Oil firms use secretive court hearing in bid to stop Vietnam taxing their profits

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ConocoPhillips and Perenco try to stop £140m levy from sale of oilfields in key case for tax avoidance by multinationals

Two multinational oil companies have launched a pre-emptive legal strike, seeking to stop Vietnam from collecting taxes on the profits made in a major oil deal.

An investigation by Finance Uncovered has found that ConocoPhillips and Perenco will attempt to stop the Vietnamese government from levying an estimated $179m (£140m) in taxes on the profits made from the sale of oilfields in the country. The dispute will be heard at a little-known but powerful international court, so secretive that information on the date and location of the hearing is restricted.

The court is managed by the UN, and little known outside privileged legal circles. But the result could mark a significant shift in the way multinationals attempt to avoid paying taxes to poorer countries.

The case follows the sale in 2012 of two companies owned by a UK subsidiary of US energy giant ConocoPhillips – ConocoPhillips Gama Ltd, and ConocoPhillips Cuu Long. They were sold to a UK company owned by the Anglo-French oil firm Perenco.

It appears from corporate accounts that the only assets held by ConocoPhillips Gama and Cuu Long were Conoco's oil interests in Vietnam.

According to accounts filed at Companies House in the UK, ConocoPhillips sold the companies for $1.3bn, reaping a profit of $896m. Buried in the detail of those accounts, a small note states that the company paid no taxes on the capital gain.

The tax-free gains were made possible by the UK's "substantial shareholder exemption", which meant profits on the sale of shares in subsidiary companies are not subject to capital gains tax in the UK.

But while the UK may choose not to levy any capital gains tax, Vietnam has the right to do so under the terms of the UK-Vietnam tax treaty. The Vietnamese government has signalled its intention to tax the transaction.

Perenco declined to comment.

A spokesman for ConocoPhillips said: "The sale was between two UK-incorporated and resident entities with no taxable presence in Vietnam. The target companies are also UK companies. As a result, no taxes were owed on the sale in Vietnam."

The company said it would “pursue all available legal remedies to challenge any attempt by Vietnam to tax the transaction”.

ConocoPhillips and Perenco have filed a case under the UK-Vietnam Bilateral Investment Treaty, which is subject to an arbitration process run by the United Nations Commission on International Trade Law.

The use of the bilateral investment treaty mechanism is controversial. Such disputes are expensive, opaque and unusual in tax litigation.

Neither ConocoPhillips nor Cavinder Bull, chairman of the arbitration panel looking into the case, would disclose the location, or the dates, of the hearings.

Bull said it was inappropriate to comment “in any way” about the case, which is thought to be the first of its kind to address the issue of capital gains tax. It also sets a worrying precedent for poorer countries, as any dispute would involved huge legal fees.

Sarah-Jayne Clifton at the Jubilee Debt Campaign said it was “outrageous that a multinational is trying to use an inappropriate legal process to force Vietnam to give up its tax revenue”.

“Many cases brought against impoverished countries seek to hound them into submission. We have seen this with vulture funds, where companies have chased developing country governments through courts across the world, in pursuit of unjust debt claims.”

George Turner

P.S.

The Guardian

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