

Tax Guide for Petroleum Operations in Ghana

November 2017



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Message from Ghana's Tax Oil and Gas Leader



For more than 100 years, PwC has served the petroleum industry all over the world. Our aim is to continue providing that service, here in Ghana, at the highest standards.



It is with great pleasure that we present you with the 2017 issue of our tax guide for the upstream petroleum sector in Ghana.

There have been a few developments since our last edition in 2015. Primarily, the introduction of the Income Tax Act, 2015 (Act 896), effective 1 January 2016 and the repealing of the Petroleum (Exploration and Production) Act, 1984 (PNDCL 84) on 19 August 2016. The Petroleum Income Tax Law 1987 (P.N.D.C.L. 188) was also repealed on 1 January 2017 and the Revenue Administration Act, 2016 (Act 915) became effective on 1 January 2017.

As the leading provider of tax services to the majority of entities operating in the upstream petroleum sector, we are strategically placed to continually advise our clients as the sector evolves.

For more than 100 years, PwC has served the petroleum industry all over the world. Our aim is to continue providing that service, here in Ghana, at the highest standards.

I hope you find this publication useful and encourage you to reach out to me or my team for further discussions or to share insights.



Ayesha Bedwei,
*Tax Partner,
Oil and Gas Leader*

Glossary



AOE.....	Additional Oil Entitlement
CIT	Corporate Income Tax
GNPC	Ghana National Petroleum Company
GRA	Ghana Revenue Authority
HS Code	Harmonized Systems and Customs Tariff Schedule
IGC.....	Indigenous Ghanaian Company
IRA.....	Internal Revenue Act
ITA	Income Tax Act
JV.....	Joint Venture Company
PA	Petroleum Agreement
PC	Petroleum Commission
PIT	Petroleum Income Tax
PITL	Petroleum Income Tax Law
RAA.....	Revenue Administration Act
TCC.....	Tax Clearance Certificate
VAT	Value Added Tax + National Health Insurance Levy
VRPO	VAT Relief Purchase Order
WHT	Withholding Tax

Overview of Tax in Ghana



Gold and cocoa productions, as well as remittances from citizens working abroad, are the major sources of foreign currency in Ghana.

Currently, the services sector accounts for 54% of GDP while the agriculture sector accounts for 20%. The remaining 26% is represented by the manufacturing sector.



Ghana is a country located in West Africa, bordered by the Ivory Coast (Côte d'Ivoire) to the west, Burkina Faso to the north, Togo to the east, and the Gulf of Guinea to the south. Formed from the merger of the British colony of the Gold Coast and the Togoland trust territory, Ghana, in 1957, became the first sub-Saharan country in colonial Africa to gain its independence. Ghana is divided into ten regions, and its capital is Accra. The official language of Ghana is English, and the currency is the Ghana cedi (GHS).

Well-endowed with natural resources, Ghana has roughly twice the per capita output of other countries in the West Africa sub-region. In terms of its political terrain, Ghana has a stable multiparty constitutional democracy founded on elections by open and free universal adult suffrage. The country has witnessed five smooth transitions of change of governments in the current democratic dispensation. The main arms of government are the Executive, Legislature, and Judiciary, each of which is independent of the other. At the local level, the District Assemblies are to be the highest political and administrative authority in each district, with deliberative, executive, and legislative powers.

Gold and cocoa productions, as well as remittances from citizens working abroad, are the major sources of foreign currency. With the discovery of oil resources in 2010, the receipts from oil production have significantly increased the real gross domestic product (GDP), which currently stands at an actual rate of 3.6%.

In its 2017 budget, the government's key policy objectives targeted in the medium-term include a business friendly and industrialised economy that creates jobs, a modernised agricultural sector that emphasises value addition and improved efficiencies, countrywide integrated infrastructure, and enhanced human capital. The budget also included some tax administrative initiatives for 2017 including intensifying transfer pricing audits for the extractive sector and replacing the outright tax relief system for imports with a refund system.

Ghana's domestic economy used to revolve around agriculture, which accounted for more than a third of GDP until 2012. Currently, the services sector accounts for 54% of GDP while the agriculture sector accounts for 20%. The remaining 26% is represented by the manufacturing sector.

The legal framework



The upstream oil and gas industry is currently regulated by:

Ghana National Petroleum Corporation Law, 1983 (P.N.D.C.L 64) (GNPC Law)

This law established the Ghana National Petroleum Corporation (GNPC) as the National Oil Company of the upstream oil and gas industry in Ghana.

Petroleum (Exploration and Production Law), 2016 Act 919

This law provides the framework for the management of oil and gas exploration, development and production in Ghana.

Petroleum Income Tax Act 1987 (P.N.D.C.L. 188) (PITA)

Even though the PITA has been repealed, it provides for the taxation of income of Contractors and Subcontractors in instances where there is a fiscal stability clause in their PAs with respect to section 135 of the ITA.

Internal Revenue Act 2000 (Act 592)

The IRA provides for the taxation of income of Contractors and Subcontractors. It also provides for transactions outside the scope of the Petroleum Agreements in instances where there is a fiscal stability clause in their PAs with respect to section 135 of the ITA.

Income Tax Act 2015 (Act 896)

The ITA provides for the taxation of income of Contractors and Subcontractors. It also provides for transactions outside the scope of the Petroleum Agreements in instances where there is a fiscal stability clause in their PAs.

Value Added Tax, 2013 (VAT) and National Health Insurance Levy, 2013 (NHIL)

Collectively “VAT”, these laws provide for the taxation of the supply of goods and services made in or imported into Ghana.

Petroleum Agreements (PAs)

These are agreements signed between the GNPC, Government of Ghana and the Contractor(s) of the oil fields and ratified by the Parliament of Ghana. The PA with the Contractor will specify:

- The applicable income tax rate and applicable local tax acts;
- The definition for Exploration, Development, and Production periods;
- Benefits to be derived by the State in the form of royalties and income tax;
- Accounting methods; and
- Foreign exchange control rules.

The legal framework



Petroleum Commission Act, 2011 (Act 821)

This Act established the Petroleum Commission (PC) with the object to regulate and manage the utilisation of petroleum resources and to coordinate the policies in relation to them. The PC has also come out with revised license and renewal fees for petroleum operators and service providers.

Petroleum (Local Content and Local Participation in petroleum Activities) Regulations, 2013 L.I 2204

Local content regulations have been introduced to ensure the participation of Ghanaian individuals and companies in the petroleum industry.

Transfer Pricing Regulations, 2012

These regulations govern transactions between related parties and associated persons.

HARMONISED SYSTEM: ECOWAS Common External Tariff and Other Schedules, Act 905

This provides for the harmonized system of customs and import duties.

Ghana Maritime Authority Regulations, 2012

These regulations provide for the imposition of fees or charges on vessels used in the production of petroleum.

Petroleum Revenue Management Act, 2011 (Act 815)

This Act regulates the collection, allocation and management by government of petroleum revenue derived from upstream and midstream petroleum operations.

Revenue Administration Act, 2016 (Act 915)

This act provides for the administration and collection of revenue by the Ghana Revenue Authority and for related matters.

Taxation of Contractors



Corporate Income Tax

Unless specifically provided in a PA, Contractors are required to pay tax on chargeable income at a rate of 35%.

Currently, most PAs have a corporate income tax rate of 35%.

In calculating the assessable income and tax liability, each separate petroleum operation should be treated as an independent business.

The assessable income or loss from each PA is ring fenced. Any other activity outside of the scope of the PA is taxable under the ITA.

The PAs provide for the accounting rules for Contractors within the Exploration, Development, or Production periods. Generally, all costs associated with petroleum operations are capitalised until production. At that time, costs may be recovered and used as deductions against petroleum revenue.

Deductions allowed

Outgoings and expenses wholly, exclusively and necessarily incurred in petroleum operations are generally allowed for tax purposes. The following expenses are generally allowed:

- Capital allowance;
- Bad debt;
- Rental and royalties;
- Contributions to and other expenses incurred in respect of a decommissioning fund for the petroleum operation in accordance with the rules established for that fund;
- Expenses incurred in the course of closure of the petroleum operation, where funds in the relevant decommissioning fund are not

yet available or are inadequate; and

- Any other amount incurred directly by the Contractor in the course of the petroleum operation.

Deductions not allowed

Expenditures that are not allowed include:

- Research and development expenditure;
- Expenditure wholly, exclusively and necessarily incurred in the acquisition or improvement of a valuable asset used in the operation but is income of a recipient which does not have a source in Ghana;
- Expenditure wholly, exclusively and necessarily incurred in acquiring services or facilities for the operation but is income of a recipient which does not have a source in Ghana;
- Expenditure that contravenes the arm's length rules;
- Bonus payment made in respect of the grant of the petroleum right;
- Expenditure incurred as a consequence of a breach of a petroleum agreement;
- Personal, domestic or excluded expenditure;
- Capital expenditure;
- Repair or improvement of a depreciable asset limited to 5% of written down value of pool of asset;
- Financial cost up to a calculated limit; and
- Depreciation.

Capital allowances

Capital allowances are granted to Contractors from the year of commercial production on

Taxation of Contractors



petroleum capital expenditure at a rate of 20% on a straight line basis.

Carryover of tax losses

The PITA provides that Contractors may carry losses forward indefinitely. The ITA however limits this period to 5 years. Contractors who operate under the PITA per their PAs may carry their losses forward indefinitely.

Thin Capitalisation

Thin capitalisation provisions in the ITA apply to Contractors. The applicable debt-to-equity ratio per the ITA is 3:1.

Transfer Pricing

The Commissioner-General is allowed to adjust non-arms-length transfers between related parties. New regulations also require that taxpayers maintain contemporaneous documentation that supports all intercompany arrangements.

Capital Gains Tax (CGT)

Gains from the sale or transfer of petroleum assets are included in calculating the assessable income of the Contractor.

Value Added Tax/National Health Insurance Levy

Value Added Tax (VAT) and the National Health Insurance Levy (NHIL) are charged on taxable supplies at a rate of 15% for VAT and 2.5% for NHIL, totalling 17.5%. Per the VAT Law, supply of crude oil and hydrocarbon products such as natural petroleum gas, liquefied petroleum gas and diesel is an exempt supply outside the purview of VAT.

The PAs generally state that Contractors are not subject to VAT. The GRA issues VAT Relief

Purchase Orders (VRPOs) to the Contractors to relieve them from the payment of VAT. Invoices the Contractor receives may have VAT charged. In lieu of payment of the VAT, the Contractor provides a VRPO to the supplier in order to fulfil the obligation.

Currently the use of VRPOs has been abolished by law, even though in practice they are still been used. Enforcement of the abolishment of the use of VRPOs will imply that Contractors will pay VAT and then apply for a refund of net VAT paid.

Royalty Payments

Royalty payable by the Contractors to the Government of Ghana can range from 4% to 12% of petroleum production, depending on the terms of the PA.

Royalties paid by the Contractor are a tax deductible cost in assessing tax liability.

Rental Payments

Contractors are required to make rental payments to the Government of Ghana for the use of government property, public lands, and specific services provided to public enterprises at a rate not higher than the commercial rate.

The following are the standard surface rental payable. These may vary depending on the PA of the Contractor.

Phase of Operation	Surface Rentals per annum
Initial Exploration Period	US\$ 30 per sq. km
1st Extension Period	US\$ 50 per sq. km
2nd Extension Period	US\$ 75 per sq. km
Development & Production Area (on creation)	US\$ 100 per sq. km

Taxation of Contractors



Rental payments made by Contractors are tax deductible costs in assessing the tax liability of the Contractors.

Additional Oil Entitlement (AOE)

The Government of Ghana has a share or a percentage interest in the crude oil being produced in a development and production area by Contractors. The Additional Oil Entitlement (AOE) indicated in the Petroleum Agreements seeks to measure Ghana's entitlement to the crude oil and acts as an additional windfall tax.

This share is based on the after-tax inflation – adjusted rate of return that the Contractor achieved with respect to each field.

AOE is computed monthly, quarterly or yearly depending on the provisions of the petroleum agreement of the Contractor.

A provisional AOE calculation is based on the best estimates of factors in case of disagreement. A revision is made retrospectively when the disagreement is resolved.

A final computation of AOE is made within thirty (30) days following the filing of annual tax returns by the Contractor.

Customs and import duties

Contractors are exempted from import duties and taxes on equipment they import for their petroleum operations. This right is captured under the respective PAs. However, from 2017, as part of the Government's administrative procedures, all importers are required to pay the duties and taxes upfront. The Contractor is entitled to apply for refund of these taxes and duties. The refund will be settled within 30 days of the application.

Local Content Requirements

New Contractors wishing to operate in Ghana must comply with the new local content requirements. This includes:

- Entering into a JV with a local partner who holds at least 5% of the equity. The JV must be incorporated in Ghana and in accordance with the laws of the Republic of Ghana.
- Submission of a local content plan outlining the succession plan for any expat employees.
- Support for the transfer of technology to indigenous Ghanaian companies.
- Compliance with limitations on the import of materials, equipment, services, and employees.

Foreign Exchange Controls

The Petroleum Agreements provide the right for Contractors to open and maintain bank accounts in foreign currency and Ghanaian currency (Ghana Cedi). Further, Contractors may report and pay its taxes in US Dollars or Ghanaian Cedis as stated in their PAs. Subcontractors are to report and pay their taxes in Ghana cedis but may seek approval to report in other currencies.

Employment Taxes

Foreign national employees of Contractors are generally taxed at a flat tax rate of 20% if they are non-resident in Ghana. PAs generally provide for exceptions to taxation if the foreign national employees are only present in Ghana for a short period (the period of time is dependent on each PA).

Resident individuals (i.e., Ghana citizens or non-residents who are present in Ghana for more than 183 days) are taxed at a graduated scale of 0-25%.

In-kind benefits, like accommodation or driver and vehicle, are included in an employee's taxable income.

The PA generally provides for exemption from contribution to Ghana's social security/pension for expatriate employees of the Contractor and Subcontractor.

Taxation of Contractors



Withholding Tax

<i>Resident persons</i>	<i>Payment Rate %</i>
Payment to Subcontractors for works and services for or in connection with a PA	7.5
Royalties, natural resources payments and rents	15
Management, consulting and technical service fees and endorsement fees	7.5

<i>Non-Resident persons</i>	
Payment to Subcontractors for works and services (Including rental of tools and equipment)	15 final WHT
Royalties, natural resources payments and rents	15
Management, consulting and technical service fees and endorsement fees	20

Compliance

PIT Return	30 April
Annual Transfer Pricing Return	30 April
Quarterly PIT Return and quarterly tax payments	30 April, 30 July, 30 October, 30 January
Monthly VAT Returns (For those who have registered for VAT)	End of following month
Monthly Payroll Return	15th of following month
Monthly WHT Return	15th of following month
Annual Payroll Return	30 April

Taxation of Subcontractors



Corporate Income Tax

The ITA provides that a withholding tax applies to payments made to Subcontractors for services performed. According to the ITA, the tax withheld on payments to a non-resident person represents final tax on that person, while tax withheld on payments to a resident person is not a final tax. The withholding tax rates are determined by the PAs. Those currently in effect state that tax shall be withheld at rates of 5% or 15% on the gross amount. The ITA provides for a withholding tax rate of 7.5% for resident Subcontractors and 15% for non-residents Subcontractors.

Carryover of tax losses

Subcontractors may carry forward tax losses for three (3) years on non-petroleum income which are taxed in accordance with the ITA.

Thin Capitalisation

Thin capitalisation provisions apply to Subcontractors who operate under the ITA. Interest and foreign exchange loss deductions are limited on related party debt that exceeds a 3:1 debt-to-equity ratio. However as Subcontractors are generally taxed at 5% on the top line, interest deduction may not be relevant if the Subcontractors do not earn non-petroleum income.

Transfer Pricing

The Commissioner-General is allowed to adjust non-arms-length transfers between related parties. Transfer Pricing regulations also require that taxpayers maintain contemporaneous documentation that supports all intercompany arrangements.

Value Added Tax/National Health Insurance Levy

Value Added Tax (VAT) and the National Health

Insurance Levy (NHIL) are charged on taxable supplies at a rate of 15% for VAT and 2.5% for NHIL, totalling 17.5%. On 5 April 2017, the VAT Flat Rate Scheme now allows for retailers and wholesalers of goods to account for VAT at a flat rate of 3% on the value of taxable supply.

The PAs generally state that Contractors are not subject to VAT. The GRA issues VAT Relief Purchase Orders (VRPOs) to the Contractors to relieve them from the payment of VAT. Invoices issued by the Subcontractor to the Contractors will have VAT charged. In lieu of payment of the VAT, the Contractor provides a VRPO to the Subcontractor in order to fulfil the obligation. As a result of this, Subcontractors that pay input VAT may find themselves in a “perpetual VAT credit” position. Taxpayers have to apply to have this credit refunded.

In the case where the abolishment of the use of VRPO comes into practical effect, Subcontractors will be able to offset output VAT against input VAT.

Customs and import duties

Subcontractors do not benefit from the same exemptions as Contractors. As a result, customs duties, ranging from 0-20%, may apply on the importation of equipment. Administrative levies may also apply. However, Subcontractors can import equipment in the name of their Contractors to obtain a refund of customs and import duties.

Subcontractors providing services offshore, may also be subject to maritime vessel charges.

Local Content Requirements

The Petroleum Commission requires all companies participating in the upstream petroleum industry in Ghana to comply with local content regulations. This includes:

Taxation of Subcontractors



- Entering into a JV with an 'indigenous Ghanaian company who holds at least 10% of the equity
- Submission of a local content plan outlining the succession plan for any expat employees
- Support for the transfer of technology to indigenous Ghanaian companies, and
- Compliance with limitations on the import of materials, equipment, services, and employees.

Foreign Exchange Controls

Subcontractors may request permission from the Bank of Ghana to invoice and transact business in a foreign currency. Without this permission, Subcontractors will be expected to invoice in Ghana Cedis.

Employment Taxes

Non-resident foreign national employees of Contractors are generally taxed at a flat tax rate of 20%. PAs generally provide for exceptions to taxation if the foreign national employees are only present in Ghana for a short period (the period of time is dependent on each PA).

Resident individuals (i.e., Ghana citizens or non-residents who are present in Ghana for more than 183 days) are taxed at a graduated scale of 0-25%.

In-kind benefits, like accommodation or driver and vehicle, are included in an employee's taxable income.

Some PAs may provide an exemption for expatriate employees of Subcontractors from contributing to the national pension scheme.

Withholding Tax

Resident persons	Payment Rate %
Interest (excluding individuals & resident financial institutions)	8
Dividend	8
Rent on residential properties to individuals and artificial persons	8
Rent on non-residential properties to individuals and artificial persons	15
Supply of goods exceeding GH¢ 2,000 per annum	3
Supply of services exceeding GH¢ 2,000 per annum	7.5
Supply of works exceeding GH¢ 2,000 per annum	5

Non-Resident persons

Dividend	8
Royalties, natural resources payments and rents	15
Management, consulting and technical service fees and endorsement fees	20
Payment to petroleum Subcontractors	15

¹ "indigenous Ghanaian company" means a company incorporated under the Companies Act, 1963 (Act 179)

(a) That has at least fifty-one percent of its equity owned by a citizen of Ghana; and

(b) That has Ghanaian citizens holding at least eighty percent of executive and senior management positions and one hundred percent of non-managerial and other positions.

Taxation of Subcontractors



Compliance

Annual CIT Return	30 April
Annual Transfer Pricing Return	30 April
Quarterly CIT Return and quarterly tax payments	30 April, 30 July, 30 October, 30 January
Monthly VAT Returns	End of following month
Monthly Payroll Return	15th of following month
Monthly WHT Return	15th of following month
Annual Payroll Return	30 April

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