investments in the order of Q.15.000 billion could take place in the mining sector between 2010 and 2016, which would generate 2.000 new direct jobs.

### 2.2 Production

Although the exploitation of mines and quarries (including hydrocarbon) is still quite low, its importance in the Gross Domestic Product has rapidly increased in the last 6 years having reached 1.9 percent in 2010. The importance of mining in GDP has been steadily increasing in the last few years (Table 1). Gold is the most important mineral produced, due to the significant drive given by the Canadian company Goldcorp to the industry with the Marlin and Cerro Blanco projects, since 2003. However, despite the rapid increase of national production, Guatemala produced only 0.34 percent of the world’s gold production in 2009<sup>1</sup>. The development of other gold deposits such as Cerro Blanco will undoubtedly improve Guatemala’s classification as international producer of this metal.

Currently, 96 percent of the mining value of production corresponds to metal mining exploitation, mainly the Marlin I project of Montana Exploradora de Guatemala S.A. (a Goldcorp subsidiary), which produces and exports gold and silver. Table 2 and Graph 1 show the importance of metal mining as compared to non-metal mining in Guatemala.

---

<sup>1</sup> British Geological Survey. *World Mineral Production 2005-2009*.

Metal mining production has substantially increased in the last 5 years. Almost all of this increase is due to the production growth in the Marlin mine. In 2010 the value of production of both metals increased by almost 50 percent as compared to 2009.

(Millions of Quetzales every year)						
	2005	2006	2007	2008	2009	2010
Gross Domestic Product	207,729	229,836	261,760	295,872	307,552	331,803
Mine and Quarry Exploitation	2,397	3,269	4,121	5,371	5,063	6,411
Percentage	1.15	1.42	1.57	1.82	1.65	1.93
Source: Banco de Guatemala						

These substantial increases are the result of the world economic conditions, which resulted in the tripling of the prices of both metals between 2005 and 2010 (Graph 2). Gold and silver exports increased from US\$13.3 million in 2005 to US\$500 million in 2010 (Graph 4).

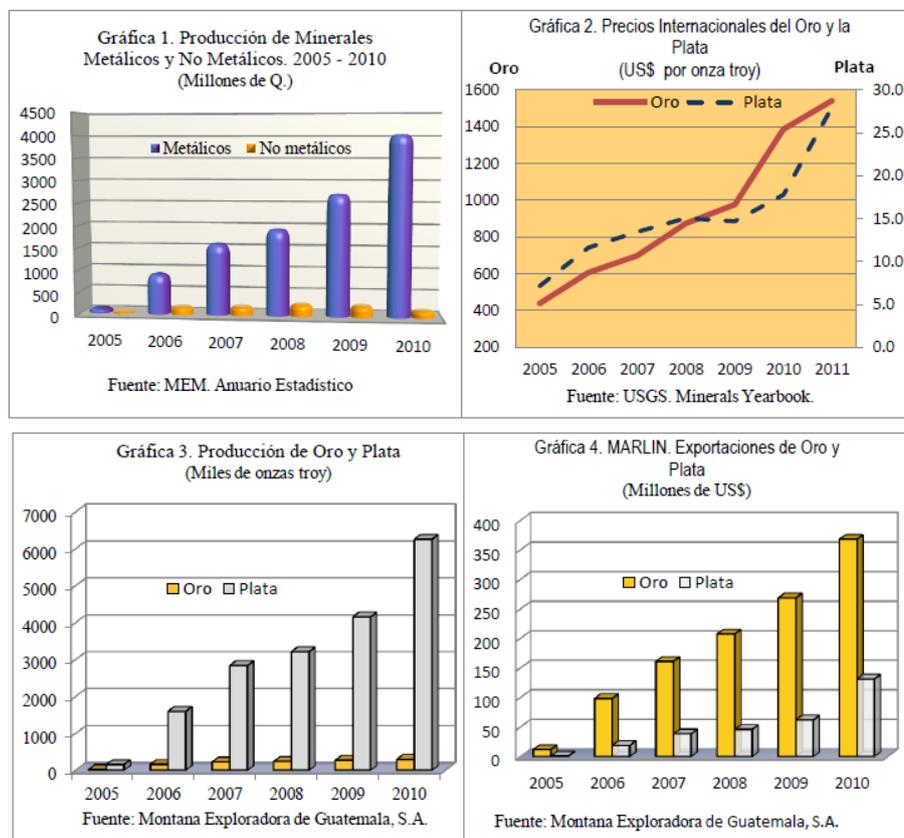
Producto	Unidad	2005	2006	2007	2008	2009	2010
<b>Minerales metálicos</b>							
Hematita	TM				452	5,463	1,604
Oro	onzas troy	23,825	161,905	227,233	239,453	272,783	296,203
Plata	onzas troy	227,446	1,598,517	2,837,204	3,187,181	4,110,016	6,245,035
Plomo	TM	23	28	363	117		
<b>Minerales no metálicos</b>							
de los cuales:							
Basalto	M3	512	1,603,897	2,084,606	1,582,770	56,534	1,155,959
Caliza	TM	75,984	30,495	2,306,123	1,515,803	2,537,403	4,910,289
Sílice	TM	-	-	67,975	65	35,933	62,268
En millones de Quetzales							
<b>Minerales metálicos</b>		<b>101.6</b>	<b>899.4</b>	<b>1,592.5</b>	<b>1,921.3</b>	<b>2,710.5</b>	<b>4,019.4</b>
Hematita					0.0	0.4	0.1
Oro		91.5	748.6	1,234.1	1,571.5	2,199.6	2,953.5
Plata		10.0	145.2	291.8	349.7	510.5	1,065.8
Plomo		0.1	0.1	0.3	0.0		-
<b>Minerales no metálicos</b>		<b>36.7</b>	<b>166.8</b>	<b>192.5</b>	<b>263.1</b>	<b>249.7</b>	<b>165.0</b>
de los cuales:							
Basalto		0.0	30.6	0.1	38.6	0.8	28.4
Caliza		0.5	3.1	58.8	126.2	47.3	60.0
Sílice		-	-	27.6	134.8	17.3	29.1
<b>Valor Total de la Producción</b>		<b>138.3</b>	<b>1,066.2</b>	<b>1,785.0</b>	<b>2,184.4</b>	<b>2,960.2</b>	<b>4,184.4</b>

Fuente: Ministerio de Energía y Minas.

During 2009, Montana increased the Marlin's production capacity to 14 percent, an increase of 272,783 ounces as compared to 2008. In 2010 the company produced 296,200 troy

ounces or 7 percent more than in 2009. Forecast production for 2011 is around 400,000 ounces.

In 2009 Montana continued its exploratory activity in the Cerro Blanco gold and silver project and is expected to complete the feasibility study for this project in mid/ 2011. Montana has also started exploring in its Escobal silver prospect.



The production of other metals such as hematite and lead has not been significant and no clear trend is identified. The most important lead and zinc deposit has been discovered in the Chiantla-San Sebastián and San Miguel Acatan mining districts in Huehuetenango and close to Coban in Alta Verapaz. Two lead, silver and zinc projects are located in Minas La Esperanza and Caquiepec from Firestone Ventures Inc., but no information on production was obtained.

Among non-metal minerals, the most important are basalt, lime and silica. In 2009 and 2010, however there is a production decrease, possibly in response to a decrease in the value of products in the construction sector amounting to 12.5 percent in 2009. There is no reliable information on cement production. However, Cementos Progreso plans to double its lime production capacity in its San Miguel plant up to 360,000 tons/year (as compared to 180,000 tons/year in 2009).

### 2.3 Mining Investment Projects

The existence of mining deposits and quarries ready for commercial exploitation present opportunities for starting new mining exploration operations and for new domestic and foreign capital investments. The following are among the main investments in Guatemala.

### **Proyecto Minero Fénix**

The Fenix project is an important investment made by Compañía Guatemalteca de Niquel S.A. (former EXMIBAL, S.A.) in El Estor municipality, Izabal department, which could amount to US\$ 754 million. This investment aims at extracting 590 thousand tons of nickel in 30 years. This mining exploitation will generate revenues for the country from royalties, foreign exchange and taxes, as well as employment and revenues for communities around the project. The company is owned by the Canadian HudBay but it is looking for the participation of other multinational companies to develop the project.

### **El Pato**

Located in the Chiquimula Department, it currently holds a gold exploration permit. This area was explored through an agreement with the United Nations and is currently the property of Compañía Minera El Condor, S.A., subsidiary of the Canadian Goldex Resources.

### **Proyecto Cerro Blanco**

This is a gold exploitation project located in the municipality of Asuncion Mita, Jutiapa. The project is the property of Entre Mares de Guatemala, a subsidiary of Goldcorp Inc. In December 2010 Cerro Blanco reserves have been estimated at around 2 million ounces.

### **Proyecto San José Mincesa**

This project for limestone and other minerals production is located in the municipality of San Juan Sacatepequez, Guatemala. The project is being constructed and is the property of Cementos Progreso.

## **2.4 Illegal Exploitation**

According to information from GREMICAP, illegal extraction of gravel, river sands and pumice, among other minerals, has become a problem that generates a domino effect in the legal system and Guatemalan society. Illegal mining is carried out with no authorization in watersheds, rivers and slopes all over the country. The situation brings about other problems such as child exploitation, infraction of legal regulations, tax evasion and bad product quality, which means deficiencies in constructions, adverse environmental impacts, depletion of natural resources, insufficient remuneration to workers and no labor benefit payments. The total volume reported to MEM is 5.25 million cubic meters, while the non-reported one is estimated at 4.18 million cubic meters. To solve this problem, the situation requires the coordination of activities of the public entities involved, besides MEM, other entities, such as the Ministry of Environment and Natural Resources, and the Superintendency of Tax Administration<sup>2</sup>.

## **2.5 Legal Regime**

In Guatemala, underground resources belong to the State and the Ministry of Energy and Mines is in charge of issuing mining rights under the Mining Law (Decree 48-97).

---

<sup>2</sup> Construcción Review. "Efectos de la Minería Ilegal en Guatemala", July 2010.

Mining rights (including appraisal, exploration and extraction of minerals) can be granted to both domestic and foreign investors. Table 3 shows a summary of the mining sector's legal and tax regimes.

**Appraisal licences.** These are exclusive licences granted for 6 months. They are renewable for additional 6 months and may cover between 500 and 3000 km<sup>2</sup>. The government has proposed abolishing these licences due to the concern that their accumulation in a few hands can prevent other stakeholders from starting recognition activities.

**Exploration licences.** They are exclusively granted for three years with a two-year extension each. The current area is reduced by 50 percent in each extension. These licences cover a maximum extension of 100 km<sup>2</sup>. The holder of an exploration license may request an exploitation licence if he so desires. MEM has a maximum deadline of 30 days for approving an application. However, in the case of a large mine, this approval period can be quite short.

**Exploitation permits.** These are granted for a maximum term of 25 years non-renewable. The maximum exploitation area is 20 km<sup>2</sup>. Companies are obliged to submit an environmental impact assessment.

**Environmental requirements.** Recognition and exploration permit applications must include an environmental mitigation study. Those who apply for extraction permits shall submit a complete environmental impact assessment to the Ministry of the Environment and Natural Resources (MARN) and the National Protected Area Council (CONAP), if mining were to be developed in a protected area. National environmental standards have not been totally developed but international standards are available as guidance.

The law does not establish any obligation to formalize a mining development agreement with the State that would allow establishing all the rights and obligations of the license holder and of acceptable processes of dispute resolution. Neither does the law distinguish between large scale mining, artisanal mining and quarries. The last two are much simpler activities<sup>3</sup>. Therefore, the revised law tends to focus in the aforementioned issues which are of public interest.

Law 48-97 was an improved Law that replaced law 41-93, which was highly restrictive and had no success in attracting investments to Guatemala. However, this Law now requires modernization.

## 2.6 Tax Regime

The most important contribution of mining to development is government revenues. Therefore, the tax regime must make sure governments receive an adequate share of revenues. At the same time, the tax regime must be internationally competitive and take into account that mining is a capital-intensive activity, that metal prices fluctuate in large cycles, and hence that the risk level assumed by investors is quite high.

---

<sup>3</sup> In 1991, law Decree 55-90, "Small Mining Promotion Law," came into effect. It was replaced by Law Decree 41-93 which lasted until the current mining law was approved.

In Guatemala, the mining sector tax regime includes royalties, privative funds and taxes. chart 3 shows a summary of the mining tax regime.

## 2.6.1 Tax Revenues

The Superintendency of Tax Administration (SAT) determines and follows the payment of the following mining taxes.

### Income Taxes

**i. Corporate income tax.** The corporate income tax applies both to resident and non-resident companies, but is only applied on the revenue that originates in Guatemala. This means it is applied on the revenue originated from capital, goods, services or rights invested or used in Guatemala or originated from activities carried out in the country.

Companies and individuals may choose between the following two regimes:

- a. *General regime*, according to which the companies pay a fixed 5 percent tax on their gross income regardless of the profit margin or income level. The tax is paid on a monthly basis under this regime. This is the most common regime in the mining sector regime.
- b. *Optional regime*, which is the general corporate tax at a 31 percent rate on the taxable net income. Payments are made on a quarterly basis under this regime.

The general regime allows losses to be carried forward for 5 years. The net income regime only allows losses to be carried forward for one year.

The 5 percent option on the gross income is a fixed tax that bears no relationship with profitability.

**ii. Individual income tax (salaries).** This is a withholding tax paid to the State on a monthly basis by the companies. as employee salary deduction.

**iii. Withholding tax of non-residents.** This is a tax on natural or legal persons. Any payment made by a domestic entity to a foreign company is subjecte to tax withholding. In case of personal services (salaries), interests, among others, tax withholding is 10 percent above the income. Remaining services supplied by non-domiciled entities are subjected to a 31 percent income tax.

### Value Added Tax (IVA, in Spanish)

The Value Added Tax rate is 12 percent on the sales of goods and services as well as imports. Exports of goods and services are exempted from IVA. Exporters can access the reimbursement system by filling in monthly applications before Banco de Guatemala.

### Tax on Real Estate (IUSI, in Spanish)

This is an annual *ad-valorem* tax on property in urban and rural areas. Collection and administration of this tax has been decentralized to local governments (municipalities).

The property value is estimated by assessment of the owners and the tax is applied to real estate owners progressively, according to Table 3. This tax is paid on a quarterly basis.

<b>Cuadro 3. Impuesto Único Sobre Inmuebles y Destino</b>				
<b>(Quetzales)</b>				
<b>Valor del Inmueble</b>	<b>0 - 2,000</b>	<b>2,001 - 20,000</b>	<b>20,001 - 70,000</b>	<b>más de 70,000</b>
<b>Tasa</b>	<b>Exento</b>	<b>0.2 por ciento</b>	<b>0.6 por ciento</b>	<b>0.9 por ciento</b>
<b>Destino</b>	<b>Municipalidad</b>		<b>25 por ciento, Gobierno Central 75 por ciento, Municipalidad</b>	

### **Solidarity Tax**

Corporations and companies domiciled in Guatemala must pay the Solidarity Tax on a quarterly basis. The rate of 1 percent applies over the larger amount between:

- a) The fourth part of net assets –the amount that results after subtracting from the total assets, the tax credits, reserve for doubtful accounts, accrued depreciation and amortization, or
- b) The fourth part of the last fiscal year’s gross income.

In the case of taxpayers whose net asset is more than four times their gross revenues, the taxable base set forth in letter b) above will apply. This tax can be credited against the payable income tax.

### **Import Tariff Duties**

These result from imports of goods and are paid according to a tax scale between 0 and 15 percent. Inputs, machinery, equipment, spare parts, accessories, materials and explosives to be used in mining operations are exempted from tariff rates and duties. However, some products are not exempted and pay taxes.

### **Stamp Tax**

This is a tax on documents applied on civil and mercantile contracts, receipts documenting cash payments or dividend payments, as set forth by the law. Those who issue, subscribe or grant documents containing acts or contracts are subjected to payment of this tax. The tax rate is three percent. The tax is determined by applying the rate to value of the said documents and contracts.

For the purpose of the revenue flows to be included in the reconciliation report – both in the mining and in the hydrocarbon sectors - neither withholdings nor the value added tax will be taken into account, following the suggestion of the EITI Source Book, since these taxes are indirect benefits of the extractive activity. However, if the Commission decides to include them, these flows must be material and an explanation must be given to justify this decision.

**Table 4. Legal Regime**

	<b>Mining Law (Decree 48-97) of 1997 and Fiscal Regime</b>	<b>References</b>
<b>Appraisal license</b>	<i>Duration:</i> 6 months renewable up to 6 additional months <i>Surface:</i> between 500 km <sup>2</sup> and 3.000 km <sup>2</sup>	Law: Art. 21-22
<b>Exploration license</b>	<i>Duration:</i> 3 years with two extensions of 2 years each <i>Area reduction:</i> 50% at each extension <i>Surface:</i> maximum 100 km <sup>2</sup>	Law: Art. 24-25
<b>Exploitation license</b>	<i>Duration:</i> maximum 25 years that can be extended until 25 years <i>Surface:</i> maximum of 20 km <sup>2</sup>	Law: Art. 27-28
<b>Royalty</b>	1% deductible from taxes (0.5% to the State; 0.5% to municipalities)	Law: Art. 61-65 Regulation: Art. 33
<b>Canons</b>	- Mining right granting: Q. 1.300 - Recognition permit: Q.120 /km <sup>2</sup> - Exploration permit: 3 units / km <sup>2</sup> per year; 6 units /km <sup>2</sup> per each year of the first extension; 9 units / km <sup>2</sup> per each year of the second extension*. - Exploitation permit: 12 units /km <sup>2</sup> per year - Exploration and exploitation permit transfer: 3 and 5 units / km <sup>2</sup> respectively	Art. 66-67 Law
<b>Tax on company income</b>	<i>General regime:</i> 5% fixed on gross income <i>Optional regime:</i> 31% on net income	
<b>Tax deduction on salaries</b>	ISR on employee income less personal deductions	
<b>Withholding tax on payments to non-residents</b>	- 10% on personal services (salaries), interests, etc. - 31% on payments for other services	
<b>Tax on capital gains</b>	Depending on the use of tax regime, capital gains are subjected to 5% or 31%	
<b>Dividends</b>	- 0% when dividends are paid from profits that have already been subjected to a tax; 10% to non-residents on profits not subjected to ISR - The 3% Seal Tax applies on receipts documenting dividend payment.	
<b>Property Tax– IUSI</b>	- Value Q.0 – Q.2.000: exempted - Value Q.2001 – Q.20.000: 0.2% rate - Value Q.20.001 – Q.70.000: 0.6% rate - Value more than Q.70.000: 0.9% rate	
<b>Import duties</b>	If the company is under the assembly line regime, it is exempted. Otherwise, the rate goes from 0% to 15%	

\* The value of units is determined by MEM at the beginning of the year. They vary between Q.100 and Q.1.000. MEM agreement OM-318-97 fixes the value at Q.100.000 indexed according to USD price on 17/07/97, which was Q.5.99 per USD1.00.

## 2.6.2 Non Tax Revenues

### Royalties

The royalty rate is 1 percent and it applies both to base metals and precious metals. Royalties are deductible for tax purposes. The royalty rate applied to mineral exploitation is 0.5 percent for the State and 0.5 for municipalities. The royalty is based on the sworn declaration of the volumen produced and marketed, and the value of the product is based on the domestic price or the spot price of foreign exchanges. Payment is annual.

According to the new law, MEM has proposed a percentage range for the royalty on gold production starting at 3 percent and going up to 7 percent when the international price exceeds \$1.500 per ounce.<sup>4</sup>

### Canons and Fees

Canons and fines are assigned to the General Mining Directorate. Companies make payments at the Treasury department of the Ministry of Energy and Mines.

## 2.7 Revenue Flows

In 2010, the mining sector contributed with 1 percent of income to the State. The sector generated Q.351 million for the State in 2010 as compared to Q.12 million in 2005 (Table 5, graph 5). Ninety percent of all payments from mining companies to the State correspond to Goldcorp (See Annex V). According to information from the Ministry of Energy and Mines the amount of royalties paid by mining companies was Q.41.5 million and canons and fees Q.3.6 million.

Mining companies report and pay corporate tax on their income to the Superintendency of Tax Administration (SAT). Each company chooses the regime they deem convenient (5 percent on gross sales or 31 percent on net profits). In 2010, ISR payments of Q.238 million accounted for 68 percent of all payments made by mining companies to the State. The stamp tax accounted for 18 percent of all payments to the State in 2010.

In 2010, the material flows to be considered for reconciliation, in order of importance were:

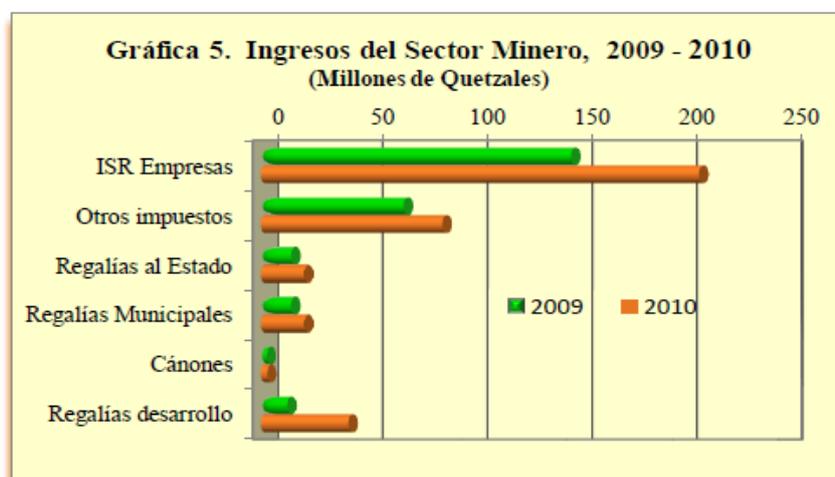
- i. ISR (67.9%)
- ii. Stamp tax (17.9%)
- iii. State royalties (5.49%)
- iv. Municipal royalties (5.49%)
- v. Canons (0.9%)
- vi. Solidarity tax (0.8%)

---

<sup>4</sup> Comisión de Alto Nivel sobre Minería. Iniciativa de Ley 3528. Reformas al Decreto No. 48-97 “Ley de Minería”.

Cuadro 5. Ingresos del Sector Minero, 2005 - 2010							
(Millones de Quetzales corrientes de cada año)							
	2005	2006	2007	2008	2009	2010	%
<b>Total Gobierno Central</b>	24,927.0	29,206.0	33,611.0	35,578.0	34,037.0	37,399.0	
<b>Sector Minero</b>	12.1	71.5	117.1	141.5	261.1	383.0	100%
<i>porcentaje</i>	0.05	0.24	0.35	0.40	0.77	1.02	
<b>Ingresos Tributarios</b>	7.96	57.97	93.91	115.41	216.25	296.02	
ISR Empresa	6.91	53.31	89.25	109.22	148.01	209.22	54.6%
Otros Ingresos:	1.04	4.66	4.66	6.19	68.24	86.80	22.7%
ISR de personas							
Retenciones no residentes							
IUSI							
<b>Ingresos No Tributarios</b>	4.18	13.55	23.20	26.09	44.88	87.00	
Regalías Gobierno Central	0.98	5.10	10.28	10.94	14.61	20.74	5.4%
Regalías Municipalidad	0.98	4.67	8.32	10.95	14.55	20.74	5.4%
Cánones:	2.03	3.58	4.18	3.56	2.92	3.08	0.8%
De Otorgamiento	1.97	0.06	0.06	0.06	0.01	0.01	
De Reconocimiento		0.19	0.01	0.06	-	0.60	
De Exploración		1.91	1.65	2.06	1.10	1.02	
De Explotación		1.41	2.19	1.29	1.33	1.21	
Prórroga y Cesión	0.06	0.01	0.27	0.09	0.48	0.25	
Multas	0.11	0.09	0.13	0.28	0.13	0.22	0.1%
Intereses	0.08	0.11	0.28	0.37	0.06	0.26	0.1%
Regalías para el desarrollo					12.63	41.96	11.0%

Ministerio de Energía y Minas. Anuario Estadístico Minero, Banco de Guatemala y Goldcorp.



**Caption: Chart 5**

Cuadro: chart	Ingresos del sector minero: Mining sector revenues
Millones de quetzales corrientes cada año: Millions of current quetzales each year	Total gobierno central: Total central government
Sector minero: Mining sector	Porcentaje: Percentage
Ingresos tributarios: Tax revenues	ISR empresa: Company ISR
Otros ingresos: Other revenues	ISR de personas: Individuals' ISR
Retenciones no residentes: Retentions to non-residents	Ingresos no tributarios: Non tax revenues

Regalías gobierno central: Central government royalties	Regalías municipalidad: Municipality royalties
Cánones: Canons	De otorgamiento: Granting
Reconocimiento: Recognition	Exploración: Exploration
Explotación: Exploitation	Prórroga y cesión: Extension and transfer
Multas: Fines	Intereses: Interests
Regalías para el desarrollo: Royalties for development	Ministerio de energía y minas. Anuario estadístico minero: Ministry of Energy and Mines. Mining statistical annual report
Gráfica: Graph	

## 2.8 Sector Strategy

Exploration and mining activities have generated much controversy with local communities, particularly indigenous populations<sup>5</sup>. Controversial issues include to what extent communities should be informed and consulted about the potential impacts of mining on land, water and health and its real contribution to the development of their communities. Mining companies find themselves threatened by occupations by communities in mining areas. Some disputes have led to violence and property damage.

Studies about the impacts of mining residues in water reservoirs used by communities, the resistance of waste reservoir in case of earthquakes and impact of mining explosions on the houses of communities concluded that there is a need for more government controls<sup>6</sup>. The Ministry of Environment and Natural Resources, in turn, maintains that its test and control program is adequate. It is believed that the communities would not oppose mining if adequate safeguards were applied. The government, communities and ILO are currently discussing the adoption of regulations to implement Convention 169.

The Government intends to promote metal mining so that this activity could significantly contribute to country development. The Mining Policy for 2008-2015<sup>7</sup> establishes the following mining policy objectives:

- Promoting technical and rational development of mining resources;
- Modernizing the legal framework applicable to mining and strengthening the government's regulatory role on this matter;
- Strengthening community development in mining areas;
- Establish a dialogue and consensus building during the process of granting permits with the actors directly affected by mining;
- Strengthening environmental protection.

Efforts have been made to review the 1997 Mining Law. In 2006, the High Level Commission for Mining, led by the Church, the universities and the Government, reviewed the Mining Law (Initiative 3428) and sent it to Congress. In mid 2008, President Colom sent it to the Energy and Mining Commission and the Economy and Foreign Trade Commission of Congress. The reviewed Initiative was returned to the Congress plenary in January 2009. From then on, several revision bills have been submitted becoming Initiative 885 dated January 20 2009. Finally, a commission from the Ministry of Finance reviewed

<sup>5</sup> Guatemala signed ILO Convention 169 requiring consulting with communities concerning tribal and indigenous cultural traditions.

<sup>6</sup> The Congress of the Republic of Guatemala. Report of the National Special Commission on Transparency, October 2009 and COPAE (2008 and 2009). Studies by the Catholic Church Pastoral Commission on Peace and Ecology, available at [www.mining-resistance.org](http://www.mining-resistance.org).

<sup>7</sup> Ministry of Energy and Mines, *2008-15 Energy and Mining Policy*. Guatemala, 2007.

the law in June 2011. This law will likely be submitted to the Congress's Legislative Directorate in 2012.

Meanwhile, June 19 2008, the Constitutional Court ordered 7 articles from the Mining Law (Decree 48-97) to be declared unconstitutional, specifically those related with permit granting. In practice, this decision led to the suspension of permit granting until there is a national consensus on the Mining Law reforms.

According to MEM, there were 413 current licences in 2010 and 459 applications being processed. Among current licences, 274 are exploitation licences, out of which 144 are for non-metal mineral exploitation and 27 for metal mineral exploitation. However, among the latter, only two are active, that is, Marlin I in San Marcos and El Sastre in El Progreso.

Once the new Mining Law is approved and the suspension for approving new permits is raised, several mining projects (including those of gold, lead, nickel, silver and zinc) can be implemented.

Guatemala shows a high potential for gold, silver and nickel production expansion. Once the feasibility studies are completed, the Fenix nickel project and the Cerro Blanco gold project should start operations in the near future.

## **2.9 Mining Companies and Governmental Agencies**

### **2.9.1 Mining Companies**

#### **Goldcorp Inc.**

Goldcorp Inc. is a leading company in the production of gold and related activities, including exploration, extraction, processing and regeneration. Some of its projects include the Red Lake, Porcupine and Musselwhite mines in Canada, Peñasquito, Los Filos and El Sauzal in Mexico, Marlin in Guatemala, Marigold mines (67 percent share) and Wharf in the USA and the Alumbrera mine (37 percent) in Argentina. Its future projects are located in Quebec, Argentina, Chile and Dominican Republic. In a short time Goldcorp Inc. has grown from a strong medium sized company to one of the most experienced gold producers in the world. Goldcorp Guatemala works as Montana Exploradora de Guatemala S.A. with Marlin Mine in the San Marcos Department and as Entre Mares de Guatemala S.A. in the Cerro Blanco Project in the Jutiapa Department.

The **Marlin Mine**, which extracts gold and silver, has been under operation since December 2005. It is located in San Miguel Ixtahuacán, San Marcos. Thirteen percent of its facilities are in Sipacapa, San Marcos. The project cost was US\$254 million plus a loan from the International Financial Corporation of US\$45 million. Marlin had an original life cycle plan of 10 years. However, exploration activities in the area show additional life cycle potential. Montana generates 2.000 direct jobs at the Marlin Mine and 8,000 indirect jobs.

The **Cerro Blanco Project** is to develop a modern gold and silver mine in Asuncion Mita, Jutiapa. The corresponding environmental impact assessment and permits to start construction were issued in August and September 2007. The project, planned for a 16-year period including exploration, construction operation and technical closing stages, is in its construction stage (2011-2013). The project has performed feasibility studies to generate electricity through a geothermal plant. During construction, 750 jobs are expected to be created and during production around one thousand indirect jobs.

Within a corporate social responsibility approach, Goldcorp has a commitment towards Sustainable Development. The Sustainable Development Department has a Community Relation Unit and an Organizational Development Unit. The Community Relations Unit share information about the Marlin mine with neighboring communities and listens to comments. The Organizational Development Unit works in community development projects to strengthen local capacity. In December 2010, a Round Table for Dialogue was established with San Miguel Ixtahuacan and Sipacapa.

### **Compañía Guatemalteca de Níquel, S.A.**

Compañía Guatemalteca de Níquel S.A. (CGN) is a subsidiary of HudBay Minerals Inc., a Canadian company. In 2008, HudBay acquired the share of Skye Resources Inc. in the Exploraciones y Explotaciones Mineras Izabal S.A. (Eximbal), and received an exploitation concession for 25 years to reopen the nickel mine called Fenix Project. HudBay has been improving the existing facilities and trying to ensure provision of electricity for its project, with the hope of starting extraction in the near future. However, opposition from local communities and the financial crisis have delayed its implementation plan .

It is estimated that total investment in the Fenix project will be around US\$1 billion. Once Fenix is developed, it is estimated to be one of the 10 largest nickel projects in the world, which will have an important economic impact for Guatemala. Only during the construction stage, 1.500 jobs have been generated and more than 5.000 jobs are forecast for the project development stage. The Fenix project is expected to generate US\$50 million per year in State revenue starting from the first year of production.

CGN's mission is to take advantage of mineral resources in a responsible way through valuing and respecting its employees, the communities, the environment, the cultural context and country's legal framework. Therefore, the company has made efforts in publicly committing to involve the communities in the areas where it operates, in its projects and it undertakes awareness programs with the communities, using best international practices. Success will be based upon guaranteeing a comprehensive and meaningful public consultation through every Project stage.

### **Mayaniquel, S.A.**

Mayaniquel S.A. is a Guatemalan company, legally established, devoted to mining exploration and development of nickel laterite resources in Alta Verapaz and Izabal. It is a subsidiary of Anfield Nickel Corp., a Canadian mining company with headquarter in Vancouver, BC and listed in the Toronto stock exchange (Toronto Venture Exchange, TSX-V: ANF). Anfield Nickel Corporation, which acquired BHP Billiton's Mayaniquel and Jaguar Nickel companies in 2008, aims to discover and develop nickel deposits in Guatemala.

Mayaniquel is committed to ensuring active local participation, since it considers this is aspect an essential approach for long term project sustainability. Such commitment also includes making sure there will be tangible improvement in the living conditions of communities working with the company through employment opportunities and participation in social programs mainly focused in health, education and infrastructure.

## **Grupo Guatemármol**

This is a company with more than 40 years of experience. Guatemármol extracts, cuts, transports and processes marble throughout the product cycle. Besides domestic production, Guatemármol imports other kinds of natural stones, such as: granites, slate, arsenic rock, travertines, onyx, among others.

In several communities, Guatemármol supports rural schools and does maintenance of roads and highways. Additionally, it is committed to tree planting and reforestation of areas in the neighborhood of its quarries.

## **Agregados de Guatemala**

Constructora Universal S.A., Productora de Materiales de Construcción Hincapié S.A., Productos Mineros de Guatemala S.A. and Sierra Negra S.A. make up Agregados Guatemala S.A. (AGREGUA). The company's mission is "Providing regional markets with the best aggregates and related products and services based upon the principles of social responsibility, integrity and excellence to satisfy the needs of their clients and community".

AGREGUA is devoted to manufacturing aggregates which are an indispensable raw material for the production of concrete, asphalt, blocks and other pre-manufactured works.

## **Sílice de Centroamérica, S.A.**

Sílice de Centroamérica S.A. belongs to Grupo Vidriero Centroamericano (VICAL). It is mainly focused in manufacturing and selling glass vessels. This company started operating in 1964 and caters for the needs of Central American markets, also exporting outside the area. Sílice de Centroamérica S.A. uses raw materials such as sand and feldspar. It has a recycling program for the good use of glass, as well as environmental conservation.

VICAL is a leader in producing and selling glass vessels in Central America. Their clients are important companies such as: beverage bottling, beer and liquor companies, food producers and drug companies.

## **Goldex Resources Corporation**

Goldex Resources Corporation is a young gold exploration company headquartered in Canada. The company has an expert team, with decades of experience in successful gold prospection. Its geologist teams have a legacy of 12 geological findings which became gold producing mines. By using this experience, Goldex has acquired rights in two potentially exceptional properties in Guatemala and the State of Durango in Mexico. With the aid of domestic geologists, its team of professionals is making great strides in its El Pato project in Guatemala.

Goldex Is dedicated to evaluating additional properties and income generating opportunities. Its vision is becoming a world class diversified exploration company. Its mission is to increase shareholder value through focused exploration and new acquisitions. Goldex is listed in the Toronto Venture Exchange and the Frankfurt stock exchange.

## **Other companies**

In 2009 and 2010, the Castle Gold company exploited small amounts of gold in El Sastre and expected a continued decrease in 2011. At the end of 2009, the Canadian Argonaut Gold Ltd. started the acquisition of Castle Gold and concluded such acquisition in February 2010. Argonaut Gold did not report Gold production in El Sastre until mid-2010.

## **2.9.2 Government Agencies**

### **General Mining Directorate (DGM, in Spanish)**

The Ministry of Energy and Mines (MEM) is responsible for enforcing mining legislation and policies through the General Mining Directorate (DGM). The DGM is charged with the supervision and technical control of every aspect related with mining operations, as well as promoting mining and mining industry development pursuant to the Mining Law and its Regulation. By law, the DGM (i) grants appraisal, exploration and exploitation licences; (ii) determines the areas of special mining interest and the timing for these to be granted through public bidding; and (iii) defines the percentage of royalties charged by the State, among others.

### **Fiscal Monitoring Unit / Treasury Department (MEM)**

The Fiscal monitoring Unit of MEM revises the sworn declarations submitted by companies every year concerning extraction levels and sale amounts. The companies sworn declaration contains a production report and costs for the year. These documents are the basis for the annual audits conducted by the Unit. The Unit analyzes annual expenditure budgets submitted by the oil and mining companies and calculates the taxable base for royalties, canons and fees. Based upon the payment declaration form, the companies make payments at Ministry's Treasury Department. The amounts received are deposited in the common fund or the Ministry's account, as corresponds, through Banco de Guatemala.

### **Superintendency of Tax Administration (SAT)**

The Superintendency of Tax Administration was created in 1998 with the objective of modernizing the tax administration and enforcing the fiscal commitments contained in the Peace Accords and the Modernization of the Public Sector Program. SAT is a decentralized state entity that has national jurisdiction to exercise tax administration functions contained in the legislation. SAT has functional, economic, financial, technical and administrative autonomy and it is a legal entity with its own capital and resources.

### **Banco de Guatemala (Payment Section)**

The Payment Section manages the deposit made in Banco de Guatemala in the Automatic Gross Payment System – LBTR, in Spanish – and the Accounting and Financial Information System – SICO, in Spanish – as requested by public and financial sector entities, as well as processing and settling of operations performed through these systems.

### **Ministry of Public Finance (National Treasury)**

The National Treasury is the Ministry of Public Finance agency responsible for regularly programming of the State's General Revenues and Expenditures Budget. It schedules and manages State revenue and expenditure flows. One of the National

Treasurer functions is the centralization of revenues and expenditures of the State's budget in the Single National Common Fund Account. The **Account Management Department** is responsible for keeping updated the registry the monetary deposit accounts' records in the SICOINWEB system for the management of the State's General Revenues and Expenditures Budget and for updating the information on daily movements of monetary deposit account of central Government entities and those stated in specific regulations.

**Ministry of Public Finance (Tax Analysis and Evaluation Directorate, Revenues Division)**

The Tax Analysis and Evaluation Directorate is the Ministry of Public Finance directorate responsible for formulating, evaluating and following up the tax policy, as well as for concentrating and supplying tax information. Inter alia, it has the following responsibilities:

- Analyzing and monitoring of benchmarks, in coordination with SAT, the conduct of, as well as dictating pertinent measures to strengthen tax revenues.
- Estimating, in coordination with the Technical Budget Directorate and SAT, total collection and individual tax collection for multiannual, annual and monthly periods, as well as establishing collection targets.

**Municipal Integrated Financial Administration (DAFIM, in Spanish)**

It aims at integrating the municipality in the public sector's financial management and consolidation process.

## **3. THE HYDROCARBON INDUSTRY**

### **3.1 Background**

There has been oil exploration in Guatemala for around 60 years. Current production comes from Peten Norte and Peten Sur oil basins and is transported through a pipeline from Rubelsanto in the northern Alta Verapaz Department and the Xan field the northern Peten. Both intercept each other at the Raxruhá pumping station and continue in a single line to the Piedras Negras oil terminal in Santo Tomas de Castilla, Department of Izabal (see map) where the crude is exported.

During the 1960s, several American companies (e.g. Texaco, Amoco, Esso, etc.), were granted exploration concessions and drilled wells. However, two companies consolidated their position as the largest oil producers in the mid-1970s: Shenandoah Oil from the United States of America and the Canadian company Canadian Centram. Decree Law 96-75 changed the concession modality (of up to 40 years) with prospection and development contracts that were less attractive for foreign investors. As a result, only Shenandoah, which had access to the single viable oil field (Rubelsanto) at that time and Centram (a subsidiary of INCO) remained in Guatemala after 1976.

The Chinaja Field was found between 1976 and 1980. Drilling in the Yalpemech, Chinaja Oeste, Tortugas and Rubelsanto fields in the Peten Sur basin took place between 1980 and 1985. In 1983, the new Hydrocarbon Law -Decree 109-83- was enacted as well as its regulation, which are currently in effect. At the beginning of the 1980s, Texaco Exploration Guatemala Inc. discovered the Xan field with 400 million barrels of oil in place. Later on, in 1985 the production sharing contract 2-85 was signed with Basic Resources and the 232-km long Xan-Raxruhá pipeline was built. From 1985 to 1995, Hispanoil, Basic Resources and Petén Petroleum drilled wells in the Caribbean, Rubelsanto, Atzam and Yalpemech areas where hydrocarbons were found. The Xan field has been strongly developed since 1995 with the drilling of 14 development wells.

At present, most of the oil is produced by the French company Perenco, which acquired Xan Field operations in 2001. Also, Petro Energy (British Virgin Islands), Petrolatina (United Kingdom), Empresa Petrolera del Itsmo S.A. Petrolatina Corp, Empresa Exploradora del Atlántico and City Petén have exploration units.

### **3.2 Oil Production**

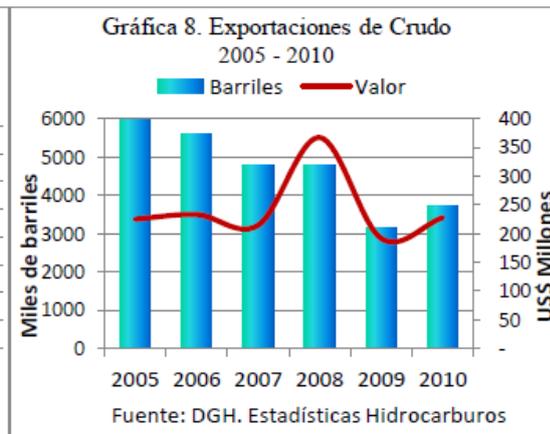
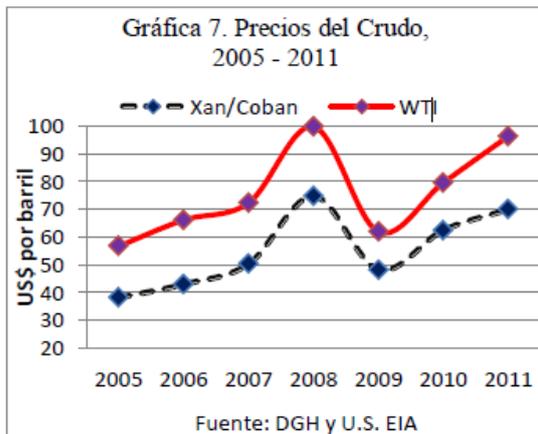
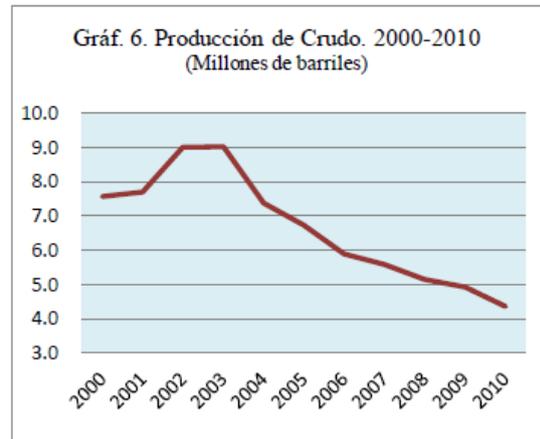
In Guatemala, oil, as every underground resource, belongs to the State. Exploitation has been made by private companies on the basis of services and production sharing contracts. Over 85 percent of production is exported and the remaining 15 percent is used in the local production of asphalt and, to a lesser extent, the cement industry.

More than 90 percent of oil production comes from the Xan field in the north of Petén, operated by Perenco. National crude oil production constantly increased since 1990. It increased from 1.3 million barrels to 9.2 million barrels from 1990 to 1998. A period of decline in the production started in 1999 until Perenco revamped production activity in 2002 and 2003. Total production started to decrease in 2004 as the Xan field showed signs of depletion (graph 6). The decrease in the production from Xan has been compensated, although for just 1.5 percent, by the production of the Chocop and Yalpemech fields operated by PetroEnergy S.A. Table 6 shows total production since 2000 and Table 7 shows production per company since 2005.

Cuadro 6. Producción de Petróleo. Años 2000 - 2010											
Millones de Barriles											
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total	7.6	7.7	9.0	9.0	7.4	6.7	5.9	5.6	5.2	4.9	4.4
Miles de bpd	20.7	21.1	24.7	24.7	20.2	18.4	16.1	15.3	14.1	13.5	12.0

Fuente: Ministerio de Energía y Minas

Oil has experienced a significant growth in exports. The value of oil exports more than tripled from US\$100 million in 2001 to US\$370 million in 2008 (graph 8), reflecting mostly world price increase (graph 7). In 2010 oil represented the fifth export product with US\$228 million, after coffee, sugar and banana exports



**Caption:**

Graf: graph	Producción de crudo: Crude production	Millones de barriles: Millions of barrels
Precios del crudo: Crude prices	US\$ por barril: US\$ per barrel	Fuente: Source
Exportaciones de crudo: Crude exports	Miles de barriles: Thousands of barrels	Valor: Value
DGH Estadísticas hidrocarburos: Hydrocarbon statistics	Barriles: Barrels	

Domestic oil prices follow the West Texas International oil price trend, referred to light/sweet 39° API oil, subtracting a penalty for the domestic product quality that equals 27 percent (quotation at the Santo Tomás de Castilla Port). The domestic crude is a heavy/sour crude of 16° API with a 6.5% sulfur content.

Although oil represented 9.8 percent of the 5 main exports, equivalent to US\$228 million in 2010, the trade balance in the industry is negative as Guatemala has to import almost all of

its consumption of oil products. In 2010, the value of imports of oil by-products amounted to US\$2.235 billion. Diesel and gasoline imports accounted for 60 percent of this amount.

### 3.3 Fields, Contracts and Operators

#### Xan Field

The Xan field, located in San Andrés, Petén, is the main producing field in Guatemala. Texaco Exploration Guatemala Inc. discovered the field in the beginning of the eighties with 400 million barrels of oil in place. Currently, Xan produces 11.500 barrels of oil per day.

The water produced in the operations is re-injected into the same reservoir at 7.500 ft. deep in 10 wells for secondary recovery. The associated natural gas extracted is processed for its use in electricity generation. The Oil produced is pumped along a 475 km. pipeline to the Piedras Negras Terminal for export.

Since Perenco took over the Xan operation, reserve recovery significantly increased due to investments in new wells for primary recovery, injector wells and facilities for secondary recovery, as well as the use of cutting-edge technology for stimulating the deposit. Due to the low pressure of the reservoir, all of the field production is lifted to surface with the aid of 34 electro-submersible pumps. Total production of these systems is 125.000 bpd of water and oil. This complex artificial lifting equipment is installed at depths between 2.000 and 2.300 m.

#### Other Fields

The **Rubelsanto** field, located in Alta Verapaz was the only viable field in the mid-70s. This field, discovered by Shenandoah, reached a maximum production of 412 barrels per day in 2000. From then on, the field has entered a phase of continuous decline.

The **Tierra Blanca** field in Petén is the second producer in Guatemala. This field reached its peak production at 1.010 bpd in 2004. Its daily production has continued to decrease since then, having recorded just 130 bpd in 2010.

Perenco was the operator of **Rubelsanto**, **Chinaja Oeste** (Cobán), **Caribe** (Petén) and **Tierra Blanca** (Petén) fields until 2009 under the 1-2009 Emergency Oil Service Contract. Empresa Petrolera del Itsmo assumed operation of said fields in 2009 under contract 2-2009 after atender held in that year. The production of all these fields in 2010 accounted only to 5 percent of the country's total production.

The **Chocop and Yalpemech** fields, located in Petén are operated by the Canadian Petroenergy S.A. Both are quite small with a maximum production of 217 bpd in 2008.

PetroLatina Corp. operates the **Atzam** field in Alta Verapaz. This field was found at the beginning of the 90s. Petrolatina Corporation operates this field under services contract 1-2005. The company has started exploration in this field.

At mid-2011, General Hydrocarbon Directorate, of the Ministry on Energy and Mines, reported four exploitation permits in Guatemala, allocated to Empresa Petrolera del Itsmo, S.A., Perenco Guatemala Limited, Petro Energy, S.A. and PetroLatina Corporation as well as three exploration contracts in Petén, Quiché, Las Verapaces and Izabal, granted to

PetroLatina Corp; City Peten, L.A.P./US Oil Guatemala; and Compañía Petrolera del Atlántico, S.A. Table 8 shows details of the contracts, operating companies and current contractual phase and Map 1 shows contract area location.

<b>Cuadro 7. Producción de Petróleo por Empresa. Años 2005-2010</b>						
En barriles						
	2005	2006	2007	2008	2009	2010
<b>Total</b>	<b>6,727,641</b>	<b>5,892,867</b>	<b>5,584,012</b>	<b>5,158,284</b>	<b>4,933,278</b>	<b>4,362,879</b>
Perenco Guatemala Ltd.	6,230,812	5,495,754	5,256,396	4,797,525	4,611,771	4,053,032
Perenco/Enpr. Petrolera del Itzmo*	427,982	321,175	259,887	267,247	245,443	242,652
Petro Energy S.A.	68,847	75,938	67,730	79,233	70,005	63,418
PetroLatina Corp.	0	0	0	14279	6059	3778
		Barriles por día				
Perenco Guatemala Ltd.	17,071	15,057	14,401	13,144	12,635	11,104
Perenco/Enpr. Petrolera del Itzmo*	1,173	880	712	732	625	665
Petroenergy S.A.	189	208	186	217	192	174
Petrolatina Corp.				39	17	10
Fuente: Ministerio de Energía y Minas						
* Perenco operó estos campos bajo el Contrato de Servicios Petroleros de Emergencia 1-2009 hasta Agosto 2009 en que asumió la Empresa Petrolera del itzmo bajo el CPP 2-2009. Producción diaria en 2009 es solo EPI.						

**Chart 8. Contracts, Companies, Fields and Contractual Situation**

<b>CONTRACT No./ OPERATOR No.</b>	<b>FIELD/LOCATION</b>	<b>TERM</b>	<b>CONTRACT TYPE</b>	<b>CONTRACTUAL SITUATION</b>
<b>Exploitation Contracts</b>				
<b>2-2009</b> EMPRESA PETROLERA DEL ITSMO S.A	RUBELSANTO CHINAJA OESTE CARIBE TIERRA BLANCA Location: Alta Verapaz, Petén	Starts: 28-Jul-2009 Ends: 27-Jul-2034	Oil Operation Management and Agreement Execution for Efficient Conservation and Production of the Areas	Exploitation
<b>2-85</b> PERENCO GUATEMALA LTD	XAN Location: Petén	Starts: 13-Ago-1985 Extension: 12-Aug-2025	Oil exploitation operations	Exploitation
<b>1-91</b> PETRO ENERGY S.A.	CHOCOP YALPAMECH Location: Alta Verapaz, Petén	Starts: 10-Jul-1988 Substitution 17-May-1991 Transfer 13-Dec-1996 (A CGC) 2-Jan-2004 (A PESA) Ends: 12-Dec-2013	Oil exploitation operations	Exploitation
<b>1-2005</b> PETRO LATINA CORPORATION	ATZAM Location: Cobán, Quiché, Alta Verapaz	Starts: 28-Mar-2006 Ends: 27-Mar-2031	Exploration and exploitation contract	It has started the exploitation phase
<b>Exploration Contracts</b>				
<b>6-93</b> PETRO LATINA CORPORATION	Location: Alta Verapaz	Starts: 8-Feb-2004 Ends: 7-Feb-2029	Oil exploitation operations	Evaluation
<b>7-98</b> COMPAÑÍA PETROLERA DEL ATLÁNTICO, S.A.	Location: Izabal	Starts: 20-Jul-2001 Ends: 19-Jul-2026	Seismic option	Drilling of the first well
<b>1-2006</b> CITY PETEN S. DE R.L	Location: Petén	Starts: 20 SEP-2006 Ends: 19-SEP-2031	Hydrocarbon exploration and exploitation	Exploration

Source: General Hydrocarbon Directorate, MEM

### 3.4 By-Product Industry

La Libertad mini refinery, operated by Perenco, produces the necessary fuel for electricity generation and the fluid pump systems in oil operations. The refinery also produces high quality asphalt for the local and International market. In 2010 asphalt exports accounted for 46 percent of total production that year (Table 9).

The main process units in the refinery are the atmospheric distillation tower, the vacuum distillation and the fuel desulfurization plant. The refinery can process 5.000 bpd of oil and produces 3.000 bpd of asphaltic products. Currently, Perenco is the only asphalt and fuel producer in Guatemala.

Table 9. Derived Production		
Thousands of barrels		
	2009	2010
La Libertad Mini - Refinery		
Asphalt	389.35	299.92
Diesel*	166.7	153.24
Others*	24.27	19.61
Total	580.32	472.77
Asphalt exports	33.75	139.53
*Non tradable products		
* Naphtha, kerosene and gas oil, non-tradable		

The refinery pays the State 10 cents of a dollar per asphalt barrel produced.

### 3.5 Strategy and Perspectives

Guatemala is a net importer of oil products for domestic consumption. This is because most of the crude produced is heavy (16° API) and its relatively low volume has not allowed it to develop a derivative industry. However, a refinery infrastructure with appropriate technology will allow obtaining desired fuels, that would account for 22 percent of domestic consumption. Two refineries are being built: Motagua S.A. and Procesos Industriales Maya S.A. Both refineries are located in El Progreso.

In 2010, imports of oil products and lubricants accounted for 18 percent of total domestic imports. This is why one the Government's policies is increasing the energy supply at competitive prices. In this regard, the government has promoted an increase in the prospection and development of hydrocarbon.

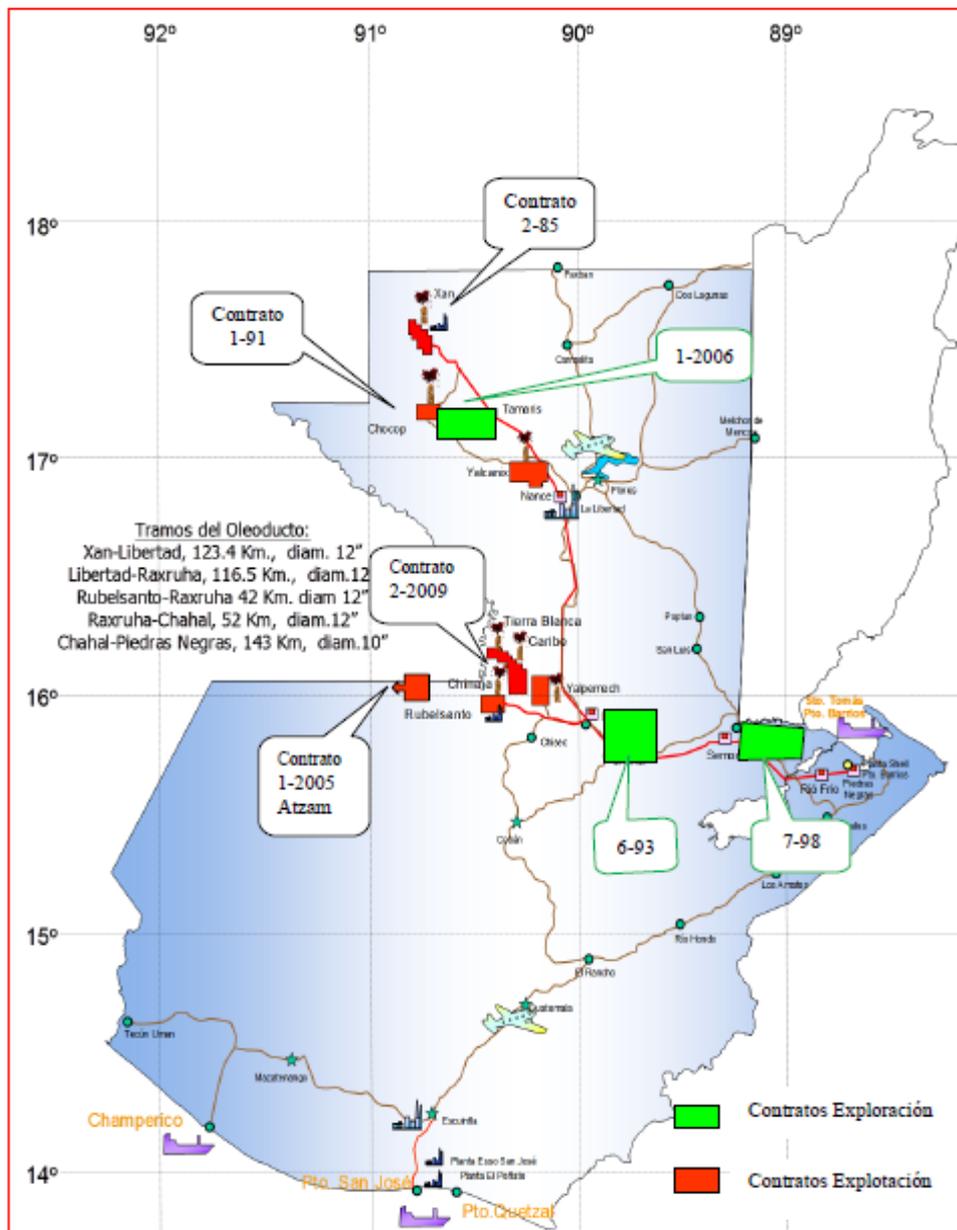
MEM started an aggressive plan to quantify hydrocarbon reserves in the Petén, Amatique and Pacífico basins in 2004. In 2005 a number of contracts for hydrocarbon exploration and development were signed, such as contracts 1-2005 (Atzam Field) and 1-2006 (La Libertad field) in 2006. In May 2011 MEM tendered four oil prospection and development areas: Yalcanix, San Francisco, La Libertad and Xacbal. Perenco and City Petén submitted proposals for the Yalcanix block located in Petén, which has reserves estimated at 140 million barrels. According to the tender documents, the winning company will drill three wells in a three-year term.

The other three oil areas did not generate an interest among the invited companies. Facts such as the security situation, as well as the rejection by communities and environmental organizations opposed oil development in el Petén could have been the reasons that influenced the decisions of companies invited to bid. MEM will decide if it calls a new tender for the San Francisco, La Libertad and Xacbal areas.

Guatemala is an under-explored region with a good oil prospectivity, considering its closeness to highly productive oil fields in Mexico. Oil and gas fields in the southern border of the Petén basin, including Rubelsanto in the area covered by licences 6-93 and 7-98 are located in a geological setting which is similar to oil and gas fields in the south of Mexico.

Reservoirs in these fields have the same age and both areas have the same geological history. Many comparisons can be made between both areas according to seismic information that indicate that the Chiapas southwest geological formation extends to the Petén southern basin (Chapayal).

**Map 1. Guatemala Oil Infrastructure**  
*MAPA 1. INFRAESTRUCTURA PETROLERA DE GUATEMALA*



Contrato: Contract  
 Contratos exploración: Prospection contracts  
 Contratos explotación: Development contracts  
 Tramos del oleoducto: Pipeline stretches

Guatemalan economy is still growing and there is a strong demand for oil and gas. The current government is interested in promoting private investment, especially by small companies.

### 3.6 Legal Regime

The Hydrocarbon Law (Decree No. 109-83) dated September 1983 and its regulation (Government Agreement 1034-83) dated December 1983 established the legal framework regulating hydrocarbon activities in Guatemala. Later on, in June 2005, Government Agreement No. 190-2005 established the Hydrocarbon Prospecting and Development Contract Model. This is a Production Share Contract.

#### **Production Share Contract (PSC or CPP, in Spanish)**

The Production Sharing Contract is highly used in the world. Around 60 percent of contracts in the hydrocarbon sector are PSC<sup>8</sup>. In the several PSCs the common elements are two: (i) the government owns the hydrocarbons, and (ii) the contractor receives part of the net production as payment for his services.

Guatemala's PSC characteristics are summarized in Table 10. The contract duration can be up to 25 years, and the Ministry of Energy and Mines can approve a single extension of up to 15 years, as long as the terms are more favorable to the State (Article 12, Fonpetrol). The exploration phase may last up to 6 years. Work commitment regarding the drilling of exploratory wells during exploration is negotiable, but the contractor is obligated to drill one well per year during a field development phase.

Recoverable costs within the contract are all capital, exploration, exploitation and development, operating and administrative costs and expenditures during exploration and development. Costs related with dry or non-economic wells are recoverable to at least 70 percent.

---

<sup>8</sup> The first production share contract was signed between state-owned Pertamina from Indonesia and the Independent Indonesian American Petroleum Company (IIAPCO) in 1966. This original PSA has the following characteristics:

- a. The State owns the hydrocarbons
- b. The government keeps control of contract administration and the contractor is responsible for executing oil operations according to contract terms.
- c. The contractor is responsible for submitting work programs and budget for the government's scrutiny and approval.
- d. The contract is based upon the sharing of hydrocarbons produced but not of net profits.
- e. The contractor finances the project and offers all the necessary technology for operations and therefore assumes all the operational risk.
- f. During the contract term, following recovery of 40% of annual production for cost recovery, the remaining production will be shared as 65%/35% in favor of government. The contractor taxes were paid out of the share of Pertamina's profit oil.
- g. All the equipment acquired and imported into the country by the contractor became Pertamina property except for company service equipment and leased equipment.

Today variants of the original contract concepts are used, for example royalties and production sharing based more on net profit than in barrels produced. See: Daniel Johnston. *International Petroleum Fiscal Systems and Production Sharing Contracts*, PennWell Books, Tulsa, Oklahoma, 1994.

**Table 10. Contract and Fiscal Terms**

	<b>Production Sharing Contract Model (AG 190-2005) and Hydrocarbon Law (Decree 1034-83)</b>	<b>Articles</b>
<b>Contract term</b>	Non extensible 25 years - Prospection phase up to 6 years: the first year is the evaluation period which is extensible for one year, plus 4 years of prospection. - The development period starts with establishing a commercial field and can be extended to one year.	Contract: Art. 4.1 Clause V and VI
<b>Relinquishment of areas</b>	After the exploratory phase, the contractor can only retain development areas if there were any. Before ending the sixth year, they will return all of the original area except development areas. For each commercial field, the contractor may return an area of no more than 10.000 ha, except for special cases.	Contract: Clause V
<b>Work commitment</b>	The number of wells the contractor shall drill in the first 6 years is negotiable. The Contractor is obliged to drill at least one development well per commercial field per year until they complete field development according to the work program.	Contract: Art. 7.3.1.3 Art. 7.3.2  Art. 8.5
<b>Royalty</b>	20% of the crude oil net production value with 30° API of gravity. The percentage increases or decreases by 1% per each API degree higher or lower than 30° API. In no case shall it be lower than 5%.	Contract: Art. 10.2 Art. 61 in the Law
<b>Recoverable costs</b>	Recoverable costs are all disbursements on prospection, development and exploitation capital costs, operation costs and administrative costs during prospection and development. Costs related with dry wells or non-economic wells are recoverable to at least 70%.	AG General Regulation AG 1034-83: Art. 219 Contract: Art 11.2, Art. 12.1
<b>Profit oil</b>	They are the net hydrocarbon production less the hydrocarbon volume corresponding to royalties and recoverable costs that can be attributed to each contract area. State participation in the production is of at least 30%, which increases according to a scale based upon daily production, e.g. 40% if daily production is 5001 bpd to 10.000 bpd up to 70% of production exceeding 50.000 bpd.	Contract: Art 12.2  Law: Art. 66, 73g, 212, 225, 229, 231, 232.
<b>Domestic market supply</b>	The contractor is obliged to sell an amount equivalent to recoverable costs and/or their remuneration to the State until they complete 55% of all hydrocarbons produced in the country, whichever is the greater amount.	Contract: Art 14.1
<b>Income tax and other payments</b>	ISR is calculated on production net value, after deducing prospection, development and production costs and expenditures and whatever other costs and expenditures are related with oil operations. Besides, up to 33% of investments is deducted to ensure well-being and social aid of workers, their families and the population in the areas neighboring the contract area.	Contract: Art. 19.1  Law: Art. 34 y 66
<b>Import tariffs</b>	Import of fungible materials or machinery, equipment, spare parts and accessories necessary for oil operations enter the country free of customs tariffs and related burdens.	Law: Art. 25 Contract: Art. 3.1.5
<b>Contributions for the development of communities in the contract area</b>	An amount of 0.5% of the fiscal value of former year production is aimed at this end. It is considered as operation costs and the Contractor recovers 100% of annual contribution.	Contract: Art. 23.3

<b>Annual charges and administrative fees</b>	- Administrative rates - Service rate of Q.50.000 or the amount fixed in the bid for each approved exploitation area; - Annual charges per hectare of each exploration or exploitation area adjusted for inflation:  or \$0.25 per ha. included in the exploration area or \$0.50 per ha. in the area at evaluation phase or \$5.00 per ha. in exploitation areas	Law: Art. 45 Regulation: Chapter V  Contract: Art 19.3 Law: Art 34/35 Regulation: Art. 261-2
-----------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------

### 3.7 Tax Regime

The hydrocarbon tax regime consists of royalties, annual charges and administrative rates, income tax (including retentions), value added tax, tax on dividends, payments to the state for service contracts, import tariffs and single tax on real estate.

#### 3.7.1 Tax revenues

The Hydrocarbon Law specifies the contractor’s obligation of complying with all the current legislation, regulations and tax norms. By law, income tax payment is expressed in dollars.

##### Corporate Income Tax

ISR is calculated on net production value after deducing exploration, development and production costs and expenditures and whichever costs and expenditures is related with oil operations. The rate is 31 percent. The contractor can also deduce up to 33 percent of investment aimed at ensuring social well-being and assistance for workers, their families in neighboring communities.

##### Real Estate Tax (IUSI)

This is an annual *ad valorem* tax on urban and rural property. Collection and management of this tax has been decentralized to local governments (municipalities). Property value is estimated through evaluation by the owners and the tax is applied to real estate owners on a progressive basis according to chart 3. This tax is paid on a quarterly basis.

##### Import Tariff

Imports of fungible materials or machinery, equipment, spare parts and accessories necessary for oil operations enter the country free of customs tariffs and related charges.

In deciding which revenue flows to include in the reconciliation, neither withholdings nor value added taxes will be taken into account, following the guidelines of EITI’s Source Book, since these taxes represent indirect benefits of the extractive activity. However, if the Commission decides to include them, the flows must be material and an explanation justifying this decision needs to be provided.

### 3.7.2 Non-tax Revenues

#### Royalty

The royalty rate is fixed at 20 percent when produced crude has a 30° API gravity. The percentage increases or decreases by 1 percent per each degree of API higher or lower than 30° API. In no case will it be lower than 5 percent. Payment is done on a monthly basis.

#### State Share in Production

The State share of hydrocarbons (profit oil) is the net hydrocarbon production in each producing area, less the hydrocarbon volume corresponding to royalties and recoverable costs attributable to the contract area. Profit oil is minimum 30 percent, and increases according to a sliding scale based on daily production (5 ranges) and the royalty percentages in each one of the steps are negotiable. Payment is done on a monthly basis.

#### Annual and administrative fees

According to Hydrocarbon Law, annual and administrative fees, e.g. revenues from annual charges per hectare and administrative rates can be paid in US-\$ or Quetzales.

#### Use of Transportation

It consists of all the facilities and installations established for transporting hydrocarbons between certain points (mainly the oil pipeline). The government may sign contracts to operate transportation stationary systems by request of the contractor. The rates are approved by the Ministry based on the opinion of the National Oil Commission.

### 3.8 FONPETROL (Decree No. 71-2008)

In compliance with Article 31 of the Hydrocarbon Law, Congress issued Decree No. 71-2008 Law on the Fund for the Economic Development of the Nation, which assigns the royalties and the State profit oil, as well as other revenues which from oil contract operations of any kind to the development of the interior of the country and the research and development of new and renewable energy sources. The percentages established to this end are shown in Table 11.

		VARIOUS COUNCILS	GENERAL DEPARTMENTS COUNCIL	CONAP	COMMON FUND
TAX CODE					
10224	Oil Exploitation Royalties	5%	20%	3%	72%
10225	Shareable Hydrocarbons	5%	20%	3%	72%

FONPETROL beneficiaries are: a) Development Councils at the department level and, b) Public entities responsible for protected areas according to law.

The administration of FONPETROL is under the control of the MEM, the Presidency of the Republic Executive Coordination Secretariat (SCEP) and the Ministry of Public Finance (MINFIN). MEM presents to SCEP and MINFIN the final report of funds that the law

allocates to FONPETROL, corresponding to the current month and adjusted within the first five days of each month.

SCEP as the entity in charge of overseeing the Departmental Development Councils, calculates fund distribution according to article 6 of the Law ,and MINFIN makes the corresponding payments to all the entities.

In order to guarantee transparency in the use of FONPETROL resources, benefiting entities must publish investment project characteristics before executing investments as well as the benefits they bring to the area, their cost and destination. Additionally, the benefiting entities must publish said information fifteen days prior to their execution in their transparency portals.

### **3.9 Payment and Revenue Flows**

The hydrocarbon sector represented 2.3 percent of all State revenues in 2010. The sector generated Q.976 million to the State in 2010 as compared with Q.849 million in 2005 (Table 12). According to data from the General Hydrocarbon Directorate, most revenues derive from royalties and production sharing. In 2010, both items amounted to Q.754 million. Income from ISR was Q.78 million in the same year. In 2009 there was a substantial decrease of oil revenues, Q.632 million, compared with 2008, Q.1.283 million, as a result of the fall in the international prices of crude. In 2010, the price trend reverted and this continues in 2011.

Perenco contributed with 91 percent of all payments to the State by sector companies (see Annex V).

According to Table 12, in 2010 material flows were the following:

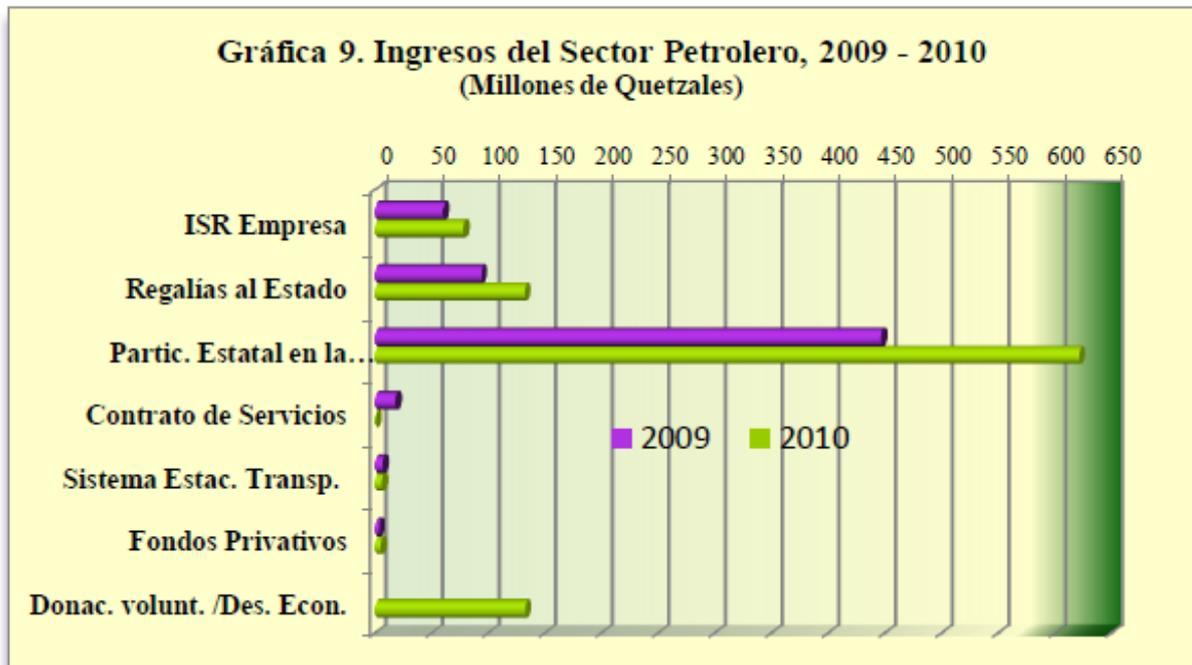
- i. State Share in Production (73.2%)
- ii. State Royalties (15.6%)
- iii. ISR (9.2%)
- iv. Revenues for the use of Transportation System (0.7%)
- v. Annual and administrative fees (0.5%)

See graph 9.

Cuadro 12. Ingresos de la Industria Petrolera 2005 - 2010							
(Millones de Quetzales)							
	2005	2006	2007	2008	2009	2010	%
<b>Ingresos Gobierno Central</b>	<b>24,927.0</b>	<b>29,206.0</b>	<b>33,611.0</b>	<b>35,578.0</b>	<b>34,037.0</b>	<b>37,399.0</b>	
<b>Petróleo</b>	<b>672.6</b>	<b>750.8</b>	<b>839.3</b>	<b>1,283.4</b>	<b>629.8</b>	<b>976.2</b>	<b>100%</b>
<i>porcentaje</i>	<i>2.70</i>	<i>2.57</i>	<i>2.50</i>	<i>3.61</i>	<i>1.85</i>	<i>2.61</i>	
<b>Ingresos Tributarios</b>	<b>67.29</b>	<b>72.34</b>	<b>70.04</b>	<b>104.52</b>	<b>60.23</b>	<b>78.17</b>	
ISR	67.29	72.34	70.04	104.52	60.23	78.17	8.0%
IUSI							
Otros Impuestos							
<b>Ingresos No Tributarios</b>	<b>605.27</b>	<b>678.50</b>	<b>769.27</b>	<b>1,178.90</b>	<b>569.56</b>	<b>898.03</b>	
Regalías al Estado	109.77	94.79	107.76	163.44	93.90	132.22	13.5%
Participación Estatal en la Prod.	466.62	509.26	602.96	916.44	447.02	621.56	63.7%
Contr. Servicios (CSPE)	22.50	58.37	48.29	87.68	18.22	0.51	0.1%
Sistema Estac. de Transporte	-	11.82	6.07	6.32	6.82	6.09	0.6%
<i>Fondos Privativos:</i>							
Tasa por Hectárea	1.88	1.18	1.03	1.35	0.42	0.42	0.0%
Capacitación de Personal	4.50	3.08	3.15	3.67	3.18	4.61	0.5%
Aportes para el des. Econ.						1.25	0.1%
Aportes Batallón ecológico						2.25	0.2%
Donaciones reconstr. desastres						129.12	13.2%
<i>Misceláneos:</i>							
Valor de la Producción	1,958	1,925	2,156	2,915	1,940	2,243	
Precio por barril (US\$ / bbl)*	38.08	42.93	50.25	74.63	48.11	62.39	
Q. / \$ 1.00	7.64	7.61	7.68	7.57	8.17	8.07	

Fuente: MEM: *Ingresos Generados por la Fiscalización de Crudo y Estadísticas Hidrocarburos*; Perenco Guatemala Limited.

\* Mezcla Xan/Coban en Puerto Santo Tomás de Castilla.



**Caption: Chart 12**

Cuadro: chart	Ingresos de la industria petrolera: Oil industry revenues
Ingresos gobierno central: Central government revenues	Petróleo: Oil
Porcentaje: Percentage	Ingresos tributarios: Tax revenues:
Otros impuestos: Other taxes	Ingresos no tributarios: Non tax revenues
Regalías al estado: Royalties to the state	Participación estatal en la producción: State sharing in production
Contrat. Servicios: Service contracts	Sistema estacionario de transporte: Stationary transportation system
Fondos privativos: Privative funds	Tasas por hectárea: Rate per hectare
Capacitación de personal: Personnel Training	Aportes para el desarrollo económico: Contribution for economic development
Aportes batallón ecológico: Ecologic battalion contributions	Donaciones reconstr. Desastres: Donations for reconstruction due to disasters
Misceláneos: Miscelanea	Valor de la producción: Production value
Precio por barril: Price per barrel	Fuente: Source
MEM ingresos generados por la fiscalización de crudo y estadísticas hidrocarburos: Taxes from crude and hydrocarbon statistics.	Mezcla Xan/Coban en Puerto Santo Tomas de Castilla: Combination of Xan/Coban at the Santo Tomas de Castilla Port
Ingresos del sector petrolero: Revenues from the oil sector	ISR empresa: Company ISR
Millones de quetzales: Millions of quetzales	Donac. Volunt./Des, econ.: Voluntary donations/economic development

### Allocations to Fonpetrol

Table 13 shows that in 2010 the contribution Perenco paid to Fonpetrol was Q.696 million, equivalent to 77 percent of all its payments to the State (Q.901.4 million) in that year, which witnesses of the importance of allocations at department level.

Cuadro 13. Perenco: Asignaciones a Fonpetrol -2010					
(Miles de Quetzales)					
Rubros Asignados a Fonpetrol	Consejos Departamentales del país	Consejo Departamental Petén	Vigilancia y Recup. Áreas Protegidas	Fondo Común	Total
	5%	20%	3%	72%	
Regalias	4,692	18,769	2,815	67,568	93,844
Participación estatal en la producción (Crudo compartible)	29,645	118,580	17,787	426,888	592,899
Participación tarifa al Estado	305	1,218	183	4,386	6,092
Tasas por Hectárea (incluye TH por ampliación, modif C2-85)	21	83	12	300	416
Capacitación de Personal (Incluye Capac por ampliación, modif C2-85)	149	598	90	2,152	2,989
<b>Total</b>	<b>34,812</b>	<b>139,248</b>	<b>20,887</b>	<b>501,294</b>	<b>696,241</b>

Fuente: Perenco Guatemala Limited

## 3.10 Oil Company and Governmental Agencies

### 3.10.1 Oil Companies

#### Perenco Guatemala Limited

Perenco Group is a French oil and gas company with operations in 16 countries. Currently, Perenco produces 275,000 bpd in all countries. One of the main company policies is to be the operator of its own assets. Its main activities in Guatemala are focused in the Xan oil field (since 2001), the La Libertad refinery, 475 km of pipeline and the Piedras Negras Terminal. The production area is 307 km<sup>2</sup> and daily production is 11,500 barrels.

Perenco's activities in the **Xan field** are essentially secondary recovery operations in 34 wells activated with submersible electro-pumps installed between 2,000 and 2,300 meters deep, re-injecting water produced in operations to increase reservoir pressure. The associated natural gas obtained is processed to generate electricity. The crude obtained is transported in the pipeline to the Piedras Negras terminal to be exported. The pipeline connects the Xan and Rubelsanto Fields to the Piedras Negras terminal on the Atlantic Coast. The facilities have a 430,000 barrels storage capacity and dispatch in average 12 ships per year.

Perenco operates **La Libertad Refinery** that produces fuel to generate electricity and fluids for Perenco's entire operation. The refinery has a processing capacity of 5,000 bpd and also produces high quality asphalt for the Central American market. Perenco is currently the only asphalt and fuel producer in the country.

Perenco operated the Contract 1-85, which expired in August 2005 (Area A-6-2005) after concluding the 25-year contract that included the Rubelsanto, Chinaja, Tierra Blanca and Caribe oil fields. Perenco continued operating these areas through a temporary oil services-contract that ended in February 12 2006. As of February 13 2006, after an emergency oil service-contract tender, CSPE 1-2007, Perenco was the company awarded the tender with two other companies participating. The CSPE included for the first time the benefits of production sharing in favor of the State. The contract lasted through 2009 when a new tender was called, where Empresa Petrolera del Istmo won the award.

Perenco supports both local government (COCODES) initiatives and private and community initiatives in communities close to the area of operations. Current social

programs include: reforestation program in 15 communities, school education, preventative health as well as road infrastructure and water well building.

### **Empresa Petrolera del Istmo (EPI)**

Empresa Petrolera del Istmo is a subsidiary of Mquest International Inc. headquartered in Houston, Texas, USA. Through Government Accord 205-2009, EPI was awarded the administration for 25 years of the oil area Perenco had been operating (before Basic Resources) since 1985: Rubelsanto, Tierra Blanca, Caribe and Chinajá Oeste fields, located in Alta Verapaz and Quiché. The Accord approved the contract between EPI and the Ministry of Energy and Mines dated June 2, 2009 whereby the administration of these fields is awarded to EPI. Maximum production from these fields was 1.444 bpd in 2005 and only 665 bpd in 2010, having entered the depletion stage.

Empresa Petrolera del Istmo S.A.'s work program is focused in geological and geophysical studies as well as secondary recovery of wells aiming at increasing production in different deposits by feasible technical, economic and financial means.

Mquest International Inc. is a private company classed as Specialized Consultants in the Industry. It was established in 1986 and incorporated in Texas. Mquest offers exploration consulting and field development services, reservoir analysis, asset evaluation and assistance with the procurement of oil and gas properties. It currently has several active projects in Latin America<sup>9</sup>.

### **Petro Energy, S.A. (PESA)**

This company is based in Guatemala operating contract 1-91 which includes the Chocop and Yalpemech fields.

### **PetroLatina Energy PLC**

PetroLatina Energy PLC is an oil and gas company registered in England and listed under the AIM (Alternative Investment Market for small companies) in the London stock exchange, which specializes in Latin America. The company was established in 2004. The administrative team has decades of experience in oil operations. Colombia is its main operation country.

Under licence A7-2005 and Contract 1-2005 PetroLatina has started the exploitation phase at the Atzam field<sup>10</sup> in Alta Verapaz, 20 km west of the Rubelsanto field. It is estimated that oil quality is 35° API and reserves are estimated between 5 and 15 million barrels of oil in place. Presently, the company also performs geological studies in the Las Casas structure under licencet 6-93. Potential reserves in Las Casas are estimated at 55 million barrels. Both licences were issued as production sharing contracts.

### **Compañía Petrolera del Atlántico, S.A.**

Contract 7-98. Compañía Petrolera del Atlántico S.A. initially received a 127.830 ha concession area which encompasses 60 percent of Lake Izabal and neighboring territory. The concession is currently 53.800 ha and excludes Lake Izabal's area. The company was

---

<sup>9</sup> <http://www.mquestint.com/>

<sup>10</sup> Atzam was originally discovered by Hispanoil in 1970 where more than 30 million barrels were found.

created in 1997 and was the only company that participated in the tender. It is owned by Flamingo Energy Investments (BVI). Both companies and Chx Guatemala Limitada are partners in contract 7-98, which has Pacific Rubiales as operator with 55 percent share in the concession.

### **City Petén L.C.**

In November 2008, a Resolution of the Ministry of Energy and Mines Resolution, approved the minutes of the contract transferring 51 percent of rights established in the Exploration and Exploitation of Hydrocarbon Contract 1-2006 entered into between US Oil Guatemala, S.A. and City Peten L.C. and orders the publication of the respective contract.

### **Pacific Rubiales**

Pacific Rubiales is a public company listed in the Toronto and Colombia stock exchanges. It is the largest independent oil and gas production company in Colombia. The company has increasing reserves and is maximizing future production prospects through its exploration activities. The company produces around 225.000 bpd and has interests in 45 blocks in Colombia, Peru and Guatemala.

In October 2010, Pacific Rubiales executed a farm-in agreement by which it received a 55 percent share and acts as an operator of contract 7-98, corresponding to the area known as A-7-96 (Blocks N-10-96 y O-10-96) in Guatemala. The rest of the interest corresponds to Compañía Petrolera del Atlántico Ltd. (owned by Flamingo Energy Investments, BVI), and CHx Guatemala Limitada. The contract area is located in the southern basin of Peten and Belize and characterized by the presence of abundant oil filtrations and oil samples in seismic detonation sites. By signing the farm-in agreement, Pacific Rubiales won access to 5 prospects with an important potential of oil in place.

During 2010, the company identified its prospection program, which was to be submitted for approval on the second quarter of 2011. Its activities for 2011 included reprocessing of 300 km<sup>2</sup> of seismic data; acquiring and processing other 300 km of bi-dimensional seismic; 5.300 km of aeromagnetic and aero-gravimetric surveys; 6.600 km<sup>2</sup> of remote perception sensors; ageological surface campaign with sample analysis; and the beginning of an integrated geological interpretation to define exploratory prospects locations to be drilled in 2012<sup>11</sup>.

## **3.10.2 Governmental Agencies**

### **Hydrocarbon General Directorate (Ministry of Energy and Mines)**

The main functions of the Hydrocarbon General Directorate are proposing the country's oil policy to the Ministry of Energy and Mines. The DGH is in charge of studying, promotion, monitoring, supervision and control and other activities related to hydrocarbon operations. Its mandate is consistent with the Hydrocarbon Law, Decree Number 109-83 and its regulation, Government Agreement Number 1034-83 in what regards hydrocarbon exploration and development. DGH's operational objectives are:

1. Promoting investment to maximize the country's oil resource base, with the objective of achieving self sufficiency through the exploration production and refining activities.

---

<sup>11</sup> <http://www.pacificrubiales.com/operations/guatemala.html>

2. Promoting oil areas and calling one oil tender per year. Promoting investments in oil refining.

**Ministry of Energy and Mines Control Unit** (See section 2.9.2)

**Tax Administration Superintendence (SAT)** (See section 2.9.2)

**Banco de Guatemala (Payments System Section)** (See section 2.9.2)

**Public Finance Ministry (National Treasury)** (See section 2.9.2)

**Finance Ministry (Fiscal Analysis and Evaluation Directorate, Income Division)** (See section 2.9.2)

## 4. DECISIONS ON THE SCOPE OF THE EITI REPORT

The first EITI criterion requires regular publication of “all oil gas and mining company material payments to government” and of “all material government revenue from oil gas and mining companies”. A revenue flow is material if its omission or incorrect reporting materially affects EITI’s final report.

It is important for the National Commission to have the opportunity to discuss and make decisions about the revenue flows that will be included in the reporting templates. Moreover, EITI recommends involving broader multi stakeholder groups to have a say in decisions concerning materiality.

Reporting templates must reflect the Commission’s agreement regarding these material payments and revenues and the threshold of each flow. To achieve these requirements, the Commission must reach an agreement concerning:

- Revenue flows that companies and government shall disclose
- The companies that have to report
- The governmental entities that have to report
- The period that the report must cover
- The aggregation or disaggregation of the information in the EITI report
- Payments and transfers to local governments

### 4.1 Payments/Revenues Flows that Companies and Government Shall Disclose

**Mining.** The Commission shall decide which flows will be included in the reconciliation. This decision depends on the relative importance of each one with respect to the total sector contribution to the State revenues and the cost of including payments that of low significance

The material flows to be reconciled could be:

- i. ISR (67.9%)
- ii. Stamp tax (17.9%)
- iii. State Royalties (5.49%)
- iv. Municipal Royalties (5.49%)
- v. Canons (0.9%)
- vi. Solidarity tax (0.8%)

**Hydrocarbons.** The Commission shall decide the convenience or not of verifying les significant payments such annual charges per hectare and administrative fees. The flows reported in this report for 2009 and 2010 are shown in the chart below.

**Flow threshold.** Considering that a single company represented 90 percent and 91 percent, respectively of all payments to the State in the mining and hydrocarbon sectors, the minimum amount of payments should be sufficiently low to permit other companies to participate in the reconciliation. For example, State Royalties and Municipal Royalties were Q21 million in 2010. Therefore, the minimum amount could be around Q.500.000 (2.4 percent of the total).

Materiality of Flows		
	2009 %	2010 %
1. State Share in Production	70.8	73.1
2. Royalties	14.9	15.6
3. ISR	9.5	9.2
4. Service Contract	2.9	0.1
5. Stationary Transportation System Revenues	1.1	0.76
6. Privative Funds	0.6	0.5
TOTAL	99.8	99.3

## 4.2 Companies that must disclose information

**Mining:** In 2010, MEM reported 200 active exploitation mining licences corresponding to 102 mining companies, out of which 2 are devoted to metal mining and the remaining in non-metal mining activities, mostly construction materials. GREMICAP has 22 active members who have expressed their interest in participating in the reconciliation.

Montana Exploradora de Guatemala, S.A. has shown the largest sales -94 percent- and contribution to State revenues -90 percent- in 2009-2010 (Annex III). The criterion to classify mining companies as material could be their annual sales, for example those with sales higher than US\$1 million. Table 14 classifies companies according to the value of sales in 2010. Companies with sales higher than US\$1 million (Q.8 million) are:

- Montana Exploradora de Guatemala, S.A.
- Peña Rubia, S.A.
- Sílice de Centroamérica, S.A.
- Constructora Universal, S.A., and
- Productos Mineros de Guatemala, S.A.

The Commission may consider Compañía Guatemalteca de Níquel S.A., Entre Mares de Guatemala, S.A., Mayaníquel, and Goldex among the companies which have not yet entered the production phase, due to their importance. The decision of including any other company will depend on (i) the feasibility for relatively small companies to provide figures from accounts audited according to international standards; and (ii) the cost of having too many companies participate.

**Hydrocarbons.** There are four companies involved in crude exploitation and three companies in exploration activities. All material companies must participate.

Some criteria that the Commission should take into account to decide which companies should participate are (i) company production level; (ii) contribution of each company to sector payments; and (iii) ability of relatively small companies to provide account figures audited according to international standards. As for the first criterion, Perenco contributes with 93.2 percent of the production followed by EPI, 5.3 percent; Petro Energy 1.4 percent; and PetroLatina 0.1 percent.

According to chart 15, the lowest flow size may be Q.500.000, which was the royalty amount paid by the EPI company in 2010.

Cuadro 14. Empresas Mineras por Ventas. 2010		
Empresa	Producto (s)	Venta Q. millones
1	Montana Exploradora de Guatemala, S.A. oro y plata	4,019.26
Empresas con ventas de más de Q. 10 millones		115.66
2	Peña Rubia, S.A.	Piedra caliza, esquisto y toba en bruto
3	Silíce de Centroamerica, S.A.	Silíce, granito, feldespato
4	Constructora Universal, S.A.	Basalto en bruto
5	Productos Mineros de Guatemala, S.A:	Basalto en bruto, cantos rodados, arena de rio y grava
Empresas con ventas entre Q. 1 millón y Q. 10 millones		40.05
6	GUATEMARMOL, S.A.	Mármol
7	Jose Nery Estrada Mayen	Cenizas volvánicas, arena y grava, piedra caliza dolomítica
8	Cerámica Hispano Centroamericana,, S.A.	Lutita férrica
9	Actividades y Servicios La Cumbre, S.A.	Arcilla
10	INDACO, S.A.	Arena blanca
11	Canteras y Minerales de America, S.A	Piedra caliza en bruto
12	Maria Antonieta Cubeddu Atzeni de Putzu	Piedra caliza
13	Jorge Jose Borges Montealegre	Arena blanca
14	MADEVEN, S.A.	Piedra, arena
15	CABAN, S.A.	Arcilla férrica ferruginosa
Otras empresas (87)		Subtotal 10.98
TOTAL 102 empresas		4,185.95

Cuadro 15. INGRESOS GENERADOS POR LA FISCALIZACION DEL PETROLEO. 2005 -2010						
Millones de Quetzales						
	2005	2006	2007	2008	2009	2010
<b>TOTAL</b>	<b>598.9</b>	<b>662.4</b>	<b>759.0</b>	<b>1167.6</b>	<b>559.1</b>	<b>754.3</b>
<b>REGALIAS</b>	<b>109.8</b>	<b>94.8</b>	<b>107.8</b>	<b>163.4</b>	<b>93.9</b>	<b>132.2</b>
Perenco Guatemala Ltd. 1-85 1/	10.3					
Perenco Guatemala Ltd. 2-85	98.5	94.8	107.4	160.9	81.4	103.4
Petro Energy S.A. 1-91 2/	0.9		0.3	2.5	8.1	6.0
Empresa Petrolera del Istmo 2-2009 3/					4.4	22.9
<b>INGRESOS DIRECTOS</b>	<b>22.5</b>	<b>58.4</b>	<b>48.3</b>	<b>87.7</b>	<b>18.2</b>	<b>0.5</b>
Petrolatina, 1-2005						0.5
Perenco CSPE 1-2009 4/	22.5	58.4	48.3	87.7	18.2	
<b>HIDROCARBUROS COMPARTIBLES</b>	<b>466.6</b>	<b>509.3</b>	<b>603.0</b>	<b>916.4</b>	<b>447.0</b>	<b>621.6</b>
Perenco Guatemala Ltd. 2-85	466.6	509.3	603.0	916.4	441.8	598.7
Empresa Petrolera del Istmo 2-2009					5.2	22.9

Fuente: MEM. Ingresos Generados por la Fiscalización de Petróleo Crudo Nacional.

1/ Finaliza el Contrato 1-85 el 12 de agosto de 2005.

2/ Operadora del Contrato 1-91 no efectuó pago por problemas internos de la Cia, a partir del 2008 incia convenio de pago.

3/ Inicia Contrato 2-2009 a partir del 12 agosto de 2009.

4/ Inicia Contrato de Servicios Petroleros de Emergencia a partir del 13 de agosto de 2005 finalizando el 12 de agosto de 2009.

In the first report, the Commission needs to explain which selection criterion(a) has been chosen.

### 4.3 Government entities that must report

EITI requires government to make sure that every governmental entity receiving material payments participate in the information disclosure process. An entity can be exempted only if it can show with a high degree of certainty that the figures it reports would in any case be immaterial.

**Mining.** Governmental agencies receiving payments from mining companies are:

- **The Ministry of Energy and Mines** (*Treasury Department*) receives royalty and privative fund payments and deposits them in the Treasury account.
- **SAT** records tax payments and enters the information in State Accounting accounts.
- **Banco de Guatemala** registers tax payments received by system Banks and deposits them in its Treasury accounts.
- **The Ministry of Finance**, as receiver of Common Fund (Treasury deposits) and taxes (State Accounting) revenues.
- **DAFIM.** The Integrated Municipal Financial Administration Directorate at theMunicipal level.

**Hydrocarbons.** Government agencies receiving payments from oil companies are:

- **The Ministry of Energy and Mines.** (Treasury Department) receives privative funds and deposits them in Treasury accounts.
- **Banco de Guatemala** receives Royalty and State share in production payments in dollars, exchanges them and deposits them in the Common Fund (National Treasury). Similarly, Banco de Guatemala registers bank deposits for taxes in the Common Fund.
- **SAT.** Controls tax payment through system banks and registers it in the Ministry of Finance accounts (State Accounting).
- **The Ministry of Finance** acts as receiver of deposits in the Common Fund (Treasury) and taxes (State Accounting).

### 4.4 Period the report will cover

Implementing countries shall produce their first EITI Report within 18 months. EITI full member countries shall produce annual reports. EITI reports shall cover information which should not be older than the last before last complete accounting period (e.g. an EITI report published in the calendar/fiscal year 2011 should not be based upon information older than the 2009 calendar/fiscal year). If the Commission wishes to divert from that norm, it should be clearly stated in the Work Plan and the justification shall be communicated to EITI's Directorate Council.

### 4.5 Aggregation or disaggregation of the EITI Report

EITI's policy is neutral concerning report aggregation level. Reports in disaggregated values submit details of incomes paid by each company individually. An

aggregated report presents the details of each payment item made by all companies in an aggregated way.

To date, half of the countries publish aggregated reports and half disaggregated ones.

Arguments in favor of disaggregation are, that it (i) allows government and public better understand the contribution of each company to the national economy; (ii) guarantees companies and state entities that their participation in the EITI be acknowledged; (iii) shows commitment to transparency; (iv) ensures that scrutiny is laid on the way these resources are used.

This is one of the most controversial points in the EITI process, because many companies are strongly opposed to the individual declaration, supposedly due to the convenience of keeping financial data confidential and preserving comparative advantages. To reach a decision on this point, the Commission may ask companies to provide an explanation about their concerns regarding a disaggregated approach. In the end, the publication of disaggregated data depends on the government and the companies willingness to void the confidentiality clauses.

#### 4.6 Direct payments, transfers to local governments and social payments

Some relatively small revenue flows in the national context can represent high materiality levels at the subnational level and hence be relevant for transparency purposes.

**Direct payments.** In defining the “materiality of payments and revenues”, it is required that the Commission establishes clearly whether the direct payments to local or regional governmental entities are material. If the Commission decides they are, it must make sure that this information is disclosed and that it is reconciled at the subnational level.

**Central government transfers.** The Commission can extend the EITI’s scope to transfers between central governments and different subnational government layers, particularly where said transfers are dictated by the Constitution or another legal body.

According to Table 13 -Allocations of Perenco to Fonpetrol- government transfer to Peten in 2010 was Q.139 million (US\$17.3 million). This amount could be sufficiently material to consider including it in the EITI report. See graph 10.

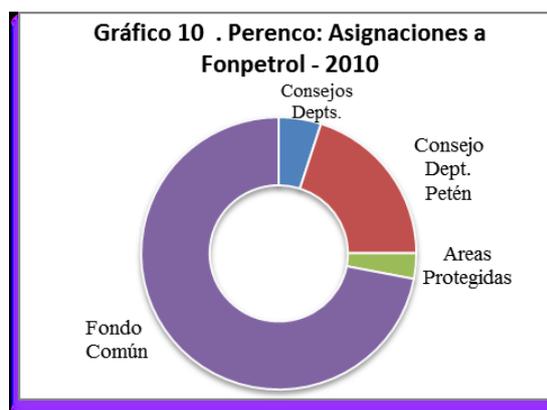


Gráfico: Graph  
 Asignaciones a Fonpetrol: Allocations to Fonpetrol  
 Fondo común: Common fund  
 Areas protegidas: Protected areas  
 Consejo dept. Peten: Peten departmental council  
 Consejos depts: Departmental councils

**In-kind payments.** When there are agreements based on in-kind payments, infrastructure provision or other barter-type arrangement of significance, the Commission must agree about a mechanism to include these benefit flows in the information disclosure process. To do so, it is necessary to have a clear understanding of contract terms, parties involved, resources committed by the State, compensation benefit flow value (e.g.

infrastructure works), and materiality of these agreements in connection with conventional contracts.

If the Commission concludes that these agreements are material, a process for reporting should be developed so as to obtain a level of transparency equal to that of other revenue payments and flows. If the reconciliation of these transactions is not feasible, the Commission must agree on a way to reveal this information unilaterally by the company and/or government and attach this information to EITI's Report.

### **Social payments**

EITI recommends to give a high degree of transparency to payments and social transfers, starting with a careful understanding of the types of payment and transfer, the parties involved in the transactions, and the materiality of these payments and transfers in connection with other benefit flows. If the Commission agrees that social payments and transfers are material, it can develop or amend the reporting templates in a way to obtain a degree of transparency similar to other payments and revenues. If the reconciliation of important (social) transactions is not possible (e.g. when company payments are in cash or to third parties), the Commission may consider unilateral company and/or government disclosure, to be annexed to the EITI Report.

**Royalties for development (mining sector)** “Royalties for development” is a term used by Montana Exploradora to describe additional assistance to communities as part of what is defined as “corporate social responsibility,” which is not considered in the law. The Ministry of Energy and Mines has no control of these programs, since they are not part of any agreement with the government. Montana invested Q.12 million in 2009 and Q.42 million in 2010 in social activities in the framework of its Sustainable Development Program and specific interventions through the Sierra Madre NGO (Annex IV).

**Infrastructure Provision and Social Payments (hydrocarbon sector).** Some infrastructure and social payments were contributed by Perenco in 2010. Most important among these are the annual payments to the Jungle Battalion for Q.1.2 million and voluntary donations for reconstruction following the Agatha storm and Pacaya volcano eruption, as well as for the Jungle Infantry Battalion Q.129 million. See Annex IV.

## **4.7 EITI at the municipal level**

The conflictive situation in the development of extractive activities in the country is to a great extent due to the claims by communities that the benefits of these activities do not reach their communities. The reconciliation of company payments and municipality revenues can be a way to find answers to this concern. To make the decision about which municipalities to include in the reconciliation, the National Commission must consider the following information concerning municipal revenues:

- Fifty percent of the mining royalties are received by the municipalities. According to Montana, the San Miguel Ixtahuacan Municipality alone received the Q.56 million in 2010.
- Twenty percent of oil company tributes reach the Peten Departmental Council alone, which equals to Q.139m in 2010.

- The Integrated Accounting System for local governments allows the identification of royalty revenues at municipal level.

The Commission should take a decision concerning the number of municipalities to be included in the reconciliation considering the elements of time and cost involved.

## **5. PAYMENT FLOWS**

### **Royalties and mining privative funds**

Royalties and canons are annual payments. The Ministry of Energy and Mines issues the companies a payment order based on the annual production and sales information as stated in the sworn declaration. Companies submit the payment order to the Treasury Department of the Ministry, specifying the amount they paid as royalties and canons. The Treasury Department issues the corresponding receipt. The amounts received are deposited in the common fund and the Ministry accounts, respectively, in the Central Bank of Guatemala. Municipal royalties are paid directly to the municipality.

Canons and related fees are deposited in the National Treasury in a special account opened at the State Accounting General Directorate of the Ministry of Public Finance in the name “General Mining Directorate”. This government agency is authorized to withdraw said funds, by purchase and payment orders.

### **ISR and other taxes**

Any tax the State receives is deposited in the Common Fund. Generally, companies pay taxes to SAT. Payments made through a commercial bank, are transferred to the common fund through Banco de Guatemala. Banco de Guatemala records all the operations in said fund, using the Accounting and Financial Information System, SICOF<sup>12</sup>. The common fund is managed by the National Treasury.

In turn, the commercial bank issues a debit note for the payment made and SAT verifies the payment detail and transfer of the payments to the common fund. SAT enters the information details in the Integrated Accounting System SICOINWEB<sup>13</sup> managed by the Ministry of Finance. The system keeps the information in an aggregated way. Only SAT keeps records of the disaggregated figures by company.

ISR is paid on a monthly basis under the general regime.

### **Oil royalties and annual charges and fees**

The amounts for royalties and annual charges and fees under the Hydrocarbon Law US-\$, but can also be paid in Quetzales at the daily exchange rate published by Banco de Guatemala. The companies deposit these payments in branches of the Banco de Guatemala. The Bank makes the conversion at the current exchange rate and deposits Quetzales in the Common Fund (royalties) or in the account of the Ministry of Energy and Mines (annual charges and fees) at the State Accounting Directorate of the Ministry of Public Finance.

---

<sup>12</sup> The Accounting and Financial Information System allows for fund transfers between current accounts in Banco de Guatemala either in domestic currency or US\$.

<sup>13</sup> The Integrated Accounting System – SICOIN – is the IT tool that controls budgetary execution, recording revenues and expenditures of programs and forecasts as necessary, automatically generating with each record the State accounting and payment process.

## Fonpetrol

The Ministry of Energy and Mines calculates the revenues generated by the industry (royalties, profit oil, and annual fees) of the corresponding month and sends this information to the Ministry of Finance and the Executive Secretariat of the Presidency .

The Ministry of Energy and Mines calculates the Fonpetrol rate to be paid by oil companies. These amounts are deposited in Finance Ministry accounts.

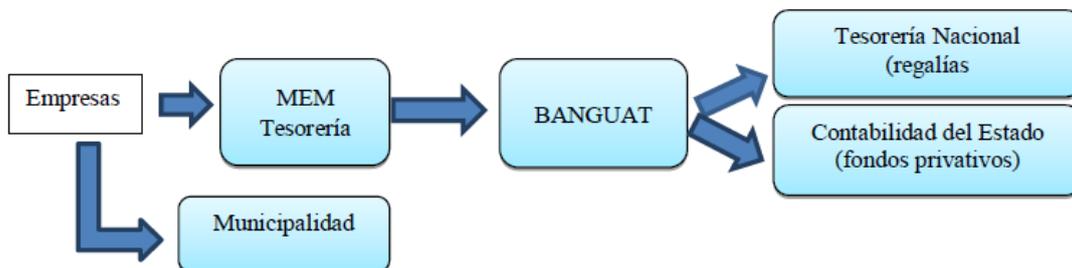
### 5.1 Reconciliation

**At central level.** The National Treasury reconciles with the banks. State Accounting (MINFIN Analysis and Tax Evaluation Directorate) conciliates with SAT.

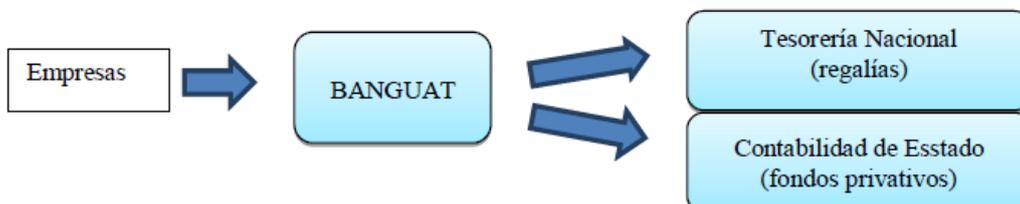
**Reconciliation for the EITI Report.** The reconciler should reconcile with the following government agencies:

- *Payments of royalties and canons.* With MEM's Treasury Department, Banco de Guatemala and National Treasury.
- *Tax payments.* With SAT and MINFIN's Fiscal Analysis and Evaluation Directorate.
- *Payments of royalties and transfers to municipalities.* With the Municipal Fiscal Administration Directorate.

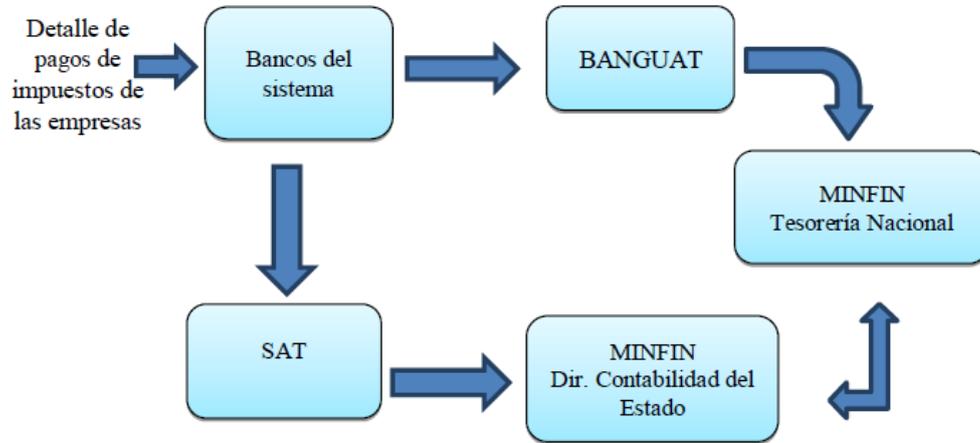
#### Payment of mining royalties and canons (fondos privados)



#### Payment of oil royalties and annual charges and fees (fondos privados)



### Tax payment path



## 6. LEGAL IMPEDIMENTS

The EITI process should easily be included in the revenue management legal framework as could any other fiscal control mechanism. However, in some cases, it has been necessary to have a separate legal framework, for example creating new legislation and transparency policies concerning revenues generated by extractive industries.

For example, a common issue is the need to create provisions whether voluntary, legislative or regulatory, to allow government and all companies to disclose information on their payments and revenues. In several occasions legal or contractual barriers have been found which prevent disclosure of this information and which have required new legislation or regulations or amendments to current legislation to permit disclosure. It is the government's role to facilitate the legal base for implementing EITI.

In the case of Guatemala, there are three legal bodies prohibiting disclosure of information on taxes to third parties, e.g. the reconciliator:

- Constitution: Article 14  
“...It is punishable to disclose the amount of paid taxes, profits, losses, costs and any other piece of information referring revised accounting to individuals or corporations ...”
- SAT Organic Law, Article 44  
“...SAT is forbidden to disclose or facilitate information or documents which, according to Constitutional provisions or other laws and the Tax Code, should be kept secret or confidential. Likewise, it is forbidden to reveal the amounts of paid taxes, lost profits, costs and any other piece of information referring the accounting of tax payers.”
- Tax Code, Article 101 A  
“...Public officials and employees who participate in applying, collecting, monitoring and controlling taxes may only reveal said information to their higher hierarchy or, if required, by a court of justice...”

The Commission needs to evaluate the appropriate legal instrument(s) to overcome these legal barriers so that the reconciler may have free access to the tax information from each company participating in the first EITI Report.

Annex E includes the National Tax Supervision Superintendence letter requesting information used by EITI-Peru to allow disclosing the information on taxes to the reconciliator. The Commission may assess if a similar instrument could be used in Guatemala.

In case the Commission decides to publish the EITI's Report with disaggregated information, a confidentiality agreement could be considered between the reconciler and the companies. If the Commission decides to publish the Report with aggregated data, this agreement will not be necessary.

# ANNEXES

**A. Form for government agencies (oil)**

Name of the government agency: \_\_\_\_\_

Name of the block or field<sup>14</sup>: \_\_\_\_\_

Revenue Flow <sup>1516</sup>	2009		2010
	Volume (Barrels)	Amount and currency	Amount and currency
1. State share in production (min. 30%) Monthly			
2. Royalties Monthly			
3. ISR Monthly			
4. Stamp tax			
5. Annual per ha charges			
6. Service Contract			
7. Stationary Transportation System			
8. Other revenues (> Q.500.000)			
Total			

	2009		2010	
	Volume	Value	Volume	Value
Payments in kind, infrastructure provision, others				
a.				
b.				
Contributions for development				
a.				
b.				

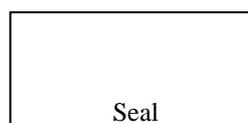
We admit that it is our responsibility to submit this form with truthful information.

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

<sup>14</sup> Submit a separate form for each block/field.<sup>15</sup> Report based upon cash accounting.<sup>16</sup> Submit detail of individual payments that make up amounts recorded in the form.

**B. (Oil) Company Form**

Company name and address: \_\_\_\_\_

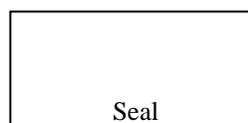
Block or field name: <sup>17</sup> \_\_\_\_\_

Revenue Flow <sup>1819</sup>	2009		2010
	Volume (Barrels)	Amount and currency	Amount and currency
1. State Production Sharing (min. 30%) Monthly			
2. Royalties Monthly			
3. ISR Monthly			
4. Stamp tax			
5. Annual per ha. charges			
6. Service Contract			
7. Stationary Transportation System			
8. Other paymentes (> Q.500.000)			
Total			

	2009		2010	
	Volume	Value	Volume	Values
Payments in kind, Infrastructure provision, others				
a.				
b.				
Contributions for development:				
a.				
b.				

We admit that it is our responsibility to submit this form with truthful information.

Name: \_\_\_\_\_  
 Position: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_



<sup>17</sup> Submit a separate form for each block/field.

<sup>18</sup> Report based upon cash accounting.

<sup>19</sup> Submit detail of individual payments that make up amounts recorded in the form.

**C. Form for Government Agencies (mining)**

Government agency: \_\_\_\_\_

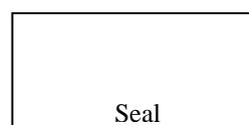
Mine and company name: \_\_\_\_\_

Revenue Flow <sup>2021</sup>	2009	2010
	Quetzales	Quetzales
1. Income tax (ISR)		
Monthly		
2. Royalties		
Annual		
3. ISO		
Monthly		
4. Canons and fees		
5. Product import tariff		
6. Stamp tax		
7. Other payments (> Q.500.000)		
Total		

	Benefit	Benefit
Payments in kind, infrastructure provision, others		
a.		
b.		
Contributions for development:		
a.		
b.		

We admit that it is our responsibility to submit this form with truthful information.

Name: \_\_\_\_\_  
 Position: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_



<sup>20</sup> Report based upon cash accounting.

<sup>21</sup> Submit detail of individual payments that make up amounts recorded in the form.

## D. Mining Companies Form

Company name and address: \_\_\_\_\_

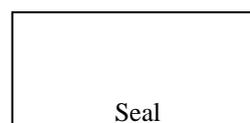
Mine name: \_\_\_\_\_

Revenue Flows <sup>2223</sup>	2009	2010
	Quetzales	Quetzales
1. Income tax (ISR)		
Monthly		
2. Royalties		
Annual		
3. ISO		
Monthly		
4. Canons and fees		
5. Product import tariff		
6. Stamp tax		
7. Other payments (> Q.500.000)		
Total		

	Quetzales	Quetzales
Payments in kind, infrastructure provision, others		
a.		
b.		
Contributions for development:		
a.		
b.		

We admit that it is our responsibility to submit this form with truthful information.

Name: \_\_\_\_\_  
 Position: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_



<sup>22</sup> Report based upon cash accounting.

<sup>23</sup> Submit detail of individual payments that make up amounts recorded in the form.

**E. Form for Mining Companies (payments to municipalities)**

Company name and address: \_\_\_\_\_

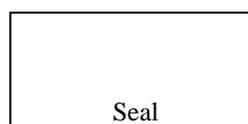
Mine name: \_\_\_\_\_

Revenue Flow <sup>2425</sup>	2009	2010
	Quetzales	Quetzales
1. Single tax on real estate (IUSI)		
2. Royalties		
3. Other payments (> Q.500.000)		
Total		

	Quetzales	Quetzales
Payments in kind, infrastructure provision, others		
a.		
b.		
Contributions for development:		
a.		
b.		

We admit that it is our responsibility to submit this form with truthful information.

Name: \_\_\_\_\_  
 Position: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_



<sup>24</sup> Report based upon cash accounting.

<sup>25</sup> Submit detail of individual payments that make up amounts recorded in the form.

## F. Municipality Form (revenues received from the mining sector)

Municipal agency name: \_\_\_\_\_

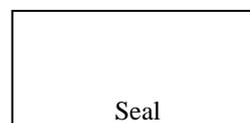
Mine name: \_\_\_\_\_

Revenue Flow <sup>2627</sup>	2009	2010
	Quetzales	Quetzales
1. Single tax on real estate (IUSI)		
2. Royalties		
3. Other payments (> Q.500.000)		
Total		

	Quetzales	Quetzales
Payments in kind, infrastructure provision, others		
a.		
b.		
Contributions for development:		
a.		
b.		

We admit that it is our responsibility to submit this form with truthful information.

Name: \_\_\_\_\_  
 Position: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_



<sup>26</sup> Report based upon cash accounting.

<sup>27</sup> Submit detail of individual payments that make up amounts recorded in the form.

### G. Reporting Government Entity (Fonpetrol) Form

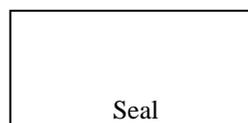
Government agency name: \_\_\_\_\_

Peten municipality name: \_\_\_\_\_

Revenue Flow <sup>2829</sup>	2009	2010
	Quetzales	Quetzales
1. Fonpetrol allocations		
3. Other payments (> Q.500.000)		
Total		

We admit that it is our responsibility to submit this form with truthful information.

Name: \_\_\_\_\_  
 Position: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_



<sup>28</sup> Report based upon cash accounting.

<sup>29</sup> Submit detail of individual payments that make up amounts recorded in the form.

## H. Reporting Municipal Agency (Fonpetrol) Form

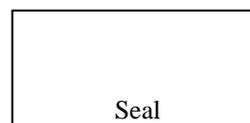
Name of the municipal agency: \_\_\_\_\_

Name of the municipality in Peten: \_\_\_\_\_

Revenue Flow <sup>3031</sup>	2009	2010
	Quetzales	Quetzales
1. Fonpetrol allocations		
3. Other payments (> Q.500.000)		
Total		

We admit that it is our responsibility to submit this form with truthful information.

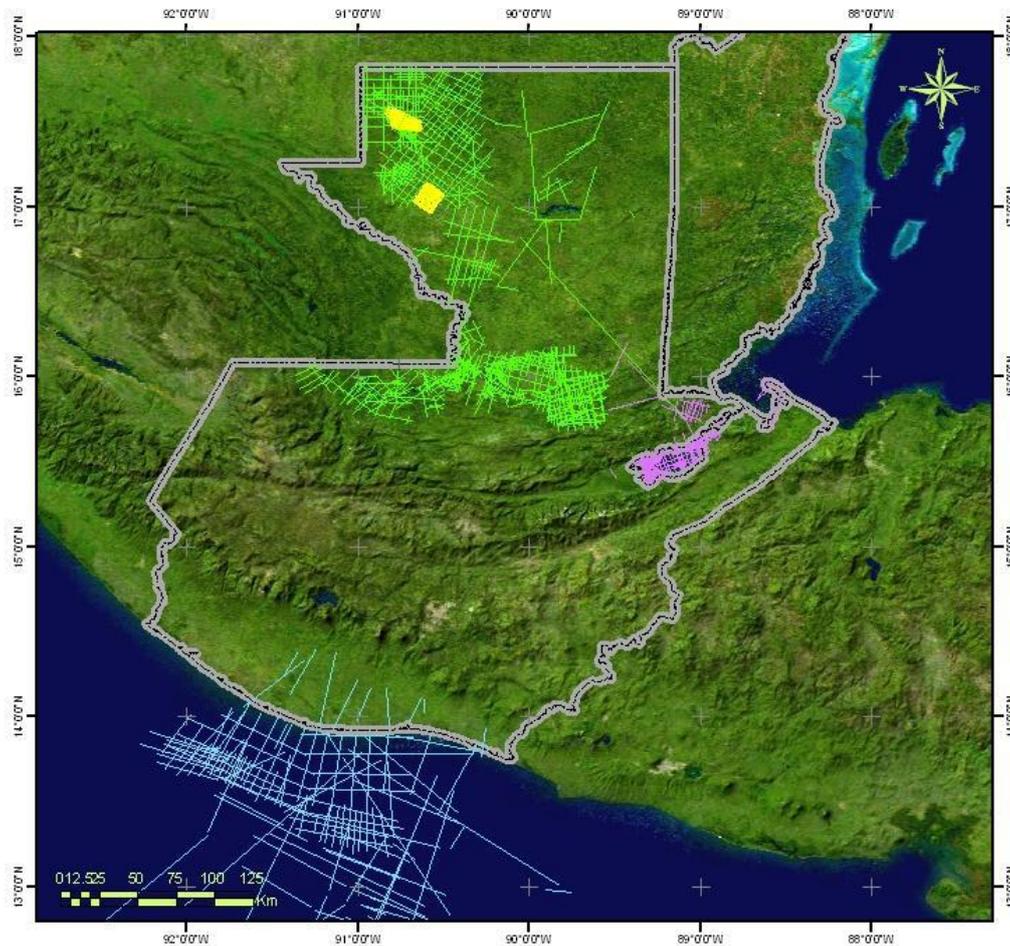
Name: \_\_\_\_\_  
 Position: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_



<sup>30</sup> Report based upon cash accounting.

<sup>31</sup> Submit detail of individual payments that make up amounts recorded in the form.

### Cobertura Sísmica



**Explicación**

-  Sísmica 3D Cuenca Peten
-  Sísmica 2D Cuenca Peten
-  Sísmica 2D Cuenca Pacifico
-  Sísmica 2D Cuenca Amatique



**Caption:**  
 Cobertura sísmica: Seismic coverage  
 Explicación: Explanation  
 Sísmica 2D Cuenca...: 2D seismic...basin

## PRODUCING COMPANIES. Year 2010:

	Empresa	Producto (s)	Venta Q. millones
1	Montana Exploradora de Guatemala, S.A.	oro y plata	4,019.26
	<b>Empresas con ventas de más de Q. 10 millones</b>		<b>115.66</b>
2	Peña Rubia, S.A.	Piedra caliza, esquisto y toba en bruto	
3	Sílice de Centroamerica, S.A.	Sílice, granito, feldespato	
4	Constructora Universal, S.A.	Basalto en bruto	
5	Productos Mineros de Guatemala, S.A.	Basalto en bruto, cantos rodados, arena de río y grava	
	<b>Empresas con ventas entre Q. 1 millón y Q. 10 millones</b>		<b>40.05</b>
6	GUATEMARMOL, S.A.	Mármol	
7	Jose Nery Estrada Mayen	Cenizas volcánicas, arena y grava, piedra caliza dolomítica	
8	Cerámica Hispano Centroamericana, S.A.	Lutita férrica	
9	Actividades y Servicios La Cumbre, S.A.	Arcilla	
10	INDACO, S.A.	Arena blanca	
11	Canteras y Minerales de America, S.A.	Piedra caliza en bruto	
12	Maria Antonieta Cubeddu Atzeni de Putzu	Piedra caliza	
13	Jorge Jose Borges Montealegre	Arena blanca	
14	MADEVEN, S.A.	Piedra, arena	
15	CABAN, S.A.	Arcilla férrica ferruginosa	
	<b>Empresas con ventas entre Q. 500,000 y Q. 1 millón</b>		<b>3.62</b>
16	Pedra el Pilar, S.A.	polvo de piedra, basalto, pedrín	
17	César Augusto Paiz Gomez	piedra caliza, arena de río	
18	Sistemas, Cosntruccion y Asesoría, S.A.	arena de río	
19	Gilberto Jimenez Reyes y Condueños	bentonita, caliza marmolizada	
20	LosChocoyos, S.A.	piedra de mármol gris	
	<b>Otras empresas (82)</b>	<b>Subtotal</b>	<b>7.36</b>
		<b>TOTAL 102 empresas</b>	<b>4,185.95</b>

## COMPANIES IN EXPLORATION AND DEVELOPMENT:

Entre Mares de Guatemala, S.A.  
 Compañía Guatemalteca de Níquel, S.A.  
 Mayaníquel, S.A.  
 AGREGUA (4 companies)  
 Goldex  
 Argonaut Gold Ltd.

## INFRASTRUCTURE PROVISION AND SOCIAL PAYMENTS

### I. COMMUNITY DEVELOPMENT COMPREHENSIVE PROGRAM – PIDEC – 2010

It is executed by Fundación Sierra Madre (FSM), a not-for-profit Guatemalan development organization devoted to support community sustainable development in San Miguel Ixtahuacan and Sipacapa, in San Marcos and, south of Malacantancito and Santa Barbara, in Huehuetenango.

PIDEC's objectives are: to strengthen the capacities of people to generate sustainable development processes and to improve the living conditions of the communities in these municipalities. FSM operates with funding from several entities, mainly Montana Exploradora, which allocates a budget capped at US\$400,000 per year.

#### STRATEGIC WORK AREAS

FSM's 2010-2015 strategic plan includes activities in health, education, environment, entrepreneurship and organization. FSM also executes projects together with the Sustainable Development Department of the Marlin Mine, targeted at a broad population sector in the San Miguel Ixtahuacan and Sipacapa Municipalities. The following projects were executed in 2010.

#### Health

10 medical assistance events on pediatrics, gynecology, general medicine, ophthalmology, dentistry and family planning, benefitting 1,145 people.

#### Education

- Distance learning for pre-schoolers and primary education students
- Mini- libraries for schools in three municipalities\*
- Opening of the Science and Humanities Bachelor Studies on Tourism
- Literacy program with 35 communities to be started in 2011\*

#### Environment

The high demand of inputs for construction and fuels from the forest requires constant resource renewal. Therefore, reforestation projects are promoted in schools, energy forests, water recharge areas: integral orchards and adequate organic and inorganic waste management.

- During the year, more than 23,000 trees were planted with the support of students, teachers, parents and organized women groups.
- Firewood-saving furnaces were introduced in 8 municipalities.
- Training on *The Environment and Me* was provided at basic education and primary school level.

- Five community groups have installed their agroforestry nurseries, which benefit 85 women. There were 7,300 plants produced. FSM is one of the main buyers of these trees for reforestation.\*

### **Small and Micro-Businesses**

Strengthening and promoting small and micro-businesses is one of the objectives mainly aimed at developing economic activities to generate employment and revenues.

- Groups of women were trained in handicrafts, cutting and sewing of basic garments, embroidery, bakery, typical knitting and weaving, computing literacy and others.
- Workshops to prepare a Municipal Development Plan, with the participation of SEGEPLAN and representatives from the municipality's 5 different regions.

### **Agribusinesses**

- certification of organic coffee according to international standards was obtained for the first time for 78 coffee producers. These organic production certifications become important since the area is a polluted one, which is also politically difficult. Actions were also started to get the social responsibility and environmental certificates for coffee production.\*
- Assistance for coffee producers from 12 communities, as well as the organization and functioning of Asociacion de Agricultores Manos Unidas (a farmer association).
- 76 producers from 9 communities participated in training workshops on post-harvest management, e.g., support to 16 companies in the preparation of dairy products.\*

### **Organization**

This is referred to the organizational development of producers, women and youth, municipal strengthening and support to local authorities. FSM, in coordination with the SMI municipality worked on:

- Assistance to municipal employees to improve services
  - Strengthening groups of women through the Women's Municipal Office (OMM)
  - Strengthening Auxiliary Mayors' and COCODES' capacities
  - Eleven training events to 73 municipal employees aiming at improving service supply
  - Ninety-eight auxiliary mayors, 175 COCODES representatives, 28 community leaders (in total 301 people) were benefited from training on prevention alternatives and dispute settlement under the strengthening program aimed at the community organization.\*

## II. SUSTAINABLE DEVELOPMENT PROGRAM

Before starting operations, the Marlin Mine assumed a commitment to respect the San Miguel Ixtahuacan and Sipacapa communities' cultural values, as well as supporting the area's sustainable development. Montana has helped with social development projects in infrastructure, education, productivity, community relations and health.

The Sustainable Development Department has executed more than 2 thousand community development interventions in 8 years, which means a Q120 million investment, in more than 150 infrastructure, education, productivity, community relations and health projects.<sup>32</sup>

In 2009 and 2010, Montana reports a Q.12.6 million and Q.41.9 million, respectively, in what the company calls "royalties for development."

### Montana Exploradora de Guatemala. Investments on Community Development - 2010

Area/Type	Education	Health	Social	Culture	Emergency	Churches	Sports	Environment	Security / Justice	Productivity	Total Q
Infrastructure	16,796.5	1,214.6	83,399.8	1,422.6		117.2	1,741.0	61.1		3,474.0	108,778.8
Economic	17.9		923.7	5.7		11.0				1,115.1	2,326.5
Services	1,527.7	60.0	2,271.1				25.0				3,883.8
Functioning	396.9	304.1	55.6	4.4	77.0	0.9	2.0	5.9	81.3	600.0	2,032.2
Advisory	170.0		1,253.8	250.0				1.1		46.0	2,139.9
Equipment	79.4		11.8			9.3	17.9	9.3	10.1		852.7
<b>Total</b>	<b>19,857.5</b>	<b>1,578.7</b>	<b>88,419.8</b>	<b>1,682.7</b>	<b>77.0</b>	<b>237.5</b>	<b>1,785.9</b>	<b>629.4</b>	<b>91.3</b>	<b>5,654.1</b>	<b>120,013.9</b>

Source: Goldcorp, *Impacto Económico, Social y Ambiental*, February 2011, at <http://www.goldcorpguatemala.com>

### Infrastructure

These are water, electrification, rural roads, highways, bridges, community rooms, contention walls and perimeter walls for Q.108.8 million. To date, 212 infrastructure projects have been executed, among which:

- The New Urban Center in the San Jose Nueva Esperanza village, in San Miguel Ixtahuacan. The project's objective is to move the community's urban center to a better area with better facilities for Q.4,004,255.\*

### Education

Educational and sports infrastructure works were built. To date, more than Q3 million have been contributed for paying teachers, benefiting 22 communities and more than 3000 students who have received education they had no Access to and more than 269 initiatives promoted by Montana for the improvement of education in the San Miguel

<sup>32</sup> See Goldcorp. *Impacto Económico, Social y Ambiental*, february 2011, en <http://www.goldcorpguatemala.com>.

Ixtahuacan, Sipacapa, Malacatancito and Tejutla municipalities. The following are among the main ones:

- Car mechanics and electricity technology workshops at the San Miguel Ixtahuacan Technological Institute. Q1,146,000.
- **Joint work with FSM:**
  - Teacher training in 22 schools in SMI under the Learning Improvement Program.\*
  - Support to the mechanics and electricity institute, where FSM is responsible for equipment and tool inventory of workshops, which were built and donated by Montana.

### **Health: CAP**

The new Permanent Service Center (CAP) of San Miguel Ixtahuacan was built and equipped to expand healthcare service in the area.

- The San Miguel Ixtahuacan municipality provided the land, Montana contributed more than Q21.5 million to build and for medical equipment, and the Ministry of Health is in charge of its operation and good functioning. This center is equipped with cutting-edge technology in every medical area.\*

### **Joint work with FSM:**

- Training CAP's technical and paramedical personnel related to clients, human relations, team work, professional ethics, first aid and emotional intelligence.\*

### **Productivity**

To date, 14 programs have been supported in the process of increasing community productivity. Some of them are:

- Tomato production under "agril" in the Sholtanan village, San Miguel Ixtahuacan. Montana's contribution Q.200,000 (US\$25,000)

### **Community Relations**

Support to different cultural and sports events, and aid in natural catastrophes. To date, 228 community activities have been supported.

### **Environmental Management: Reforestation**

Reforestation of more than 300 hectares in the San Miguel and Sipacapa municipalities, exceeding the Environmental Impact Assessment. The goal for 2011 is to reforest 50 hectares between the two municipalities.

There is a Forestry Plan with the National Forest Institute, INAB, which includes an area of 199.5ha, out of which 98ha have already been released.

\*Important projects among which the Commission may select those that should be conditioned.

## Repartición Fonpetrol - 2010

RESUMEN DE PAGOS AL ESTADO en 2010 (Gifras en USD)	FONPETROL				
	Consejos Departamentales del país 5%	Consejo Departamental al Peten 20%	Entidades Vigilancia y recuperación áreas protegidas 3%	Fondo Común Guatemala 72%	
Regalías	11 628 735	581 437	2 325 747	348 862	8 372 689
Regalías - Entregas en especie	-				
Participación estatal en la producción (Crudo compartible)	73 469 561	3 673 478	14 693 912	2 204 087	52 898 084
Participación estatal en la producción - Carreteras	-				
Participación tarifa al Estado	754 936	37 747	150 987	22 648	543 554
Crudo del Estado contrato de servicios RUB	0				
Tasas por Hectárea (incluye TH por ampliación, modif C2-85)	51 586	2 579	10 317	1 548	37 142
Capacitación de Personal (Incluye Capac por ampliación, modif C2-85)	370 440	18 522	74 088	11 113	266 717
ISR	8 998 070				
Aportes anuales para el desarrollo económico de la nación por ampliación, etc.	154 521				
Aportes Batallón ecológico \$0.30, Conap \$0.10 y Municipalidades \$0.15 por hectárea	279 005				
Donaciones voluntarias para reconstrucción por tormenta Agata y volcán Pacaya	16 000 000				
Aporte variables fondo para el desarrollo económico de la nación	-				
<b>TOTALES</b>	<b>111 706 854</b>	<b>4 313 763</b>	<b>17 255 052</b>	<b>2 588 258</b>	<b>62 118 186</b>

El Petróleo participa al desarrollo del país:  
**17.25 MUSD Peten**  
**4.314 MUSD Otros**  
Departamentos

Batallón de la selva + CONAP  
El Petróleo participa a la recuperación de la Laguna del Tigre

### PERENCO: PAYMENTS TO THE STATE AND SOCIAL PAYMENTS – 2010

(Thousands of quetzales)

	2010
Royalties	93,844
State share in production	592,899
State tariff share	6,092
Rates per hectare	416
Personnel training	2,989
ISR	72,614
<b>Subtotal</b>	<b>768,856</b>

#### Infrastructure provision and social payments: as from August 2010:

Annual contributions for economic development from postponement of Contract C-285 and Refinery	1,247
Annual contributions to the Jungle Battalion (US\$0.30/bbl)*	1,252
CONAP annual contributions (US\$0.10/bbl)	417
Annual contributions to municipalities (US\$0.15/bbl)	582
Voluntary donations for reconstruction following the Agatha storm and Pacaya volcano eruption and for the Jungle Infantry Battalion*	129,120
<b>Subtotal</b>	<b>132,619</b>
<b>Total</b>	<b>901,474</b>

Source: Perenco Guatemala Limited

\*Reconciliation recommended.

Pagos Realizados por Montana Exploradora S.A., 2005 - 2010						
(Millones de Quetzales corrientes de cada año)						
	2005	2006	2007	2008	2009	2010
ISR		20.77	82.40	96.80	138.58	201.86
Otros Impuestos	1.04	4.66	4.66	6.19	68.24	86.80
Regalías Gobierno / Municip.	1.01	9.95	16.86	21.17	29.81	44.23
Regalías para el Desarrollo					12.63	41.96
Total	2.06	35.38	103.92	124.16	249.25	374.84
Fuente: Montana Exploradora S.A. Ver <a href="http://www.goldcorpguatemala.com/">http://www.goldcorpguatemala.com/</a>						

**Caption:**

Producción de Petróleo por Empresa y Campo. Años 2000 - 2010												
En Barriles												
Empresa y Contrato	Campo	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>TOTAL</b>		<b>7,571,161</b>	<b>7,695,352</b>	<b>9,004,952</b>	<b>9,027,668</b>	<b>7,384,124</b>	<b>6,727,641</b>	<b>5,892,867</b>	<b>5,584,012</b>	<b>5,158,284</b>	<b>4,933,278</b>	<b>4,362,879</b>
<b>Perenco Guatemala Ltd.</b>		<b>7,340,944</b>	<b>7,492,339</b>	<b>8,774,321</b>	<b>8,526,530</b>	<b>6,804,454</b>	<b>6,230,812</b>	<b>5,495,754</b>	<b>5,256,396</b>	<b>4,797,525</b>	<b>4,611,771</b>	<b>4,053,032</b>
1-97	Yalcaxix					862	39					
2-85	Xan	7,340,944	7,492,339	8,774,321	8,526,530	6,803,592	6,230,773	5,495,754	5,256,396	4,797,525	4,611,771	4,053,032
<b>Perenco/Empr. Petrolera del Itzmo*</b>		<b>187,791</b>	<b>165,270</b>	<b>171,050</b>	<b>431,162</b>	<b>527,169</b>	<b>427,982</b>	<b>321,175</b>	<b>259,887</b>	<b>267,247</b>	<b>245,443</b>	<b>242,652</b>
1-2009 CSPE	Rubelsanto	150,258	129,571	111,043	103,709	88,401	93,956	67,107	59,968	73,260	57,392	59,246
2-2009	Chinaja Oeste	8,998	11,437	7,999	7,478	5,867	3,528	2,052	418	288	-	-
	Caribe	11,374	24,263	41,744	78,631	65,091	60,912	40,801	33,827	33,919	27,817	26,795
	Tierra Blanca	17,161	-	10,264	241,344	367,809	269,586	211,216	165,674	159,780	160,234	156,610
<b>Petroenergy S.A.</b>		<b>42,425</b>	<b>37,743</b>	<b>59,582</b>	<b>69,976</b>	<b>52,501</b>	<b>68,847</b>	<b>75,938</b>	<b>67,730</b>	<b>79,233</b>	<b>70,005</b>	<b>63,418</b>
1-91	Chocop	42,425	37,743	59,582	69,976	52,501	56,928	39,746	38,377	61,492	60,966	54,066
	Yalpemech				0	0	11,919	36,192	29,353	17,741	9,039	9,351
<b>Petrolatina Corp.</b>										<b>14,279</b>	<b>6,059</b>	<b>3,778</b>
Petroenergy S.A.		116	103	163	192	144	189	208	186	217	192	174
Petrolatina Corp.		-	-	-	-	-	-	-	-	39	17	10
<i>Misceláneos:</i>												
Valor de la producción (US \$mn)							256.19	252.98	280.60	384.96	237.34	278.00
Precios (US\$ / barril)**							38.08	42.93	50.25	74.63	48.11	63.72
Fuente: Ministerio de Energía y Minas.												
* Perenco operó estos campos bajo el Contrato de Servicios Petroleros de Emergencia 1-2009 hasta Agosto 2009 en que asumió la Empresa Petrolera del Itzmo bajo el CPP 2-2009												
** Mezcla (Xan/Coban) Precio en Pto. Santo, Tomas de Castilla												

PERENCO GUATEMALA LIMITED							
<b>RESUMEN DE PAGOS AL GOBIERNO (Cifras en Miles de USD)</b>							
25-Jan-11							
	<b>C O N C E P T O</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
1	Regalías	14,633	12,898	12,896	22,973	8,761	11,629
3	Participación estatal en la producción (Crudo compartible)	60,236	69,116	70,052	144,472	47,295	73,470
6	Crudo del Estado contrato de servicios RUB	2,295	7,815	4,973	13,396	2,229	0
5	Participación tarifa al Estado	0	1,553	791	834	834	755
7	Tasas por Hectárea (incluye TH por ampliación, modificación C2-85)	181	48	48	52	52	52
8	Capacitación de Personal (Incluye Capac por ampliación, modificación C2-85)	571	343	343	370	370	370
9	ISR	8,153	8,864	8,582	12,839	6,889	8,998
10	Aportes anuales para el desarrollo económico de la nación por ampliación, modificación y prórroga C2-85 y Refinería	-	-				155
11	Aportes Batallón ecológico \$0.30, Conap \$0.10 y Municipalidades \$0.15 por barril del total de la producción						279
12	Donaciones voluntarias para reconstrucción por tormenta Agata y volcán Pacaya y para Batallón infantería de la Selva						16,000
13	Aporte variables fondo para el desarrollo económico de la nación	-	-	-	-	-	-
	<b>TOTALES</b>	<b>86,070</b>	<b>100,637</b>	<b>97,685</b>	<b>194,935</b>	<b>66,429</b>	<b>111,707</b>
	<b>Desglose numeral 11 - Aportes para la nación</b>						
	Batallón ecológico \$0.30 por barril						155
	Conap \$0.10 por barril						52
	Municipalidades \$0.15 por barril						72
	Totales						<b>279</b>

**Information Request Letter to Sunat**

Lima, June [ ] 2009

Messrs.  
National Tax Administration Superintendence – SUNAT  
Att.: Division of Services to Tax Payers – SUNAT

Dear Sirs,

[ ] (hereinafter the “Company”) with Single Tax Payer No. [ ], domiciled at [ ], Lima which is represented by its General Manager, Mr. [ ], identified with DNI No. [ ], pursuant to Power of Attorney registered in Entry No. [ ] of the Registry of Corporations at the Lima and Callao Registry Office, states the following:

According to procedure No. 58 of TUPA (tax return report request of determined tax return report and information submitted by telematics and electronic means), it requests access and submission of detailed information copies in **annex** attached to this communication (hereinafter the “information”).

For the purposes of processing this request, we authorize the following persons so that any of them, individually and indistinctly, may carry out every procedure and act necessary to get and/or collect information:

<b>Names</b>	<b>DNI</b>
1. Carlos Valdivia	07876578
2. Numa Arellano	25824784
3. Miriam Santivañez	09992507
4. Liseth Palacios	41194897
5. Renzo Valera	40671148
6. Carla Mazzei	40305184
7. Francisco Rojas	10797510
8. Patricia Espinoza	40510914

Notwithstanding the notification that shall be made to our fiscal domicile, the Company requests to be notified to fax number [ ] (Att.: [ ]) to get a prompt response to this request.

With no more to say, we thank you in advance for your attention to this letter.

Sincerely

[ ]

## Annex

Requested periods: The following information request shall cover the 2004 – 2007 fiscal period.

Requested declarations shall include rectifications or substitutions submitted for the aforementioned tax period.

Requested information details are the following:

### 1. Income Tax

Forms	Information requested per form
<ul style="list-style-type: none"> <li>- PDT 0654 – Annual Income, Fiscal Year 2004 ,Third Category.</li> <li>- PDT 0656 – Annual Income, Fiscal Year 2005, Third Category.</li> <li>- PDT 0658 – Annual Income, Fiscal Year 2006, Third Category.</li> <li>- PDT 0660 – Annual Income, Fiscal Year 2007, Third Category.</li> </ul>	<ul style="list-style-type: none"> <li>- Company Tax Payer Number and Name.</li> <li>- Form Order Number.</li> <li>- Tax Period.</li> <li>- Form submission date.</li> <li>- Submission currency</li> <li>- Box 504</li> <li>- Box 126</li> </ul>

In case the mining company declaring information attaches its Annual Tax Return, the following should be informed for each concession or UEA.

Concession or UEA Code	Currency	Income Tax	Other credits with no right to rebate
XXXXX		XXXXX	XXXXX

In case of companies exploiting hydrocarbons and declaring information attached to their Annual Tax Return, the following shall be reported per prospection or development Block, respectively:

Nº of the Block being Prospected or Developed	Currency	Income Tax
XXXXX		XXXXX

### 2. Mining royalties (PDT 698)

PDT 698 used as Tax Return	PDT 698 used as Payment Receipt
<ul style="list-style-type: none"> <li>- Company Tax Payer Number and Name</li> <li>- Form Order Number</li> <li>- Tax Period</li> <li>- Form submission date</li> <li>- Box 106 – Royalty to be paid</li> <li>- Box 598 – Total amount to be paid.</li> </ul>	<ul style="list-style-type: none"> <li>- Company Tax Payer Number and Name</li> <li>- Form Order Number</li> <li>- Tax Period</li> <li>- Form submission date</li> <li>- Tax Return form Order Number</li> <li>- Box 609: Total amount to be paid</li> </ul>