



# IGF-OECD BEPS in Mining Program

## *ISSUE 3:* Limiting the BEPS Impact of Tax Incentives

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*With thanks to Emil Sunley, Saira Stausholm, Jaqueline Terrel, Iain Steel (ODI)*





# Tax Incentives Defined

"Any special tax provisions granted to qualified investment projects or firms that provide a **favourable deviation** from the general tax code" (Platform on Tax Collaboration).

1. Preferential tax treatment of mining in the **general tax code**

(e.g. Corporate income tax rate is 35% for all taxpayers, but 30% for mining);



2. Specific tax incentives in the **mining law**;

(e.g. 10% import duties in general tax code, reduced to 5% in mining law)

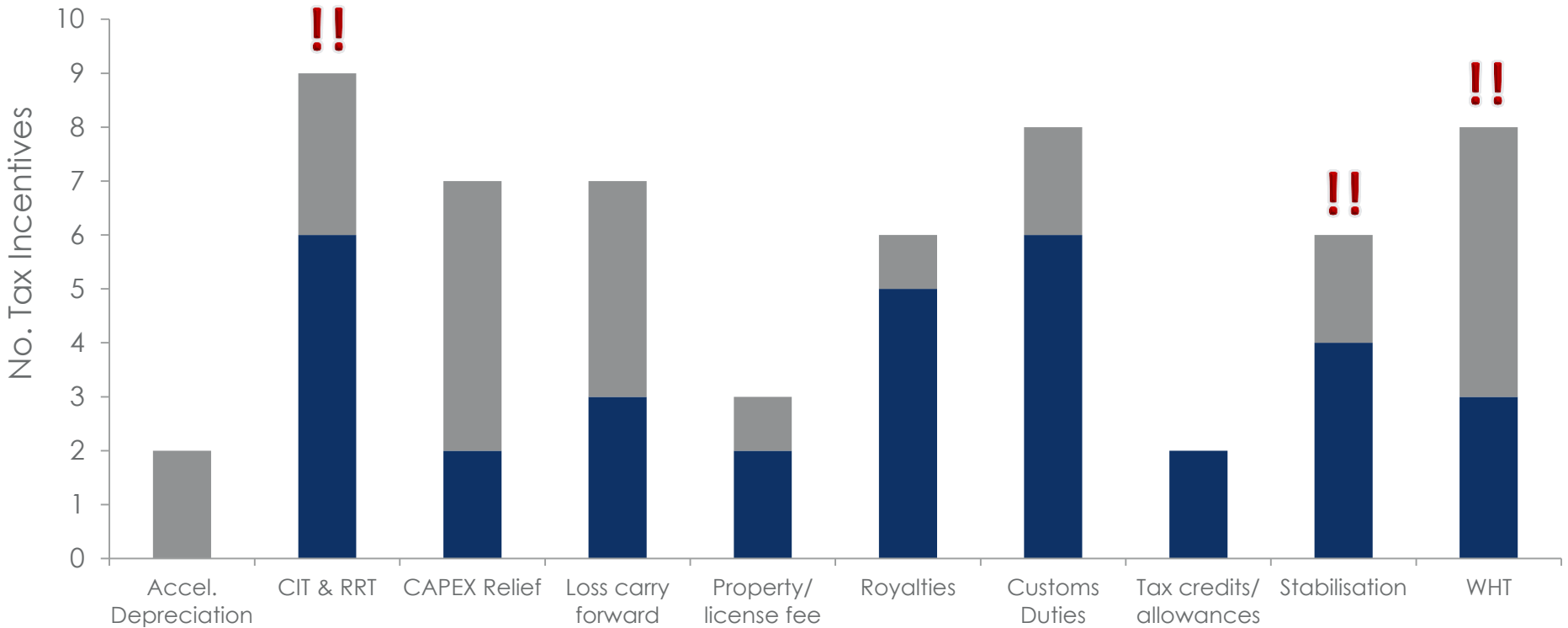
3. Specific tax incentives in **mining contracts** (project-level)

(e.g. CIT is 20% for the first ten years of production)

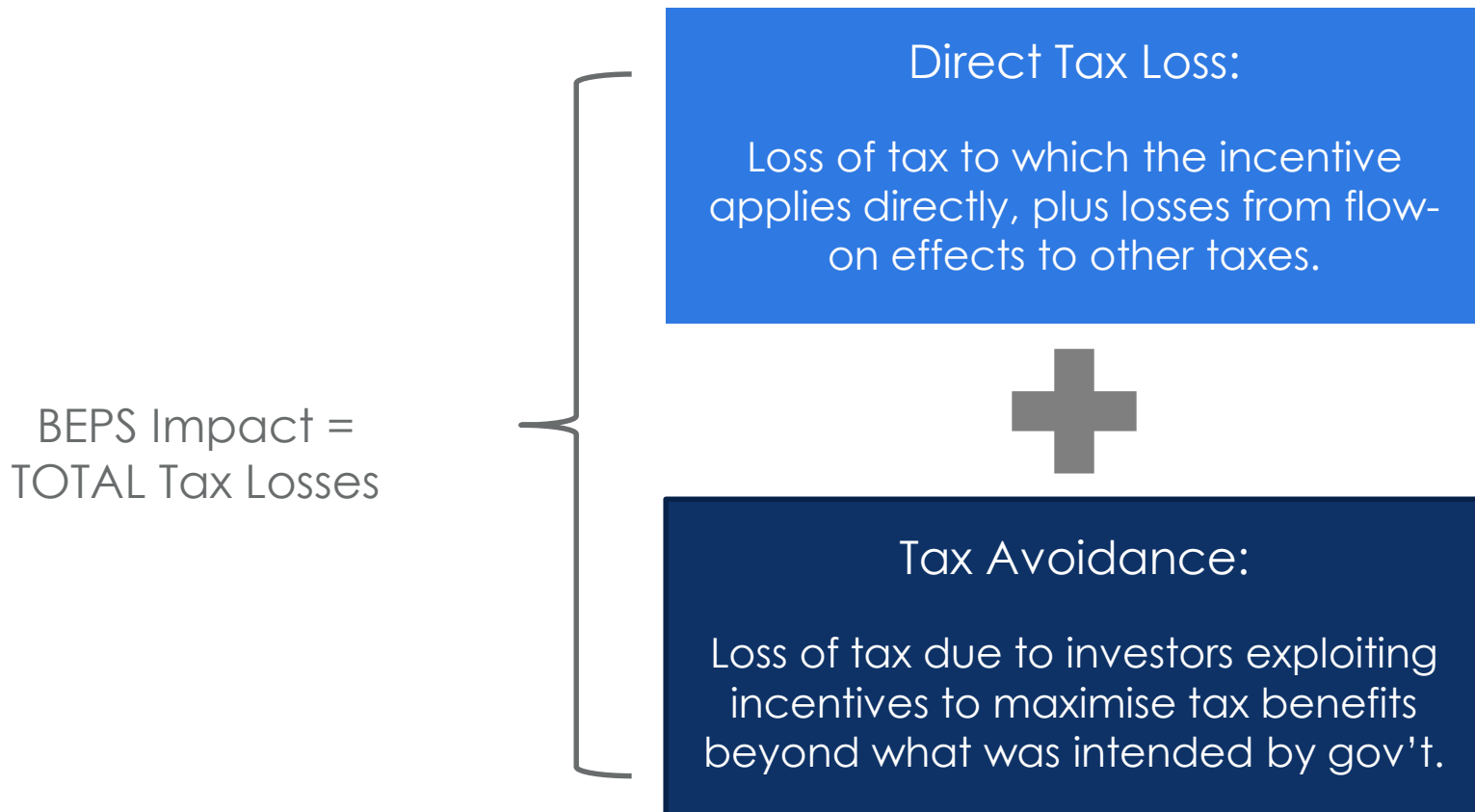
# Tax Incentives Are Wide Ranging

Chart 1. Types of Tax Incentives in Mining

■ No. countries w/ incentive in >1 contract    ■ No. countries w/ incentive in law



# Tax Incentives May Have a "BEPS Impact"



# Example, the BEPS Impact of EPZ Status

Country A

Parent

Country B (host country)

Mine

Sells mineral product to processing facility

@ 30% below market price

Export Processing Zone

Processing Facility

• Tax free

- CIT 35%
- 3% royalty on received sale price

BEPS Impact =  
TOTAL Tax Losses

Direct Tax Loss: All taxes

Tax Avoidance:  
Reduced Royalties and  
Income Tax



# Risk of BEPS Depends on Type of Incentive

Tax Incentive	Potential BEPS Impact	Risk*
Tax holiday	High-grading; abusive TP	HIGH
Economic Processing Zone	Differential tax treatment leads to TP	
Withholding tax relief	Excessive interest; high management fees	
Investment tax credit	Cost increase; base manipulation; double dip	MEDIUM
Investment allowance	As above; but risk is lower as less generous	
Accelerated depreciation	Cost increase; base manipulation	
Sliding scale royalty	Tax planning to avoid higher royalty bracket	
Import duty relief	Non-mining items claimed	LOW

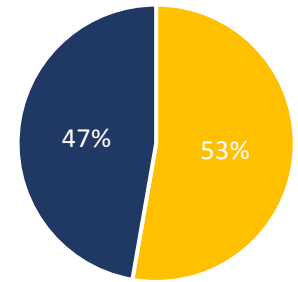
*Fiscal stabilization may freeze all of the above.*

\*Risk is a combination of the likelihood of the indirect tax loss occurring, and the fiscal impact

# Estimating Costs

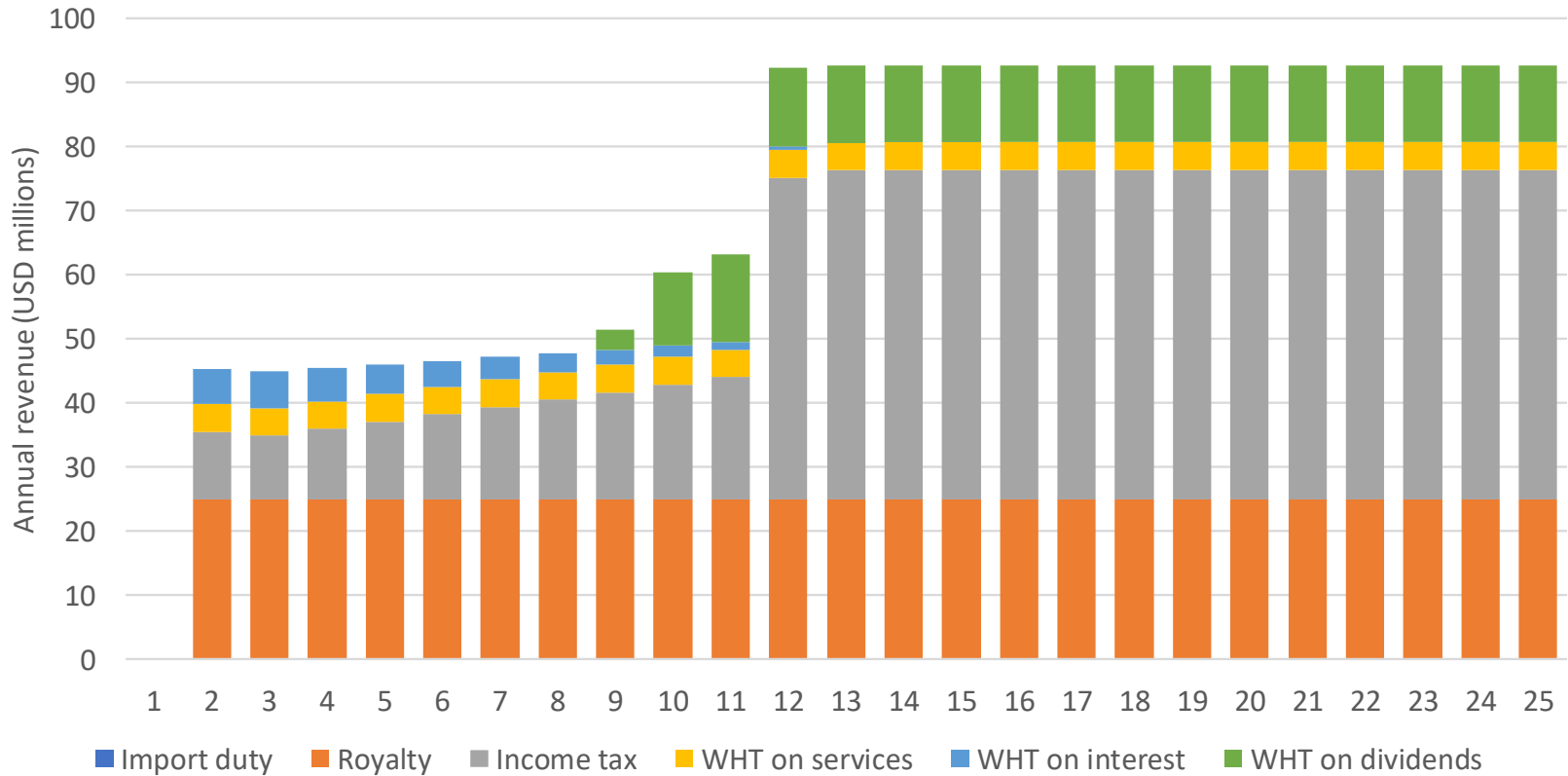
Baseline Fiscal Regime (no tax incentives)

Government Revenue



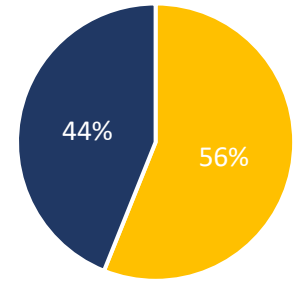
Investor

Government



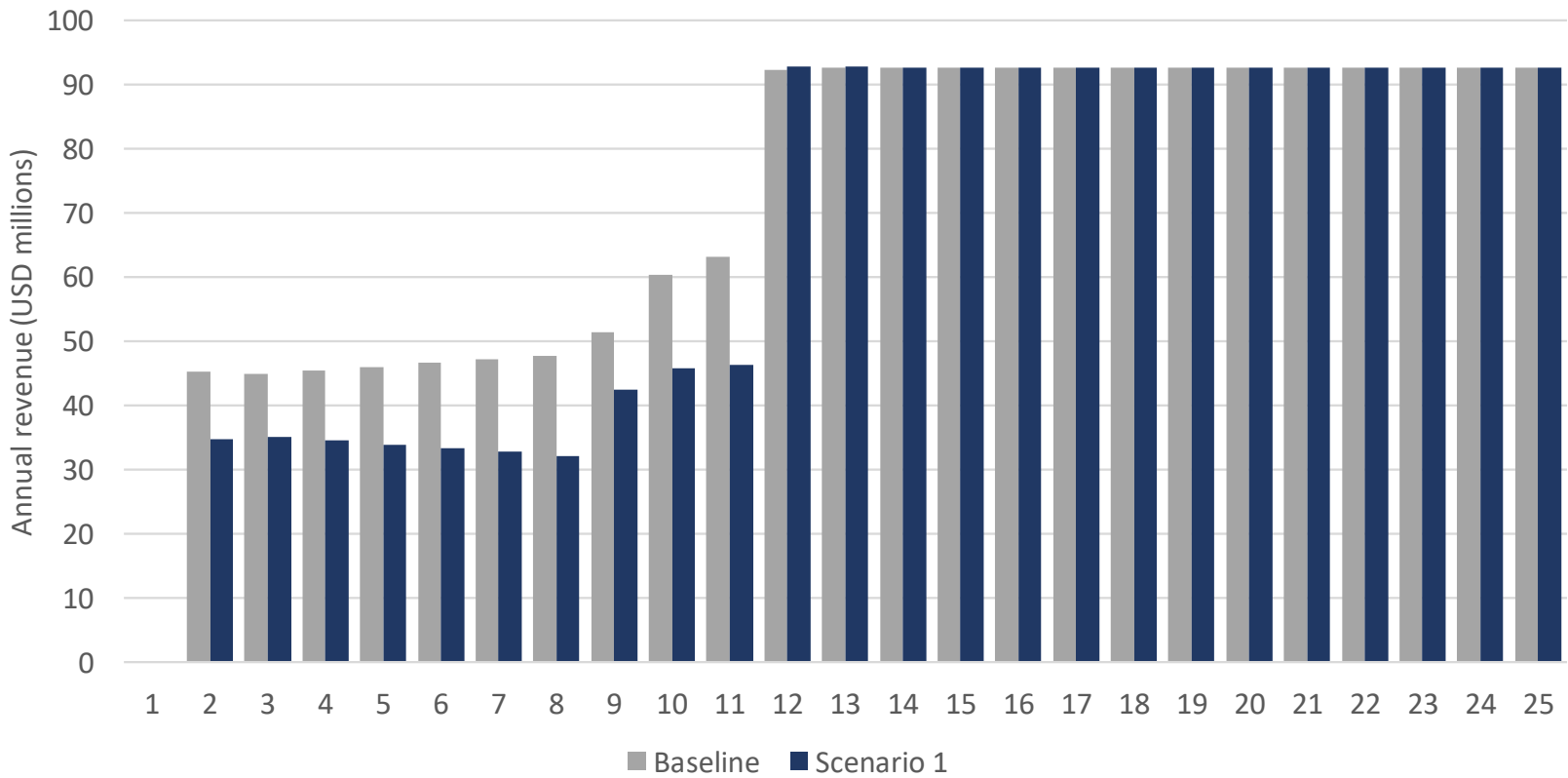
# Scenario 1: 10 Year Tax Holiday

## Government Revenue



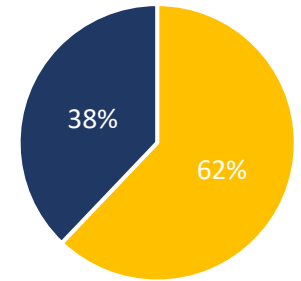
Investor

Government

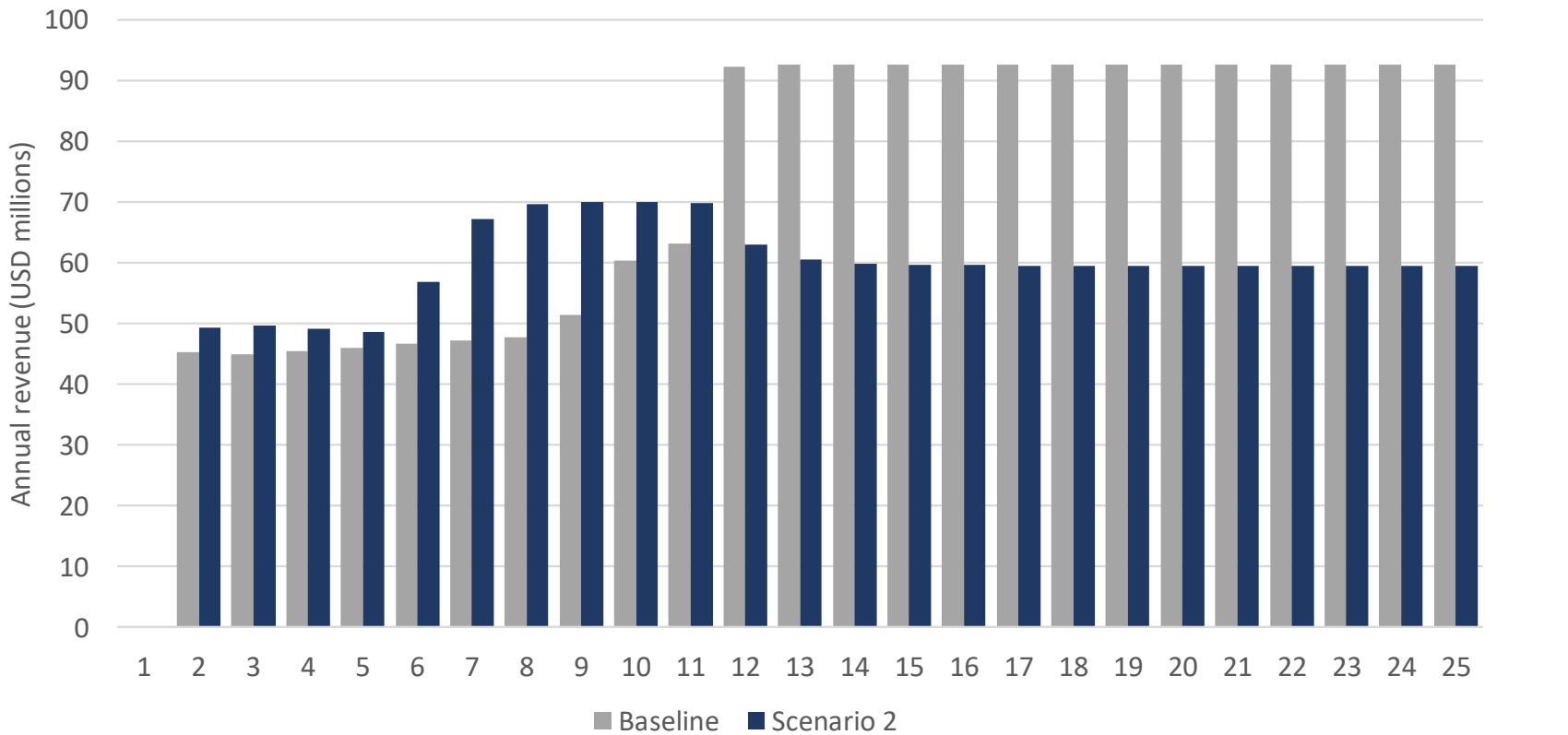




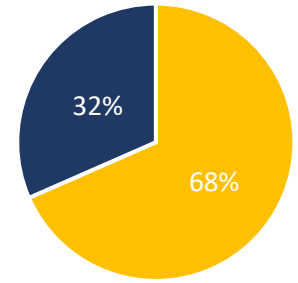
## Scenario 2: 10 Year Tax Holiday Plus High-Grading



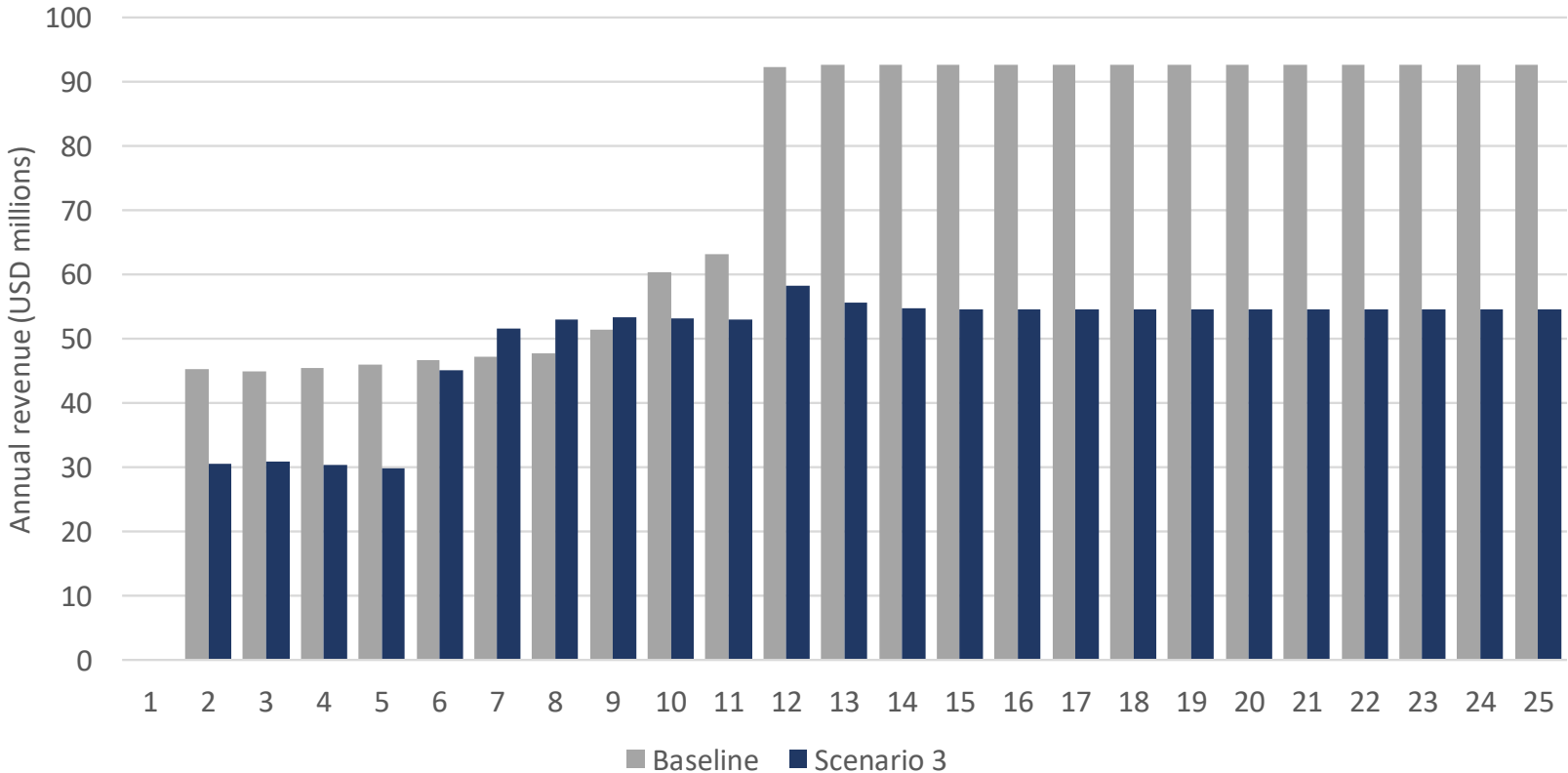
### Government Revenue



# Scenario 3: 10 Year Tax Holiday, High-Grading, and Reduced Royalty Rate



## Government Revenue





# Limiting the BEPS Impact of Tax Incentives

1. Tax incentives should directly relate to the amount of investment;
2. Avoid tax incentives that create competing fiscal regimes side-by-side;
3. Limit the most damaging incentives, notably tax holidays;
4. Avoid providing tax relief linked to outbound payments to foreign entities (e.g. withholding tax on management fees);
5. Clearly define the base to which the tax incentive applies;
6. Cost incentives before you give them, in particular, the potential BEPS effect.