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Oil and Gas Tax Guide for Africa 2017

A quick guide to oil and gas tax regimes in some of Africa's fastest growing countries.

February 2018

Contents

Foreword

Over the past few years, the global economic downturn in the oil and gas industry has had negative effects that have been felt by many.

At PwC, we have watched these industry developments and analysed the effects from the perspective of how they will impact our clients. Using our expertise, we have developed ways in which we can best help companies prepare and manage changes.

Our third edition of the PwC Oil and Gas Tax Guide for Africa, seeks to provide a summary of the oil and gas fiscal and regulatory regime in nineteen countries, along with significant developments.

If you wish to discuss the findings of this publication, please do not hesitate to contact us.

We trust that you will find this guide useful.

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Algeria

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Country profile

Brief overview of the oil and gas developments in Algeria

Algeria's first commercial oil discovery occurred in 1956 with production beginning in 1958. Algeria currently has proven reserves of 12.2bn barrels and crude oil production of 1.146 m bpd which provides around 35% of the country's gross domestic product. The country is considered the leading natural gas producer in Africa. All of the country's proven oil reserves are held onshore and there has been limited offshore exploration.

The Algerian territory has been divided into Zones A, B, C and D with specified tax rates applicable in each registered Zone. Algeria aims to achieve 290 wells in 2017, against 265 in 2016.

According to the latest estimations, approximately two-thirds of Algerian territory remains underexplored or unexplored meaning the country is ripe for investment with a high probability of reward.

Political Updates

Algeria will have a major political event in the medium term: a presidential election in 2019. Most observers think that this election will be held under a climate of stability.

- The Algerian authorities have strengthened border security as a response to the Libyan crisis. Security conditions on oil and gas facilities have been enhanced since the January 2013 terrorist attack in Ain Amenas and no attack has been reported since the above mentioned dramatic event.

Economic Updates

- Algeria is affected by the decline of oil prices, which has triggered a high level of budget deficit;
- This situation is coupled with a decline in hydrocarbon exports due to a sharp rise in domestic consumption and lack of sufficient investment;
- Increasing the exploration in order to renew oil and gas reserves will be a critical issue for Algerian government;
- As a response to the crisis, the latter has adopted a new economic model, and a budget trajectory. Significant evolution of the Algerian tax legislation is to be expected, notably in the hydrocarbon sector;

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- The Algerian authorities are considering amending the hydrocarbons law in force in order to provide additional tax incentives, aimed at improving the country's attractiveness for oil & gas multinationals;
- The oil exploration effort should be strongly accelerated in the coming years. Sonatrach –the national Oil & Gas operating company - intends to invest $73 billion between 2016 and 2020 on exploration –production E&P activities;
- Despite the protests, prospecting non-conventional hydrocarbon resources should be boosted in the coming years (announcement of the Energy Minister).

Fiscal regime

Oil and gas activities are regulated by the Hydrocarbons code and its texts of application, the Algerian Direct Tax Code and specific provisions of the contracts concluded with Sonatrach (an Algerian government owned company).

The Law 86-14 implemented the former Hydrocarbons Code (hereafter referred to as "Law 86-14), which remains applicable to any contracts concluded with Sonatrach before the entry into force of the new Hydrocarbons Code introduced by the Law No. 05-07 in 2005 (hereafter referred to as "Law 05-07). Modified and completed by the Law N° 13-01 of February 20th, 2013. Activities outside the exploration and exploitation (notably well services, pipeline transport etc.) are taxed under the standard tax regime (at a rate between 19% and 26%).

Since September 2015, only one regulation concerning oil and gas fiscal regime has been published, namely Executive Order N°15-282 of November 3rd, 2015 amending and supplementing Executive Order N°08-01 laying down the list of activities to be consolidated, profits consolidation methodology and the additional profit tax (ICR) reduced rate application modalities.

Regulatory Framework

The key regulators in the oil and gas industry include:

- Agence Nationale Pour La Valorisation Des Ressources Hydrocarbures (ALNAFT) (Independent Government Agency): ALNAFT promotes the Hydrocarbons industry, manages Algeria Hydrocarbons database, evaluates competitive bids and award exploration and exploitation areas, as well as exploration and exploitation contracts, and approves development plans;
- Autorité de Régulation des Hydrocarbures (ARH) (Independent Government Agency): ARH implements and enforces the regulations pertaining to hydrocarbons exploration and production activities in Algeria, including technical regulations as well as regulations pertaining to transportation tariffs, third party access to transportation infrastructures, health, safety and environmental standards. ARH is also responsible for considering applications for pipeline transportation concessions;
- Ministry of Hydrocarbons is responsible for the regulation and supervision of oil and gas policy;

- General Directorate of Taxes is responsible for hydrocarbon tax collection.

Forms of contracts

Exploration and production agreements provided by the 1986 Hydrocarbons Law includes joint ventures, partnerships, production sharing, and risk service contracts. The 2005 Hydrocarbons Law includes two main instruments:

- The Exploration and/or Exploitation Contract (EEC); and
- The Pipeline Transportation Licence (PTL).

The EEC is concluded between the International Oil Company (IOC) and ALNAFT (the mining title holder) after a bidding process. However, an EEC will also provide that Sonatrach will own a 51% interest in the contract.

Law No. 05-07 provides that contract follows an exploration period of a maximum of 7 years and exploitation period of a maximum of 25 years (however, if oil is discovered in the first 7 years, the exploitation period will be proportionately increased). Where the exploitation period is concerned with gas deposits, the period has been extended by 5 years.

For unconventional liquid or oil and gas, the exploration period is 11 years with an exploitation period of 30 – 40 years dependent upon the resource. The production period may be extended for up to 10 years.

Local Content Regulation

In the framework of public procurements, a 25% preference margin is granted to products of Algerian origin and /or Algerian Law companies. Furthermore, O&G tenders often include local content clauses.

Taxation regime

Direct Taxation

The applicable tax regime is determined by the date of the contract and the Zone in which the field is located. The Algerian fiscal regime applicable to the oil and gas upstream industry is governed either by Law No. 86-14 or by Law No. 05-07 (as amended).

Key taxes under the former regime (Law No. 86-14)

- Royalties: Royalties on gross revenues are paid by Sonatrach for the whole production. The standard royalty rate is 20%, however it can be reduced to 16.25% or 12.5% for Zones A and B respectively. Sonatrach is liable for the monthly payment of the royalty (articles 39, 40, 41 of the law No. 86-14, as amended).
- Income tax: Under a product sharing contract (PSC), the payment of income tax is ensured by Sonatrach and included in the foreign partner's share of hydrocarbon production.

- Income tax applies to the foreign company's share of "profit oil". Profit oil is calculated as the foreign company's gross revenue less royalties, transportation costs, depreciation costs and exploitation costs borne by the company.
- The profit oil is subject to tax at the rate of 38% which is withheld at source by Sonatrach. Oil companies are not authorised to consolidate all their activities in Algeria to determine their corporate income tax liabilities.
- Tax on corporate earnings: This tax only concerns the share of profit oil belonging to Sonatrach. That share amounts to profit oil minus the foreign partner's share and the corresponding income tax. The maximum tax is 85%. Reduced rates of 75% for Zone A and 65% for Zone B apply.
- The Windfall Tax (Tax on exceptional profits (TPE)): TPE applies to exceptional profits on contracts under Law 86-14. When the monthly fixed average of FOB Brent oil exceeds USD 30, a tax rate of 5%-50% is applied to the foreign partners production part.

According to article 10 of the Executive Decree 06-440, Sonatrach will be liable for the monthly withholding and the remittance of this tax to the tax authorities, based on the share of production of the Contractor.

Key taxes applicable under Law No. 05-07, as amended

Surface fee: The surface fee is an annual tax paid per square kilometre of the licenced area. It is not tax deductible and the fee is dependent upon which territorial Zone (A, B, C and D) the operations are conducted. Unconventional oil and gas exploration and production surface fees are calculated in line with Zone A fees. The rates of the surface fee per square kilometre are (in Algerian Dinars (AD)):

	Exploration period				
Zone	Years 1, 2 and 3	Years 4 and 5	Years 6 and 7	Retention period & exceptional period	Production period
A	4,000	6,000	8,000	400,000	16,000
B	4,800	8,000	12,000	560,000	24,000
C	6,000	10,000	14,000	720,000	28,000
D	8,000	12,000	16,000	800,000	32,000

Royalty: Royalties are deductible and paid on a monthly basis to ALNAFT. Royalties are based on the hydrocarbon extraction level multiplied by the average fixed monthly price. This fixed price is determined depending upon public hydrocarbon indexes. The rate at which royalties will be paid is determined under the EEC agreement in place, however, there is a minimum rate applied by law:

Area	Incentive	A	B	C	D
Unconventional oil and gas	5%				
0–20,000 BOE/day		5.5%	8.0%	11.0%	12.5%
20,001–50,000 BOE/day		10.5%	13.0%	16.0%	20.0%
50,001–100,000 BOE/day		15.5%	18.0%	20.0%	23.0%
> 100,000 BOE/day		12.0%	14.5%	17.0%	20.0%

Petroleum Income Tax (PIT): PIT is calculated based on the law applicable to the contract. In both cases, the taxable income is the value of production by each perimeter where exploitation activities are undertaken, less deductible expenses (royalties, exploration and development costs, abandonment reserves, Training fees related to activities governed by this law, purchase cost of gas for enhanced recovery, Article 86).

Contracts entered into before 20 February 2013

Under Law No. 13-01 contracts entered into before 20 February 2013 PIT is calculated based on accrued production. Where accrued production is under 70*109 Algerian Dinars, PIT is levied at 30%. Where it is in between 70 and 385 a marginal percentage is calculated as shown below. Where accrued production is 385 or higher, the second level PIT rate is applied at 70%.

Accrued production in 10^9	First accrued production point (S1)	70
	Second accrued production point (S2)	385
PIT rate	First level	30 %
	Second level	70 %
Marginal rate	Level when PV is between S1 & S2	40/(S2-S1)* (PV-S1) + 30

Contracts entered into after 20 February 2013

For contracts starting after 20 February 2013, the PIT calculation is based upon the profitability of the exploitation activities and the tax rate is from 20% to 70%, through the calculation of coefficient R1 and R2 replacing the previous thresholds (S1 and S2). The coefficient (R1) is the ratio between the sum of the Gross Profit discounted at a rate of 10% from the first year where the contract entered in force up to the year preceding the determination of the rate of PIT (i.e. Accumulation 10%) and the sum of the Investment Expenses discounted at the same rate (i.e. 10%) from the first year where the contract entered in force up to the year preceding the determination of the rate of PIT during the same period (i.e. Cumulative 10%).

R1 = Sum of the gross profit discounted at a rate of (10%)/ Sum of investment expenses discounted at a rate of (10%)

The coefficient (R2) is the ratio between the sum of the Gross Profit discounted at a rate of 20% from the first year where the contract entered in force up to the year preceding the determination of the rate of PIT (i.e. Accumulation 20%) and the sum of the Investment Expenses discounted at the same rate (i.e. 20%) from the first year where the contract entered into force up to the year preceding the determination of the rate of PIT during the same period (i.e. Cumulative 20%).

R2 = Sum of the gross profit discounted at a rate of (20%)/Sum of investment expenses discounted at a rate of (20%)

After calculating the above, using the coefficients R1 and R2 it is applied the rates set out in the following table:

		Case 1	Case 2	Case 3
PIT rate	R1 ≤1	20%	30%	20%
	R1 > 1 and R2 <1	20% + 50% x R2	30% + 40% x R2	20% + 50% x R2
	R2 ≥1	70%	70%	70%

- **Case 1** includes all exploitation perimeters except the perimeters included in case 3 where the daily production is less than 50,000 BOE;
- **Case 2** includes all exploitation perimeters excluding the perimeters include in the case 3 where the daily production is more than 50,000 BOE;
- **Case 3** includes small deposits and underexplored perimeters with complex geology and/or which lack infrastructure.
- Additional profits tax (APT): APT is calculated by reference to the annual profits (less PIT). Royalties, PIT, depreciation and abandonment reserves are all deductible.

The APT rate is generally 30% except for where the profits are to be reinvested (15%) or where the profits are in relation to unconventional oil and gas, small deposits and underexplored areas the rate is 19%.

- Tax on flaring: Although it is against the law, ALNAFT can give authorization for up to 90 days to allow a company to undertake gas flaring. The tax is levied at AD 8,000 per thousand normal cubic meters (nm3) and is not tax deductible.

Withholding tax

Services

Withholding tax is levied at the rate of 24% on remuneration (consulting fees, management fees, services, remuneration, lease equipment, royalties etc.) paid by an Algerian resident to a foreign service supplier without a permanent establishment in Algeria.

Dividends

The withholding tax rate on dividends is 15% to a non-resident company.

Royalties

The general withholding tax on royalties is 24%.

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Interest

Cross border loans are prohibited in Algeria. The general interest withholding tax rate is 10%.

The applicable withholding tax rate may be reduced where the recipient is a resident of a country that has concluded a double tax treaty with Algeria. Algeria has signed 28 double tax treaties.

The Hydrocarbons Code does not apply any withholding taxes on companies carrying out exploration and exploitation activities.

Thin capitalisation and Transfer Pricing

There are no thin capitalisation rules in Algeria.

An arm's-length approach to transfer pricing applies. All entities registered with the tax department responsible for large-sized companies (Direction des Grandes Enterprises), in addition to the other foreign companies established in Algeria, and must submit their transfer pricing documentation along with annual tax returns (before April 30th of each year). There is a penalty of DZD 2million (equivalent to USD 20,000) should the documentation to support transfer pricing practices not be provided by the deadline date and within 30 days after a first request is made by the Algerian tax administration. Moreover, tax authorities are entitled to apply a 25% penalty on the deemed transferred profits in addition to a 25% late payment penalty.

Double Tax Treaties (DTT)

Algeria has concluded 27 DTTs. Since 2015, 3 DTTs have entered into force:

- The DTT with Kuwait on 18 January 2016;
- The DTT with Saudi Arabia on 1 March 2016; and
- The DTT with United Kingdom on 1 January 2017.

Indirect Tax

VAT

Since January 2017, Value-added tax (VAT) standard rate is set at 19% while the reduced rate is established at 9%. However, the above rates are not applicable for O&G industries, in accordance with Law 05-07 on hydrocarbons. Accordingly, PSA's are not included within VAT scope.

VAT is to be reported and paid on a monthly basis. It must be submitted in a monthly tax return (Gn°50 format) along with all the other payable taxes such as PIT, CIT instalments and TAP. This monthly tax return is due by the 20th of each month. However, as mentioned above, E&P companies are exonerated from VAT, therefore, these companies are not subject to the above mentioned VAT declaration procedure.

Customs and Excise Duties

Customs rights rates in Algeria are the following: 0%, 5%, 15% and 30%. Please note that Algeria has signed a free trade agreement with the European Union, and is a country member of the Greater Arab Free Trade Area (GAFTA). Excise rights concerns mainly alcoholic and tobacco products.

Furthermore, upstream O&G companies are exonerated from customs duties, provided that imported goods are included in a list enclosed to Executive Order n°14-06 of January 15th 2014.

Other Taxes

The following taxes are applicable to the contractor where they are not expressly excluded by Law 86-14 and Law No. 05-07:

- Capital Gains tax: Capital gains realized by resident companies are taxed as any other income under the applicable CIT rate, which may vary depending on the nature of the company's activity. Capital gains realized by non-resident companies are subject to a Withholding tax (WHT) levied at 20%. However, WHT's rate could be reduced or neutralized by a Double Tax Treaty.
- Payroll related taxes: Personal income tax is withheld at source by the employer according to a progressive scale (up to 35%). In addition, training tax and apprenticeship tax is withheld at the rate of 1% of annual payroll per tax. The progressive scale is illustrated below:

Less than DZD 120,000	0%
from DZD 120,000 to 360,000 DZD	20%
from DZD 360,001 to DZD 1,440,000	30%
Exceeding DZD 1,440,000	35%

- Social security contributions of 35% of the annual payroll split 26%/9% between the employer and employee respectively. However, the 2005 Law provides an exemption on social security contributions on the salaries of the employees of foreign oil companies where the employees care covered by their home country.
- Tax is withheld at the rate of 24% on remuneration (consulting fees, management fees, services, remuneration, lease equipment, royalties etc.) paid by an Algerian resident to foreign service suppliers without a permanent establishment in Algeria, subject to the relevant double taxation treaty. Sonatrach will pay the tax on behalf of the foreign company, however, the Contractor is required to annually calculate the amount of tax on its remuneration and will prepare the tax return to be submitted to the Algerian tax authority.
- Land taxes, registration fees and stamp duties apply at various rates.

Taxation of Oil Field Services (OFS) companies

OFS companies are not subject to the same taxation regime as E&P companies. Indeed, OFS are subject to the common tax regime, whereas E&P companies are subject to the tax regime provided for by law 05-07 on hydrocarbons and its related regulations. In this framework, please note that OFS companies are subject to the following taxes:

- Tax on business activity (TAP – 2%);
- Corporate income tax (IBS – 26% for services) since the Complementary Finance Law for 2015;
- Income tax / Tax on wages (Personal income tax and social security contributions 26%);
- Value added tax (VAT – 19% since January 2017).

The Algerian fiscal legislation requires taxpayers to submit their monthly tax returns (G50) before the 20th of each month. These returns concern the following taxes: Personal income tax, Corporate Income Tax (CIT) instalments, withholding taxes, TAP and VAT.

Furthermore, OFS and E&P companies are also required to submit prior to April 30th an annual tax return along with a Transfer Pricing documentation justifying the arm's length character of their intercompany transactions (if any).

Deemed Profit Taxation

Algerian tax legislation provides for a single deemed profit tax (Impot forfaitaire Unique "IFU") applicable for companies which turnover does not exceed DZd 30 million (equivalent to USD 300 000). IFU rates is established as follows:

- 5% for production activities;
- 12% for other activities.

IFU regime applies for OFS, but does not concern E&P companies.

Incentives in the oil and gas industry

In terms of article 57 of the Law 86-14 and the article 89 of the Law No. 05-07, Sonatrach and its foreign contractors are exempt, with respect to their prospecting, research and exploitation activities, from:

- Tax on professional activity (TAP), which is levied at the rate of 2% of the total gross amount of professional revenue or the turnover net of VAT realised during the year;
- All other taxes on income and result of the exploitation due to the Government, local authorities and all public entities;
- All taxes on distribution of income (i.e. including the 15% branch remittance tax);
- Value Added Tax (VAT), on equipment imported or purchased locally by the Contractor or for its account, and used directly for oil activity purposes;
- VAT on services, including surveys and leasing, rendered by the Contractor or for its account;

- Customs duties, but limited to the imported equipment used for oil activity purposes;
- Law 13-01 provides for a preferential regime concerning unconventional oil and gas. In this framework, it should be noticed that additional profit tax (ICR) standard rate is reduced to 19% regarding profit arising from unconventional Oil & Gas.

Compliance

Annual corporate income tax (ICR) return:

Foreign oil companies, in the frame of the law 05-07, must be present in Algeria in form of a branch, which are in general tax regime.

Although oil companies are exempt from IBS during the exploration phase, they remain subject to the filing of an ICR return calculated at the rate of IBS, G4 or G4 Bis, annually before April 30 of each year.

The failure to file or the late filing of the annual ICR return is subject to jeopardy taxation by the tax authorities, with an increased penalty of 25%. Failure to submit the above mentioned listed documents by the due date will incur a lump sum penalty of AD 1,000 per document.

CIT is to be paid following a quarterly instalment regime, in addition to a settlement balance (payable CIT) to be paid when filing the annual tax return.

Complementary Finance Law for 2015 introduced a multiplicity of CIT rates depending on the nature of the activities performed by the concerned company. The said rates are applied as follows:

- 19% for manufacturing activities;
- 23% for building activities, public works, and hydraulics, as well as tourist and thermal activities, excluding travel agencies;
- 26% for all other activities not mentioned above.

Monthly G 50 forms:

In Algeria, withholding tax on remuneration paid to employees or remuneration paid to non-resident services suppliers are withheld at source by the employer or by the beneficiary of the services when paying remuneration, and declared on a monthly basis under a return named G 50 form.

This form must be filed within the 20 days following the end of the month of the remuneration payment of the related taxes must be made at the same time. The penalty for failure to withhold/insufficient withholding is 25% of the tax due.

Failure to pay the related tax within the allotted timeframe is subject to a 10% tax penalty.

Annual declaration of wages and salaries (G29):

Oil companies are required to file an annual declaration of salaries on a G29 form. The form requires details of the beneficiaries (local or expatriate), as well as the gross payment, the tax withheld, the net payment, and the

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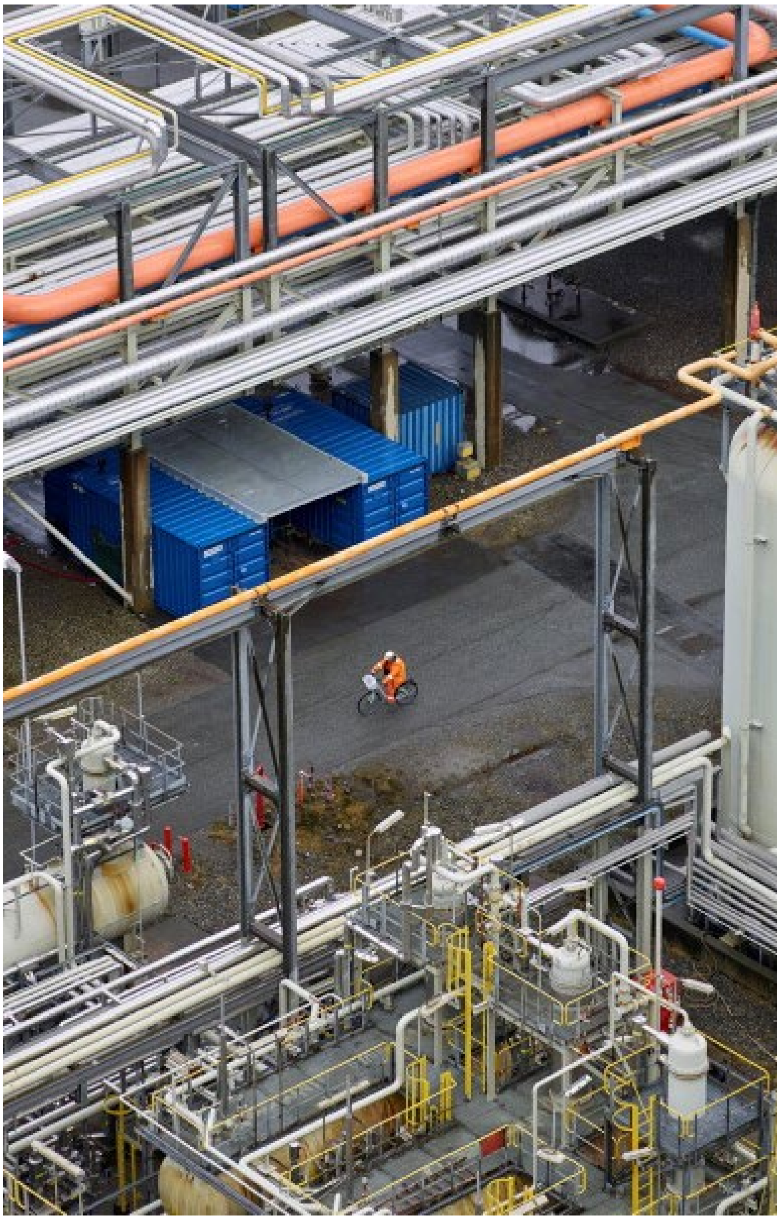
period to which the payment relates. Employers paying wages and salaries must file the declaration before April 30 of each year.

Statute of limitation:

In Algeria, the statute of limitation expires at the end of the fourth financial year following that for which tax is due.

Tax audits

Tax audits are carried out by tax authorities following an audit program. A tax audit's frequency may vary depending on the business activities. In this framework, many companies operating in resale activities are subject to a tax audit every 4 years. On the other hand, O&G companies, notably those operating in the E&P are very rarely subject to tax audits.



Angola

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Country Profile

Brief history on oil and gas development

Angola is Africa's second largest oil producer, producing 1.9 million barrels per day (bpd).

The growth of the Angolan economy has decreased since 2013, 1.1% in 2016. The Angolan economy is still very dependent on oil revenues. In 2017, the economy was projected to increase to 1.3%.

The decrease in growth was due to the Angolan oil sector which has impacted on the oil production and price. The fall in oil prices led to reduced tax revenue and lower exportations.

The Projections are showing an increase in the price of oil after 2017. However, until 2020 the oil price shall stay below 70USD/bbl. Consequently, Angola is experiencing a downturn in the investment project, which is impacting the economy.

Significant developments

Presidential Decree no. 109/16, of 26 May 2016 approved the Model for Readjustment of the Petroleum Sector's Organization which aims to increase the efficiency of the Petroleum Sector, a better utilisation of the national hydrocarbon resources and the financial flows essential for the country's development. With this model, it is expected that there would be restructuring of entities with competencies in the sector, appropriate management of several state participations in various entities, avoiding conflicts of interest, increasing political coordination and focus on the management and transparency in the results. In practice, it is expected that Sonangol EP, a public company, will focus on its main activity which is to be a national concessionaire. New entities are also being created with this new model.

Presidential Decree No. 2/16, of 13 June 2016 sets forth the procedure and the incentives for the adjustment of the contractual and fiscal terms applicable to concessions with marginal discoveries. The main purpose of this Decree is to encourage the development of marginal discoveries by the concessionary's associates and contractors carrying out petroleum operations.

In general terms, the decree establishes that the following are indicators of a marginal discovery (i) reserves under 300 million barrels; (ii) water

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depth in excess of 800 meters; (iii) revenues for the State of not less than USD 10.5/barrel;(iv) revenues for the National Concessionaire's associates of less than USD 21/barrel; and (v) an Internal Rate of Return substantially lower than 10%.

The tax incentives will determine the following:

- The Petroleum Production Tax (PPT) and Petroleum Income Tax (PIT) rates and the percentages of the investment allowance and of production bonus based on the volume of recoverable resources.
- The amortization period for capital expenditures which will range from 2 to 4 years, depending on the volume of recoverable resources.
- The period for recovery of development expenses which will be determined between 2 and 4 years, based on the volume of recoverable resources.
- A full exemption of customs charges and duties on petroleum exports is to be granted for a 5-year period from the beginning of commercial production.
- Further it is also established that for marginal fields with resources below 30 million barrels the assessment of PIT only becomes required as of the third, fourth or fifth year of amortization of capital expenditures, at percentages depending on the volume of recoverable resources.

The above listed incentives will be granted in a progressive manner according to the inclusion of new marginal discoveries in qualified zones.

Finally, through the Order no. 678/17 of 25 September 2017, the Angolan Tax Authorities created the Transfer Pricing Unit, which is responsible for the implementation of the Transfer Pricing Regime. This Order defines the scope of the Transfer Pricing Unit and its functions, which entail:

- Regulate and ensure compliance with the obligation to deliver the required Transfer Pricing documentation;
- Perform audits on the Transfer Pricing documentation;
- Provide the necessary support and clarification to taxpayers;
- Ensure the proper sharing of information and interaction on matters regarding the Transfer Pricing regime, with other services, directorates or offices of the ATA, or other entities with which the ATA cooperates with; and
- Execute all tasks related with the transfer pricing matters.

Fiscal Regime

Currently, the regulatory framework for the taxation of petroleum operations is regulated by the Law nº 13/2004 (of 24th December 2004). Furthermore, the taxable income is also determined according to the rules set in each block Production Share Agreement (PSA) and Concession Decree (for PSAs signed before this Law came into effect) or risk services agreements (RSA).

Resident entities and Angolan-based permanent establishments of non-residents engaged in hydrocarbon exploitation and production operations (petroleum activities) in Angola are subject to:

- Tax on income from oil (Imposto sobre o Rendimento do Petróleo);
- Oil production tax (Imposto sobre Produção do Petróleo);

- Oil transaction tax (Imposto de Transacção do Petróleo);
- Surface charge; and
- Training contribution.

Non-petroleum activities are subject to the regular regime under the Companies' Corporate Income Tax normal regime.

Regulatory Framework

The key regulators in the oil and gas industry include:

- Sonangol: the State Petroleum Company that holds all the oil concessions manages and supervises government's interest in the industry.
- Ministry of Petroleum: regulates and supervises oil and gas operations carried out under the various licenses and leases.
- Ministry of Finance: administers the petroleum taxes and other taxation issues relating to the industry.

Forms of contracts

The most common forms of petroleum contracts in Angola include:

Concession/Joint Venture

This is usually an arrangement between The National Concessionaire (Sonangol) and oil companies. Companies operating under this arrangement have a concession provided by Sonangol to explore certain blocks.

Production Sharing Contract

Sonangol is the holder of the concession, and appoints a Contractor to conduct petroleum operations in the area.

The Contractor provides the funds and bears the risks until commercial production is achieved. Production is allocated in barrels to costs, then taxes and finally, profit using a predetermined sharing formula.

Risk Service Contract

The Contractor has no title to oil produced but undertakes exploration, development and production activities on behalf of the concession holder. The Contractor is reimbursed and remunerated from the sale of oil produced.

Unconventional Oil and Gas

Decree-Law 10/07, of 3 October 2007 sets out the legal, tax, custom and foreign exchange regime applicable to the Liquefied Natural Gas (LNG) Project. This legislation refers the tax regime for shareholders of the LNG Project and the executing companies. It also refers to some applicable tax exemptions.

Angolan local content regulation in the Oil and Gas Industry

With regards to the oil & gas industry, the local content rules are provided for in various legal statutes, amongst which the most significant are:

i. Law 10/04, of 12 November 2004 ("Petroleum Activities Law"), which imposes on the Angolan Government the obligation to implement the appropriate measures to ensure, promote and encourage the engagement of companies held by Angolan citizens in petroleum-related activities;

ii. Ministerial Order 127/03, of 25 November 2003 ("Ministerial Order 127/03"), on the legal regime for the contracting of goods and services by oil & gas companies, establishing a protection scheme for Angolan companies in respect of the provision of services and supply of goods to such entities;

iii. Decree 48/06, of 1 September 2006 ("Decree 48/06"), on the rules and required tender procedures for the contracting of services and goods necessary for the execution of petroleum operations;

iv. Decree-law 17/09, of 26 June 2009 ("Decree-law 17/09"), on the rules and procedures for the recruitment and training of personnel for the execution of petroleum operations, as regulated by Executive Decrees 45/10 and 46/10, of 10 May 2010, ("Executive Decree 45/10" and "Executive Decree 46/10").

Sonangol's prior approval of the contracts

According to Law 10/04 dated 12 November 2004, contracting of services and acquisition of goods for oil operations should be preceded by a public bid. In line with Article 26, the Government should implement actions to promote and motivate the participation of oil companies owned by Angolan individuals.

Through the publication of Decree 48/06, dated 1 September 2006, the Angolan Government approved a special regulation concerning the acquisition of goods and the contracting of services by oil companies, which, in a nutshell, have to be approved in advance by Sonangol. This Decree also establishes the basis and requirements for public bids in the oil sector.

This special regime also determines the preference for Angolan companies to provide services to the oil sector. However, the fact that this Decree determines the preference of Angolan companies does not restrict 'non-Angolan' companies from bidding for the same contract – which will ultimately be reviewed and approved by Sonangol.

In order to allow an assessment to be made by Sonangol, the company that is bidding to provide the services should either (i) already be registered with the Ministry of Petroleum as a service provider, for which the corporate documents of the company should be presented, or (ii) attach its corporate documents to the proposal for a specific contract. It is therefore mandatory that the bidder entity be the same entity that will provide the services.

Taxation regime

Direct taxes

Petroleum Income Tax (PIT)

On production share contracts, PIT is payable, per development area, on profit oil attributed to each oil company, less the oil shared with Sonangol.

- Cost oil: This is the proportion of the total oil produced to which the oil companies carrying out the oil activities can dispose of freely to cover the costs that had be to incurred to produce the oil; and
- Profit oil: This is the remaining oil produced after taking the cost oil.

Oil is valued at actual market price following the "arm's length principle". Hence, the price of oil transactions may be adjusted.

The profit oil is shared with Sonangol as per the terms provided for in the concession agreement (following negotiations).

Cost oil quota will permit recovering costs incurred in exploration, development and production, as well as cost of administration and services (A&S). A&S costs either capitalised or not, are attributed pro-rata to exploration, development and production costs.

Production and development costs, including their share of A&S costs, are recovered from each development area; any unutilised balance of cost oil will be used to recover exploration costs. If the production and development costs are not recovered, they will be carried forward for future recovery against the respective development area.

Development costs are capitalised and amortised at a rate of 25%.

PIT is payable on the actual profit computed in accordance with the rules established in Law 13/04 and the production share agreement or other forms of association, at rates that can range from 65.75% for concession and risk service agreement and 50% in case of PSA.

Oil production tax

In addition to the PIT, oil companies operating as partners of Sonangol on concession agreements must pay a production tax on an annual basis.

The flat rate of 10% or 20% on the officially controlled crude oil output or sales per year. Reduced rate of 10% only applicable with approval of the Government and for

i. the exploration of small deposits,
ii. exploration of oil in waters with depth up to 750 meters and
iii. exploration of oil in areas of difficult access determined by the Government.

Petroleum and other substances produced under PSA's are not subject to this tax.

Oil transaction tax

An oil transaction tax (TTP) is levied on the profit of oil companies operating in Angola under concession or RSA agreements. Taxable profit for TTP purposes is calculated in accordance with the general rules applicable to the PIT, as per Law 13/04. There are, however, special TTP rules which are discussed below.

Deductible expenses

- Production premium (*prémio de produção*), which is based on the crude oil and liquid gas volume taken into account in the gross income; and
- An investment premium (*prémio de investimento*) equivalent to a certain percentage of the capitalised investment per year.

Non-deductible expense

- Oil production tax
- Oil transaction tax
- Surface charge
- Training contribution
- Financial expenses, including interest and related charges on ordinary loans.

TTP is levied at a rate of 70%.

Petroleum and other substances produced under PSA's are not subject to this tax.

Surface Charge

A Surface Charge is due at an annual amount of USD 300 per Km^2.

This charge is payable in the month following the one where either a Concession is granted or a commercial discovery is declared, respectively for areas of the concession granted or declared development area.

Training Contribution

Oil companies are required to pay a training contribution to the Angolan State to assist in the financing for training Angolan individuals (Article 57 Law 13/2004). The training contribution is imposed differently for oil companies (and depending on the phases of the petroleum activities carried out) and for the suppliers of goods and services to oil companies.

Decree-Law 17/09 defines the amount of the levy for the training of Angolan personnel, as well as other rules, including collection thereof.

Oil companies and their service providers must contribute to the training of Angolan employees as follows:

- USD 100,000 – for oil companies that only have research licenses;
- USD 300,000 – for oil companies that are carrying out research activities;
- USD 0.15 per oil barrel – for oil companies that are in a production stage;
- USD 0.15 per oil barrel – for oil companies that carry out oil refining activities;

- 0.5% of the annual turnover – for companies that carry out storage, transportation, distribution and commercialization activities of crude oil;
- 0.5% of the values of contracts – for companies that render services to oil companies on a regular basis [Article 12 Decree Law 17/2009].

For non-resident entities or resident entities with the majority of share capital owned by non-resident entities, the Decree – Law 17/2009 is only applicable if these entities render services in Angola for more than one year.

Oil exploration and production companies

Petroleum activities are subject to taxation according to the Law 13/04 and, therefore, any other activities not considered as petroleum activities are taxed under the Companies' Corporate Income Tax normal regime.

Oil Field Service Companies (OFS)

OFS are subject to the general tax regime (Corporate Income Tax - CIT), which has the following bases of taxation, legal deadlines and other obligations:

i. CIT is levied at 30% on the profits derived from business activities carried out in Angola by resident or non-resident entities. Tax resident entities are taxed on their worldwide profits. Non-resident PEs however are liable to tax on the profits attributable to the PE, sales of goods or merchandise of the same or similar kind to that sold by the PE and any other business activity which is of the same or similar kind to those conducted by the PE. The profits are adjusted in accordance with the provisions of the CIT Code.

ii. Legal deadlines: By the end of May of each year (or April, depending on the taxpayer type A or B), an annual CIT return (Modelo 1), attaching several documents, including the year's financial statements, must be filed in respect to the preceding fiscal (calendar) year, and any tax due should be settled immediately. Provisional CIT payments could be applicable for companies that are not subject to corporate withholding tax. The provisional payment is based on 2% of the turnover generated in the first six months of the calendar year and it is payable by the end of August of the same year.

Withholding tax

Withholding tax is applicable on payments for services to resident and non-resident entities, at the rate of 6.5%. For Angolan taxpayers, this is regarded as an advance payment of the CIT due at the year-end; the deductibility of these withholding taxes against tax payable is now to be limited in time to a period of five years. For non-resident companies, this is a final tax in Angola.

The obligation to withhold and pay this tax lies with the company contracting the services, and these companies are required to provide their service suppliers with a certificate confirming the payment of the tax withheld to allow those suppliers to deduct these values against their CIT payments.

This tax should be paid by the last working day of the month following the month in which the tax has been withheld.

Investment Income Tax (IAC)

Dividends

Dividends and profits remittance paid by an Angolan entity are subject to IAC at a 10% tax rate. The tax should be withheld by the paying entity and paid to the Angolan Tax Authorities by the end of the following month in which either the deliberation (to distribute the dividends) occurs, or payment of dividends is made, if prior.

Prior to the transfer of dividends, investors should submit an application for BNA consideration; attaching the documentation showing evidence that tax obligations were met, the annual tax returns were filed with the tax authorities and the company's financial statements are audited.

Interest

The IAC rate is 15%, except for the following income, for which the rate is 10% and 5%:

The tax rate is 10% for the following interest:

- Bond interest.
- Interest from shareholders' loans.

The tax rate is 5% for the following interest:

Interest on bonds, securities or other financial instruments issued by any company, Treasury Bills, Treasury Bonds and Central Bank Securities, as well as accrued interest on these securities, when the securities have been admitted to trade on a regulated market and have been issued with a maturity equal to or in excess of three years.

The IAC on interest on third party loan is paid and assessed by the receiving entity; if the interest is paid to foreign entities, then the obligation above shifts to the Angolan resident entity paying the interests.

For shareholder loans, the tax on the interest paid is withheld at the same time of payment or when the interest is earned.

Royalties

Royalties are levied at a 10% rate. The IAC on royalties should be withheld by the paying entity and should be paid to the Tax Authorities by the end of the following month.

Rental of industrial and commercial equipment to third parties may fall into the Angolan tax authorities' concept of royalties.

Capital gains tax (CGT)

Capital gains arising from the sale of participations are subject to IAC at a 10% rate, except if these arise within the scope of a commercial activity subject to CIT or Employment Income Tax (EIT). Until the end of January of each year, entities should file their IAC tax return with the Tax Office. The return should disclose the total profits received or paid in the preceding year. Other capital gains obtained (other than the sale of participations) will be subject to CIT at a rate of 30% if obtained by Angolan residents or tax PEs in Angola taxable under the general regime or subject to the Petroleum Tax Law if obtained by Oil & Gas entities.

Capital Gains realized by non-residents are only subject to tax in Angola if the capital gains are attributed to a tax PE in Angola or if the buyer is an Angolan investor. Capital gains on the sale of participations will trigger Investment Income Tax (IAC) at a rate of 10% - the capital gain will be calculated based on the difference between the sale price and acquisition cost. Indirect sale does not trigger taxation in Angola.

Thin Capitalisation and Transfer Pricing

There are no thin capitalisation rules in Angola, however, interest arising from shareholder loans are not tax deductible for CIT purposes.

In Angola, only traditional transactional methods are accepted under the Angolan transfer pricing legislation: Comparable Uncontrolled Price method, Resale Price Method and Cost Plus Method. The regulations on transfer pricing only provide limited guidance. Also, the preparation of the Transfer Pricing compliance regulations is quite recent in the Angolan tax framework and so far, there is very limited experience of actions from the Tax Authorities. However, the statute of limitation in Angola corresponds to 5 years and as such it is anticipated that in the near future, tax authorities will start looking into the transfer pricing files submitted in 2014 (which was the first year that transfer pricing files were required to be submitted). Furthermore, the requirement to prepare and deliver a transfer pricing file only applies to those taxpayers who are in the Large Taxpayers List and whose sales and/or supply of services (turnover) during a fiscal year exceeds 7,000 million Kwanzas. Oil & Gas companies are considered as Large Taxpayers.

Indirect taxes

Value added tax (VAT)

There is no VAT in Angola. A consumption tax exists but it is more in the nature of an excise duty. Additionally, there is no sales tax in Angola. However, stamp duty which is payable by the end of the following month applies to any receipts issued by companies at a rate of 1%. It is in practice a 1% turnover tax.

Custom Duties (Direitos Aduaneiros)

Custom duties are levied on imports at ad valorem rates varying between 2% to 50%. The range of taxation for both Consumption Tax and import duties varies according to the type of good. The rates are set out in the tariff. According to Law 11/04 a special exemption regime applies to the oil industry for some listed equipment.

The importation of assets (that are not available in Angola) to be used directly and exclusively for activities may benefit from an exemption of all import-related duties, with the exception of stamp duty at 1% on customs clearance documents and custom fees at 0.1% on the value of imported goods, in case they are brought into the country based on the temporary importation regime.

Presidential Legislative Decree nr. 5/15, of 21 September, amended the Customs Duties applicable on Imports and Exports. Generally, there has been an increase of the duties applicable to imported and produced goods in Angola.

Consumption Tax

A Consumption Tax is due on imported goods, locally produced goods and some services.

The Consumption Tax rate applicable to services depends on the service that is being provided, but can vary between 5% to 10%. The responsibility for consumption tax payment and any declarative obligations lies with the producer, supplier of goods or service provider, rather than the final consumer. However, the Consumption Tax increases in practice the final price attributed to the goods produced or services rendered.

Service providers are not exonerated from the obligation to assess consumption tax in the provision of services to oil & gas companies, but will only receive from the latter the amount due for the services.

Furthermore, note that services within the consumption tax code provided by non-resident entities will be subject to consumption tax in Angola through a reverse charge mechanism. It will be the Angolan entity's responsibility to pay the consumption tax over to the Tax Authorities.

Presidential Legislative Decree no. 5/15, of 21 September 2015, amended the Consumption Tax rates and Customs Duties applicable on Imports and Exports. This Decree aims at: (i) increasing taxation of products considered superfluous, as drinks (water, juices, beers and other alcoholic drinks), watches and jewellery, tobacco, among others; (ii) reducing taxation of some equipment understood to be necessary for domestic production, particularly agriculture; and (iii) taxing the production of several petroleum products, such as gasoline, diesel, and gas, among others. The increases in taxation apply to both imported products and products produced in Angola.

Entities subject to Consumption Tax must file a monthly schedule relating to locally produced goods and services rendered (only with reference to the invoices which have been paid in the preceding month). The tax is payable simultaneously, by no later than the last working day of the following month. Note that Consumption Tax on importation is assessed by the custom duties agent.

Other Taxes

Employment Income Tax (IRT)

Resident and non-resident individuals earning income from employment sourced in Angola (if paid for or borne by an Angolan employer) are subject to monthly taxation (IRT) at rates progressing from 0% to 17%[1].

This means that the compensation paid to expatriates, irrespective of the time they stay in Angola and where the compensation is processed and paid, if charged to the Angolan entity (including a PE), attracts IRT.

Taxable employment income for IRT comprises any amount paid in cash or in kind to an individual. The amount includes wages and salaries (including any amount withdrawn as remuneration by the partners of unincorporated businesses), bonuses, premiums, entertainment, travel allowances (value not exceeding that payable to civil servants), subsidies, rewards and directors fees irrespective of the source, place, currency and form.

All compensation items listed above are subject to IRT, with some exceptions, as follows:

- Insurances mandatory according to Law
- Retirement pensions

[1] *The 17% marginal rate applies on the excess of Kwanzas 230,000 (approximately USD 2,000)*

- Housing allowances for up to 50% of the rental price (if lease contract is duly registered and filed with the Tax Authorities)
- Vacation and Christmas allowances up to 100% of the basic salary
- Food and transport allowance up to AKZ 30.000 of the monthly global amount
- Employees' contributions paid to social security

In practice, other items of compensation have been accepted not to attract IRT in respect of costs borne directly by the employer and not directly allocated to specific individual/s.

Some of these items are:

- Accommodation – e.g. staff houses
- Medical assistance
- Education and work training for employees
- Transport provided to employees for work purposes
- Relocation costs, travel in and out and use of cars to and from Angola

Angola operates a fairly straightforward PAYE system in which the Angolan employer withholds from each employee's gross (taxable) compensation, the IRT due on a monthly basis.

Individuals do not file returns for either annual periods or any other period. For calculation purposes, the rates apply to the gross (taxable) income less the social security contribution paid by the employee.

For self-employers, companies must withhold tax from any payments made to them at a rate of 10.5% (corresponding to 70% of the 15%) or 6.5% depending on the services being rendered.

The tax withheld is considered as payment on account on the year final tax due by the self-employed individual. Self-employers have to submit an annual return by the end of March with regard to the employment income earned in the preceding year.

For self-employers and income received by company managers income is subject to a flat rate of 10.5% (corresponding to 70% of the 15%) contrary to income earned by workers carrying out industrial and commercial activities on which a rate of 6.5% or 30% applies, depending on the turnover volume in relation to that foreseen for the respective activity in the minimum profits table.

Social Security Contributions (Segurança Social)

Registration

Companies and branches employing staff have to register with the social security authorities at least 30 days before starting activities. The registration of employees should be made in the first month of employment.

Contributions

Monthly contributions are due and apply on remuneration at rates of 8% and 3% payable by the employer and employees, respectively.

Payment of monthly social security contributions should be made by the 10th of the following month.

Expatriates may be exempt from contributing to the Angolan social security scheme if they are covered by their home country scheme and prove to be contributing to the same.

Property taxes

Property tax (IPU) is levied on rental income earned by individuals or companies owning real estate assets on actual rental income when the assets are leased or on the assets' registered value if not leased.

Leased

According to the recent regulation, rents paid by Angolan entities (individuals or companies) that carry out commercial activity must withhold 15% IPU from rents paid.

The IPU so withheld must be paid over to the tax authorities by the end of the following month. Where the tax was not withheld, the landlord will have to pay the additional tax assessed in a tax return filed in January and July of the following year.

Not Leased

IPU is levied on the patrimonial value, as follows:

- Up to 5.000.000 (Kwanzas) 0%
- Over 5.000.000 (on the excess) 0.5%

Owners of real estate assets not rented must pay the IPU in January and July of the following year, or, at request (by July each year). If approved, the IPU is payable over four instalments in January, April, July and October of the following year.

All costs and income derived from real estate activity should be considered for IPU purposes and not for CIT.

According to the IPU Code, in general terms, property means the land itself or the land with all structures attached with capacity to produce income, except when connected with agriculture, forestry and cattle activities. Rental income is considered to be the total amount that the landlord receives from its tenant in the context of the transfer of the right to use the real estate asset and services associated with it.

Property Transfer Tax (SISA)

Additionally, there is also Property Transfer Tax (SISA) which is levied at a 2% rate for all acts that involve permanent or temporary transmission of real estate. Under SISA, the transfer of shareholding in a company may trigger PTT if the main purpose of the transaction is the transfer of the real estate owned.

Stamp Tax (ST)

Stamp tax is payable on a wide variety of transactions and documents, at specific amounts or at a percentage based on value.

A very relevant stamp duty applies on any receipts issued by companies at a rate of 1%, which is payable by the end of the following month. It is in practice a 1% turnover tax.

Stamp tax is due on the acquisition of real estate by the acquirer, at a rate of 0.3%. Stamp tax also applies on the registration of letting and sub-letting contracts at a rate of 0.4% or 0.1% for commercial or residential leases, respectively.

On share capital and increase of share capital, stamp tax applies at a rate of 0.1%.

Stamp tax is applicable to financial operations, such as credit utilisation (including but not limited to open credit accounts) and bond guarantees, interest and commission charged by financial institutions, as well as foreign withdrawals, foreign public debt bonds, foreign notes and coins. As a general rule, stamp tax is due for the entity that provides the credit and charge for the interest and commissions being later charged to the borrower or the interest / commissions debtor.

In addition to the operations referred to above, stamp tax is also applicable to written agreements, financial and operation leasing in tangible assets, custom operations, cheques, lending, civil deposits, gambling, licenses, traders' books, deeds, report, credit bonds, and transfer of business, among other acts.

Incentives in the oil and gas industry

A list of equipment, machinery and products used in petroleum operations are exempt from customs duties on importation. This exemption applies to goods that are not available in Angola and are exclusively for use in petroleum operations. The exemption also applies to the general customs services fee.

At request to the Ministry of Petroleum, other tax incentives may be available through Sonangol.

Compliance Requirements

Tax returns and payments

Every company engaged in petroleum operations is required to file two sets of returns:

- Estimated tax returns must be filed monthly.
- Actual tax returns must be filed by the end of March of the following year and final tax paid at the same time.

Penalty

- Late submission of returns: Can go up to USD 500,000.
- Late payment of tax: 35% of the tax payable plus 1% monthly interest.
- Lack of submission of support documentation in annex to the PIT return: USD 100,000.

Tax Audits

For the Oil & Gas entities, tax audits are conducted regularly on a yearly basis. Ministério das Finanças (MinFin) is currently finalising the audits for FY2016 and companies are receiving the exceptions considered by the auditors for FY 2016. After issuance of the MinFin audit reports, a fixation commission is scheduled to assess the taxable income and verify if the profit oil declared and the deductions (recoverable costs) are in line with the Petroleum Income Tax Law. Upon this commission the taxpayer can appeal to the Revision Commission within 30 days from the date of reception of the notification from the Chief of the Tax Office. After the Revision Commission, if the taxpayer considers that legal formalities have not been complied with or errors in the interpretation of law have occurred in the process, the taxpayer may, within 30 days, appeal to the court level.

Special Contribution

There is a relevant legislation which although not applicable to Oil & Gas companies has impact in the oilfield services companies. The special contribution approved by the Presidential Legislative Decree 2/15, of 30 June 2015 applies on the transfers abroad executed pursuant to technical assistance and management services agreements, which are regulated by Presidential Decree 273/11, of 27 October 2011, as amended by Presidential Decree 123/13, of 28 August 2013. Taxable persons are individuals, private or public companies, with registered office or permanent establishment in Angola, which request to an Angolan commercial bank for the execution of a transfer abroad which is aimed at paying services provided under a technical assistance or management services agreement.

Taxable basis is the amount in national currency of the transfer abroad as requested to the commercial bank, regardless of the exchange rate being applied.

The special contribution rate to be applied on the amount in Kwanza for the transfer to be executed abroad is 10% and is a cost of the entity requiring the transfer abroad.

Cameroon

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Country profile

Brief history on oil and gas development

Petroleum exploration in Cameroon started as far back as 1947. Nevertheless, the first hydrocarbon title, that is to say the first oil research permit, was granted for the Douala offshore basin to the company SEREPCA, on April 16th, 1952. The first discovery of commercial oil was made in 1972 in the Betika oilfield, located in the Rio Del Rey basin.

Cameroon became an effective oil producer in 1977. From 1980 to 1986, the country experienced its most active period of Production to date, with production hitting a record high of 182,000 barrels/day (bpd).

After this date, the volume of the exploration declined due to the international oil crisis, resulting in a progressive decline of the domestic production of crude oil of around 3% per year on average between 1986 and 1999.

After the initial discoveries, proven oil reserves have increased rapidly.

After a period of decline, an increase in discovery of proven reserves was expected due to the development and the intensification of drilling activities[1] under the signature of new Petroleum Contracts and the retrocession of the Bakassi peninsula to the Republic of Cameroon.

Cameroon's oil production in million barrels during the last five years was as follows: 21.9 in 2012, 24.2 in 2013, 29.9 in 2014, 34.9 in 2015 and 33.6 in 2016. It is worth noting that the oil production at the end of the 2nd quarter of the year 2017 was 14.5 million barrels.

According to the National Hydrocarbons Company (NHC), the recent increase is the result of the commissioning and operation of the Bojongo field and the increase in production of three new oil fields namely Padouk, Inter-Inoua Barombi and Barombi Nord-Est. It should be noted that a recent Production Sharing Contract covering the Yoyo Bloc was signed on 1st June 2017.

In March 2005, Cameroon adhered to the Extractive Industries Transparency Initiative (EITI) which is a global standard to promote the open and accountable management of oil, gas and mineral resources, and was declared compliant on 17th October 2013 after the first validation process. The second validation process started on 1st July 2017 and is currently ongoing.

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Reservoir estimates

The proven reserves of crude oil in Cameroon are estimated at 200 million barrels.

Significant new developments

Although no specific law or regulation has been enacted, clarifications have been brought to the existing rules. Subject to specific provisions contained in Double Tax Treaties and some oil contracts and except where the vendor is subject to the corporate income tax, services provided to oil companies are subject to 15% withholding tax irrespective of the phase of activities (exploration, development or exploitation). However, an exemption may apply during the exploration and development phase if the vendor is a related party and provides evidence that, the service was rendered at cost.

Invoices issued by oil subcontractors subject to the withholding tax shall clearly mention:

- The gross amount;
- The withholding tax to be deducted at source;
- The net amount payable.

As of 1 January 2016, the following significant corporate tax developments were introduced in Cameroon by the 2016 Finance Law:

- Sums paid for the use of valid patents, brands, designs, and models are henceforth capped at the overall limit of 2.5% of the taxable income before the deduction of expenses claimed only when such sums are paid to firms participating directly or indirectly in the management or capital of a Cameroonian firm.
- Losses due to damage in inventories shall be deductible from the taxable basis when they are duly established and validated by a Commissioner of damage in the presence of a taxation officer.
- The deadline for the reduced corporate income tax (CIT) rates granted to companies whose ordinary shares are listed on the Cameroon Stock Exchange has been extended for three years, with effect from 1 January 2016 (see Incentives applicable to listed companies in the Tax credits and incentives section for more information).
- Mobile telephone communications and internet services are henceforth subject to excise duties at an extra-reduced rate of 2%.
- Public orders for fuels and lubricants, regardless of the purchase or payment method, shall be exempted from registration duty and stamp duty.

As of 1 January 2017, the following significant corporate tax developments were introduced in Cameroon:

- An African Integration Contribution (AIC) has been instituted at the rate of 0.2% applicable to the taxable value of goods imported from third party countries into the African Union.
- Goods acquired electronically and imported into Cameroon shall be subject to customs duties and taxes under conditions laid down by regulation.

- Health insurance premiums paid to local insurance companies for members of staff and their spouses and dependent children, where the reimbursement of expenses to the same persons fails to appear under deductible charges, shall be deducted from the taxable profits.
- Tax incentives are granted for the promotion of youth employment, approved management centres, educational, vocational training and health, rehabilitation of disasters areas, local materials and raw materials, and innovation.
- Companies that issue stocks on the Cameroon Stock Exchange shall be entitled to a reduced CIT rate of 25% (i.e. 27.5% including 10% additional council tax) for a period of 3 (three) three years, with effect from the year of issue.
- The 2017 financial Law provides a change whereby there are henceforth three rates of Special Income Tax (SIT): the general rate at 15%, the average rate at 10% and the reduced rate at 5%.
- Public contracts and procurements paid from the budget of State-owned companies and semi-public corporations shall be subject to the registration duties at the rate of 2% or 1% where the amount is respectively less or more than XAF 5 million.
- The business license to be paid shall be calculated by applying a rate (depending on the size of the enterprise) to the turnover realized the previous financial year ended. There are minima and maxima contributions according to the size of the enterprises.

Fiscal regime

Institutional overview and regulatory framework

There are two regulatory frameworks in Cameroon:

- Conventions of Establishment concluded before the Petroleum Code of 1999 (some of which are still in force);
- The Petroleum Code (published in 1999).
- According to the Conventions of Establishment, Petroleum Operations cover exploration and production operations and any other activities related thereto.

The Petroleum Code made this definition clearer, by defining Petroleum Operations as hydrocarbon prospection, exploration, exploitation, transportation activities, and storage activities, excluding activities relating to the refining and distribution of petroleum products.

In addition to the conventions of establishment and the Petroleum Code, the laws and regulations below also apply to oil operations:

- Law N° 64/LF/4 of 6th April 1964 laying down the tax base and the mode ofrecovery of flat fees, royalties and mining taxes;
- Law N° 78/24 of 29 December 1978 laying down the tax base and the mode of recovery of flat fees, royalties and mining taxes;
- The Decree N° 2000/465/PM of 30 June 2000 laying down the implementing rules of the Petroleum Code;

- The Decree N° 2002/032/PM of 03 January 2002 establishing the tax base and the modalities of recovery of fees and charges applicable to hydrocarbons; and
- The Petroleum Contracts signed between the State of Cameroon and oil companies.

Taxation rules are provided by the regulations above and the General Tax Code.

Regulatory Framework

Industry sectors – upstream and downstream

The petroleum industry in Cameroon is divided into upstream and downstream sectors.

The upstream sector covers the hydrocarbons prospection, exploration, exploitation, transportation and storage activities relating to crude oil. In Cameroon, this sector is regulated as described above (please see Institutional overview and regulatory framework above).

The downstream sector covers the refining and distribution activities of petroleum products, as well as activities relating to the transportation, distribution, processing, storage, importation, exportation and marketing of natural gas within the national territory according to several Laws, Decrees and Orders related thereto.

Business License

Except where exemption applies, in order for an entity to be able to perform its activities in Cameroon, it has to obtain a business license as provided for by the General Tax Code.

Section C12 of the Code exempts all new companies from business license tax for a year. All new companies must obtain an Attestation of Exoneration from the competent authorities to benefit from the exemption.

It therefore appears that the business license is payable each year from the second year of existence of new registered entities.

The business license shall be assessed on the basis of the turnover declared by the taxpayer for the previous financial year closed. New enterprises shall be required to present a projected turnover to be regularized at the end of the period.

The business license to be paid shall be calculated by applying a rate to the turnover of the previous financial year closed as follows:

- 0.159% on the turnover of large companies, for a minimum contribution of XAF 5 million and a maximum contribution of XAF 2.5 billion. For a company to be considered as large, it must have an annual turnover of XAF 3 billion. Considering the size of the project (USD 166 billion) the branch will be considered as a large company.

- 0.283% on the turnover of medium-sized companies, for a minimum contribution of XAF 141,500 and a maximum contribution of XAF 4,500,000;
- 0.494% on the turnover of small-sized companies, for a minimum contribution of XAF 50,000 and a maximum contribution of XAF 140,000.

Capital investment regulations

There are currently no capital investment regulations in the oil and gas sector in Cameroon.

Forms of contracts

The forms of petroleum contracts applicable in Cameroon are the following: Conventions of Establishment and Contracts of Association, Concession Contracts and Production Sharing Contracts.

Conventions of Establishment and Contracts of Association

Conventions of Establishment and Contracts of Association allow every partner in the process of oil production to benefit from a guaranteed percentage on the “Rente minière” for each year. The “Rente Minière” is the difference recorded during a given fiscal year and for a given Basin between the hydrocarbons turnover from the area of Association on the one hand and the Technical Costs attributable to the respective Area of Association on the other hand.

Concession Contracts

A Concession Contract is a petroleum contract attached to a hydrocarbons exploration permit and where applicable, to exploitation concession, whereby the holder shall be responsible for financing the petroleum operations and shall, in accordance of the provisions of the Concession Contract, be entitled to the hydrocarbons extracted during the period of validity of such Contract, subject to the right of the State to collect royalty in kind.

The Concession Contract is entered into prior to the granting of a Hydrocarbons Exploration Permit. It sets forth the rights and obligations of the State and Holder during the period of validity of the title granted to the latter.

Production Sharing Contracts

The Production Sharing Contract is a petroleum contract via which the holder receives compensation in kind consisting of a share of hydrocarbons production according to the provisions of the Petroleum Code and the Contract. The holder shall be responsible for financing the petroleum operations.

Under this contract, the hydrocarbons produced shall be shared between the State and the holder in accordance with the terms of the Contract. The holder receives a share of production as reimbursement of its costs (cost oil) and compensation in kind on the remainder of the total hydrocarbons production (profit oil) according to the provisions of the Contract.

The Production Sharing Contract may also provide for a compensation in cash rather than compensation in the form of a share of hydrocarbons. In such case, the Contract shall be deemed to be a Risk Services Contract.

Government participation

The State, either directly or through a duly mandated government body or unit reserves the right either to acquire or to have acquired, an interest under any legal form whatsoever, in all or part of the petroleum operations which are the subject of a Petroleum Contract, in accordance with the terms and conditions provided in such Petroleum Contract.

The National Hydrocarbon Company (NHC, or SNH in French) is the state-owned company that guarantees the interests of the State in the petroleum activities, that is to say, in the petroleum contracts concluded with Oil and Gas companies.

In the Petroleum Contract, the NHC shall have the same rights and obligations as the Holder to the extent of its participation in the petroleum operations under the arrangements specified in the petroleum Contract.

Local Content in the Oil and Gas Industry

The holder of a petroleum contract and its subcontractors shall give preference to Cameroonian companies in the award of contracts for the construction and the supply of goods and services, when the terms are competitive with respect to quality, price, quantities, delivery, conditions for payment and after-sale service.

The holder and its subcontractors shall prioritise the employment of qualified personnel of Cameroonian nationality for the purposes of their petroleum operations. Therefore, the holder must set up and finance a training programme for Cameroonian personnel of all grades, according to the terms and conditions specified in the petroleum contract as soon as petroleum operations start.

Circular N° 005 / PM of 13 June 2012 relating to the general conditions applicable to foreign investors provides that jobs for labour force, worker, employee or supervisor are primarily occupied by qualified and skilled national workers if any up to:

- 50% at least for managerial jobs;
- 60% at least for supervisory jobs;
- 80% at least for labour force and workers.

Taxation regime

Direct taxes

Petroleum/oil taxation

There are two main regimes of petroleum taxation in Cameroon:

- The tax regime of oil contracts concluded before the 1999 Petroleum Code;
- The tax regime of oil contracts concluded after the 1999 Petroleum Code.

The tax regime of oil contracts concluded before the Petroleum Code of 1999: Conventions of Establishment.

Some of the Conventions of Establishment concluded before the Petroleum Code are still in force. Their tax regime is as follows:

- Several tax exemptions: VAT, taxes on dividends paid to shareholders, registration fees on contracts link to petroleum operations, WHT on certain conditions, exportation fees;
- Taxation to Corporate Income Tax (CIT) at a specific rate (15%, 38.5%, 48.647%, 57.5%), specific royalties, customs duties at the production phase;
- Guaranteed mining revenue representing a percentage of the net difference between turnover and cost.

The tax regime of oil contracts concluded after the petroleum code of 1999

In 1999, the government of Cameroon decided to stop signing Conventions of Establishment by publishing the Petroleum Code (on December 22nd) covering two forms of oil contracts: Concession Contracts (CC) and Production Sharing Contracts(PSC).

The main differences between the two types of contracts are:

- PSCs are not subject to royalties based on the production, but Concession Contracts are;
- There could be "excess profit tax" calculated according to the provisions of the Concession Contract[1]
- In the case of PSC, a part of the production (Cost Oil) is allowed to the oil company to cover petroleum costs and the "Profit Oil" is shared between the State and the Oil Company according to a ratio agreed upon in the PSC.

[1] *"excess profit tax" is determined as follows:*

- *10% of the amount of the profit subject to the company tax for the elapsed calendar year if "R" ratio (Net Cumulative Revenue / Cumulative Investment is equal to or greater than 1.5 but not less than 2.5;*
- *20% of the amount of the profit subject to the company tax for the elapsed calendar year for any value of the "R" ratio is equal to or greater than 2.5;*
- *No "excess profit tax" will be due if "R" ratio is less than 1.5.*

The tax regime provided by the Petroleum Code, and applicable to Oil Companies which have concluded either a Concession Contract or a PSC is the following:

- Exemption from: VAT on goods and services directly linked to petroleum operations, distribution taxes on dividends paid to shareholders, registration fees on contracts linked to petroleum operations, WHT under the conditions specified in the Petroleum Code and the oil contracts, export fees, and exemption from customs duties on listed equipment during the exploration phase;
- Taxation in the form of: annual surface rental fees, CIT at a rate between the common rate (33% since January 2015) and 50% (40% being the rate agreed within the majority of PSCs), customs duties during the exploitation phase.

The key tax provisions below shall apply for the assessment of CIT:

- Each Operator / Holder of the oil contract is responsible for its own CIT;
- Exploration and development costs shall be amortised according to modalities set out by the oil contract;
- Equipment shall be amortised from the commencement of their utilisation;
- Exploitation cost shall be booked in expense accounts;
- Losses can be carried forward for the maximum number of years provided for by the oil contract (at least 4 years). There is no carry-back mechanism;
- Head Office expenses are deductible within the limit provided by the oil contract ;except where full deductibility is granted;
- Fiscal year means a period of twelve (12) consecutive months computed as provided by the oil contract.

Royalties

Proportional mining royalty applicable to conventions of establishment

The proportional mining royalty is the amount that guarantees a percentage of the oil production allowable to each party (the oil company or the State) for each year as set out in the Convention of Establishment and the Contract of Association. This is usually paid monthly, in cash or in kind, at the rate provided by the oil contract (generally 12.5% for oil and 5% for gas).

The proportional mining royalty can be positive or negative. Its positive amount represents the payment due by the oil company to the State. The negative amount of this royalty is the amount due by the State to the oil company in order to guarantee the percentage of the mining rent provided by the oil contract.

Proportional royalty applicable to concession contracts

Oil companies party to a Concession Contract with the State are required to pay the proportional royalty calculated against the total monthly production available of a defined area.

This royalty is settled monthly in cash or payment in kind, according to the provisions and the rates set out by the concession contract.

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Additional Petroleum Duty

There is an additional petroleum duty due on exceptional income realised by the Holder of a concession contract.

The amount of additional petroleum duty is a percentage of a basis determined by reference to an R factor.

R is computed by the ratio of net cumulative revenue (gross revenues of the Contractor less the sum of exploitation costs (including abandonment) less company tax) over cumulative investments (sum of exploration and development costs from the effective date to the prior calendar year).

Signature and Production Bonuses

Petroleum companies are required to pay signature bonuses and also production bonuses based on certain milestones indicated in oil contracts.

Flat fees

This is paid when the petroleum permit is granted or renewed.

For the granting and renewal of the Prospection Authorisation, the amount of fixed duty is currently fixed at XAF 6 million.

For Exploration Authorisation, the flat fee is XAF 15,000 /km² at the time of granting the authorisation and XAF 10,000/km² upon renewal, with a minimum levy of XAF 6 million.

For Exploitation Authorisation, the flat fee is as follows:

- Granting of the title: XAF 250 million;
- Renewal of the title: XAF 250 million;
- Transfer of the title: 250 million.

Annual Surface Rental fee

Holders of petroleum contracts and Authorisations deriving therefrom are subject to an annual surface rental fee. The payment of the annual surface rent is due as from of the signature of the petroleum contract.

The annual surface rent for the Authorisation of oil exploration is determined as follows:

- The first year 1,750 XAF/km²;
- The second year 2,000 XAF/km²;
- The third year 3,500 XAF/km²;
- Subsequent years 5,500 XAF/km².

The annual surface rent for Exploitation Authorisation relating to liquid hydrocarbons is XAF 100,000/km² per year, with a minimum levy of XAF 6 million[2].

[2] *This tax is payable each calendar year on 31st January of the year based on the statement of liquidation established by the administration in charge of Mining directly and spontaneously when the taxpayer or files its return to the tax Administration*

Gas taxation

There is no specific regime for gas taxation in Cameroon.

Liquefied natural gas (LNG) regime

There is no specific regime for liquefied natural gas taxation in Cameroon.

Withholding taxes

Withholding tax shall be applied by the petroleum companies as follows:

- 16.5% applicable to interest on loans other than those granted by non-resident lenders for fund pertaining to development investments;
- 15% applicable to services provided by entities located abroad when the conditions required for exemption are not met;
- 5.5% applicable to services provided by local vendors except where exempt;
- 1.1% or 3.3% applicable to goods and materials supplied local vendors depending on their tax regime;
- 10% applicable to rent paid for the leasing of premises to entities not attached to a specialized tax center.

Capital gain tax (CGT)

Capital gains from the assignment or transfer of any capital assets shall be recorded as credit to the production and profits accounts for CIT purpose.

The net overall capital gains arising from income from bonds, income from debts, deposits, surety–bonds and current accounts, profits realised from the direct or indirect transfer of shares, reimbursement of sums put at the disposal of the company by a manager or a partner as an advance or a loan, as well as from the transfer of rights relating to natural resources shall be subject to 16.5% WHT (which is an advance payment of CIT).

Where the transfer of rights relating to natural resources is realised abroad, the Cameroonian company and the transferor shall be jointly and severally liable for the payment of sums due under such transfer.

The Circular laying down the modalities of application of the 2015 Finance Law specifies that indirect transfer is considered to be the transfer of shares between two foreign related entities, which belong to the same scope of consolidation, notably where an entity of that scope of consolidation holds whole or part of the share capital of the Cameroonian entity.

From what precedes, it results that the indirect transfers of shares subject to capital gain tax (i.e. the 16.5% WHT) are those realized between the entities belonging to the same scope of consolidation.

For the definition of the notion of consolidation, the Circular refers to the definition provided by section 78 of the OHADA Uniform Act Organizing and Harmonizing Undertakings' Accounting Systems.

According to section 78 mentioned above, exclusive control by an undertaking results from:

- direct or indirect holding of a majority of the voting rights of another undertaking;

- appointment of the majority of the members of another undertaking's administrative, management or supervisory structures for two successive accounting periods; the consolidating undertaking is deemed to have made such appointments if, during that period, it directly or indirectly held a fraction of the voting rights greater than forty percent and no other member directly or indirectly held a fraction greater than its own;
- the right to exert a dominant influence over a company by virtue of a contract or the articles of association, when the applicable law so permits, and the consolidating undertaking is a member of the dominated undertaking.

Joint control is the shared control of an undertaking run jointly by a limited number of shareholders with the decisions resulting from the agreement between them.

Notable influence over the management and the financial policy of another undertaking is presumed when an undertaking directly or indirectly holds a fraction of that other undertaking's voting rights equal to at least one fifth.

Thus, enterprises belong to the same consolidation perimeter when one enterprise holds voting rights in the other companies and is therefore shareholder in the others companies.

Property Tax

Property tax is payable annually on real estate, with or without an ownership certificate or an administrative or judicial order issued. Tax is charged at 0.1% of the assessed property value.

Properties belonging to clubs, associations, or sporting bodies' accredited properties intended for sports and sports facilities are exempt from property tax.

Double Tax Treaties

Cameroon has concluded Double Tax Treaties with the following:

- CEMAC Countries (Cameroon, Central African Republic, Chad, Gabon, Equatorial Guinea, and Republic of Congo);
- France;
- Canada;
- Tunisia;
- Morocco; and
- United Arab Emirates.

Profit repatriation issues

During the validity of the petroleum contracts and provided that they comply with their obligations particularly with regard to the rules governing foreign exchange and taxation, holders shall be guaranteed:

- The right to freely deposit, retain and acquire or borrow funds from abroad, including proceeds from the sale of their proportional share of production, and to freely dispose thereof, to the extent the amount exceeding their tax obligations and local needs for petroleum operations on the territory of Cameroon;

- The right to transfer and freely retain abroad, the proceeds from sales of hydrocarbons, dividends and proceeds of any type from invested capital as well as the proceeds from the liquidation or disposal of their assets;

Transfer Pricing and thin capitalization Regulations

Companies under the jurisdiction of the Large Taxpayers' Unit (LTU)[5] are required to automatically transmit Transfer Pricing documentation alongside their Annual Tax Returns to the tax authorities no later than March 15th of each year.

This obligation shall apply where:

- More than 25% of the taxpayer's share capital or voting rights is held directly or indirectly by a company established or created outside Cameroon;
- The taxpayer itself holds directly or indirectly, more than 25% of the share capital or voting rights of a legal entity domiciled outside Cameroon;
- The taxpayer is a company within the perimeter of consolidation of the parent company as defined by Section 78 of the OHADA Uniform Act Harmonizing Company Accounting Procedures.

For taxpayers who are not under the jurisdiction of the LTU, the TP documentation can be requested during tax audits.

Law N°2013/017 establishing the 2014 Finance Law of the Republic of Cameroon introduces thin capitalisation rules by tightening conditions of deductibility of interests paid on loans obtained from shareholders or affiliated companies.

The deduction of interests on sums of money left or placed at the disposal of local entities by partners or related companies who directly or indirectly own at least 25% of the share capital or corporate voting rights is capped at:

- one and a half times the amount of equity or
- 25% of profit before corporate tax and before deduction of the said interests and amortisations taken into account in determining such profit.

Otherwise, interests on the excess amount shall not be deductible. As such they are added back for corporate income tax calculation and subject to distribution tax at 16.5%.

Indirect taxes

Value-added tax (VAT)

The provision of goods and services of any nature, including studies, directly related to the performance of Petroleum Operations are exempt from VAT. The rate of VAT is 19.25% and 0% for exports.

In order to benefit from this exemption, oil and gas companies and their subcontractors must obtain an Attestation of Exemption from VAT. This exemption applies to operations carried out by holders of petroleum contracts, their contractors and subcontractors in the first degree. Upon failure to obtain that attestation, the normal VAT rules are applicable. Such in-put VAT is not recoverable and shall be treated as cost.

VAT returns of a given fiscal year should be submitted on the 31st of March of the following year (i.e. the VAT return of FY 2017 should be submitted on March 31st 2018 at the latest). Monthly returns are required to be filed by the 15th of the following month at the latest.

VAT should be paid when the return is submitted. However, monthly payments (if any) are to be made on the 15th of the following month at the latest. In addition, early payments are encouraged in practice to avoid penalties for late submission.

Consumption tax

There is no such tax in Cameroon.

Registration Duty

The registration duty applies to certain deeds listed by the General Tax Code (GTC). The assessment basis depends on the nature of transactions, and the rate varies from 1% to 15%.

The formation of a company and subsequent capital increases in Cameroon are not subject to registration duty.

Public contracts or orders paid from the budget of the state, regional, and local authorities; public institutions, public corporations, and semi-public companies; or through external financing shall be subject to registration duty at the rate of 2% for amounts below XAF 5 million and 5% for amounts at or above XAF 5 million.

As of 1 January 2016, public orders for fuels and lubricants, regardless of the purchase or payment method, shall be exempted from registration duty and stamp duty.

The following transactions are subject to registration duty at the rate of 2%:

- The transfer of shares and bonds of commercial or civil companies with registered offices outside of the Economic and Monetary Community of Central Africa (CEMAC) zone when said instruments are utilised or when the transfer produces consequences in a CEMAC country.
- The transfer (even indirect) within Cameroon or abroad of shares and bonds of companies with registered offices in Cameroon.

Holders of Petroleum contracts shall be liable under conditions of general application for fees related to transfer tax (i.e. registration duty) with the exception of registration fees related to loans, sureties and contracts directly related to Petroleum Operations.

Custom duties

The customs regime applicable to oil operations depends on the phase of the operations.

At the Exploration/Research phase

Full exemption shall apply to equipment and accessories listed and deemed to be re-exported after operations. Such equipment and accessories shall be imported under the Normal Temporary Admission (NTA) regime.

This exemption also applies to consumables listed.

Equipment and accessories not listed but which are to be re-exported shall be imported under Special Temporary Admission (STA) regime. According to the STA, the payment of the customs duties is spread over some years considering the duration of the equipment's depreciation, the value of the equipment as declared and the time during which the equipment shall be used in Cameroon.

At the Exploitation phase

This preferential customs regime which covers spare parts for machines and equipment necessary for petroleum operations shall also apply during the two – year duration of a provisional exploitation authorisation.

Beyond the period mentioned above, imports of products and materials required for petroleum operations are subject to the customs regime of general application.

Equipment not relating to oil operations shall be subject to the Customs regimes of general application.

Holders may export the share of hydrocarbons to which they are entitled free of all export taxes and duties.

The importation of goods and merchandises from other countries is subject to customs duties, except where exemptions or the suspended customs regimes are applicable. Customs duties are levied on the customs value of most imported goods at rates ranging from 5% to 30%.

There are certain benefits applicable to PSC's or concessions contracts as follows:

1. Most products and materials during the Exploration phase can be imported free of all taxes and duties including turnover tax.
2. Goods and materials directly used for Petroleum Operations benefit from a preferential low customs rate of 5% during the first 5 years which follow the grant of the Exploitation Authorisation or its renewal. Thereafter, full customs duty rates apply.

The above customs benefits apply to the Contractor and also their sub-contractors. The Ministry in Charge of Finance provides a list of products and materials for which this benefit applies. However, the list although in existence, is unsigned, therefore the concern is that it does not have the force of law. Customs generally adhere to the list. However, practically, companies will apply for a certificate of exemption for each category of operation. This process can take 1 to 2 months and therefore timing must be carefully planned. Moreover, the certificate of exemption applies to the PSC contractor and to immediate tier 1 subcontractor's. However, tier 2, i.e. sub sub-contractors are unable to benefit albeit that the wording of the PSC does provide to allow all tier contractors to benefit.

Other custom duties

The Community Integration Tax does not apply to equipment imported under Normal Temporary Admission (NTA) or Special Temporary Admission (STA) regimes.

OHADA Levy

The OHADA levy does not apply to equipment imported under NTA or STA.

Data processing fee

The rate of this tax is 0.45% applicable to the Cost + Insurance + Freight values.

However in practice, listed equipment imported for oil operations are subject to a fixed amount of about XAF 100,000.

SGS Inspection fees

Exemptions apply to the importing and re-exporting of equipment necessary for oil exploration or exploitation.

Registration duties

Agreements which are directly linked to the performance of oil operations shall be exempt from registration duties.

However, holders of Petroleum Contracts are liable under conditions of general application for registration duties related to contracts which are not directly related to petroleum operations. The registration duties rates vary from 1% to 15% depending of the nature of the transaction.

Stamp duty

Holders of petroleum contracts are liable under conditions of general application to stamp duties.

Contribution to the National Social Insurance Fund (NSIF, or CNPS in French)

The social contribution is divided into three parts:

- Contribution for family allowance: 7%;
- Contribution for Industrial accident with low risk: 1.75%, medium risk: 2.5, high risk: 5%.

In practice, the rate generally applied by oil companies and oil subcontractors is 5%. Given that the services are usually performed offshore, they are classified as hydrocarbon research activities, and as such considered to be high risk.

- Contribution for old age pension: 4.2%.

Other taxes

Personal income tax

Persons liable: tax residents Individuals of foreign nationality who stay in Cameroon for more than 183 days per year shall be considered as tax resident in Cameroon, except if they can prove that the job they perform in Cameroon is of an accessory nature.

Basis of Assessment: The basis of assessment shall be the overall income earned by the tax resident.

The personal income tax is deducted at source by the employer. The rates and calculations are as follows:

The benefits in kind are assessed as follows on the basis of taxable income:

- Housing: 15%;
- Electricity: 4%;
- Water: 2%;
- Each domestic servant: 5%;
- Each vehicle: 10%;

- Food: 10%.

Deductible Charges:

Professional Charges: 30% of taxable income;

Social Contributions: 4.2% of remuneration subject to social contribution, with a maximum base of 750,000 per month;

Family Expenses: 500,000 FCFA per year.

After deduction of the above charges, the Personal Income Tax is calculated according to the progressive rate below:

- From 0 to 2 000 000 XAF: 11%
- From 2 000 001 to 3 000 000 XAF: 16.5%
- From 3 000 001 to 5 000 000 XAF: 27.5%
- More than 5 000 000 XAF: 38.5%

National Social Insurance Fund (NSIF)

Employer and employee must contribute on a monthly basis to Cameroon's National Social Insurance Fund at 11.2% and 4.2%, respectively. The basis of contribution is capped at XAF 750,000 per month (i.e. XAF 9,000,000 per year). Employers in Cameroon must also contribute 1.75%, 2.5%, or 5% of total salaries to the National Social Insurance Fund for Industrial Accidents when they are respectively classified in groups A, B or C according to the classification per type of activity. The calculation basis in this category is the gross salary, including the benefits in kind assessed for their actual amount.

In addition to the Personal Income Tax and social insurance contributions made to NSIF, there are other taxes and contributions imposable on the salaries of employees working in Cameroon. These are divided into taxes to be borne by the employer, and taxes to be borne by the employee, as summarised in the table below.

Other Taxes/ Contribution on payroll	To be borne by the Employer	To be borne by the Employer
CRTV Royalty	Depend on the amount of gross salary, this royalty does not surpass XAF 13000 per month	N/A
Local Development Tax	Depend on the basics salary subject to a maximum amount of XAF 30000per year	N/A
Housing fund tax	The basis of this tax is the taxable salary. The tax rate is 1%	The basis of the tax is the gross salary, the benefit in kind being considered for their actual amount. The tax rate is 1.5%
National Employment (NEF) contribution	N/A	The basis of the tax is the gross salary, the benefits in kind being considered for their actual amount. The tax rate is 1%

Other statutory contribution

No other statutory contributions are applicable in Cameroon.

Taxation of Oil Field Services (OFS)

Services from OFS bases abroad are subject to a 15% withholding tax payable either when the transaction is booked in expense account by the oil company or when the invoice is settled.

Local Permanent establishments of OFS have the choice between the tax regime of common application (i.e. corporate income tax of 30% on the net taxable income, or a withholding tax regime of 15% on the gross revenue.).

OFS incorporated locally are subject to the tax regime of general application.

There is a deemed profit tax of 16.5% applicable to the net profit after corporate income tax. The deemed profit tax applies only to OFS which are local branches and that have opted for the regime of corporate income tax.

Incentives in the oil and gas industry

Capital allowances

From the year of commercial production, the Holder of an oil contract may claim tax depreciation on capital expenditure on the basis of modalities provided by the oil contract.

Investment tax credits

There is no special investment tax credit for Oil and Gas companies in Cameroon.

Tax exemption

Exemption from withholding tax is provided under certain conditions, on remunerations paid overseas for services rendered by entities located abroad.

Exemption from withholding tax is provided on dividends and interests from loans granted by non-resident lenders for funds pertaining to development investments.

Exemption is also provided from VAT applicable to the provision of goods and services of any nature(including studies), which are directly related to the performance of Petroleum Operations.

Registration duties: deeds directly linked to the execution of oil operations shall be exempt from registration duties;

Exemption from customs duties:

- At the Exploration/Research phase: Full exemption is available to equipment and accessories listed and deemed to be re-exported after operations;
- At the Production phase: For equipment and accessories imported and which are to be re-exported without having undergone any change other than the normal depreciation due to use, a reduced rate of

5% is applicable for the first 5 years from the grant of an production authorisation or its renewal.

- Holders may export the share of hydrocarbons to which they are entitled free of all export taxes and duties.

Export processing zone

There is no specific free zone for oil and gas export.

Group relief

There is no group relief available under the regulations of the Oil and Gas industry in Cameroon.

Compliance Requirements

Annual declarations

The annual return is a summary of all transactions carried out by the taxpayer during the fiscal year. This return includes the financial statements, its appendices and the assessment of the final income tax and VAT (where applicable). For a given fiscal year, the annual tax return shall be submitted within to the deadlines provided by the Petroleum Contract.

CIT returns of a given fiscal year should be submitted on the 31st March of the following year (i.e. the CIT return of FY 2017 should be submitted on March 31st 2018 at the latest). Instalments of XAF 2.2% are paid monthly.

The 2014 Finance Law also states that the annual tax return shall be accompanied by Transfer Pricing documentation, for entities falling under the jurisdiction of the Large Taxpayers' Unit (LTU).

Quarterly returns

Oil companies are required to file a quarterly return no later than the 15th of the month following the quarter in which the return is due, along with the supporting document of the amount of taxes payable.

Payment of income tax

The payment of CIT for a given fiscal period is required to be made in four installments. Each installment shall be determined by application of the rate of CIT on the estimated portion of the taxable income for the year attributable to the quarter. Each installment shall be paid no later than the 15th of the month following the quarter in which it is due. The final accounting shall be carried out when the financial statements are submitted.

CIT should be paid when the return is submitted. However, instalments of XAF 2.2% are paid monthly. In addition, anticipated payments are encouraged in practice to avoid penalties for late submission.

Payment of withholding tax

Taxes withheld at source shall be declared and paid on a monthly basis. The taxes withheld at source for a given month shall be paid no later than the 15th of the following month. This concerns payroll, payments of invoices received from local vendors and remunerations of services provided by entities located overseas.

Notwithstanding the provisions relating to the system of declaration, the Tax Administration may transmit a pre-completed tax return to the taxpayer who can submit a request for correction to the competent Taxation Centre.

Penalty

Late submission of returns

Late submission of the return shall entail the application of a 10% penalty per month of delay, capped at 30% of the principal tax due.

Interest on late payment

Late submission of the return shall give rise to the application of a 1.5% interest per month up to a maximum of 50%.

Tax audit

As a general rule, there should not be more than one audit undertaken in a company within the same fiscal year.

There 2 categories of audits:

- Desk Audit: It is carried out by the Tax Administration from its office on the basis of the taxpayer's file they have.
- The onsite audit: It starts from a notice of audit which shall be notified to the taxpayer no later than 8 days before the audit starts.

Where the tax authority notices a shortcoming or an inaccuracy or omission in the data used as a basis to calculate any taxes, duties or sums due under the General Tax Code, the corresponding adjustments shall be made following the adversary procedure. The onus of proof shall lie with the tax authority.

Audit and other reporting requirement

Audit

The books relating to oil operations shall be kept in accordance with the OHADA Accounting Principles and Generally Accepted Rules of Accounting in the International Petroleum Industry.

Prior to undertaking oil operations, contractors shall provide the Government with an outline of its chart of account and the organization of its accounting for review and approval purposes.

Unless otherwise decided, the accounting records and reports shall be prepared and kept in English or French using the USD as the currency of account.

Chad

PricewaterhouseCoopers Tax & Legal, Sarl
Immeuble Star Nationale/ Avenue Charles De Gaulle-BP : 1899 - N'Djaména-Tchad

Country profile

Brief overview of the oil and gas developments in Chad

Oil exploration in Chad has been undertaken since the 1960s. In 1969, the first President of the Republic of Chad, Ngarta Tombalbaye, entrusted the American CONOCO with the first oil investigations which revealed the existence of oil in the South of the country in 1975.

These investigations led to the identification of five (5) potential oil areas: the basins of Doba, Dosséo, Salamat, Bongor, and the Chad Lake. The basins of Salamat and Bongor were not considered viable at this time for commercial development.

These investigations resulted in the inauguration of a well in Doba, in the South of the country. However, in view of the deterioration of relations between Chad and its former colonial power, France, which did not pay much attention to oil prospection, CONOCO ended this prospection.

In 1978, a consortium was formed with Shell, Chevron and Exxon. However, its activities were interrupted by the civil war from 1979 to 1982. In 1988, the legal framework of the oil project of Doba was put in place after a return to peace in Chad. In 1992, Chevron was replaced by Elf in the consortium formed in 1978.

In 1993, significant oil resources were confirmed in the Doba area; and in 1996, the principle of a Doba oil project, through an oil pipeline crossing Cameroon, was adopted. A consortium led by Esso (40% of shares), Shell (40% of shares) and Elf (20% of shares) was formed. In November 1999, Shell and Elf withdrew themselves from the consortium. A new consortium was then formed by Exxon Mobil (40%), Chevron (25%) and Petronas (35%).

For the exploitation of its oil, Chad needed a pipeline. The World Bank and the European Investment Bank financed the participation of Chad and Cameroon, providing capital to the two companies responsible for the pipeline, namely TOTCO and COTCO.

The World Bank contributed to the building of this pipeline at US $ 92.9 million (US $ 39.5 million for Chad and US $ 53.4 million for Cameroon). The International Finance Corporation (IFC), a subsidiary of the World Bank, financed the project in the form of loans amounting to $ 100 million given to the two (2) companies, namely TOTCO and COTCO. In addition to this direct contribution, IFC mobilized $ 100 million in the form of syndicated loans.

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Chad 2017 Country Updates

The finances mobilised from the World Bank Group contributed US$4.3 billion necessary for the building of the 1,070 km of pipeline linking Doba (Chad) to Kribi (Cameroon) with an estimated lifespan between 25 and 30 years.

The Chad-Cameroon oil project aims to develop 300 wells in the Komé, Miandoum and Bolobo oil fields in the Doba basin in the south of the Republic of Chad.

After this long process, Chad saw its crude flowing for the first time on October 10, 2003.

According to the 2012 BP Statistical Energy Survey, Chad's commercial oil reserves were estimated at 1.5 billion of barrels at the end of the 2011.

In spite of the current financial crises, Chad's upstream oil sector continues to attract many oil companies.

The consortiums which are currently exploiting oil in Chad are: Exxon, Griffiths and CNPC.

The key institutions involved in the upstream oil sector are: the Ministry of Energy and Petroleum, the National Assembly and the National Hydrocarbons Company (named SHT).

The current applicable petroleum contracts are: concession contract and production sharing contract.

Political Updates

- Re-election in 2016 of the president Idriss Deby, who has been in power since 1990;
- Insecurities caused by the sect Boko haram; and
- Permanent risks of terrorist attacks.

Economic Updates

Consequences of the fall of oil prices on the international market which affects the oil activities in Chad, include the closure of many subcontracting companies, massive dismissal of workers from oil companies and decrease in oil revenues for the government.

Fiscal regime

General Tax regime

Rates of WHT on rents paid to individuals:

- 15% for residents and 20% for non-residents whose rent is less than or equal to XAF 1,000,000 per month;
- 20% for residents and 25% for non-residents whose rent is between XAF 1,000,001 and 4,000,000;
- 25% for residents and 30% for non-residents whose rent is higher than XAF 4,000,001.

Oil and gas tax regime

Until 2000s, oil companies were operating under concession contracts where corporate income tax was due on the net profits realized.

In 2007, Chad introduced a new hydrocarbon code with Production Sharing Contracts (PSCs) as the standard tool to govern relationships between the State and the oil companies.

Tax levies and exemptions applicable to PSC

Under PSC, Oil operations are subject to certain taxes, fees and charges. Exemptions are also provided.

Applicable taxes

Due to its oil operations, the holder of PSC is subject to the sole payment of:

- corporate income tax at the rate of net profits earned from all the research activities and exploitation of the Chadian Territory at rate comprised between the common rate of 35% and 75% ;
- signing bonus ;
- exclusive attribution bonus for an authorisation of exploitation;
- production royalty (rate from 14.25% to 16.5% on the total production of crude oil and from 5% to 10% on the total production of natural gas).
- superficiary royalty
- exceptional tax on the capital gain from sale of assets;
- stamp fees;
- registration fees;

The exempted taxes

The holder of a PSC is exempt from:

- minimum tax;
- apprenticeship tax;
- business license;
- direct tax on profits;
- tax on profit distributed;
- taxes of any kind on interest and other interests of sums borrowed by the Contractor for the purposes of the oil operations;
- registration fees resulting from the setting-up of the companies and the capital increases;
- property tax on the property of companies and all other property taxes except those payable on residential buildings;
- all export taxes and duties in respect of its petroleum activities; and
- taxes on sales, value added and any assimilated tax on supplies of goods and services.

Regulatory Framework

The key institutions involved in the upstream petroleum sector include the government (through the Minister of Energy and Petroleum), the National Assembly and the national hydrocarbons company named “Société des Hydrocarbures du Tchad” (SHT).

Forms of contracts

There have been no changes relating to the forms of oil contracts in Chad to date. The main contracts remain: the Concession Contracts and Production Sharing Contracts.

Local Content Regulation

Key legislation relating to the upstream hydrocarbons sector includes law No.006/PR/2007 dated 20 April 2007 on hydrocarbons, as amended and supplemented by ordinance No. 001/PR/2010 dated 30 September 2010 approving a model production sharing contract regulating the activities of exploration and production of liquid or gaseous hydrocarbons in the Republic of Chad and the decree No.796/PR/PM/MPE/2010 dated 30 September 2010 implementing the Petroleum Law (together with the Petroleum law, the Petroleum Legislation).

The Petroleum Legislation include a number of local content requirements relating to employment, including the following:

- the contractor must employ Chadian qualified employees, in priority to foreign qualified employees, subject to equivalence of qualifications;
- the annual work programme to be submitted by the contractor during the development and production phases must include:
  - » a programme of recruitment for Chadian personnel and the related budget and,
  - » a training programme for the Chadian personnel and the related budget, being noted that such programme must enable the Chadian personnel to accede to any positions from qualified worker to executive and director;
- the annual and semi-annual reports to be provided by the contractor must specify the number of employees dedicated to the petroleum operations, with a breakdown between expatriates and Chadians;
- the contractor must submit an annual report on:
  - » the current recruitment of Chadian personnel, divided by seniority and,
  - » the nature and costs of actual training provided to Chadian employees.
- the contractor and its sub-contractors must give priority to Chadian companies for construction and services contracts, subject to equivalence of conditions in respect of quality, price, quantity, timing for delivery, payment conditions, offered guarantees and after-sales service.

Taxation regime

Direct Taxation

Corporation Income Tax ("CIT")

Before 2015 fiscal year:

The rate of CIT varies from 40% to 75%, depending on the conditions to be defined in the oil contract (article 74.2 of Law N°006/PR/2007 relating to hydrocarbons).

Since 2015 fiscal year:

The rate of CIT according to common law moved from 40% to 35%. Thus, it is obvious that the rate of CIT to be applied to oil companies shall also move from 35% to 75%, depending on the conditions defined in the oil contracts.

There are no incentive or different regimes for unconventional oil and gas.

Capital Gains Tax

Capital gains realized by resident companies are not subject to any tax. Capital gains realized by non-resident companies are subject to WHT at a rate of 25% if these companies do not have their tax residence in CEMAC area. This WHT shall be filed and paid no later than the 15th of the month which follows the month of the payment of these gains to these companies. NB: capital gains realized by oil companies are not subject to WHT. This is often defined in the contract.

Withholding tax

A 12.5% withholding tax is due on payments made by companies to non-residents as consideration for intellectual property, non-commercial activities, interest and services rendered or used in Chad. In addition, employers are required to withhold personal income tax on the salaries paid to their employees.

Thin capitalisation and Transfer Pricing

There are currently no rules relating to the Transfer Pricing ("TP") or thin capitalisation regulations in Chad.

Double Tax Treaties (DTT)

Except for the CEMAC treaties, there are no other tax treaties signed by the Republic of Chad.

Indirect Taxes

VAT

The VAT rates are:

- 18% applicable to all taxable transactions;
- 0% applicable to exports and related international transportation.

However, depending on their oil contracts, oil and gas companies and their subcontracting companies are generally exempted from VAT on all their transactions.

VAT shall be filed and paid no later than the 15th of the month which follows the month of the realizations of taxable transactions.

Sales Tax

Sales in whole or part are subject to WHT at the rate of 4% and any sales (whether in whole or not) are subject to VAT at rate of 18%.

Customs and Excise Duties

- Customs rates vary from 5% to 30% according to the nature of each item.
- Excise rates vary from 5% to 25% according to the nature of each item.

Oil companies are often exempted from custom duties. This is generally defined in the contract.

Other Taxes

Social Security contributions

Social security contributions are payable by both the employer (16.5% of the gross salary up to XAF 500,000) and the employee (3.5% of the gross salary up to XAF 500,000). These rates are the same for all employees and employers in the O&G, E&P and OFS sectors.

Employment tax

Taxes are payable by the employee but withheld by the employer.

The rates applicable are as follows:

Chargeable Income (XAF)	Tax rates
from 60 000 to 150 000	10.5%
from 150000 to 300 000	20%
from 300 000 to 800 000	25%
from 800 000 to 1 000 000	30%
from 1 000 000 to 1 500 000	40%
from 1 500 000 to 2 000 000	45%
from 2 000 000 to 3 000 000	50%
from 3 000 000 to 6 000 000	55%
Above 6 000 000	60%

NB: The following are excluded from the taxable pay:

- Social security (named Caisse Nationale de Prévoyance Sociale (CNPS) in at a rate of 3.5%, paid by the employee;
- Rural Funds (Fonds d'Intervention Rural (FIR) in French) at fixed rate of XAF 40 paid by the employee;

- Deduction of 40% for business fees and familial expenses granted to the employee; and
- Tax credit at rate of 4% granted to the employee.

Taxes paid by employer:

- Fixed Tax at the rate of 7.5% of the gross salary of each employee;
- Apprenticeship Tax at the rate of 1.20% of gross salary of each employee;
- Social security contributions at the rate of 16,5% of gross salary up to XAF 500 000.

However, depending on their oil contracts, oil and gas companies and their subcontracting companies are generally exempted from Fixed and Apprenticeship taxes.

Taxation of Oil Field Services (OFS) companies

Oil field services companies are subject to the same taxation regime as exploration and production companies.

Property Tax

There are taxes on built properties and taxes on unbuilt properties. The properties are buildings or outbuildings, facilities, installations, cultivated or uncultivated lands, etc. There are no differential regimes applicable to property rich companies.

Deemed Profit Taxation

There is a profit tax at the rate of 20% on the profit realised by the branches of oil foreign companies and on materials and equipment rented from individuals.

Compliance

From January 1 2015, CIT returns are to be submitted and any outstanding taxes paid at the time of submission of the annual tax returns, i.e. before May 1 of the fiscal year which follows the closed year.

Tax audits

For each fiscal year, there are three successive tax audits:

- the desk audit is carried out in the premises of the Tax Administration;
- the spot check and the General tax audit are carried out on the premises of the companies or on their accountant's premises or tax administration's premises if the companies prefer so.

The duration of each tax audit shall not exceed three (3) months, but in practice the procedure may go beyond this period, depending on how both companies and the tax authorities conduct the audits.

Egypt

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Country profile

Brief history on oil and gas developments

Between 1963 and 1976, Egypt applied the "Tax & Royalty Agreements". In this type of agreements, royalty and taxes were paid as a percentage of the oil explored.

From 1976 until present: "Production Sharing Agreements" were used instead of the Tax & Royalty Agreements.

In this type of agreements, part of the explored and produced oil is called "Recovery Oil". The foreign investor takes 100% of this recovery oil to recover the costs incurred by him during the exploration and development phase.

The other part is called "Profit Oil" and is divided between the foreign investor and the Egyptian General Petroleum Corporation (EGPC).

In this type of agreements, EGPC pays the taxes and the royalty on behalf of the foreign investor.

Recent Economic Updates

As part of the overall reforms embarked upon by President El-Sisi and his current government, some steps have been undertaken, the most important of which are:

- The floatation of the Egyptian pound ("EGP") against foreign currencies, in November 2016, after being controlled by the Central Bank of Egypt ("CBE") for a long period of time. Although such floatation caused the EGP to be highly devalued, reaching almost half of its value, against foreign currencies, we estimate that such floatation would have both positive and negative impacts on businesses operating in Egypt. Whilst, making foreign currencies available by local banks to meet the business needs represents one of the most important positive impacts generally associated with floatation, the hefty increase in the outstanding foreign currency debts payable by some of the local businesses represents a major drawback and a negative impact of the floatation on the economy in general, and on those businesses in specific. Whether such negative impact is considered a necessity to reach a more stable economy or not, is yet to be discovered in the following months.

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Egypt 2017 Country Updates

Fiscal regime

In Egypt, there are no special laws / Acts governing petroleum activities. There are also no special articles for oil and gas in the Egyptian Income Tax Law. However, each single concession agreement is signed based on a special law that is issued for each agreement after obtaining parliamentary approval. This law overrides the domestic law when calculating taxable profits.

The petroleum operations in Egypt are classified as the upstream, midstream and the downstream operations.

Regulatory Framework

The Upstream industry:

Explores and produces crude oil and natural gas. The upstream is sometimes known as the exploration and production (E&P) sector.

The upstream industry pay bonuses called "Signature and production bonuses" that are payable to the government for each of the respective Petroleum Concession Agreements.

The Downstream Industry:

The downstream oil sector is a term commonly used to refer to refining of crude oil and selling and distribution of natural gas and products derived from crude oil.

The Midstream Industry:

The midstream industry processes, stores, markets and transports commodities such as crude oil and natural gas.

Regulators:

The key regulators in the oil and gas industry include:

- EGPC: The Egyptian General Petroleum Corporation
- Egyptian Tax Authority: for the taxation issues.

Forms of contracts

In Egypt, there is only one type of contract / concession agreement; that is the profit sharing agreement as described above. However, recently, the Egyptian government is trying to introduce a contract or agreement that lets the foreign investors get fees against services instead of sharing oil.

Local Content rules

Other than the concession agreement and the Egyptian tax law, there are no specific local regulations that apply to Oil and Gas Exploration and Production as well as Oilfield Service entities.

Taxation regime

Direct Taxation

As mentioned, the royalty and taxes in the upstream activities are borne by EGPC. The corporate income tax rate is 40.55% and the royalty rate is set in the concession agreement (generally 10%, but could vary).

The EGPC is the final bearer of the tax burden. Under the concession agreements, corporate tax due is paid by EGPC after grossing up the taxable base.

Exploration entities calculate the corporate income tax due from EGPC's assessable income, and they have the calculations reviewed and confirmed by the EGPC. The EGPC then pays the taxes directly to the tax authority. This is also the case for all active concession agreements.

Accordingly, the tax return prepared by the exploration entity should be reviewed, approved and signed by the EGPC.

For the midstream and the downstream activities, as per the new amendments made to the Egyptian income tax law and that came into force on 21 August 2015, the tax rate is 22.5%. The 5% surtax that was introduced in 2014 is now abolished as per the latest amendments.

Forex treatment (new accounting standard):

A new ministerial decree no. (418) for the year 2016 was issued on the 22nd of December 2016 and to be entered into force on the same date, approving a percentage of the foreign exchange currencies' differences upon the calculation of the company's net taxable income, and this is applicable for the years from 2013 till 2015, within the following percentages:

Year	2013	2014	2015
Percentage	4%	4%	3%

Moreover, the decree has mentioned that the following conditions must be fulfilled, for the purpose of application of these provisions:

The company's activity must require dealing with foreign currency, and especially the importation and exportation activities;

Such differences must be related to the company's activity and necessary for its practice; and

No final tax assessment has taken place for these years (i.e. must be open tax years).

Royalty

In the concession agreements, royalties for the upstream activities are borne by EGPC. Generally, the royalty is calculated at a flat rate of 10%. However, the rate may differ depending on each agreement.

Withholding tax

The upstream activities are exempt from applying withholding tax on offshore payments for what is related to the exploration and production.

For the midstream as well as the downstream activities, withholding tax on payments against services made from a local entity to other local entities is at the rate of 2% and 0.5%.

However, payments made from a resident company to a non-resident company for services will be subject to withholding tax at the rate of 20%. For royalty and interests paid from resident to non-resident, withholding tax of 20% should be deducted.

However, this rate may be reduced for royalties and interest, or eliminated in case of services, based on a relevant double tax treaty signed between Egypt and the payee's country of residence.

The ministerial decree no. 771 for the year 2009 should be taken into consideration when applying the double tax treaty reduced rate. There are some negotiations regarding that decree and whether it should still apply or the DTT treatment should apply automatically. Accordingly, this is a controversial issue at the moment in Egypt.

There are certain types of services that are exempt from the withholding tax according to the Egyptian Income tax Law as follows:

- Shipping;
- Transport and Freight;
- Direct advertising and merchandizing;
- Insurance;
- Training;
- Participation in the exhibitions and conferences;
- World stock exchange Introduction;
- Direct advertising and merchandising;
- Services related to religious rituals; and
- Residency in hotels or other places.

Dividends Tax

A 10% WHT will be imposed on dividends paid by Egyptian companies to resident corporate shareholders. The 10% WHT can be reduced to 5% if both of the following conditions are met:

- The shareholder holds more than 25% of the share capital or the voting rights of the subsidiary company.
- The shares are held for at least two years.

Profits of foreign companies operating in Egypt through a PE branch should be deemed to have been distributed as dividends if the profits were not repatriated within 60 days following the PE's fiscal year end. In this case, the dividends for the foreign company is subject to 5%.

Shareholders receiving dividends in the form of shares (stock dividends) should not be subject to dividend withholding tax.

Double Tax Treaties

The number of DTTs are 57. Recently, The Saudi Arabian Council of Ministers on May 1 approved the ratification of the pending income tax treaty with Egypt, according to a government news release. The treaty was signed in Cairo on 8 April 2016.

Participation exemption

90% of the dividend income received by an Egyptian resident corporate shareholder from a non-resident subsidiary should be exempt from income tax if the following conditions were met:

- The shareholder holds at least 25% of the share capital or the voting rights of the subsidiary company;
- The company holds or commits to hold the shares of the subsidiary for at least two years.

However, dividends received by an Egyptian resident corporate shareholder from another resident subsidiary is not added to the taxable income of the recipient entity and only the WHT tax applies upon the distribution (i.e. the WHT imposed upon the distribution of the dividends is a final tax based on the latest amendments of the law).

Capital gains tax

Sales of listed shares

According to the new Tax Law entered into force on 21 August 2015, capital gains realized from the sale of listed Egyptian shares by both resident and non-resident shareholders are subject to a 10% withholding tax. However, the application of this tax is suspended for two years, as of the 17th of May 2015 (i.e. the date of the official announcement made by the Cabinet of Ministers regarding this exemption). This is suspended for an additional 3 years.

Sales of unlisted shares

According to the new Tax Law entered into force on 21 August 2015, capital gains realized from the sale of unlisted Egyptian shares by both resident and non-resident shareholders are subject to the regular tax rate for corporate shareholders (22.5%) and individual shareholders (progressive rates of up to 22.5%). This is expected to apply to transactions from the effective date of the new Tax Law.

Capital gains realized from shares invested abroad will not be taxable in Egypt for non-resident companies. For resident companies however, capital gains realized from shares invested abroad will be subject to Corporate Income Tax, with a credit to be given for the foreign tax paid.

Concession Agreements

In Egypt, most of the concession agreements provide protection against the taxes applicable to capital gains, farm out and dividends. And so the above taxes applicable to capital gains and dividends should not apply. It's worth noting in order for the capital gains tax exemption to apply, the sold asset(s) must be relevant to the activities performed under the concession agreement (which will most likely be the case).

Transfer Pricing Regulations

On 29 November 2010, the Egyptian Tax Authority launched the Transfer Pricing Guidelines ('TP Guidelines'). The TP Guidelines are being issued as a series of parts; the first part, which was issued in the final version to the public provides guidance on the arm's-length principle, how to establish comparability, choosing the most appropriate transfer pricing method(s), and documentation requirements. The remaining parts should cover more complex transfer pricing topics, specifically transactions involving intellectual property, intra-group services, cost contribution arrangements, an advanced pricing agreements.

Transfer pricing regulation follow the arm's-length principle, specifying that any transactions between related parties should be at arm's length (i.e. the market value).

The rules do not specify penalties with regard to transfer pricing. However, the law states that the Egyptian tax authorities may adjust the pricing of transactions between related parties if the transaction involves elements that would not be included in transactions between non-related parties, and underlying purpose is to shift the tax burden to tax exempt or non-taxable entities. Where this is the case, the tax authorities may determine the taxable profit using the basis of the neutral price. The acceptable methods for determining such neutral price, according to the rule of the law, are as follows:

- Comparative free price same as Comparable Uncontrolled Price method (CUP);
- Total cost with an added margin of profit (same as Cost Plus method); and
- Resale price.

Taxpayers are required to prepare contemporaneous documentation studies to support the arm's-length nature of their controlled transactions. The Egyptian Tax Authority does not require the submission of transfer pricing documentation studies with the tax return; rather, they are required to be available upon request in a tax audit. English Studies are acceptable; however a translation may be requested from the taxpayer.

According to the Egyptian Tax Authority, the TP Guidelines will be used as a practical guide to assist taxpayers and tax inspectors in understanding how to implement and examine transfer pricing transactions. Egyptian TP Guidelines are in line with the OECD TP Guidelines.

Thin capitalization

Thin capitalization rules are applicable for the midstream as well as the downstream sectors, whereby, interest expense deductions are only allowed if the following conditions are met:

- Debt-to-equity ratio does not exceed 4:1 The Egyptian transfer pricing rules (i.e. arm's-length principle) must be followed (see Transfer pricing in the Group taxation section for more information). In case of a tax audit, if the interest rate cannot be supported by appropriate documentation (demonstrating arm's length), the Tax Authority has the right to adjust this price to arrive at a 'neutral price' and re-calculate the taxes due accordingly;

- The interest rate should not exceed twice the discount rate as determined by the Central Bank of Egypt at the beginning of the calendar year in which the tax year ends; and
- The loan should be business related.

Indirect Taxes

The introduction of Value Added Tax (VAT)

The Egyptian Parliament had discussed and approved the new Value Added Tax (VAT) law on 31 August 2016, and the law, taking effect on 8 September 2016, replaced the prior General Sales Tax (GST) law no. (11) 1991, as well as any legal provisions contradicting the new law.

Goods and services are subject to VAT except natural gas, butane gas, production, transfer or sale or distribution of electricity. In addition, Companies are is required to register for value added tax purposes if it generates revenues in excess of EGP 500k from non-exempted activities.

VAT rates, which are fixed at 13% for the FY16- FY17 and 14% starting from the FY17-FY18, are applied to all goods and services, except for machinery (excluding buses and passenger cars, which are taxed at the standard rate) and equipment that are subject to 5%. Some goods and services are also subject to the Excise Tax applied at different rates depending on the nature of the good or service.

Oil & Gas Companies are exempted as long as it is covered under the concessions agreement between the Egyptian government represented by EGPC and oil & gas companies.

The VAT and scheduled tax should be submitted on a monthly basis; the deadline for submitting the tax return is within two months from the end of each tax period (Except for April's return that should be submitted by 15th of June).

Custom Duties

The upstream activities

These activities are exempt from customs duties and import tariffs on assets and materials used for the production and exploration of oil as per the concession agreement and specifically for what is related to exploration and production activities.

The midstream and downstream activities

They are subject to customs duties and import tariffs on the imported materials and assets and the rate depends on what is imported.

Other Taxes

Social Security contributions

Egyptian resident employees are liable to Social Insurance from the age of 18 years.

Expatriate employees working in Egypt are not allowed to subscribe to the Social Insurance scheme, unless:

a. A treaty exists between Egypt and the employee's country, and it allows him/her to join the social insurance scheme; or

b. The employment contract exceeds one year.

In both cases, the employee will be expected to join the scheme.

The Social Insurance Law covers both Egyptian employees and foreign employees whose countries have treaties with Egypt for reciprocal Social Insurance treatments.

Managers of an LLC should contribute into the social insurance system regardless of their nationality.

Countries with reciprocal treaties are Greece, Cyprus, Morocco, Libya, Sudan, Jordan, Syria, Iraq, Lebanon, Somalia and Palestine.

Social Insurance Rates

- Employers and employees are both liable to pay towards social insurance, although it is the responsibility of the employer to remit the amount, and it is calculated by reference to the amounts paid by the employer to the employee.
- The thresholds for calculating social insurance per month are presently EGP 1,240 on basic salaries and EGP 2,430 on variable elements. Variable elements include the remainder of the basic salary, if it is in excess of EGP 1,012.5 per month, as well as overtime, bonuses, representation allowances and similar emoluments.

The rates of contributions under the Social Insurance Law are as follows:

Payment Type	Employer	Employee
Basic Salary	26%	14%
Variable Elements	24%	11%

Payroll contributions

Individuals are taxed on salaries earned from work performed in Egypt, regardless of where the payment is made. Where the salary is earned from an Egyptian entity, the individual recipient is liable to tax regardless of where the service is performed. In general, this tax is withheld at source from payments to Egyptians and foreign nationals working in Egypt. Payments include salaries, overtime, bonuses, fringe benefits, allowances and all other payments and benefits. Where, an annual tax is imposed on the total net income of the resident individuals for income earned in Egypt as well as the income earned outside Egypt for resident individuals whose centre of commercial, industrial or professional activities is in Egypt. Also tax is imposed on the income of non-resident individuals for their income earned in Egypt.

Employees are taxed according to the following brackets; and are entitled to annual salary tax exemptions (EGP 7,000):

- EGP 0 - 7,200 0%
- EGP 7,200 - 30,000 10% (80% deduction of the tax payable)
- EGP 30,000 - 45,000 15% (40% deduction of the tax payable)
- EGP 45,00 - 200,000 20% (5% deduction of the tax payable)
- More than EGP 200,000 22.5%
- Non-resident employees are subject to tax at the same tax brackets mentioned above with also the annual exemption of EGP 7,000.

Property taxes

The upstream activities are exempt from paying property taxes as per the concession agreement.

Real estate tax is applied to all real estates all over the country (including new urban communities and free zones). The implementation of the real estate Law has started to take place on the first of July 2013. However, the valuation of the constructed real estate units has not been tested yet.

- The tax rate is 10% of the annual rental value of the taxable real estates, after deducting the percentage of 32% of the rental value (for non-residential real estate units) to account for expenditures including maintenance.
- The annual rental valuation will be estimated by specialized committees. The following factors will be considered upon valuation:
- Geographic location considering the nature of the district.
- Standard of building and the quality of the building materials.
- Facilities available: electricity, water, sewage system, services (medical, social, educational), roads, transportation etc.

Committees, called "assessment committees", will be formed in every governorate, to be responsible for assessing the rental value of constructed real estate units. The assessment will be based on a qualitative classification of these real estate units according to the above mentioned factors (building standard, the geographical position and the annexed utilities, etc...)

The annual assessment will be applicable for a five year term. Reassessment procedures will be initiated from one year to three years before the end of each term.

Rental value assessments set by the committees will be communicated to each taxpayer via a written notification "assessment notification" and will be published in the Official Gazette. The taxpayer can appeal on the rental value assessment within sixty days following the date of the publication date.

Factors affecting the taxable amount:

- Market value of the real estate will be estimated as mentioned above by the assessment committees.
- Capital value will be 60% of the market value.
- Annual rental value will be 3% of the capital value.
- Expenditures 32% of the annual rental value estate used for purposes other than accommodation

Method of calculation for real estates used for other than accommodation:

- Rental value = (Market value X 60% X 3%).
- Taxable amount = (Rental Value X 68%).

Stamp taxes

The upstream activities are exempt from paying stamp taxes as per the concession agreement.

Stamp taxes apply as follows:

- Land registration/property transfers/transfer of deeds (including lease agreements);

- Banking Transactions;
- Insurance Premiums; and
- Payments by Governmental Bodies.

There are two distinct types of tax:

- Nominal Stamp Tax, which is imposed on certain documents, regardless of their value; and
- Proportional Stamp Tax, which is imposed at prescribed rates on the values of certain financial transactions.

Additionally, there are other types of Stamp Taxes, which are levied by the Laws of the Engineering Syndicate and the Technical Syndicate.

The rates of tax differ according to the nature of the document being exercised, and whether it is liable to Nominal or Proportional Stamp Tax.

- The stamp tax on Banks' loan is applicable on the Egyptian banks and the branches of foreign banks in Egypt with the exception to the non-resident Banks.
- The stamp tax is applied on the beginning balance of each quarter during the year, in addition to the amount of utilization (the amount of utilization from the credit facilities balance granted by banks during each quarter.
- It is due to within 7 days following the end of each quarter during the year.

In addition, specific rates apply for payments made by a Governmental body. These are subject to Stamp Tax at a maximum rate of 2.4% of the amount of the payment.

Recently, a stamp duty has been imposed on the proceeds from buying or selling any kind of stocks regardless they are Egyptian or foreign, listed or non-listed without deducting any costs, where buyer and seller should be apply the stamp duty on the total proceeds based on the following rates:

- 0.125% in thousands shall be paid by both seller and buyer till May 31, 2018.
- 0.150% in thousands shall be paid by both seller and buyer from June 1, 2018 till May 31, 2019.
- 0.175% in thousands shall be paid by both seller and buyer from June 1, 2019.
- A stamp duty of 0.3% is imposed on the buyer and seller with respect to the acquisition or exiting investment where either of the following conditions is met: If the sale and purchase transaction involves 33% or more of the value or the number of shares or voting rights in a resident company; or If the sale and purchase transaction involves 33% or more of the assets or the liabilities of a resident company by another resident company in return of shares in the acquiring company.
- In both cases above, the buyer and seller should each pay the 0.3% stamp duty on the gross transaction value without deducting any cost. If the sum of sale and purchase transactions performed by one person in one entity has reached the limit mentioned above (i.e., 33% or more) through 2 years from the first transaction by such a person and from the date of this law, the whole transaction should be considered as one transaction and consequently subject to the 0.3% stamp duty. The seller shall pay 0.3% if when he reaches the exit limit and the buyer shall also pay 0.3% when he reaches the acquisition limit and after deducting

any stamp duty paid before. The stamp duty mentioned above is not considered as deductible cost for corporate income tax purposes.

The MCDR or any other entity responsible for the settlement of the mentioned transactions will be responsible for withholding the tax due and remitting it to tax authority as per the procedures and timelines identified by the ministry of finance.

Deemed Profit Tax

As per the Egyptian tax law, there are no standard bases for a deemed profit tax audit that apply to both O&G E&P and OFS.

Incentives in the oil and gas industry

Upstream activities:

Capitalized Exploration expenditure is deductible for income tax purposes. Based on the provisions of the concession agreements and pending approval of the EGPC, capitalized exploration expenses are amortized over a period defined in the concession agreement.

Tax Losses (All Activities):

Income tax losses may be carried forward for 5 years.

Compliance Requirements

Tax returns and payments

For the upstream activities, the foreign investor provides EGPC with a draft tax return for review and approval within 30 days before the due date for submitting the return to the tax authority.

EGPC provide its approval / response within 15 days and after such approval is obtained, the investor is required to submit the return to the tax authority by the end of April of each year, or within four months from the end of the fiscal year.

For the midstream and downstream activities, the investor (service provider) is required to submit the return directly to the tax authority by the end of April of each year, or within 4 months from the end of the fiscal year.

Penalty

There is a penalty for failure to file the tax return to the tax authority by the due date. Dates of filing returns and related penalties are managed by the concession agreement.

Tax Audit

The tax authority carries out its tax audit by delegating its auditors to carry the work at the premises of the company to be audited. Tax audits are carried out annually however the tax authority audits companies on random basis, the statute of limitation is 5 years (whereas the tax evasion department has a statute of limitation of 6 years). In practice, companies are being audited every 2-3 years.

Equatorial Guinea

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Country profile

Brief history on oil and gas development

License blocks in Equatorial Guinea (EG) were first designated by the Spanish administration and offered for international tender in 1965 with awards going to groups operated by Mobil and Spanish Gulf Oil (Spangoc) but the exploration effort led to no commercial success. After independence in 1968, petroleum activity was much reduced and further significant exploration did not occur until after the 1979 change of Government. Hispanoil and the new Government formed a joint venture company, GEPSA, which discovered the Alba gas condensate accumulation in 1983. GEPSA deemed Alba to be non-commercial and their licenses lapsed. During the 1980's, Total and Elf operated groups that explored onshore and offshore Rio Muni where extensive seismic surveys were undertaken and four wells drilled without success.

The Alba acreage was relicensed in 1990 to US independent Walter International who commenced production in 1991 from two new wells. In 1995 Nomeco (subsequently CMS Oil and Gas) acquired Walter and progressively expanded onshore processing capacity to cope with increased production from additional Alba wells. The success of the Estrella-1 well (CMS, 2001), a gas condensate discovery 6 km north of the Alba Field, emphasised the large potential of the Alba Block. All CMS assets were acquired by Marathon Oil in January 2002 and Marathon has continued with investment and expansion of the Alba Field.

In 1992, United Meridian Corporation (UMC, subsequently Ocean Energy / Devon Energy) licensed Blocks A and B and in 1995 licensed Blocks C and D. UMC drilled the unsuccessful Dorado-1 well in Block A and the Delta-1 well in Block B in 1994. In 1995, Mobil farmed-in to Block B and drilled the Zafiro-1 discovery well of the 1.1 billion barrel Zafiro Field. Mobil drilled nine exploration wells in Block B outside of the Zafiro area, with discoveries at Azurita-1 (1997), Berilo-1 (1998), Turmelina-1 (1998) and Esmerelda (2005). Mobil also farmed-in to Block C in 1999 and drilled the Ostra-1 exploration well, followed by the Oreja Marina-1 exploration well in 2001 and Estrella del Mar-1 in 2002.

During 2000, Ocean Energy relinquished Block A and operatorship of Block D was taken over by CMS (now Marathon). In 2004, Marathon drilled the Corona-1 discovery well in Block D which extended the Alba Field into Block D. Triton Energy was awarded Rio Muni Blocks F & G in 1997, covering areas previously licensed to Elf and acquired seismic through 1997 and 1998. In late 1999, Triton made a significant discovery with the first well on its licenses, Ceiba-1, which tested oil at 12,400 bopd and led to the first production in the Rio Muni basin in November 2000. As a result of the Ceiba discovery, an aggressive exploration program was undertaken by

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Triton during 2000 - 2001 that continued after the acquisition of Triton by Amerada Hess in 2001. This exploration campaign resulted in 18 successful wells which proved up several hundred million barrels of oil in northern Block G which were developed as the "Okume Complex". The Okume Plan of Development was approved by the MMIE in 2003 and the field came on-stream in 2006. Additionally, the G-13 discovery was made in southern Block G in late 2002 which was appraised in 2003 but remains undeveloped.

Following a Deep Water Licensing Round in 1998-99, five exploration licenses were signed during 2000 with Atlas Petroleum (Blocks H, I and J), Vanco (Block K) and Chevron (Block L) as operators. Extensive 3D surveys were acquired in these licenses in 2001 and exploratory drilling commenced in early 2003 with the drilling of the unsuccessful L-1 well by Chevron. In 2000, RocOil farmed-in to the Atlas Block H and became Technical Operator. This was followed in 2004 by the farm-in of Pioneer and the drilling of the unsuccessful H-1 well. In 2011, White Rose farmed-in to Block H and took over as Technical operator from Roc Oil. The H-2 exploration well is planned for Q4 2012.

In 2004, Nexen farmed-in to Block K, assumed operatorship and drilled the K-1 well in late 2004 followed by the K-2 well in 2005. In 2005, Petrobras farmed in to Block L and drilled the unsuccessful L-2 exploration well and in 2006 both Chevron and Petrobras withdrew from Equatorial Guinea and Block L was relinquished.

During 2002, new exploration licenses were awarded to the Fruitex Group covering Block M in the western offshore Rio Muni and to a Petronas operated group for Block N covering Corisco Bay. Fruitex acquired 2D and 3D in Block M and in late 2003 Petronas drilled the N-1 well (with non-commercial oil) and the N-2 well in 2005.

In 2003, Devon Energy were awarded Block P in the Rio Muni Basin and in 2004, Noble Energy were awarded Block O and PetroSA Block Q, both in the Douala Basin, offshore Bioko Island. In 2004, Devon Energy drilled the unsuccessful P-1 well, but in October 2005, the P-2 well was announced as an oil discovery and was subsequently successfully appraised. In 2008, GEPetrol became operator of Block P when they purchased the Devon Equatorial Guinea assets.

In October 2005, Noble Energy announced that the O-1 well in Block O was a gas condensate discovery, the first discovery in the Equatorial Guinea part of the Douala Basin. The O-1 discovery was appraised by the O-3 and I-4 wells in 2007 and declared a commercial discovery, the Alen Field. The Alen Field Plan of Development was approved in January 2011 and production is anticipated to commence in 2013. In February 2009, Noble Energy announced that the O-5 (Carmen) exploration well was an oil discovery, the first oil discovery in Block O. It is anticipated that this will be developed as a tie-in to the Alen facilities.

In 2004, Noble Energy farmed-in to Block I and took over as Technical Operator and in June 2007, announced that the I-1 exploration well was a gas condensate discovery. In October 2007, Noble announced that the I-2 appraisal well to the I-1 discovery, had encountered oil below the gas condensate found in the I-1 well and in June 2008, announced that the I-5 well had confirmed the downdip extent of the oil leg. In July 2009, the Ministry approved the Aseng Plan of Development and first oil from the Aseng Field was produced in November 2011. In November 2007, Noble announced that the I-3 (Yolanda) exploration well was a dry gas discovery and in July 2008, announced that the I-6 (Diega) exploration well was another oil discovery in Block I. In December 2006, Santa Isabel Petroleum Company Ltd, a subsidiary of the China National Petroleum Corporation (CNPC) farmed-in and took over operatorship of Block M. In 2011, Santa Isabel withdrew from Block M and Fruitex resumed as operator.

In May 2006, the Ministry announced that two new PSCs had been signed. Block R, offshore Bioko Island was awarded to Ophir Energy and Block S, offshore Rio Muni was awarded to the China National Offshore Oil Corporation (CNOOC). In December 2006, Santa Isabel Petroleum Company Ltd, a subsidiary of the China National Petroleum Corporation (CNPC) farmed-in and took over operatorship of Block M. In 2011, Santa Isabel withdrew from Block M and Fruitex resumed as operator.

In 2007, ExxonMobil drilled the Langosta-1 gas condensate discovery in Block C and in May 2009, Repsol Exploration Guinea SA became the operator of Block C, following the withdrawal of ExxonMobil and SK Corporation from the licence. Block C was subsequently relinquished in 2012. In January 2009, Ophir Energy announced that the R-2 and R-3 exploration wells in Block R were gas discoveries and in October 2011, the Block R PSC was amended to include unlicensed acreage north-west of the original contract area. In return for the expansion of the acreage, Ophir has committed to accelerate exploration activity in the enlarged area through the drilling of 2 further commitment wells. These wells will form part of a proposed 3-4 well drilling programme which is planned to commence in 1H 2012.

In July 2009, a new PSC for Block X, in the Douala Basin, offshore Bioko Island was awarded to Starc Limited (operator) and Glencore Exploration (GE) Limited.

In early 2010, PetroSA drilled the Q-1 exploration well and in late 2010, acquired additional 3D seismic in Block Q. Also in January - April 2010, CNOOC drilled the unsuccessful S-1 and S-2 exploration wells in Block S.

In July 2010, two new PSCs were awarded to Gazprom Neft, Block T, offshore Bioko Island and Block U, offshore Rio Muni. Gazprom Neft will carry out geophysical and geological evaluation of the existing data and will drill at least one well in each block. Also in July 2010, new PSCs were awarded to Vanco Corisco Deep Ltd over Block K, offshore Rio Muni and Afex Global were awarded Block V, offshore Bioko Island. In September 2011, Glencore farmed-in to Block V and took over as operator.

In March 2011, a new PSC was awarded to Marathon Oil and SK Innovation Co., Ltd over Block D, offshore Bioko Island. In November 2011, Noble Energy announced that the Alen 1-G1 Pilot Well had encountered hydrocarbons in the Carla Prospect, Block O, Offshore Bioko Island, Equatorial Guinea. The Alen 1-G1 Pilot, designed as a gas injector well in the Alen Field Development, was deepened as a pilot hole to target the Carla Prospect which underlies the Alen Field, and encountered approximately 9.9 meters of net oil pay in the objective interval. The operator of Block O, Noble Energy, estimates that the discovered gross resources range between 35 and 100 million barrel oil equivalent of which 80 percent is liquids. Recent appraisal work at Diega, a 2008 discovery in Block I, has confirmed a gross resource range of 45 - 110 MMBoe with 60 percent liquids. Noble Energy anticipates developing both Carla and Diega through the infrastructure at Aseng. Both discoveries are expected to contribute production in 2015.

In July – September 2012, Ophir Energy announced that the R-4 (Tonel-1), the R-5 (Fortuna East-1) and R-6 (Fortuna West-1) wells were all gas discoveries, bringing the estimated proved and probable reserves for Block R to 2.9 TCF.

In June 2012, a new PSC was awarded to Marathon Oil and GEPetrol over Block A-12, offshore Bioko Island.

In December 2012, the Ministry announced the signature of 8 new PSC's offshore Bioko Island and offshore Rio Muni. The 8 PSC's were Block W (Offshore Rio Muni) awarded to Murphy Equatorial Guinea Oil Co. Ltd (operator)and Pan Atlantic Oil and Gas Ltd; Block Y (Offshore Rio Muni) awarded to Xuan Energy Limited (operator), Brenham Equatorial Guinea LLC, Strategic Oil & Gas Resources Ltd., and Royal Gate Energy Ltd; Block Z (Offshore Bioko Island) awarded to Royal Gate Energy Ltd (operator); Block EG-01 (Offshore Rio Muni) awarded to G3 Oleo e Gas (operator); Block EG-02 (Offshore Bioko Island) awarded to Pan Atlantic Oil and Gas Ltd. (operator, Novamark International and Atlas Petroleum; Blocks EG-03 & EG-04 (Onshore Rio Muni) awarded to Elegance Power (operator; and Block EG-05 (Offshore Bioko Island) awarded to Glencore Exploration and Production (EG) Limited (operator) and Pioneer Brass Ltd.

Significant new developments

The Ministry of Mines, Industry & Energy has been divided in two Ministries: the Ministry of Mines & Hydrocarbons, and the Ministry of Industry and Energy.

The low oil prices have affected the local industry, slowing or halting several operations. Still Equatorial Guinea is moving forward. Several discoveries have bolstered the Government's bid to reverse seven year of declining production. Ophir Energy and its partners are expected to announce the final investment decision for the Fortuna FLNG development.

In June 2016, Equatorial Guinea's Government launched a licensing round. The seven winners of the EG Ronda 2016 Licensing Round are:

- Ophir Energy for Block EG-24;
- Offshore Equator PLC for Block EG-23;
- Clontarf Energy for Block EG-18;
- Elenilto for Block EG-09;
- Talaveras for Block EG-07;
- Atlas Petroleum and Strategic Fuel fund for Block EG-10;
- ExxonMobil for Block EG-11.

Kosmos Energy has just acquired assets from Hess. Additionally, existing investors Tullow Oil and GEPetrol will enter partnership with the new operator. The landmark sale transfers majority ownership and operatorship of two legacy oil producing areas in the Rio Muni basin, Ceiba and Okume, to Kosmos.

Economic Updates

In 2016, the economy of Equatorial Guinea was still dominated by the petroleum sector, which accounted for 85% of gross domestic product (GDP) and more than 94% of exports in 2015, according to the International Monetary Fund (IMF). Other relatively important sectors are construction (7% of GDP in 2015), agriculture, forestry and fisheries (2% of GDP), and trade (1.6%). Although these sectors are improving, relative to the petroleum sector, change has been very marginal since 2013. Economic diversification is slow to materialize but remains an important objective for economic growth and stability in the medium and long term. Over the past three years, the fall in oil prices has severely affected the development effort.

This fall in oil prices has immediate and lasting consequences for Equatorial Guinea's budget, especially as it is accompanied by a decline in production, which only reached an estimated 155 000 barrels of oil equivalent per day in

2015, and amounted to a fall of 5% in volume per year over the last 10 years. This also affects the structure of the balance of payments, due to lower export earnings. The fall in government revenues has a direct impact on the rest of the economy, given the importance of public procurement in stimulating non-petroleum sectors. It should be noted that the capital expenditure reflected in the Finance Act 2015 (XAF 1 951 billion) corresponds to 85% of the forecast revenue. The 2016 Finance Act, against a background of recession, indicates that the authorities have chosen to maintain a high level of investment while maintaining a strategic balance.

Fiscal regime

The taxation of petroleum exploration and production is covered by the general tax provisions I Decree Law nº. 4/2004. Additionally, Equatorial Guinea is a member of the CEMAC (formerly UDEAC) and signatory to certain regional agreements concerning tax and trade.

No major new laws or regulations (since the tax law of 2004) , but a strong enforcement of the regulations related to National Content and stronger positions adopted in the frame of Tax Audits regarding the scope of application of the WHT.

Regulatory Framework

The key regulators in the oil and gas industry include:

All aspects of oil and gas exploration in Equatorial Guinea are regulated by the: Decree Law No. 8/2006 of November 2006 (Hydrocarbons Law) and the Petroleum Regulation of the Republic of Equatorial Guinea Num. 4/2013 (Petroleum Regulation).

The Hydrocarbons Law provides the framework for the licensing and award of exploration and production rights and authorises the Minister of Mines and Hydrocarbons to enter into contracts with oil companies.

The regulation of petroleum related exploration and production activities is governed by the Petroleum Regulations, issued by Ministerial Order and referenced by the Hydrocarbons Law.

Forms of Contracts

Official template as provided on the official website of the former Ministry of Mines Industry and Hydrocarbons (now MMH").

The Model Petroleum Sharing Contract included the following provisions:

- INITIAL EXPLORATION PERIOD: normally of four to five years divided into two sub periods, extendible twice on a yearly basis.
- RELINQUISHMENT: of 40% after the initial exploration period, with a further 25% of the remaining area at the end of each renewal period. Voluntary relinquishment at the end of each contract year is permitted.
- EXPLORATION COMMITMENT: is negotiable, but usually involves purchase and interpretation of all existing data relating to the contract area and seismic acquisition and/or exploration drilling in the initial exploration period and a well in each of the annual extensions.

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- ROYALTY: Minimum rate of 13%, escalating in steps according to average daily production.
- COST RECOVERY: from a negotiated share of production net of royalty with unrecovered costs carried forward.
- PRODUCTION SHARING: from profit oil according to a stepped scale related to cumulative production.
- BONUS PAYMENTS: on contract signature, on notification of a commercial discovery and on production targets.
- STATE PARTICIPATION: a minimum of 20% carried working interest during exploration phase.
- INCOME TAX: According to the Tax Law, currently at the rate of 35%.

Local Content Regulation

There are specific local content regulations in EG and it's applied to O&G, E&P and OFS. These rules concern the training of personnel and promotion of the local workforce.

Expatriate quota is 10% up to 30% for the oil and gas industry (subject to Government approval).

Taxation regime

Direct Tax

The Tax Code provides a list of taxes to which companies from the O&G sector are subject:

- Income Taxes
  - Corporate Income Tax,
  - Personal Income Tax,
  - Tax on Incomes from resident or non-resident individuals or entities,
  - Tax on individuals;
- Taxes on Transfer and Assignment generating Capital Gains not invested in Equatorial Guinea;
- Export duties;
- Gross Output Royalties;
- Surface premiums or rental rates;
- Discovery, production and marketing bonds;
- This list seems to be exhaustive.

Corporate Income Tax ("CIT")

CIT must be paid by any residing entity according to the following conditions:

Payment of the Minimum Income Tax ("MIT") corresponding to the 3% of the previous year turnover.

Payment of the remaining quota of CIT at a 35% rate in case of profits when filing the CIT return.

Penalty for late filing is XAF 200,000 per month.

The following will be treated as deductible expenses:

- Overhead of any type;
- Staff expenses and labor;
- Expenses related to the premises, material and furniture;
- Miscellaneous and especial expenses;
- Insurance premiums,
- Gifts, donations and subsidies.
- As a general rule, the following conditions must be met:
- The expense must be done in the company's interest;
- The expense must represent a diminution of the net assets;
- The expense must be related to the fiscal year during which it was done;
- The expense must be justified.

The Tax Code provides special deductibility conditions for some expenses.

Minimum Income Tax (MIT)

The amount cannot be lower than XAF 800,000 (even if company does not have revenues).

MIT is to be deducted from the CIT to be paid.

Penalty for lack of payment is equal to 50% of the amount that should have been paid.

Capital Gains Tax

Capital gains realised by resident companies:

To be determined on a case by case basis, but as a principle, subject to standard regime (i.e. 35% CIT rate).

Capital gains realised by non-resident companies:

To be determined on a case by case basis, but as a principle, subject to standard regime (i.e. 25% WHT rate).

Withholding tax

This withholding tax is applicable to:

Gross incomes related to the sale of goods and services;

- Performed by a resident or non-resident legal entity or individual;
- Within the Hydrocarbon sector of Equatorial Guinea.

This withholding tax equals to:

- 6.25% on the payments done to a resident entity ;
- 10% on the payments done to a non-resident entity.

The taxable base amounts to the gross amount paid to the provider.

The amount withheld by the withholding agent during a fiscal year is deductible from the Corporate Income Tax to be paid for the following fiscal year.

Thin capitalisation and Transfer Pricing

TP rules are not developed in EG. The law only provides general guidelines under which incomes and profits transferred directly or indirectly by the company that is under the dependence and control of companies located outside of Equatorial Guinea, whether through surcharge or a decrease in the purchase or sale prices, or through other means, will be reincorporated into the P&L of the EG company. Reintegration is to be performed by comparison with similar companies and their normal operation in Equatorial Guinea.

There are no additional details, but we understand that this would be subject to discussion during tax audits. However, up to date, we are not aware of any audits reassessing transfer pricing aspects.

No thin cap rules applicable in EG.

Double Tax Treaties (DTT)

None.

Indirect Tax

VAT

Not applicable in the oil and gas sector in EG.

No sales tax applicable in EG.

Customs and Excise Duties

Oil & gas companies often benefit from exemptions of customs & excise duties as per the PSA. Otherwise, they benefit from preferential regimes as per customs regulations (franchise or temporary admission).

Other Taxes

Personal Income Tax (PIT)

The incomes concerned are:

- Those received and related to a work contract;
- Those received for an activity performed in Equatorial Guinea.

The salaries of all employees working in Equatorial Guinea are subject to the Personal Income Tax (PIT).

Taxable base of the PIT on Salaries and Wages

According to the Tax Code, the taxable income is composed of:

- Basic salary;
- Bonuses indemnities and allowances;

- Expenses refunding;
- Benefits in kind.

Calculation, declaration and payment of the PIT on Salaries and Wages

The calculation is done in various stages.

The following amounts must be deducted from the taxable salary:

- Professional expenses: based on effective amounts, or according to the legal limit of 20% of the taxable salary (up to XAF 1,000,000 /year);
- The employee's part for the social contributions to the National Institute of Social Security (INSESO) and to the Work Protection Fund;
- Work Protection Fund and Training Tax (WPF);

After this, the PIT rate is applied to the taxable salary according to an annual progressive tax scale that ranges from 0 - 35%.

PIT is monthly withheld by the employer and then paid to the Public Treasury within the first fifteen days of the month following the payment of the salaries.

In practice, the employer must declare the PIT on Salaries and Wages within the first fifteen days of the month following the month of payment of the salaries and then must pay said tax within the fifteen days following the date when the tax liquidation is remitted to the taxpayer.

Penalties for the lack of payment or late payment of the PIT are equal to 25% of the amount due plus 10% per month late.

Social contributions

Social security contributions (INSESO[1])

In practice, the contributions to INSESO include:

- An employer's part, equals to 21.5% of the gross salary;
- An employee's part, equals to 4.5% of the gross salary.

The employer withholds the employee's part and declares it with his own INSESO part within the first fifteen days of the month following the month of payment of the salary.

The penalties for the lack of payment or late payment to INSESO are equal to 20% of the amount due.

Work Protection Fund ("WPF")

Both employers and employees must pay their contributions to the WPF.

This contribution includes:

- An employer part, equal to 1% of the gross salary;
- An employee part, equal to 0.5% of the net salary.

[1] *By its Spanish acronym – Instituto de Seguridad Social*

This contribution is monthly withheld by the employer who declares it to the Ministry of Labor and Social Security within the first fifteen days of the month following the month of payment of the salary.

The penalties for the lack of payment or late payment of the WPF are equal to 20% of the amount due.

Taxation of Oil Field Services (OFS) companies

OFS are subject to the same taxation regime as the conventional oil and gas companies. Also, the incentives available to conventional oil and gas companies are available to the unconventional oil and gas companies.

Property Tax

"Urban Property Tax" applicable to "Ownership, possession, equitable ownership and real or potential income from urban properties (Urban property means any land with or without buildings and the buildings built thereon, whenever located in urban areas). No different regimes apply to property rich companies.

A fixed contribution of 100 francs CFA for each hectare or fraction thereof of the surface area on the property. It will be due per completed six months and paid in the second and fourth quarter of the respective year.

Deemed Profit Taxation

The rate of the Company Income Tax is 35% (Unless stipulated otherwise by a PSC).

Compliance

CIT returns should be submitted by April 30th. No deadline for payments are provided by the Tax Code but in practice it should be paid 15 days following the issuance of a liquidation statement by the Ministry of Finance & Budget.

Tax audits

A specific administrative organ, the Secretary of State for the Republic in Charge of Audits, is assisted by various foreign audit firms and frequently audit companies. In practice, audit fieldworks last a week per fiscal year before a Preliminary Audit Report (to be responded to), a Final Audit Report (idem) are issued and negotiation meetings are organized to sign a Final Agreement, as the case may be.

Tax inspections are made by public servants from the Ministry of Finance and Budgets.

Ghana

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Country profile

Brief history on oil and gas development

Oil and gas exploration in Ghana is reported to have started in 1886 in the Onshore Tano Basin in the Western Region. The first Offshore well was drilled in the Saltpond basin between 1966 and 1972.

Following the successes in these areas, the Government of Ghana established the Ghana National Petroleum Corporation (GNPC) in 1983 to intensify exploratory and production activities in the country. The activities attracted oil and gas companies such as Tullow Oil, Kosmos Energy and EO Group.

Commercial production started in the Jubilee Field in the last quarter of 2010. The daily production from the Jubilee Oil Field has increased steadily – by December 2012, production was at about 90,000 barrels per day; and by mid-January 2013 production was reported to have increased to 110,000 barrels per day. It is expected that production will reach (the expected) peak of 120,000 barrels per day.

The Floating Production Storage Offloading (FPSO) vessel, called FPSO Kwame Nkrumah, arrived in Ghana on 21 June 2010 and was commissioned in the last quarter of 2010.

The FPSO Kwame Nkrumah has a storage capacity of 1.6 million barrels. It is expected that the FPSO will be able to process up to 120,000 barrels of oil a day.

Commercial production also started in the TEN field in August 2016, marking the second field to produce oil in Ghana. Another FPSO John Evans Atta Mills with a facility production capacity of 80,000 (barrels of oil per day) bopd arrived in Ghana in March 2016 to be used on the TEN field. Drilling is currently being done in 11 of the 24 wells and gross production by the end of 2017 was expected to exceed 50,000 bopd.

Eni Ghana Exploration & Production Limited for its Offshore Cape Three Points (OCTP) block located in the Tano basin, 60 km offshore Ghana also currently operates an FPSO (John Agyekum Kufuor) acquired from Malaysia's Yinson Holdings Bhd.

The FPSO will have an available storage capacity of 1.7 million barrels, an oil processing capacity of 58,000 barrel per day, a gas injection capacity of 150 million standard cubic feet per day, and a maximum future gas-export capacity of 210 million standard cubic feet per day.

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Ghana 2017 Country Updates

In the last few years, the upstream petroleum industry has experienced a number of reforms aimed at the regulation and improvement of activities within the industry.

Some significant developments in the industry over the years are:

- In September 2017, ITLOS made their judgement regarding the maritime dispute between Ghana and Ivory Coast which affected TEN fields. The judgement declared that the new maritime boundary does not affect the TEN fields in Ghana;
- First oil flowed from the Sankofa field which forms the first phase of the OCTP project in July 2017 with gas expected to flow in second quarter 2018;
- The establishment of the Petroleum Commission in July 2011 as a regulator of the upstream oil and gas industry taking over from GNPC – which hitherto played a dual role as a regulator and industry player; and
- The introduction of local content regulations to ensure the use of Ghanaian goods and services as a means of increasing the level of Ghanaian participation in the petroleum industry.

Reservoir estimates

Total proven reserves in the Jubilee Field is about 3 billion barrels. Ghana is reported to have between 5 and 7 billion barrels of oil reserves. The OCTP field is estimated to hold 1.5 trillion cubic feet (tcf) of gas and 500 million barrels of oil.

Significant new developments

There was also the introduction of the Income Tax Act, 2015 (Act 896) and the Revenue Administration Act, 2016 (Act 915). Act 896 has specific tax provisions for the sector, including rules on disposal of petroleum rights and withholding taxes on petroleum operations.

In its 2018 budget, the government's key policy objectives included the introduction of tax amnesty where taxpayers who self-declare non-compliance would have the associated penalties and interests waived. The tax amnesty is for a period of nine months (January to September 2018) and covers up to the 2017 years of assessment.

Fiscal regime

Institutional oversight and regulatory framework

The Income Tax Act, 2015 (Act 896) ("ITA") was introduced and came into force on 1 January 2016. The ITA replaces the Internal Revenue Act, 2000 (Act 592) as amended. The 2016 budget proposed the abolition of the VAT relief purchase order ("VRPO") which is currently used by Contractors to relieve VAT payable. This is however yet to be implemented.

In addition, the Petroleum (Exploration and Production) Act, 1984 (PNDCL 84) was repealed 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.

In July 2011, the Petroleum Commission (PC) was established as a body corporate by an Act of Parliament and given institutional oversight over the upstream petroleum industry. Prior to the establishment of the PC, the GNPC played that role (as well as the role as the National Oil Company).

The upstream oil and gas industry is currently regulated by the following laws:

- Ghana National Petroleum Corporation Law, 1983 (P.N.D.C.L 64) (GNPCL) – which established the GNPC as the National Oil Company of the upstream oil and gas industry in Ghana. The law also sets out the functions, administration and corporate governance aspects of the GNPC;
- Petroleum (Exploration and Production) Act, 2016 (Act 919) – to provide the framework for the management of oil and gas exploration, development and production in Ghana;
- Petroleum Commission Act, 2011 (Act 821) – which established the Petroleum
- Commission with the object to regulate and manage the utilisation of petroleum resources and to coordinate the policies in relation to them.

With regard to taxation, the industry is governed by the following tax laws:

- Petroleum Income Tax Law 1987 (P.N.D.C.L. 188) (PITL) – which provides for the taxation of income of Contractors (with Petroleum Agreements signed before 2015) carrying out upstream petroleum operations;
- Income Tax Act 2015 (Act 896) (ITA) - The ITA provides for the taxation of income of Contractors and Subcontractors (with Petroleum Agreements signed in 2015 and thereafter). It also provides for transactions outside the scope of the Petroleum Agreements in instances where there is a fiscal stability clause in their PAs;
- The Petroleum Revenue Management Act, 2011 (Act 815) as amended – which was amended in 2015 is expected to help Ghana to efficiently manage revenue from crude oil and also empower government to set aside proceeds from crude oil to fix lapses in the management of oil revenue under the previous legislation.
- Petroleum Agreements – these are agreements entered into under the PEPL between the Republic of Ghana, GNPC and Contractors in the upstream operations. PAs have provisions which govern some aspects of the taxation of Contractors as well as the Subcontractors;
- Any Double Taxation Agreements (DTA) in Force with the Republic of Ghana.

Other Regulatory Institutions

Energy Commission – the Energy Commission Act, 1997 (Act 541) established the Energy Commission (EC) with functions relating to the regulation, management, development and utilisation of energy resources in Ghana. The EC regulates Ghana's electricity, natural gas and renewable energy industries, and advices the Government of Ghana on energy matters. It grant licenses to companies that trade in LNG.

Ministry of Energy – the ministry is responsible for the formulation, implementation, monitoring and evaluation of energy sector policies.

National Petroleum Authority – the National Petroleum Authority (NPA) regulates, oversees and monitors the petroleum downstream industry including Oil Marketing Companies (OMCs) to ensure efficiency, growth and stakeholder satisfaction. The NPA also monitors and regulates petroleum prices by ensuring that prices are determined in accordance with the prescribed pricing formula. It grants licenses to service providers and oil marketing companies as well as protecting consumer interests and maintaining the highest standards of petroleum products offered to them.

Petroleum Commission (PC) – the PC is mandated to promote, regulate and manage the efficient conduct of upstream oil and gas operations and all the allied activities and also ensure the efficient utilisation of petroleum resources on a sustainable basis. All upstream petroleum companies who intend to operate in Ghana are required to register with the PC and be issued with a permit before commencement of operations.

Industry sectors – upstream and downstream

In broad terms, the entire petroleum industry can be divided into upstream and downstream sectors.

The upstream industry covers the exploration for, development, production and transport of petroleum resources. In Ghana, the upstream industry is regulated by the PC and taxed mainly in accordance with the PITL and respective PAs.

The downstream sector covers the refinery, selling and distribution of natural gas and petroleum products. The sector includes oil refinery and oil marketing companies that are responsible for the distribution of finished products to end users. Entities operating in the downstream sector are regulated by the National Petroleum Authority and mainly taxed according to the ITA. Further, enterprises in this sector are not subject to the named petroleum laws applicable in this summary report.

Capital investment regulations

There are currently no specific capital investment regulations in the oil and gas industry. The general capital investment regulations imposed by the Ghana Investment Promotion Center for foreign investors are:

- US$200,000 for joint-ventures; and
- US$500,000 for wholly owned subsidiaries

Forms of contracts

The principal form of contract is through the Petroleum Agreement (PA) (similar to Production Sharing Agreements or Contracts in other territories). Under terms of a PA, the Government of Ghana grants right to Contractors to explore and produce petroleum in a designated contract area.

As a guide, Ghana has in place a model PA which is often appropriately modified to reflect the terms agreed between the Government of Ghana (the State), the GNPC and the Contractor. The PA requires ratification by the

Parliament of Ghana and will usually specify the area that has been applied for and awarded, the exploration period and the related work program and cost, and sanctions in case of default. It also states the benefits to be derived by the State in the form of royalties and income tax and the Contractor's portion of benefits and responsibilities.

Government participation

The State through the GNPC usually holds at least 15% carried interest at the exploration and development stage of any petroleum operations. The GNPC also has the option to acquire additional participating interest as determined in the PA.

Local content regulations

New local content regulations, known as the Petroleum (Local content and Local Participation in Petroleum Activities) Regulations, 2012 was introduced to:

- provide for the development of Ghana content in the Ghanaian petroleum industry; and
- provide for the Ghana Content Plans and a mechanism for the coordination and monitoring of Ghanaian content.

In essence, the regulations were designed to ensure the coordinated and extensive use of Ghanaian goods and services in the industry as a means of increasing the rate of Ghanaian participation in the petroleum industry in order to maximise its full benefits to Ghana.

Some of the key provisions of the regulations seek to encourage the participation of Ghanaian citizens and indigenous companies in petroleum activities. The provisions prescribe that a petroleum agreement or license holder should have at least 5% equity participation of an indigenous Ghanaian company in its ownership.

Further, non-indigenous service companies providing services to GNPC and Contractors are required to have joint venture arrangements with indigenous Ghanaian companies that provide them with an equity participation of at least 10%.

Taxation regime

Direct taxes

Petroleum/oil taxation

The ITA provides for petroleum income tax rate at 35% for Contractors effective 1 January 2016. Most PAs in Ghana apply a corporate tax rate of 35%.

The withholding tax rate for payments from Contractors to Subcontractors was increased from 5% to 7.5% for resident entities and 15% for non-resident entities. This change is however not expected to impact some existing PAs due to stability clauses.

The corporate tax rate is applied on taxable profit (termed "chargeable income") calculated according to the tax laws with modifications as agreed under the PA. The assessable income of the Contractor is determined by deducting from gross revenue expenses incurred in carrying on petroleum operations. Gross revenue represents the income from the sale of the petroleum at the selling price actually realised. For sale to affiliates or in instances where export is made at rate other than at world market prices established, gross revenue will be determined in the manner provided for in the PA to which such Contractor is party.

Allowable expenses are those incurred wholly, exclusively and necessarily in petroleum operations and generally include:

- Bad debt;
- Tax losses brought forward from previous years;
- Rental and royalties; and
- Training and education of Ghanaian citizens and nationals in approved institutions.

Expenses not allowed include:

- Personal or domestic expenditure;
- Interest, charges, fees or borrowed amount in excess of commercial rate;
- Capital expenditure;
- Expenditure recoverable under an insurance contract;
- Any income tax or profit tax or similar tax; and
- Depreciation (Capital allowance is granted in place of the depreciation).

Contractors can carry forward tax losses indefinitely.

Royalties

A Contractor is subject to royalty at rates ranging from 4% to 12% of the gross production of crude oil. (The applicable rate for a contractor is based on the provisions of the PA of the Contractor.) Royalty is payable to the Government of Ghana. Royalties paid are tax deductible in determining the taxable profit of the Contractors.

Sub-contractors are not liable to royalties.

Gas taxation

There is no specified separate regime for gas taxation in Ghana.

Liquefied natural gas (LNG) regime

There is no specified separate regime for liquefied natural gas taxation in Ghana.

Withholding taxes

In Ghana and under generally applicable tax rules, a resident entity or PE is required to withhold tax on payments to resident and non-resident suppliers. The applicable withholding tax rate depends on the type of transactions.

Under some PAs, there are specific exemptions from the deduction of withholding taxes on cost reimbursements between a Contractor and its affiliates.

Under the ITA, the withholding tax rate for payments from Contractors to Subcontractors has been increased from 5% to 7.5% for resident entities and 15% for non-resident entities (this is subject to a stability clause contained in the relevant PA).

Any income arising from other activities which are not related to petroleum activities are taxed at 25% of net taxable profit (after deducting expenses incurred to generate the income) based on the provisions of the ITA.

Contribution to Local Content Fund

Contractors and sub-contractors are required to contribute to the local content fund. The contractors' contribution is stipulated in the PA whilst the sub-contractor is expected to pay 1% of the total revenue from the contractor or licensee for every contract.

The fund is expected to provide financial resources for citizens and indigenous Ghanaian companies engaged in petroleum activities such as education, training, research and development, loans at competitive rates etc.

Double Tax Treaties (DTTs)

Ghana has double tax treaties with the following countries; namely, France, Britain, Germany, Italy, Belgium, South Africa, the Netherlands, Denmark and Switzerland.

DTTs signed with the Czech Republic, Singapore, Morocco and Mauritius are yet to be ratified by the Parliament of Ghana and as such not effective.

Capital gains tax (CGT)

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

For resident companies, gains or losses from the realisation of business or investment assets and liabilities are included in the assessable income of the company and taxed at the corporate tax rate. Further, where there is a change of underlying ownership by more than 50% at any time within 3 years, the assets and liabilities of the entity is deemed to be realised. Compliance requirement is the same as the company income tax requirements.

Where a non-resident entity also indirectly disposes an asset in Ghana, there would be a deemed realisation and the gain from the realisation would be subject to tax in Ghana. As the non-resident may not have a physical presence in Ghana and as such not subject to corporate tax in Ghana, the onus may fall on the entity being disposed of to withhold tax at the corporate tax rate and remit same to the GRA for the non-resident's tax liability on the deemed disposal.

Other taxes or payments

Aside corporate tax and royalties, the Contractor is subject to the following:

- Additional Oil Entitlement (AOE): The Government of Ghana has a specified percentage entitlement to the crude oil being produced in Ghana. The AOE is a further Government entitlement to the

Contractor's share of crude oil produced. This share is based on the after-tax inflation-adjusted rate of return that the Contractor achieved with respect to each field and can be viewed as a form of windfall tax. AOE is computed monthly, quarterly or yearly depending on the provisions of the PA of the Contractor. A provisional AOE calculation is first prepared based on the best estimate of factors (which can be revised retrospectively). A final computation of AOE is then made within thirty days following the filing of annual tax returns by the Contractor;

- Payments for rental of Government property, public lands or for the provisions of specific services requested by the Contractor from public enterprises. (The rates charged the Contractor for such rentals or services should not exceed the rates charged to other members of the public who receive similar services or rental);

Surface rentals are payable to the State per square kilometre of the contract area.

Profit repatriation issues

Dividends paid by Contractors to shareholders are exempt from withholding tax. However dividends paid by Subcontractors to shareholders are subject to a final withholding tax at a rate of 8%.

Generally, branch profits repatriated are subject to tax at 8%. Although the tax laws do not specifically exempt Subcontractors from the payment of branch profit tax, in accordance with the PAs, Subcontractors are subject to final tax on revenues from petroleum operations and therefore no further taxes should be payable by them on repatriation of profits.

Transfer Pricing Regulations

The PITL allows the Commissioner-General to adjust transactions between related entities which he believes are not at arm's length. According to the law, he may also adjust or disregard a transaction, if he is of the opinion that the main purpose of the transaction is to avoid or reduce the tax liability of the Contractor or Subcontractor.

Ghana in 2012 legislated transfer pricing regulations which require transactions between related parties to be at arm's length. Per the regulations, the following transfer pricing methodologies are acceptable:

- Comparable Uncontrolled Price method
- Resale Price method
- Cost Plus method
- Transactional Profit Split method
- Transactional Net Margin method

The regulation also allows, with approval from the Commissioner-General, the use of methods other than above mentioned if those methods can be proven to be most appropriate.

Transfer pricing documentation is required to be submitted at the time of filing annual returns.

A key feature of Ghana's transfer pricing regulations is that the regulations cover relationships between individuals, corporate and unincorporated bodies.

Ghana 2017 Country Updates

Thin capitalisation

Currently, thin capitalisation provisions are not expected to apply to Contractors with a pre-2016 PA. However, interest charges on borrowed amounts in excess of the commercial rate may be disallowed in assessing the tax liability of Contractors.

Indirect taxes

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

The VAT rate is 17.5%. However, under most PAs, Contractors, their Subcontractors and Affiliates are not subject to VAT. As such, the Ghana Revenue Authority (GRA) has provided a mechanism through which Contractors can be relieved from paying VAT. Under this mechanism, the GRA provides VAT Relief Purchase Order forms (VRPOs) to Contractors, which the Contractors in turn complete with any VAT amount charged on invoices issued to them (by service providers) and furnish to those providers in lieu of cash settlement of VAT charged. By this process no cash outlay is made in respect of the VAT charged. Therefore, a Contractor is not required to account for VAT, but would have to register for VAT for purposes of obtaining the VRPO forms. A Subcontractor is required to register, charge and account for VAT on their services (including claiming any input VAT incurred). Given that services are provided mainly to Contractors (which do not settle VAT in cash), Subcontractors often have significant VAT refunds due them. The Subcontractor can make a claim to the GRA for any refund due. In practice, the GRA conducts an audit to confirm the refund amount before making the refund. 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.

As of 5 April 2017, the VAT Flat Rate Scheme (VFRS) now allows for retailers and wholesalers of goods to account for VAT at a flat rate of 3% on the value of taxable supply.

VAT returns are required to be submitted and any payments made by the last working day of the month following the month in which the VAT become due.

Consumption tax

N/A. See VAT.

Sales tax

This tax was replaced with VAT.

Custom 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.

Stamp duty

Both Contractors and Subcontractors are exempt from paying stamp duty taxes in respect of certain activities. These are detailed in the PA.

Property Taxes

There are property taxes in Ghana also known as property rate. Property for the purpose of tax is defined as immovable property.

Other tax issues

Personal income tax

The taxation of employment income is addressed through interplay of the provisions of the PAs and the ITA. Depending on the provisions of the PA, expatriate employees of Contractors and Subcontractors who work in Ghana may be subject to tax as categorised as follows:

Number of days present in Ghana	Taxation of employment income	Applicable of tax
Less than 30/60 days*	Exempt	N/A
30/60 days to 182 days	Full employment income	20%
More than 182 days	Full employment income	Graduated scale

*PA will specify number of days of presence that qualifies for exemption.

The above is however subject to the any applicable DTA rules that may be in force.

Employment income tax rate is on a graduated scale between 0% - 25% for residents and a flat rate of 20% for non-residents. Income tax is withheld by the employer.

Social security tax

The PAs have a specific exemption from the payment of Social Security Taxes in Ghana in respect of expatriate employees of Contractors and Subcontractors.

Under the general pension regulations, local employees of Contractors and Subcontractors are required to make contributions of 5.5% of salary to the mandatory Social Security Scheme. Contractors and Subcontractors are in turn required to contribute 13% of the employee's salary on behalf of the employee. The contributions are treated as exempt income and tax deductible for the employee and employer respectively.

Taxation of Oil Field Service (OFS) Companies

"OFS" mostly referred to as "Subcontractors" are subject to a final withholding tax of 5% of gross revenue for works and services connected to the petroleum operations provided to the Contractors depending on the Contractor's Petroleum Agreement ("PA"). The ITA however introduced a 7.5% withholding tax (not final) for resident entities and a final tax of 15% for non-resident entities but this would be subject to the Contractor's PA. Any income arising from other activities which are not related to petroleum activities are taxed at 25% of the net taxable profit (after deducting expenses incurred to generate the income) based on the provisions of the ITA.

Ghana 2017 Country Updates

Incentives

Capital allowances

From the year of commercial production, a Contractor may claim tax depreciation on petroleum capital expenditure at a rate of 20% on a straight line basis. A Subcontractor is also entitled to tax depreciation on assets used to generate "other" business income. (Given a Subcontractor's income from petroleum services is subject to final withholding tax on gross receipts from Contractors, any capital allowance calculation would only be deducted from other income to the extent that the assets in question were used to generate such other income.)

Investment tax credits

No special investment incentives are provided for the industry.

Tax exemptions

Beyond taxes provided for under the PA, Contractors and Subcontractors are exempted from any tax, duty, fee or other impost in respect of activities related to Petroleum Operations.

Export processing zones

There are no special location incentives available to the oil and gas industry in Ghana aside the terms contained in their relevant PAs.

Group relief

Group relief is not available under Ghanaian tax laws.

Compliance requirements

Annual Returns

A Contractor is required to file annual tax returns for each year of assessment within four months after the end of the year of assessment. Such return is due whether the Contractor has a tax charge or not. As standard requirement, the return should be accompanied by:

- A certified statement of accounts audited by a Chartered or Practising accountant;
- An estimate of the tax due;
- A statement containing the full names, address, salaries, allowances and the remuneration of the employees of the Contractor; and
- A statement of amount of production of petroleum, share of the production and the price paid for sale or export of the Contractor's share of the petroleum.

A transfer pricing return is also required to be submitted within four months after the end of the year of assessment detailing all related party transaction carried out during the year.

The returns should have a signed declaration that the particulars given in the annual returns are true and complete.

For a Subcontractor, there is a requirement to file annual tax returns for each year of assessment within four months after the end of the year of assessment. The return should include a separate statement of income and expenditure and a statement of assets and liabilities carried on by the Subcontractor. Such returns should be accompanied by a signed declaration that the particulars given in the annual returns are true and complete.

Quarterly Returns

A Contractor is required to file a quarterly return not later than thirty days after the expiry of the quarter. This return should contain an estimate of the chargeable income resulting from the operations as well as an estimate of tax due on the chargeable income computed and a remittance in settlement of the tax computed.

Payment of income tax

Contractors are required to make quarterly tax payments not later than thirty days after the expiry of the quarter. Any outstanding tax at the end of the year of assessment is required to be paid within four months after the end of the year of assessment.

Subcontractors are required to make quarterly company income tax payments on account based on the self-assessment submitted at the beginning of each accounting year. This payment is due by the last working day in the quarter. Typically, Subcontractors would use the withholding tax credit certificates obtained from the taxes withheld by the Contractors to account for quarterly tax payments. Any outstanding tax at the end of the year is required to be settled within four months after the accounting year (at which time a return is due for filing).

Payment of withholding tax

Any taxes withheld are remitted to the GRA by the 15th day of the month following the month in which the taxes were withheld.

Tax Audits

The Ghana Revenue Authority (GRA) does not have a specific audit schedule. Tax audits are triggered by a number of factors such as tax refund claims, specific industry allocation for the year and other risk based factors as considered by the GRA. In practice, the GRA issues a notice to a company regarding a tax audit except in the case where the tax audit is triggered by a refund claim.

Audit and other reporting requirement

Audit

The statement of accounts of the petroleum operations for each year of assessment should be audited by a Chartered or Practising accountant. (These statements accompany the annual tax returns).

Quarterly Cost of Production

Contractors are also required to furnish the PC with summaries of production cost of their petroleum operations at the end of the quarter.

Kenya

PricewaterhouseCoopers Limited, PwC Tower. Waiyaki way/Chiromo road, Westlands
P.O box 43963-00100 Nairobi, Kenya.

Country profile

Brief history on oil and gas development

Kenya does not yet produce crude oil or natural gas, however the country is a prospective oil producer in light of some successful discoveries since 2012. There have been a number of successful wells drilled over the past three years. The wells are undergoing appraisal with a view to commence preparation of development plans for approval by the Government.

Significant developments

With the prevailing oil prices, oil and gas exploration activities in Kenya have reduced somewhat with the exit of one major operator. The state of the sector notwithstanding, the Government in the last financial year surpassed what it had intended to achieve in the sector; 17 new petroleum blocks were gazetted against a target of seven oil blocks, and 17 exploration and appraisal wells were drilled against a target of five wells.

Fiscal regime

The regulatory framework for the taxation of petroleum operations is regulated by the Income Tax Act ("ITA"), VAT Act 2013, Stamp duty Act, East African Community Customs Management Act ("EACCMA") and the Excise duty Act 2015.

The Petroleum (Exploration and Production) Act 1986 provides the legal framework and regulations on the negotiations and conclusion of Production Sharing Contracts ("PSC") with potential investors.

Entities engaged in hydrocarbon exploration in Kenya sign a PSC.

Newly enacted tax statutes are listed below:

1. Tax Procedures Act ("TPA")

   The TPA came into operation in January 2016. The TPA seeks to harmonize and consolidate the procedures for administration of taxes. The TPA aims to provide uniform procedures for consistency and efficiency in the administration of tax laws, facilitate tax compliance by tax payers and promote the effective and efficient collection of tax.

2. Tax Appeals Tribunal ("TAT") Act

   The TAT Act establishes an independent tribunal that is responsible for hearing and determining appeals filed against any decision made by the

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Commissioner with respect to Income tax, Value Added tax, Customs and Excise or any other tax administered by the Commissioner.

3. Value Added Tax ("VAT") Regulations 2017

   These regulations provide clarifications on provisions of the VAT Act including provisions relating to export of goods and documentation required as proof for exportation of service.

4. Special Economic Zones Act ("SEZA")

   The Act provides for the establishment of special economic zones (SEZs). Entities listed under SEZA shall be granted exemption from all taxes and duties payable under EACCMA. Other benefits are exemption from VAT, custom and excise duties, stamp duty, reduced income tax rate and work permit quotas.

5. Miscellaneous Fees and Levies

   The Act governs the imposition and collection of levies known as the Export Levy, Import Declaration Fees ("IDF") and the Railway Development Levy ("RDL") which were previously regulated by the repealed Customs and Excise Act, Cap 472. Goods imported for the construction of liquefied petroleum gas storage facilities are exempted from IDF and RDL.

6. Other changes contained in various legislations

- The Miscellaneous Amendments Act, 2017 introduced investment deduction ("ID") at the rate of 150% where capital expenditure is incurred on the construction of liquefied petroleum gas storage facilities. This is however limited to a minimum capital investment of KES 4 billion and a minimum storage capacity of a total value of 15,000 metric tonnes.
- The Finance Act, 2017 introduced ID at the prescribed rates where capital expenditure is incurred on the construction of transportation and storage facilities for petroleum products by the Kenya Pipeline Company Limited ("KPC").

In summary, there has not been any significant change in law that materially affects O&G companies.

Regulatory Framework

The Petroleum (Exploration and Production) Act 1986, is the fundamental law governing upstream activities in Kenya. However, Petroleum (Exploration, Development and Production) Bill, 2015 is undergoing public scrutiny and on enactment will repeal the current Act.

The Petroleum (Exploration and Production) Act 1986 vests ownership of hydrocarbons in the hands of the Kenyan government and grants significant powers over the sector to the Minister of Energy and Petroleum. Day to day responsibility for the sector lies with the Petroleum Energy Department of the Ministry of Energy.

The Act envisages upstream activities being conducted via a state oil company established for that purpose or through petroleum companies under a petroleum agreement or in any such other manner as may be necessary or appropriate. The Minister is empowered to sign petroleum agreements on behalf of Kenya and is required to make a model agreement available to potential investors.

The key regulators in the oil and gas industry include:

- Ministry of Energy and Petroleum: Holds the power to negotiate petroleum agreements, supervise petroleum operations, and make regulations to govern the exploration and production of petroleum.
- Energy Regulatory Commission: Regulate petroleum and related products including setting the maximum wholesale and the retail prices of petroleum products.
- National Oil Corporation of Kenya Ltd: This is a state petroleum company established to spearhead exploration on behalf of the Kenyan government. This remains its main role, but since 1997 it has ventured into the retail business for petroleum products in Kenya. The company also acts as an instrument of government policy in matters related to oil and gas and gives advice to Kenyan energy policymakers.
- The National Treasury: Charged with the responsibility of formulating financial, fiscal and economic policies.
- Kenya Revenue Authority: Charged with the responsibility of revenue collection in line with the various tax legislations.

Forms of contracts

An entity seeking to engage in oil and gas activities in Kenya is required to enter into a PSC. The parties to a PSC are the Government of Kenya and the petroleum company.

The petroleum company provides the funds and bears the risk of exploration, appraisal, development and operating costs. Upon attaining production the PSC allows the petroleum companies to recoup the costs incurred on exploration and development prior to sharing the production with the Government (portions determined under the PSC).

Local Content Regulations

The Petroleum (Exploration, Development & Production) Bill 2014 (the Bill), (not yet enacted into law) contains the Petroleum, Exploration Development and Production (Local Content) Regulations, 2014 (the Regulations). The Regulations are not yet in force. The Bill seeks to establish the Upstream Petroleum Authority (the Authority) to monitor, coordinate and implement the provisions of the Regulations.

Taxation regime

Direct Taxes

Income Tax

A resident company is subject to Corporate Income Tax (CIT) on its worldwide income at the rate of 30%. A non-resident company is taxed on income derived or accrued from Kenya at the CIT rate of 37.5%. However a new company is taxed at a reduced CIT rate of 20% or 25% for a period of five years, or 27% for a period of three years, if at least 40%, 30% or 20% of the issued share capital of the company is listed on the Nairobi Securities Exchange, respectively.

The model PSC provides that the tax of the petroleum company will be paid out of the Government's share of production. This means that the portion of crude oil which the Government is entitled to take includes all taxes based on income or profits directly attributed to petroleum operations except tax paid on disposal of interest in a petroleum agreement and any tax the petroleum company is liable to deduct from payment to suppliers

Capital allowances

A petroleum company is allowed a deduction for exploration expenditure in the year of income in which the petroleum company incurred the expenditure. The rate of tax allowable depreciation for machinery first used to undertake exploration operations is 100%.

Development expenditure is deductible over a period of five years (20% per annum) at the later of the dates when expenditure was incurred, or production commenced.

Other fees

Surface fees, training fees and signature bonuses are negotiable and are provided in the PSC.

Ring-fencing

Expenditure incurred by a petroleum company in undertaking petroleum operations in a contract area during a year of income can only be allowed against income derived by the petroleum company from petroleum operations in the same contract area during the year.

Tax losses

A petroleum company can carry forward losses indefinitely and is allowed to carry back tax losses to a maximum of three years (on winding up operations).

Thin capitalisation

The debt- to- equity ratio for thin capitalisation purposes for petroleum companies is 2:1, as opposed to the ratio of 3:1 prescribed for other companies.

Transfer pricing ("TP")

Kenya TP rules require, among other things that non-resident inter-company transactions be conducted at arm's length.

Withholding tax on deemed interest

Deemed interest provisions apply where an entity is funded using interest free loans. The ITA allows the revenue authority to deem a rate of interest on such loans based on prescribed rates that are published on a quarterly basis. Withholding tax is applicable on deemed interest at 15%.

Withholding tax

The withholding tax rates applicable on payments by petroleum companies are shown in the table below

Payment	WHT Rate	
	Resident	Non-resident
Dividends	5%	10%
Interest	15%	15%
Royalties	5%	20%
Natural resource income	5%	20%
Management or professional fees	5%	12.5%
Training fees	5%	12.5%

*Natural Resource Income means:

a. an amount including a premium or such other like amount paid as consideration for the right to take minerals or a living or non–living resource from land or sea;

b. an amount calculated in whole or in part by reference to the quantity or value of minerals or a living or non–living resource taken from land or sea.

Subcontractors

Subcontractors who are non–resident (and do not have a permanent establishment in Kenya) are subject to withholding tax at the rate of 5.625% (which is final tax) on the gross amount of the service fee.

The term 'subcontractor' is defined to include resident persons (individual, company, partnership, trust or government) supplying services to a petroleum company in respect of petroleum operations.

Subcontractors that are locally incorporated or have a permanent establishment in Kenya are subject to withholding tax at 5% on the service fee and taxed at the corporate rate of tax on the adjusted profit. However, the withholding tax deducted in the case of a person with a permanent establishment is not final and is deductible against corporate tax due.

Disposals

Direct disposals (farm out transactions)

Consideration from disposal of an interest in a block by way of a farm out is taxable as business income of the entity selling its interest in the block. Costs related to future work obligations are excluded from the taxable proceeds subject to certain conditions.

Indirect disposals (share sale transactions)

The net gain will not be subjected to tax where the interest derived directly or indirectly from immovable property is below 20% of the total value of the interest.

Other Capital Gains requirements

The net gain on disposal of interest in a person owning immovable property in the petroleum industry is taxable as though it is income from petroleum operations/ business income. The CIT rate of 30% for residents and 37.5% for a non-resident with permanent establishment will apply.

Notification to the KRA

A petroleum company is required to notify the Commissioner (in writing) immediately if there is a change of ten per cent or more in the underlying ownership of the contractor.

Kenya 2017 Country Updates

Double tax treaties

Kenya has DTTs with Canada, Denmark, France, Germany, India, Norway, Sweden, UK, Zambia and South Africa. The Kenya- South Korea DTT is now ratified, but will be coming into force on 1 January 2018.

Indirect Taxes

Value-added tax (VAT)

Taxable goods for direct and exclusive use in oil and exploration (excluding motor vehicles) purchased or imported by a company granted prospecting or exploration license are exempt from VAT. Taxable services are subject to VAT at 16%. However, companies granted VAT remission on goods and services under the repealed VAT Act continue to enjoy remission up to August 2018.

Custom duties

Special exemptions apply to companies engaged in the exploration and prospecting of oil and gas for machinery excluding motor vehicles used for the exclusive use in oil and gas exploration and development. However, this exemption is upon recommendation by the Ministry of Energy and Petroleum to the National Treasury.

Import declaration fee

An import declaration fee of 2% of the Cost, Insurance and Freight (“CIF”) value is also charged subject to a minimum of KES. 5,000 payable in advance on application.

Excise duties

Excise duties is levied on some goods manufactured in Kenya, including petroleum products.

Stamp duty

Farm out

There are two differing views on how much stamp duty is payable in relation to a deed of assignment. One is nominal stamp duty of KES 200 while the other is that stamp duty is applicable at 0.2% of the value of the asset being assigned. In practice the nominal stamp duty amount of KES 200 has so far prevailed.

Share sales and other transactions

Stamp duty is payable on transfer of properties, leases, and securities. For other properties, other rates of stamp duty apply as specified in the Schedule to the Stamp Duty Act. The rates of stamp duty are shown below:

Activity	Stamp duty rate
Transfer of immovable property:	
Urban	4%
Rural	2%
Creation or increase of share capital	1%
Transfer of unquoted shares or marketable securities	1%

The value subject to stamp duty should be the market value of the property. The obligation to account for stamp duty is on the transferee.

Other Taxes

Taxation of Oil Field Service Companies (OFS)

OFS companies are not subject to the same taxation regime as exploration and production companies. Taxation of OFS companies depends on their residency status. Locally incorporated company suffers 5% WHT & pays CIT at 30% on taxable profit while a branch or PE in Kenya suffers 5% WHT & pays CIT at 37.5% on taxable profit. The WHT is creditable against CIT at the end of the year. A non-resident company (without PE in Kenya) suffers 5.625% WHT on gross service fee while management/ training/ professional fees attract WHT at 12.5% WHT. For non-residents, WHT is final tax.

Employment income tax

Resident individuals, including expatriates, are taxed on their worldwide income based on the resident tax rates, while non-residents pay tax on Kenyan- sourced income only. The resident minimum tax rate is 10% and the maximum rate is 30%. Employees are required to file annual returns.

Employers have the responsibility to withhold and pay the tax due from employees' entire remuneration on a monthly basis.

Social security contributions

Employees (including expatriates) and employers are all required to contribute to the National Social Security Fund ("NSSF") where each contributes a minimum of KES 200 per month.

However, the contributions are set to increase to a maximum of KES 1,080 per month on the first year of implementation of the National Social Security Fund Act, currently halted by a court injunction.

National Health Insurance Fund (NHIF)

NHIF contributions are graduated with the minimum being KES 150, while those earning KES 100,000 and above pay KES 1,700 per month. A penalty of 200% is levied on late payments.

National Industrial Training Authority (NITA)

An employer is also required to register with NITA and make levy payments on a monthly basis. This is an employer contribution and no contributions are required from employees. On or before the last working day of each month, an employer shall pay to NITA a levy of fifty shillings per employee. A penalty of 5% per month is charged on any outstanding levies.

These provisions apply to employees across all sectors in Kenya.

Railway development levy

Railway Development Levy applies on all goods imported into the country for home use at the rate of 1.5% of the customs value of the goods.

Regimes applicable to property rich companies

The Finance Act 2014 amended the Income Tax Act to re-introduce capital gains tax on transfer of property situated in Kenya. The amendment took effect from 1 January 2015 and is applicable whether or not the property was acquired before 1 January 2015.

Property is defined in the Eighth Schedule to the ITA as property acquired or held for investment purposes. It includes land, buildings and marketable securities. In the case of an individual, property means land situated in Kenya and any right or interest in or over that land and a marketable security situated in Kenya.

The chargeable gain is subject to tax at the rate of 5% and shall not be subjected to further taxation.

Incentives in the oil and gas industry

Kenya operates a taxes paid PSC regime.

Compliance Requirements

Tax returns and payments

Every company engaged in petroleum operations is required to file a return for each year 6 months after the year end.

Penalties

- Late submission of returns: for employment income, it is the higher of 25% of tax due or KES 10,000. In all other cases, the higher of 5% of tax not paid or KES 20,000.

Interest

- Late payment of tax: 1% per month and in duplum rule applies.

Tax Audits

There is no prescribed audit process, as an audit can be triggered by various factors as determined by the KRA. Generally, tax audits should be carried out every two to four years. The audit or inspection will commence with a request from the KRA for the taxpayer to make available any such records or information as may be required. The tax authorities must commence an audit before the expiry of five years after the end of a year of income.

The KRA may go back past five years where fraud is suspected. There is no time limit for completing tax audits. However, they are normally completed within a reasonable time, especially if there are no major disputes.

Liberia

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Country profile

Brief history on oil and gas development

Liberia experienced its first petroleum exploration in the late 1940s when the Government awarded the country's first exploration contract. Subsequent attempts at exploration were made between the late 1960s and 1989 with no declaration of commercial discoveries.

The discovery of petroleum in deep water in the offshore area of countries in the Gulf of Guinea, resulted in recommencement of exploration activities in Liberia in 2000 after more than a decade of dormancy.

After announcement of an oil discovery in Liberia in February 2012 by African Petroleum Corporation, exploration activities along offshore Liberia intensified. No commercial finds have been reported yet.

Currently, the Liberian basin consists of thirty concessionary blocks. 17 of these blocks are from the continental shelf to water depths of between 2500 to 4000 meters. 13 of the blocs are considered ultra-deep with water depths of as much as 4500 meters.

Key private sector players in the industry currently include Africa Petroleum Corporation Company, Anadarko Liberia Company, ExxonMobil, and Chevron Liberia Limited. Government participation is undertaken by NOCAL.

Significant developments

A New Petroleum (Exploration and Production) Reform Law of Liberia, 2014, became effective in 2016 subsequent to the printing of Law into handbills.

The New Petroleum (Exploration and Production) Reform Law fundamentally restructures the sector. It created two separate entities to govern and manage the sector. The New Law established an administrative body; the Liberia Petroleum Regulatory Authority and the National Oil Company of Liberia to own and manage petroleum rights acquired by the Government and citizens of Liberia.

Fiscal regime

The taxable income of a petroleum operator is determined according to the rules set in each applicable Production Sharing Contract ("PSC"). General

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provisions for the taxation of petroleum operators as contained in the Liberia Revenue Code of 2000, as amended may apply as necessary.

Petroleum operators engaged in the exploration, development and production of hydrocarbons are generally subject to the following taxes in Liberia:

- Corporate income tax;
- Royalty;
- Customs user fees on imported goods;
- Surface rental fee.

Other non-tax financial obligations imposed on petroleum operations may be as specified in applicable PSC. These typically include:

- Contribution to the Hydro Carbon Development Fund
- Contribution to the Rural Energy Fund
- Contribution to the Personnel Training Fund
- Contribution to a Social Welfare program

Regulatory Framework

The key regulators in the oil and gas industry include:

Liberia Petroleum Regulatory Authority (the "Authority") - The Authority is the principal regulator of the sector. It is responsible for entering into Petroleum Agreements on behalf of the Government of Liberia, conducting technical evaluations of areas to be opened up for petroleum operations, managing pre-qualification and bidding round process for the tendering and granting of petroleum agreements, reviewing and approving proposed reconnaissance, exploration and appraisal work programs and budget, development and production plans and budgets, abandonment plans and budgets submitted by holders of petroleum rights, representing the Government in operations committees established under petroleum agreements to review current and future petroleum operations, monitoring petroleum operations and conduct such inspection, investigations and audits, supervising the storage of petroleum data, maps, records, registers and other documents relating to petroleum operations, including petroleum data acquired by NOCAL.

National Oil Company of Liberia ("NOCAL") - This is the State owned Oil Company that exercises its commercial power to enter into and administer contracts for the acquisition of seismic and other geophysical and geochemical data, engage in Petroleum exploration, development and production activities on behalf of the government, participate in bidding rounds and obtain petroleum rights in its own name, manage any citizen participation interest acquired by the Government in petroleum agreements or production sharing agreements for the benefit of the Citizens' fund and administer in consultation with the Authority reconnaissance licenses issued under the 2014 Petroleum Law, etc.

Liberia Revenue Authority ("LRA") - LRA enforces the Liberia Revenue Code of 2000, as amended and other taxation issues relating to the industry.

Environmental Protection Agency - Regulates and ensures compliance with the Environmental Protection and Management Act.

Liberia Extractive Industry and Transparency Initiative (LEITI) - Oversees the reporting of payments made by players in the extractive industry to the various government organs including contributions towards community social and economic welfare.

National Investment Commission - Considers, reviews and decides on request for investment incentives by holders of hydrocarbon contracts with investment of over US$10 million in accordance with the New Investment Incentives Code of Liberia.

Forms of contracts

The 2014 Petroleum Law of Liberia provides for Production sharing Contracts ("PSC") which authorizes a contractor, at its own risk, to conduct petroleum operations in the contract area; authorize the contractor in the event of a commercial discovery of petroleum, to recover costs incurred in the conduct of such operations from a share of production of petroleum and allocate the remaining production of petroleum between the Government and the contractor in accordance with a scale or formula specified in the Petroleum Agreement.

This contract is granted by the Liberia Petroleum Regulatory Authority to a petroleum company ("Contractor") to carry out exploration and development of exploitable hydrocarbon reserve within a defined area.

Government Equity participation

The Government of Liberia has the right to acquire through NOCAL a participation in the rights and interests in a petroleum agreement of not less than 10%. The Government also has the right to acquire a 5% participation in the rights and interests of a petroleum agreement for the benefit of a Citizen Fund.

The option to participate in a petroleum contract by the Government is exercised by the Minister of Finance and Development Planning on recommendation of the Authority and NOCAL, by written notice to the Contractor given within the time provided in the relevant petroleum agreement.

Liberia local content regulation in the Oil and Gas Industry

The 2014 Petroleum (Exploration and Production) Reform Law provides for local content. A Contractor and its subcontractors as stipulated in the Petroleum Agreement must ensure that opportunities are given to qualified Liberians for employment at various levels of their Liberian operations by providing training programs for such Liberians.

These trainings usually include plans to train Liberians in the full range of managerial and technical activities involved in the performance by the contractor of its obligations under the petroleum agreement, including without limitation engineering design, information technology, petroleum geology technology, production facility operations and maintenance, contract negotiation and contract management

Additionally, Contractors and their subcontractors are required to give preference to enterprises, goods and services provided or supplied by

Liberia 2017 Country Updates

Liberians or business entities controlled by Liberians, where conditions of price, quality, delivery time, service and terms of payment are equivalent to those from other countries or from non-Liberian sources.

In so doing, the Contractor is required to organize its procurement procedures to give meaningful opportunity to Liberians when purchasing goods and services related to its petroleum activities.

Contractors and their subcontractors are generally encouraged to give preference to goods from Liberia and employ Liberian citizens if standards determined at discretion of contractor can be met.

To encourage development of local content and provide Liberian companies with opportunities for mentorship and assistance, NOCAL has stated that bids from groups that include a significant West African/ECOWAS upstream petroleum company that include a Liberian partner will have their bids evaluated with a 20% uplift in their signature bonus proposal.

Taxation regime

Direct Taxation

Corporate Income Tax

Oil and Gas operators are generally subject to tax on taxable income at a rate of 30%. Applicable PSC may provide for a lower rate.

The taxable income is generally the operator's income less allowable expenses in a specified license area.

NOCAL, upon exercising its right to participate in a petroleum agreement or acquiring a petroleum agreement in its own name, is also subject to corporate income tax on its share of profit oil.

For tax purposes, a permanent establishment which is a petroleum license holder is treated as a resident legal entity.

Regardless of legal form, a petroleum operator's taxable income is determined separately for each PSC or other projects engaged in by the operator in Liberia. The contractor is not permitted to consolidate income or loss arising from a PSC or other project with that of any other.

Royalty

A petroleum operator, including NOCAL, engaged in the exploitation or extraction of petroleum deposits in Liberia is required to pay a royalty on the value of total production of petroleum from the contract area, excluding such quantities as are used, reinjected or unavoidably lost in the petroleum operations, at the percentage rate(s) specified in the Petroleum Agreement.

All royalty payments are made into the Government of Liberia's Consolidated Fund.

Deductible expenses

Generally, expenses wholly, exclusively and necessarily incurred in the operations of a petroleum operator are deductible against gross income of the operator, with the following limitations:

- Pre-commencement expenses - Exploration expenses and development expenditure are deductible in the first tax period in which commercial production commences.
- Interest – Deduction for interest expenses in a tax year, other than interest paid to a resident bank, is limited to interest received during the tax year plus 50% of taxable income (excluding interest income). Excess interest can be carried forward indefinitely.
- Capital costs – No deduction is allowed for capital costs incurred during the year except the amount of annual allowance for depreciation computed in accordance with the tax provisions.
- Decommissioning expenses - Deduction for decommission expenses is limited to actual amount paid during the tax year.
- Losses – A deduction is allowed for tax losses brought forward. Carry forward of tax losses commences in the first tax year in which operator commences commercial production and has a seven- year period.
- Management fees - Deduction for management fees paid is limited to 2% of operating expenses for the tax period.

Non-deductible expenses

- Income tax paid on behalf of expatriate employees
- Loss from hedging transactions
- Any special incentive deduction granted.

Withholding tax (WHT)

Petroleum operators are required to withhold tax on specified payments to resident and non-resident persons at rates specified in the Liberia Revenue Code of Liberia of 2000, as Amended 2016. However, the following payments made by petroleum operators to resident or non-resident persons suffer withholding tax at concessionary rates:

- Dividends - 5%
- Interest - 5%
- Services - 6%

Applicable PSC may provide for different rates.

Capital gains tax (CGT)

Gains arising on the disposal of property, including gains on transfer / assignment of operator's interest in petroleum license, are includable in the operator's income subject to corporate income tax at the applicable rate. Losses arising on disposal are deductible.

Transfer of interest in petroleum operations must be preapproved by NOCAL.

Thin capitalisation and Transfer Pricing

There is no thin capitalization rules in Liberia. However, the deductibility of interest paid excluding interest paid to a resident financial institution in Liberia, is limited to the amount of interest income plus 50% of the taxable income (excluding interest income) in the tax year.

Applicable PSC may grant 100% deduction for interest expenses incurred in the tax year.

A detailed Transfer Pricing ("TP") regulation was passed by the Government of Liberia on July 1, 2016. The TP regulations requires transactions between related parties to be at arm's length. The TP Regulations are applicable effective January 1, 2017 and entities with related party transactions will be required to file a TP return along with the annual corporate income tax return for the year.

Petroleum operators have an additional requirement to disclose contracts with related parties and the manner in which intercompany prices are charged, and also have related party agreements notarized in accordance with the laws of the related party's country of residence.

A petroleum operator may also enter into an Advance Pricing Agreement with the Government of Liberia.

Indirect Taxation

Goods and Services Tax (GST)

Liberia operates a GST regime. Generally, petroleum operators are exempt from GST on raw materials and capital goods for use directly in petroleum operations.

Custom duties

Goods imported by petroleum operator are exempt from customs duties on items used exclusively for petroleum operations.

The exemption does not generally apply to customer user fees, generally 2.5%, on unprocessed exports including inspection or pre-shipment inspection of goods although applicable PSC may provide exemption.

Petroleum operators are entitled to export the fraction of hydrocarbons which is due to them pursuant the PSC, without payment of duty.

Other Taxes

Employment income tax

Employees of petroleum operators are subject to the general personal income tax compliance requirements.

Resident employees, including expatriates who spend at least 182 days in Liberia in a calendar year, are subject to tax using the graduated scale of tax ranging from 0% to 25% depending on their income bracket. Non-resident employees of petroleum operator generally suffer withholding tax at a flat rate of 15% on gross remuneration.

The operator is required to withhold the tax due on a monthly basis and remit it to the Liberia Revenue Authority within 10 days of the end of month payment is made to the employee along with a withholding tax return. Penalties are imposed for late filing of returns and late payment of taxes.

Resident employees are required to file annual income tax returns within three months of the calendar year end.

Social security contributions

Both resident and non-resident employees are required to register for and make contributions to the National Social Security and Welfare Corporation (NASSCORP).

The employee contributes 3% of total earnings and the employer contributes 4.75% of the employee's total earning for the benefit of the employee, which increases to 4% and 6% respectively effective July 1, 2018.

The employer is required to remit both the employee and employer's contributions to NASSCORP on a monthly basis.

Property / Real estate taxes

Real property within a petroleum area and used by petroleum operator is exempt from real estate tax.

Any other property owned by petroleum operator not within the license area would be subject to real estate tax. The real estate tax is assessed on a specific property and is due by July 1st every year.

The rates of real estate tax vary depending on location, size, usage and whether or not the property is deemed to be on improved or unimproved land.

Improved land – Rates range from 1.5% to 0.143% of assessed value of the real property. Property on which tax is imposed typically include property for business or commercial use, industrial use, residential use, farm land in and outside urban areas as well as buildings and other improvements situated on public land.

Unimproved land – Rates range from L$ 200 to 4% of assessed value depending on location of the property and usage.

Incentives in the oil and gas industry

Petroleum operators are typically granted the right to import into Liberia and re-export out of Liberia, including on behalf of their contractors and subcontractors, all goods necessary in the petroleum operations free of all duties and taxes.

A list of equipment, machinery and products used in petroleum operations which are exempt from customs duties on importation may be included in applicable PSC as determined by the National Investment Commission.

Foreign exchange controls – A Contractor is entitled to retain abroad all funds arising from sales of all petroleum to which it is entitled under the Petroleum Agreement, and all funds acquired or borrowed abroad in relation to its operations in Liberia under a petroleum agreement and to freely dispose of such funds to the extent that they may exceed the requirements for its operations in Liberia. However, they are required to pay Liberian- based employees from bank accounts maintained in Liberia.

There is also no restriction on the importation by a contractor of funds for use in the performance of the petroleum operations, to purchase currencies of Liberia with foreign currencies, and to exchange into foreign currencies of its election any funds held by it in Liberia in excess of its local requirements. A contractor also has the right to pay for services and assets for petroleum operations sourced from outside Liberia in foreign currency from accounts outside of Liberia.

Tax Compliance Requirements

Tax returns and payments

Every company engaged in petroleum operations is required to file tax returns for corporate income purposes as follows:

- Quarterly advance turnover tax return – Must be filed quarterly within 15 days after the end of the quarter. Any advance tax payable is due by the same date
- Annual corporate income tax returns – Must be filed within three months of the end of the tax year. Any tax payable is due by the same date. The tax return must be accompanied by financial statements audited by a company which is a member of the Liberian Institute of Certified Public Accountants.

Penalty

- Penalties are imposed for late payment of tax due and late filing of tax returns

Document retention

Generally, an entity is required to retain books and records for 7 years after the date of submission of return or date return should have been submitted. The documents must be retained in Liberia.

Other Non-Tax obligations

An applicable PSC may impose additional financial obligations on a petroleum operator in Liberia. Non-tax but mandatory financial obligations of petroleum operators generally include the following:

- *Surface rentals* - An applicable PSC may require petroleum operator to pay specified amount of surface rentals over the license period. Surface rentals are usually payable annually with rates varying during the different exploration phases as well as during the development and exploitation phases specified in PSC and may be subject to inflationary adjustments.
- *Bonus*- This may be paid in phases depending on rate of production of crude oil from a delimited area over a specified consecutive number of days. The bonuses paid may or may not be recoverable as part of petroleum costs as may be stated in applicable PSC.

  An operator may be asked to bid on an upfront payment ("signature bonus") to be paid to the Government within a set number of days of contract becoming effective.
- *Contribution to Hydrocarbon Development Fund* - To stimulate research in the field of hydrocarbons and assist the government of Liberia achieve sustainability, petroleum operators are generally required to make contributions to the hydrocarbon development fund managed by NOCAL. The contribution paid is generally recoverable as part of petroleum costs.
- *Contribution to Rural Energy Fund (REFund)* – The REFund was established in accordance with the National Energy Policy to integrate renewable energy technologies into rural development. The

contribution is usually paid annually as specified in applicable PSC and is generally recoverable as part of petroleum costs.

- *Contribution to Personnel and Training Fund* – Operators are generally required to make an annual contribution for Training programme to NOCAL as well as to the University of Liberia, through NOCAL for the enhancement of programmes in Geology, Mining Engineering, General Science and Environmental Studies. The amount payable and timelines are stated in applicable PSC. The contribution paid is recoverable as part of petroleum costs.
- *Contribution to Social Welfare Programmes* – Petroleum operators are also generally required to provide annual funding for social and welfare programmes in Liberia to NOCAL. The contribution paid is recoverable as part of petroleum costs.

Libya

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Country profile

Brief history on oil and gas development

Libya is a country located in North Africa situated on the Mediterranean coast and spans 1.77 million square kilometres. The population is over 6 million, with 97% being Arab and Berber and 3% being Sunni Muslim. In 2011, the civil war overthrew the previous regime who had been in power for 42 years. However, Libya has struggled to transition into a more democratic state with there being two rival administrations since July 2014 and the security situation in the country as a whole. This has significantly hindered activity in the oil and gas sector.

The existing Petroleum Law, Law 25, was issued in 1955. In 1959 the first commercial discoveries were made in the Sirte Basin at the Amal and Zelten fields and by 1961 the first exports commenced. The first offshore discovery was made in 1976 at ENI's Bouri Field. Libya joined OPEC in 1962 and by the late 1960s Libya was producing more oil than Saudi Arabia, approximately three million barrels of oil per day.

The original Concession Agreements (CAs) granted all production rights to the International Oil Companies (IOCs) and the state received income by way of taxes and royalties. In 1973, the Participation Agreements were forced on to the IOCs entitling the Libyan National Oil Corporation (LNOC) to 51% production interest in the agreements.

The 1970s also saw a change in the type of agreements being negotiated with Exploration and Production Sharing Agreements (EPSAs) replacing CAs.

A lack of investment and the inability to use the latest technology in the oil sector during the 1970s and 1980s coupled with diplomatic issues which forced the American IOCs to withdraw in 1986, UN sanctions to be enforced in 1992 and US sanctions to be enforced in 1996, seriously hit the oil production. UN sanctions began being lifted in 1999 and US sanctions in 2005. However, by the time the conflict commenced in 2011, oil production was 1.8 million barrels of oil per day, a little over half of that were produced at the end of the 1960s.

Oil accounts for approximately 95% of Libyan export earnings, 75% of government receipts and 25% of its Gross Domestic Product (GDP) prior to the events of 2011.

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Significant new developments

Libya has managed to increase its oil output to more than 1 million barrels a day during 2016 after what appears to be successful developments to reopen pipelines feeding the export terminals of Zueitina, Zawiya, Ras Lanuf, Es Sider and Mellitah. Mustafa Sanalla, Chairman of the NOC, also was hopeful that oil production will increase as the security situation improves in the country.

Reservoir estimates

According to the OPEC, Libya had total proven oil reserves of 48.4 billion barrels as of January 2014 – the largest in Africa and in the top 10 globally. Approximately 80% of those reserves are situated in the Sirte Basin. Libyan crude is sweet (low Sulphur content) and generally light (high API gravity).

The Oil and Gas Journal estimated in January 2012 that Libya's proven natural gas reserves were 52.8 trillion cubic feet. New discoveries were expected to increase Libyan proven reserves in the short term prior to the events of 2011.

Fiscal regime

Institutional oversight and regulatory framework

LNOC audits the IOC operators of EPSAs for cost recovery purposes. The non-operating IOCs of EPSAs are required to register Libyan branches (to be the contracting party to the EPSA) which are not cost recoverable and are not audited by LNOC.

The Dewan (auditors of government contracts) performs cost recovery audits of the IOCs of the 2 remaining CA. The non-operating IOCs of CA have Libyan branches which are cost recoverable and are audited by the Dewan.

The Tax Department audits the IOCs for undeclared salaries and wages and to ensure the contracts with their main service providers have been appropriately registered.

Forms of contracts

Exploration and Production Sharing Agreements

Since the 1970s, EPSAs have been offered to the IOCs. EPSAs are signed with LNOC. The exploration phase has a minimum work commitment, normally for a period of 5 years and the IOCs take sole risk. If a commercial discovery is made, it is ring fenced and the remaining acreage is released. The IOCs can normally negotiate extending exploration rights in the remaining acreage with a newly agreed work commitment.

A branch of a newly formed foreign registered joint venture entity (between LNOC and the IOCs) is normally appointed as the operator for the development phase and exploitation phase.

The costs are divided 50-50 between LNOC and the IOCs for the development phase. The costs of the exploration phase are shared per the production interests.

The IOCs recover a pool of costs (opex and capex) and once cumulative costs have been recovered, the IOCs take a reduced share of production based on defined factors within the EPSA.

Concession Agreements

The CAs were signed by the IOCs by the then Ministry of Petroleum during the 1950s and 1960s. The 1973 Participation Agreements gave a controlling interest of 51 per cent to LNOC. The IOCs were entitled to retain all the acreage for the entirety of the agreement. The duration of CAs were signed for at least 50 years.

Joint Operating Agreements

Joint Operating Agreements are signed to govern the relationship between the contracting parties as well as defining the rights and responsibilities of the nominated operator.

Technical Service Agreements

Technical Service Agreements are permitted by Petroleum Law, as amended, to provide offshore services to the operating IOCs through the head office or affiliate of the IOC operator.

Joint Venture Operating Agreements

LNOC has signed several Joint Venture Operating Agreements (JVOAs) with foreign investors for the operation of terminals.

Government participation

Since 2005 new exploration acreage has been released based on 4 open bid rounds where pre-approved IOCs have been allowed to submit bids. The bids have been based on two factors:

- Firstly, on the lower share in any discovery and
- If there were a tie, the amount of signature bonus being offered.

The open bid rounds have been considered a success by LNOC due to the competitive bids being tendered.

The Participation Agreements forced the then concession holders to surrender 51% of their stake to the LNOC. In the last 5 years, a number of these agreements have come to the end of their period and the IOCs have been able to renegotiate their interests in the old agreements but at a significantly lower stake in line with the recent open bid rounds.

Regulatory Framework

Industry sectors – upstream, midstream, downstream

Upstream

Libya has had a policy of trying to spread production rights across nations. LNOC has in the past tried to prevent offshore deals that swap production rights between different foreign entities. Current EPSAs give LNOC first refusal to the sale of any production rights. Libyan oil exports during 2010 went approximately 25% to Italy, 15% to France, 10% to Germany, 10% to Spain and 40% to other countries.

Midstream

Libya has a good network of pipelines, but they are in need of modernisation. The Melitah subsea pipeline has had a significant impact on gas exports since its opening in 2004. The pipeline is 520km long, connecting to Gela in Sicily, flowing into the Italian mainland and then onwards to the rest of Europe.

Libya uses 7 export terminals to export crude oil some of which suffered severe damage during the 2011 conflict. In addition, the Farwah floating production and offloading unit is used for the Al Jurf field and the offshore Bouri field which has its own export terminal. LNOC has signed a JVOA with ENI, called Greenstream, which operates the Melitah Gas Plant.

In 1971, Libya became the second country in the world to export Liquid Natural Gas (LNG) at the Marsa El Brega plant. The LNG plant is owned by LNOC and operated by Sirte Oil Company.

Downstream

Libya has 5 domestic refineries that, according to the Oil and Gas Journal (OGJ), have a combined capacity of 378 thousand barrels per day. The largest refinery is at Ras Lanuf which had a capacity of 220 thousand barrels of oil per day prior to the 2011 conflict. UN Resolution 883 of 1993 banned Libya from importing refinery equipment.

Consequently, Libya is seeking a comprehensive upgrade to its entire refining system, with a particular aim of increasing output of gasoline and other light products.

Libya has, through its overseas retail arm Oilinvest, refinery operations in Europe, namely in Germany, Italy and Switzerland.

Capital investment regulations

EPSAs contain an agreed minimum work commitment of the number of wells to be drilled and the amount of 2D and 3D seismic to be run. The agreement also contains a value for the minimum work commitment, where guarantees have to be put in place, as a penalty, if the minimum work commitment is not completed within the requisite time.

Local content regulations

EPSAs normally require that operators shall at all times use Libyan contractors, provided that they are competitive in terms of performance, price and availability. Since LNOC has representation on the IOCs management committee during the exploration phase, it would be involved in the awarding of major contracts. If a commercial discovery is made, then LNOC would have control of the newly formed operator.

Taxation regime

Basis of taxation

IOCs tax liability is in accordance with the Petroleum Law, as amended. Revenues are assessed at the official selling price, based on global market prices with a slight adjustment for the different types of Libyan blends. The law sets taxes on petroleum related income at 65%, comprising of corporate income taxes and a surtax. Current corporate income taxes are 24% and therefore the surtax is 41%.

LNOC acts as receiving agent for the petroleum tax returns of the IOCs and issues receipts on behalf of the Ministry of Finance.

Direct taxes

Petroleum Tax

EPSA holders do not pay any petroleum related taxes and royalties. The wording of an EPSA states that the LNOC settles such taxes and royalties on behalf of the IOCs. Once an EPSA holder has recovered its cumulative costs, it takes a reduced share of production based on factors stipulated in the agreement in lieu of those taxes and royalties having been settled on its behalf.

The Libyan authorities accepted for a notional tax return to be filed, with the Ministry of Finance issuing a receipt, for home country tax recoverability purposes. The basis of this return is that all assets are written off over 10 years, royalty is assessed at 16.67% of revenue, liftings are valued at the official selling price used for cost recovery purposes and intangible drilling can be amortised over 20 years. The latter is based on a one time election where alternatively the intangible drilling costs can be expensed.

Concession holders pay royalties based on production at a rate of 16.67%. The Interim Agreements were signed in 1982 to introduce the Tax Paid Cost (TPC) as unfavourable taxation terms meant that IOCs stopped lifting and the CAs had no requirement to lift. The TPC system was initially intended to provide tax credits to the IOCs, but has rather resulted in additional taxes being paid. The system provides the IOCs, a fixed margin of 6.5%. Fixed assets are written off over 3 years on a straight line basis.

Company Income Tax (CIT)

CIT returns are to be filed latest four months after the year end and payments are in four equal installments starting June, September, December and January the following year. The tax rate is 24%.

Capital Gains Tax

Libya has no separate Capital Gains Tax. Capital gains are added to the taxpayer's normal taxable income and assessed accordingly.

Financing consideration (Thin capitalisation)

Libya has no thin capitalisation regulations.

Profit repatriation issues

Libya has no profit repatriation issues. The IOCs operating as branches of foreign companies are permitted to hold foreign currency accounts offshore and do not have to make any formal branch profit distributions.

Transfer pricing regulations

Libya has no transfer pricing regulations. The price of liftings by the IOCs is set for local tax and cost recovery purposes and the IOCs have no obligation to declare what price their products have been sold offshore.

Indirect taxes

Customs Duties

Petroleum Law, as amended, provides exemption on customs duties relating to oilfield specific materials or equipment. If equipment is imported on a temporary import basis then a deposit or guarantee would be required.

Stamp Duty

Stamp Duty Law applies duty on various documents and transactions. EPSAs are now subject to a stamp duty at a rate of 1% on the initial minimum work commitment of the exploration phase as defined within the individual agreements.

- VAT – Libya has no value added taxes.
- WHT – Libya has no withholding taxes.

Other Taxes

Employee Taxation

Payroll tax is withheld by the employer. It is 5% for the first LD 1,000 per month and 10% thereafter. Jihad tax at 3% is also applicable.

Social security contribution rates are 3.75% by the employee and 11.25% by the employer on the employee's basic salary.

Taxation of Oil Service Companies (OFS)

Oil service companies are subject to the normal tax law and the corporate tax rate is effectively 24%. The tax return needs to be submitted four months after the year end (i.e. 30 April) the following year.

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Deemed Profit Taxation

In Libya, this does not apply to oil exploration and production companies but rather to service companies.

Other Tax Issues

Libyan Nationals or expatriates working in Libya are subject to various taxes, contributions and duties as follows:

- Income Tax: 5% – 10%
- Jehad Tax: 3% Social Security Contributions: 3.75% Employees and 11.25% Employers
- Social Solidarity Fund: 1%
- Stamp Duty: 0.5% on net salary

Incentives

The main incentives to IOCs is the exemption from customs duties and, as branches of foreign companies, there is no requirement to make formal distributions, and are permitted to receive revenues for oil sales to offshore bank accounts.

The attraction for the IOCs to sign EPSAs is the relatively low cost of production, in some fields USD 1 per barrel, and its proximity to the European market. Libya is the single largest supplier to the European market. In addition, only 25% of Libya's oil has been explored.

Compliance requirements

Statement of Cumulative Expenditure

The operating IOCs during the exploration phase have to file to LNOC on a monthly basis, a statement of expenditure and a final annual return which must be submitted within two months following the year-end which the statement relates.

Financial Declarations

For the concession holders a monthly Financial Declaration, coupled with a payment for taxes and royalties is required within 30 days after the month–end. A final annual Financial Declaration is filed four months after the year–end.

The notional Financial Declaration prepared by the EPSA holders should be filed quarterly, 30 days after the quarter–end. The final annual notional Financial Declaration should be filed three months after the year–end.

Branch Financial Statements

All registered entities in Libya have an obligation to file financial statements to the tax authorities. Filing should, under normal circumstances, be completed within four months of the entities year–end or one month after the date of the audit report, whichever comes first.

Tax Audits

The authorities carry out audits every three to four years. Normally the final tax assessment is based on deemed profit which is a percentage of the revenue.

Madagascar

PricewaterhouseCoopers Tax&Legal Sarl
Rue Rajakoba Augustin, Ankadivato, Antananarivo, Madagascar

Country profile

Brief overview of the oil and gas developments in Madagascar

In terms of regulation, so far the initial Petroleum Laws (dated 1996 & 1999 for upstream and downstream respectively) remain enforceable and reforming laws are yet still in discussion since the past two years.

The 1999 Law set out the Office of National Mining and Strategic Resources (OMNIS), with missions to set a national policy on mining activities; manage contractor relationships; work together on research and exploration with relevant experts.

Most famous achievements were to uncover major blocks such as the Tsimiroro block for heavy oil.

Political Updates

- Presidential elections upcoming (2018).

Economic Updates

Financial Acts: providing major economic indicator forecasts estimates twice a year: initial & rectificative – latest being 2017; 2018 in discussion.

Fiscal regime

General Tax regime:

Except for income tax and customs duty on some items, Oil & gas companies are subject to the normal tax regime.

Petroleum contractors regime:

Profit-Sharing contracts (PSC) structures apply.

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Regulatory Framework

- Upstream: Office des Mines Nationales et des Industries Stratégiques (OMNIS) – national office for national mining and strategic industries
- Downstream: Office Malgache des Hydrocarbures (OMH) – national office for hydrocarbons

Forms of contracts

Production sharing contract (PSC) structures still apply.

Local Content Regulations

No local content regulations.

Taxation regime

Direct Taxation

Direct Tax For petroleum contractors:

- Royalties on crude oil: 8%-20%, depending on barrel production.
- Direct tax on hydrocarbons (IDH): exemption from tax on capital gains and income tax.

Capital Gains Tax

Gains realised from the sale of interest is not taxable

Normal income tax

20% CIT is paid:

- provisionally on a bimonthly frequency, based on the past year's CIT
- the final balance and return is due yearly either on 15-May or 15-Nov, depending on FY end (31-Dec or 30-Jun respectively)

Withholding tax under the normal regime

A 10% withholding tax (WHT) applies on payments made to foreign services providers for a locally-established beneficiary.

A 5% WHT as well applies to payments for goods and services to local, non-registered suppliers.

Thin capitalisation and Transfer Pricing

For intercompany loans, deductible interest is limited to interest calculated on twice the share capital at the rate of the Central Bank of Madagascar plus two (+2) points. If that transfer pricing rule is not respected, tax adjustments as well as a 40% penalty apply. In addition, where no TP documentation is available where required, a MGA 100,000 penalty applies.

Double Tax Treaties (DTT)

Two (2) ratified: Mauritius & France. In project: Canada; Morocco.

Indirect Tax

VAT

- Normal VAT rate: 20%.
- VAT on exports: 0%.

Oil & gas companies are subject to the normal, common law tax regime.

VAT returns and payments are due monthly on the 15th of the month following the operative event.

Sales Tax

N/A – refer to VAT.

Customs and Excise Duties

Customs rate: 0%-20%, depending on nature of goods.

However, oil & gas companies are exempt from custom duties during exploration and for their first installation for commercial activities.

Other Taxes

Social Security

- National pensions: 13% (employer); 1% (employee).
- Medical care contributions: 5% (employer); 1% (employee) - Antananarivo. Both are capped.

Employment tax

20% salary income tax (IRSA), directly withheld by employer.

Taxation of Oil Field Services (OFS) companies

OFS companies are subject to the normal, common law taxation including VAT.

Property Tax

- Land tax (IFT) (in local currency units per hectare): on any titled bare land.
- Tax on built property (IFPB) (5%-10%): on all titled held buildings and surrounding land.

Rates are voted by the local council.

No different regimes for property rich countries.

Deemed Profit Taxation

Deemed profit taxation applies to all companies regardless of their industry, where companies do not bear legal registration while performing business in Madagascar, or where companies do not file tax returns in due time.

Tax audits

Tax audits are normally carried every three (3) years. In practice, they happen with high potential tax adjustments that require lengthy and technical discussions with tax authorities.

Morocco

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Country profile

Brief history on oil and gas development

Morocco is geographically close to many significant oil and gas producing countries and presents oil-rich geological potential. Although the growing interest of oil companies in the region could imply that Morocco's hydrocarbon assets and reserves have a lot of potential, its oil and gas reserves remain underexplored[1].

As of 31 December 2013, hydrocarbon exploration licensing was carried out on a total area of 394 165.70 Km² and included 52 onshore permits, 90 offshore permits, 4 onshore reconnaissance zones, 2 offshore reconnaissance licenses, 12 exploitation concessions and 4 Memorandums of Understanding (MOU) for oil shale[2].

Morocco aspires to become the new investment hub for oil and gas in the region, benefiting from its geostrategic position at the crossroads of Africa, Europe and the Middle East as well as the several free trade agreements concluded during the past few years.

Significant updates

- Legislative elections occurred on October 2016.
- A new government has been appointed on April 2017.
- The 2017 finance law has entered into force on June 12, 2017.
- The 2018 draft finance law is currently under discussion, once voted, it is intended to inter into force on January 1st, 2018.

Fiscal regime

Exploration and exploitation of hydrocarbons in Morocco is governed by law N0. 21-90 (enacted in 1992) as amended by law No. 27-99 (enacted in 2000) together with the hydrocarbon code. The hydrocarbon and tax codes provide the following:

- Corporate Income Tax: A 10 year exemption from corporate tax is provided for the holders of Exploitation Concessions. However, this

1 Source: www.morroccosummit.com
2 Source: Annual report 2013 published by ONHYM www.onhym.com

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only applies from the date of regular production, prior to this the proportional corporate tax rate scale levied is:

- » 10 % : From 0 MAD to 300,000 MAD : 10%
- » 20% : From 300,001 MAD to 1,000,000MAD: 20%
- » 30% : From 1,000,001 MAD to 5,000,000 30
- » 31% : above 5,000,001 MAD.
- » These rates apply as of January 1st, 2017.

- Value Added Tax: VAT is generally suffered at 20%, however oil and gas Hydrocarbons are subject to VAT at 10%.
- Surface rental: The holder or co-holder of an exploitation concession must pay to the State, in accordance with the rates and procedures provided by regulations, an annual surface rental proportional to the surface of the exploitation concession.
- Royalty: The holder or co-holder of a concession must pay to the State, in accordance with the scales, rates and procedures provided by regulations, an annual royalty on its share of the production of hydrocarbons originating from the concession, payable, in accordance with petroleum agreement provisions, either in cash or in kind, or partly in cash and partly in kind.

Regulatory Framework

In Morocco, the oil and gas sector is regulated by the Hydrocarbon law. However, other laws may apply such as the tax code, laws on environmental impacts, labour code and industrial property.

Key Regulators

- “Office National des Hydrocarbures et des Mines” (ONHYM): Established in 1928, it is a citizen organisation with a long mining history and is the basis for the discovery of almost all mines in Morocco;
- Ministry of energy, mines, water and environment (MEMWE) – Department of energy and mines: Develop and implement government policy in the fields of energy, mining and geology. Ensures as well the supervision of public enterprises under its jurisdiction (i.e. ONHYM) and controls sectors dependent on his authority;
- Moroccan Tax authority.

Forms of contracts

The hydrocarbon code distinguishes two forms of contracts of which oil companies must conclude with the state in order to be granted the reconnaissance license, the exploration permit or the exploitation concession: the Reconnaissance contract and the Petroleum Agreement.

- Reconnaissance contract: A contract concluded between the ONHYM and the company, for the reconnaissance and the evaluation of the petroleum potential of the area of interest. This contract is valid for a period of one year and can be extended.
- Petroleum Agreement: the purpose of this Agreement, which is concluded with the state, is to specify the rights and obligations of the

Parties resulting from the Exploration Permit(s) and any Exploitation Concession which might derive there from.

The interested company agrees with the ONHYM on the delimitation of the area of interest and negotiates the terms of the Reconnaissance Contract or the Petroleum Agreement.

Moroccan local content regulation in the Oil and Gas Industry

There is no specific rule provided with regards to the Moroccan local content, in the sense that it is not required for Moroccan individuals or entities to acquire the majority of share capital in oil & gas companies nor to hire a minimum number of Moroccan employees.

However, the Hydrocarbon Code provides that, in the petroleum agreement, the state will hold no more than 25% in the exploration license and the exploitation concession.

Taxation regime

Direct taxation

The taxable profit is computed as difference between:

- The gross income which is comprised of the value of the proportion relating to the holder of the exploitation concession in respect of a given fiscal year.
- The expenses, costs and amortisations relating to the same fiscal year as well as tax losses to carry forward.

The tax losses are subject to statute of limitation rules defined as follows:

- For the part relating to amortisations (other than nominal assets): the tax loss is carried forward without limitation in time.
- For the operating tax loss, it may be carried forward for 4 years.

Expenses and costs should be understood as the expenses of starting-up, of reconnaissance works, of operating cycle and those relating to the concession royalty and the surface rental.

Moreover, the expenses must be CIT deductible under the normal Moroccan tax law.

The following proportional CIT rate scale apply as of 1 January 2016:

10 %: From 0 MAD to 300,000 MAD

20%: From 300,001 MAD to 1,000,000

30%: From 1,000,001 MAD to 5,000,000

31%: above 5,000,001 MAD

The Moroccan Tax Code (MTC) provides reduced rates:

- 17.5% in case of export (after 5 years tax holidays);

Morocco 2017 Country Updates

A CIT exemption of 10 years is provided for oil and gas companies holding the exploitation concession as from the beginning of the production.

- The taxable period corresponds to 12 months.
- CIT returns must be filed within three months following the closing of the fiscal year.
- Payment of tax is made during the fiscal year by way of four instalments of 25% each based on the CIT of the previous year. A regularization is undertaken along with the submission of the taxable income return.

Concession royalty[3]

The concession royalty is due on annual basis according to the following rates:

Onshore and offshore less than 200 meters water depth: Royalties are levied on oil at 10% and gas at 5%. However, for the first 300,000 tons of oil and the first 300 million m^3 of gas produced from each exploitation concession are exempt from royalties.

Offshore beyond 200 meters water depth: Oil royalties are 7% and Gas is 3.5%. The first 500, 000 tons of oil and 500 million m^3 of gas produced from each exploitation concession are also exempt from royalties.

Surface rentals[4]

- Exploration permit: for each exploration permit, a fee of 1,000 MAD is payable at the time of filing a request or applying for an extension period.
- Exploitation concession: for each exploitation concession a rental of 1,000 MAD per Sq. Km. is payable each year.

Consolidation

Moroccan law allows holders and/or co-holders of concessions to consolidate all revenues and expenses of which it holds for the purposes of calculating corporate income tax.

Corporate Income Tax (CIT)

Oil and gas companies holding a hydrocarbon concession are exempt from CIT for a period of 10 years as from the date of regular production of that concession.

Further, newly established entities in Morocco are exempt from the "minimum contribution" for 36 months as from the beginning of the activity. This minimum contribution is calculated on the amount of turnover, specific financial income and specific non-current income at the rate of 0.5% or 0.25%. Moreover, the minimum contribution could not be lower than 3,000 MAD

Withholding tax

Interest

Interest payments to non-residents is subject to 10% withholding tax. Having said this, the MTC provides withholding tax exemption for loans denominated in foreign currency for a period of 10 years or less.

3 www.onhym.com
4 www.onhym.com

Royalties

Royalty payments to non-resident entities attract 10% withholding tax.

Dividends

Dividends for companies operating in the hydrocarbon sector are exempt from withholding tax. Similarly, no withholding tax is levied on branch repatriation of profits.

Morocco currently has 53 double tax treaties (DTTs) in force under which the domestic withholding tax rates could be reduced provided all relevant conditions are met. During 2016, 3 DTTs entered into force: Ivory Coast, Mali and Guinea Conakry.

Capital gains realised by non-resident companies:

The MTC provides for exemption of capitals gains realised by non-resident entities on shares in Moroccan entities that are listed on the stock exchange except shares on rich land entities. This exemption is subject to the provisions of the relevant DTTs. The capital gain realised by an oil and gas company in Morocco is included within the taxable basis of the company unless stated otherwise by the DTT.

Capital gains on shares of property rich companies are generally taxable in Morocco under most DTTs.

Thin capitalisation and Transfer Pricing

Article 213 of the MTC provides that the Moroccan Tax administration is entitled to adjust the taxable income and/or the declared turnover of Moroccan companies which are “dependent”, directly or indirectly, on enterprises located inside or outside Morocco. In this case, the MTC allows the tax authorities to re-determine profits that have been indirectly transferred. These adjustments are performed by way of comparison with similar enterprises or by way of direct assessment based on available information to the tax administration.

Oil and gas companies are allowed to deduct financial interest relating to loans. However in the special case of Shareholder Current Account Advances (Shareholders loans), relating interests are deductible to the extent that the following conditions and limits are respected:

- The share capital must be entirely paid-up;
- Deductible interest is computed on an amount not exceeding the amount of share capital; and
- Interest must be computed on the basis of rates provided by the Ministry of Finance.
- For 2017, the applicable rate is 2.21%.

Indirect Tax

Value-added tax (VAT)

As a general principal, all industrial, commercial and handcraft transactions performed in Morocco are subject to VAT at 20%. Nevertheless, acquisition by the holders of reconnaissance licenses, exploration permits or exploitation concession, as well as by their contractors or subcontractors, of goods and services necessary to the activity are exempt from VAT. The same rule is applicable for imported goods and services. It is worth noting that the VAT exemption is subject to some formalities and that sale of oil and gas are subject to 10% VAT.

All taxpayers making taxable supplies will need to register and account for VAT. Based on the level of turnover/taxable supply made, VAT returns are required to be prepared and filed either monthly or quarterly.

The VAT filing should be done electronically. The payment deadline is the end of each month or quarter.

Custom duties

Holders of a reconnaissance license, exploration permit or concession as well as their contractors or subcontractors are exempted from customs duties and import VAT on equipment, materials and consumable items that are necessary to undertake hydrocarbon activity.

However, these incentives are not granted if said materials and equipment may be purchased locally in the limit of 10% mark-up – price CIF – and in the same quality and delivery delay conditions.

Furniture and other personal items belonging to the personnel recruited aboard are released for consumption without payment of customs duties. The materials and items having benefited from the above exemptions cannot be used except for utilisations they were imported for. The holders of hydrocarbons reconnaissance, exploration or concession may be subject to audit by the customs administration.

These items cannot be sold unless relating customs duties are paid. Furthermore, new items are eligible for the “temporary admission regime” as provided by the Moroccan Customs Code.

Holders of hydrocarbon reconnaissance, exploration or concession as well as the contractors and subcontractors, are eligible for the “temporary admission regime” in consideration of importing materials and consumable items necessary for hydrocarbon activity and annex services. As such, these items are exempted from the payment of the quarterly royalties as provided by the Customs Code. The list of those materials and items must be approved by the administration.

Consumption tax on energy products and bitumen

Unless they are expressly exempted, the energy products and bitumen are subject to the consumption tax. In this context, crude oil and crude bituminous minerals imported are exempt from import duty and consumption taxes.

As far as the Moroccan production is concerned, crude oil or crude bituminous minerals obtained locally are exempt from the domestic consumption tax and are no longer subject to sampling by customs.

On the other hand, the natural gas extracted from the Moroccan subsoil, is subject to consumption tax in addition to the VAT calculated on the amount of the said consumption tax.

Other Taxes

Business tax

Under law No. 47-06 a local business tax is levied in Morocco, the rate of which is based upon the value of the assets of the business. Rates range from 10 – 20% and 30%. Reconnaissance license holders must pay this tax; however, holders of exploration permits and concessions are exempt.

Employment income tax

Employers established in Morocco are required to withhold, on a monthly basis, the Income Tax and the Social Security Contributions and remit the amounts to the Treasury before the end of the following month.

Furthermore, if the Morocco resident employees receive both Moroccan and foreign source revenues, they will have to submit their personal individual tax return to the tax administration before the 28th of February of the following year.

Earned salary income is taxed at a progressing scale from 0% to 38%.

Social security contributions

The only mandatory social security regime in Morocco is managed by the Moroccan Social Security Fund "C.N.S.S" as regulated through the Dahir enacting the Law No. 1-72-184.

Except some exemption cases, all employers must affiliate their employees to the National Social Security. It is worth noticing that the social security contribution is apportioned between the employer and the employee.

Employer Contribution	Rates (%)
Family allowances	6.4
Short-term & long term benefits contribution payable on earning up to MAD 6,000 per month	8.98
Mandatory medical insurance	4.11
Professional training	1.6

Employee Contribution	Rates (%)
Short-term & long term benefits contributions payable on earnings up to MAD 6,000 per month	4.48
Mandatory medical insurance	2.26

Property taxes

Property tax is levied on the transfer of property at the rate of 1.5% of the value of the property.

Registration taxes

Registration is a formality that the law provides for some acts and conventions. The applicable rates are 1%, 1.5%, 3%, 4% and 6%. They vary depending on the nature of the operation with a minimum charge of 100 MAD. This minimum charge is increased to 1000 MAD for the acts of incorporation and capital increase of companies.

Oil and gas field services companies (OFS)

Companies supplying oil and gas services are not subject to the same tax regime in Morocco as exploration and production companies. Instead they will be subject to the general tax law of Morocco and will suffer tax on profits at the proportional rate scale from 0% to 31% as provided above.

CIT:

Article 6-II-B-2° of the MTC grants the 10 years exemption to Hydrocarbon Concession holders.

OFS companies do not fall within the scope of this exemption. As such, OFS companies would be subject to CIT under the common law conditions.

VAT:

Being contractors of the reconnaissance license holders, OFS companies should enjoy the VAT exemption subject to some formalities.

Deemed Profit Taxation

Non-resident companies tenderers of work, construction or assembly contracts may opt for the flat-rate taxation at the rate of 8% levied on the gross value of the work contract.

Compliance Requirements

The MTC does not provide any specific tax rules for hydrocarbon activities. Oil and gas companies established in Morocco are required to comply with all formal obligations to which a Moroccan company is subject.

Oil companies must also maintain bookkeeping and records according to the Moroccan accounting principles (Moroccan GAAP).

Tax Audits

The tax authorities may carry out an inspection whenever necessary. Although the statute of limitations period is 4 years, it may be extended to 8 years in case of tax losses. However, the company/branch documents must be kept for ten years.

Mozambique

Martins & Associados Advogados Sociedade Unipessoal, Lda. Avenida Vladimir Lenine, 174, 4º andar. Edifício Millennium Park, Caixa Postal 796, Maputo, Moçambique

Country profile

Brief history on Oil & Gas development

Mozambique is a country located in the Southern Africa area, comprised of 11 provinces, and has Maputo as its capital. Portuguese is the official language and the official currency is Meticais (MZN).

Currently, Mozambique has one of the major sedimentary basins of Africa which is still not explored. It has also been proven that the country has natural gas at two sedimentary basins that can be explored.

The country updated its terms of legislation after the recent discovery of enormous natural gas reserves by Anadarko and ENI in the Oil & Gas Rovuma Basin off the northern coast of Mozambique. The natural gas will provide the feedstock for the Liquefied Natural Gas (LNG) facility and associated infrastructure in the Palma region.

The Petroleum Law no. 21/2014 of 18 August, 2014 governs all aspects related to petroleum operations; including the infrastructures (owned or held by a holder of petroleum right or a third party) used in connection with petroleum operations (it therefore typically includes LNG activities). It also applies to oil and gas consumption used in connection with production operations or transport.

The refining operations, industrial, distribution and marketing of petroleum products are expressly excluded from the Petroleum Law, as these activities are governed by a specific Decree no. 2/2014 of 2 December, 2014 which established the Legal and Contractual Special Regime applicable to the Liquid Natural Gas in areas 1 and 4 of the Rovuma Basin (i.e. the LNG Regime).

In order to ensure benefits flow to the local private sector, the new Petroleum Law includes aspects to establish a more equitable profit sharing fiscal structure with international extractive companies, strengthen the governance arrangements supporting these sectors, clarify the public and private sector's role in exploiting and managing these resources and exploring options to support local content (LC) development.

Regulation on petroleum operations is currently under discussions and expected to be approved soon.

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Significant new developments

There were a number of significant developments both economically and politically over the last year or two. Due to these developments over the last couple of years Mozambique's currency, the Metical, has weakened substantially against the dollar, with minimal growth registered in the year 2017. Given this pressure on the economy, tax collections by the Mozambique Revenue Authorities decreased and naturally, the Authorities are more aggressive with tax inspections / audits as well as focused on large transactions where capital gains or related taxes become due and payable. Usually, these types of transactions are in the extractive industry.

Fiscal regime

In Mozambique, petroleum operations are defined as "all or some of the operations related with the research, development, production, separation and treatment, storage, transport, sale or delivery of oil as agreed by the parties, including the operations of processing natural gas and ending of all concluding operations."

Petroleum operations are governed by the following legislation:

- Law no. 21/2014, of 18 August (Petroleum Law);
- Regulations on Petroleum Operations, approved by Decree no. 34/2015, of 31 December (PO Regulations);
- Law no. 27/2014, of 23 September (Specific Rules on Taxation and Tax Benefits of Petroleum Operations);
- DecreeLaw no. 2/2014 of 2 December, provides a special legal and contractual framework for the Liquefied Natural Gas Project in Offshore Areas 1 and 4 in the Rovuma Basin.

In addition, the Government approved the following regulations:

i. Decree no. 32/2015, of 31 December the Regulation of the Specific Tax Regime and Fiscal Benefit of Petroleum Operations;

ii. Decree no. 74/2016 which approves the complementary terms of the EPCC (Concession contract) in Area 1 of the Rovuma Basin;

iii. Decree no. 75/2016 which approves the terms of the alterations of the EPCC (Concession contract) in Area 4 of the Rovuma Basin;

iv. Decree 76/2016 concerning the option under the law 27/2014 of September 23, not to receive in kind the Liquefied Natural Gas corresponding to the Production Tax, committing it to the joint sale by the concessionaire;

v. Decree no. 77/2016 approves the terms and conditions of the Liquefied Natural Gas Agreement with the Government for Area 1;

vi. Decree no. 78/2016 which approves the terms of the sale of shares in the Liquefied Natural Gas Project for Area 1 within the Concessionaires.

vii. Decree no. 37/2017 which approves the terms and conditions of the

In terms of taxation of petroleum operations, they are subject to the general corporate taxation rules, as established in the Corporate Income Tax Code (CIRPC).

The Corporate Income Tax (IRPC) regime accommodates some specific rules related to the oil and gas sector and ensures a greater competitiveness in the sector, namely

The ring fencing rules that can be summarized as follows:

1. An entity that has more than one concession must assess the taxable income of each concession separately, as if each was an independent taxpayer;
2. Oil & Gas companies are now required to organize their statutory accounts and comply with tax and accounting obligations separately per concession;
3. Oil & Gas companies are required to have different tax registration numbers per concession; and
4. Offset of losses assessed in one concession with gains assessed in another is not allowed.

Petroleum Production Tax paid is no longer deductible for Corporate Tax purposes.

Regulatory Framework

The key regulators in the oil and gas industry include:

- Ministry of Energy and Mineral Resource (*MIREME*): This ministry regulates the activities of companies operating the energy, oil and gas sector.
- National Institute of Petroleum (*INP*): This Institute is subordinate to *MIREME*, and is responsible for the negotiation of the petroleum concession contracts on behalf of the government.
- National Hydrocarbons Company (*ENH*) is the entity that manages and holds the participating interests on behalf of the State.

Forms of contracts

In accordance with the Petroleum Law, the petroleum operations shall be carried out through a concession contract following a public tender. A public tender is launched by the Government for the activities of exploration, production and exploration of oil and gas.

The petroleum operations are subject to the prior execution of a concession contract under the Petroleum Law which will grant the following rights:

- Reconnaissance – the reconnaissance concession contract grants the nonexclusive right to carry out preliminary exploration work and assessment operations in the concession contract area;
- Exploration and production – an exploration and production concession contract grants an exclusive right to carry out petroleum exploration and production as well as a nonexclusive right to construct and operate oil pipelines or gas pipelines systems for transportation of crude oil or natural gas or infrastructure for gas produce in the concession contract area;
- Construction and operation of oil pipeline or gas pipelines systems – an oil pipeline or a gas pipeline system concession contract grants

the right to construct and operate oil pipeline or gas pipeline systems for the purpose of transporting crude oil or natural gas, in those cases that such operations are not covered by an exploration and production concession contract; and

- Construction and operation of infrastructure – which grants the right to construct and operate infrastructure for petroleum operations, such as processing and conversion, which are not covered by an approved exploration and production development plan.

The most common forms of petroleum contracts in Mozambique are the following:

Joint Venture Arrangement

This is usually an arrangement between *ENH* on behalf of the Government of Mozambique and oil companies. Companies operating under this arrangement jointly own and develop various oil and gas concessions, contribute towards costs and subsequently derive benefits based on their equity participation in an oil block.

The parties will typically sign a Joint Operating Agreement (JOA) to govern relations between them.

Exploration and Production Contract (EPC)

This type of agreement is basically an agreement between an Oil and Gas Company and the Government. The Government grants to the contractor a determined area for research, exploration or production on the contractor's own risk and costs.

The contractor provides the funds and bears the risks until commercial production is achieved. Production is allocated in barrels to royalty, then taxes, then costs and finally profit using a predetermined sharing formula.

An EPC contains the exclusive right to conduct petroleum exploration and production activities, as well as the nonexclusive right to construct and operate an oil or gas pipeline for the purposes of transporting oil or gas produced from the contract area, except where access to an existing oil or gas pipeline system is available on reasonable commercial terms.

The power to approve the execution of the EPC, development plans and any material amendments thereto is vested in the Council of Ministers.

Petroleum Concession Agreement has been updated in mid-June 2016.

Royalties

The Petroleum Production Tax (PPT) or Royalty is levied on the petroleum produced in the Mozambican territory from a development and production area, with such tax liability being generated upon the extraction of the petroleum produced from a petroleum deposit.

The PPT rates are 10% for crude oil and 6% for natural gas. Please note that when the production is intended for the development of local industry, the above rates are reduced by 50%.

The State may opt for the collection in kind of part or all of the PPT by means of notice by the tax administration, after consultation with the relevant services of the Ministry responsible for the petroleum sector.

The tax basis of the PPT shall be the value of the petroleum produced, which shall be determined based on the weighted average prices at which it was sold by the producer and its contractors in the month to which the tax to be assessed pertains.

Local Content rules

Mozambique has recently introduced some local content rules for the industry, which includes, amongst others:

i. Mozambican companies or foreign entities associated with Mozambican citizens or companies, have right of preference in the attribution of concession agreements;

ii. Foreign citizens or entities providing services to the oil operations must associate with Mozambican citizens or companies;

iii. Holders of the rights to conduct oil operations must give preference to local products and services, when same are comparable in quality, to the international products, materials and services that are available within the required deadline and quantities, and when the price, including taxes, is not superior in more than 10% (ten per cent) comparing to the price of the available imported goods;

iv. The Concessionaires must contribute to the training of local technicians in accordance with the provisions of the respective concession agreement with the Mozambican Government;

v. Acquisition of goods and services within the oil operations in an amount equal or superior to MZN 40,000,000.00 must be made through public tender;

vi. Concessionaires and the Specific Purpose Entities must prepare and submit, every year, to the competent Governmental entities, a training plan aimed at a the gradual increase of the percentage of Mozambican citizens working in any project of the Rovuma Basin, in all levels of organization. This must include an effective training plan of Mozambican workers, either in Mozambique or abroad, for each phase and level of the operations.

Taxation Regime

Direct Taxes

Profits and Gains

Furthermore, without prejudice to the *IRPC*, in terms of the Petroleum Tax Regime, the following are considered profits and gains derived from petroleum operations:

- Revenues from the sale or disposition of the produced oil;
- Compensations received for any loss or destruction of the produced oil, resulting from an insurance contract or other source;
- Amounts received from a sale of information regarding the petroleum operations;

- Capital gains resulting from the sale, directly or indirectly, of real estate assets, located in Mozambique, related to oil and gas operations, regardless of whether the disposition occurs abroad;
- Unused amounts of the fund related to the costs for the demobilization of oil and gas operations;
- Any other withdrawals related to Demobilization Fund of oil and gas operations; and
- Any other amounts obtained by virtue of oil and gas operations in respect of the concession contract.

Costs and Losses

In terms of the Petroleum Tax Regime, the following, amongst others are considered costs and losses derived from petroleum operations:

- Operating costs; Overhead such as warehouses, vehicles, offices, camps, installations, equipment, used in the petroleum operations.
- Professional training of Mozambican employees;
- Expenses incurred in the signing of a concession contract, excluding any bonus associated with this acquisition;
- Contributions in cash to the Demobilization Fund and direct costs of demobilization;
- Expenses of any downstream activity of the concession contract or services provided under an activity related to the referred contract; and General administrative expenses.

The enacted law also provides for nondeductible expenses, which include:

- Fraudulent activities;
- Hedging losses;
- Expat personnel training expenses and training programs not in compliance with the legislation;
- Bribes;
- Petroleum trading or transport costs downstream of the delivery point specified in the agreement;
- Independent experts consulted with for purposes of determining petroleum price, if not requested by Government;
- Petroleum Production Tax;
- Commissions paid to intermediaries;
- Arbitration costs, except those to defend exploration, development or production activities;
- Indemnities paid for damages; and
- Damages caused by negligence or fraud.

Amortization

The concessionaire must depreciate all depreciable items of tangible and intangible assets in accordance with the IRPC.

The prospecting and exploration costs carried out under a concession contract are treated as depreciable items of tangible assets, and are subject to amortization.

Furthermore, the development and production costs carried out under a concession agreement are considered as depreciable items of tangible assets, and consequently subject to amortization.

Please see the table below with the amortization rates:

Assets	Rates
Prospecting and Exploration Cost	100%
Development costs	25%
Petroleum Production Assets	20%
Acquisition of Petroleum rights	10%
Other Assets	10%

The amortization is deducted with the above rates unless the working life of the petroleum operation approved in the development plan is reduced, in which case the rate shall be divided by the number of expected years of oil and gas operations.

Withholding tax

Withholding tax is an advance payment of income taxes. It is deductible from payments made on qualifying transactions which include payments in respect of services, rent, dividend, interest, royalty, commission. Note however that payments for services between local entities subject to Corporate Tax are exempted from withholding tax.

Payments to non-residents without permanent establishment are taxed through a final withholding tax of 20% on the income listed on the specific legislation.

Additionally, the income listed below is subject to final withholding tax at a rate of 10%:

- Telecommunications services and international transport services, including assembly and installation of the equipment made by such service providers;
- Construction and rehabilitation of infrastructure of production, transport and distribution of electricity in rural areas, within the scope of public rural electrification projects;
- Chartering of seafaring vessels for fishing and cabotage activities; and
- Securities listed on the Mozambican Stock Exchange.

By the 20th day of the following month, all amounts withheld have to be delivered by the company to the tax authorities.

However, if payments of income subject to withholding is to be made to foreign entities, proof of payment of the tax has to be presented to the commercial bank or central bank (where applicable) before the transfer is processed or approved. Therefore, in these cases, the withholding tax has to be paid to the State before the transfer is made.

However, the applicable withholding tax rate may be reduced where the recipient is a resident of a country that has a double tax treaty with Mozambique.

Mozambique has currently in force, Double Taxation Treats (DTTs) with some African, European and Asian countries; namely, Portugal, Italy, Mauritius, United Arab Emirates (UAE), Macau, South Africa, Botswana, India and Vietnam.

Capital gains

In Mozambique, capital gains are not taxed separately from other company's incomes, they must be added to the remaining company's income and taxed at the end of the year based on the Corporate Income Tax rate (e.g. 32%). The following changes were introduced to the *CIRPC* regarding capital gains, with effect from 2013:

- Capital Gains derived from direct or indirect transfer of shares, participating interests and other rights involving assets located in Mozambique, between non-resident entities, are regarded as obtained in the country; and
- The direct and/or indirect disposals of Mozambican companies by non-residents are subject to tax at a rate of 32% in Mozambique (certain reliefs may be available depending on the nature of the asset sold (i.e. direct participative interest sale or share sale).

The compliance requirements will include obtaining the necessary approvals for the sale from the competent authorities, and also disclosing the gain in the tax return. For gains by non-resident entities, the compliance requirements will depend on the structure of the sale, but in essence approval must be obtained and the non-resident will likely be required to register for tax, pay over the tax in Mozambique and then deregister.

Transfer pricing

Regarding transfer pricing rules, the IRPC currently has only generic rules, according to which the Tax Authorities may proceed with the necessary corrections for assessing the profits for tax purposes whenever:

- By virtue of special relations between the taxpayer and other entity, conditions different from those which should be normally agreed between independent entities have been established; and
- In consequence of those conditions, the profits for accounting purposes are different from those that would have resulted had such special relations not existed.

Please note, however that the *IRPC* was changed to include additional transfer pricing rules, with regards to the definition of the concept of special relations.

The Regulations on transfer pricing was recently approved and will, in principle, be in force from January 2018, which require transactions between related parties to follow the arm's length principle.

The Tax Authorities have the power to re-calculate a taxpayer's taxable income if, due to a special relationship between the Mozambican and non-resident companies, certain conditions existed that allowed a calculation of profit that differed from the profit that would have been calculated without the existence of such relationship (i.e. the arm´s length principle).

Principle of Independent Entities

With regards to the *IRPC,* the following operations are considered to be conducted by independent entities applying the transfer pricing rules provided by the *IRPC*:

- Transactions relating to different concession contracts of the same taxpayer;

- Transactions relating to a concession contract and other activities of the same taxpayer;
- Transactions relating to oil and gas operations downstream of the development plan/ point of delivery;
- Services provided to activities downstream to the delivery point; and
- Any transactions between entities with special relationships.

According to this principle, when two or more taxpayers develop activities of reconnaissance, research, development and production of oil and gas within the same concession agreement, each taxpayer must separately calculate the taxable income of the petroleum operations in respect of that concession contract, as if they are associated entities conducting intergroup transactions by applying transfer pricing principles (i.e. principle of independent entities.)

Thin capitalisation

A debt to equity safe harbour ratio of 2:1 applies in Mozambique. Any interest incurred on the portion of the loan deemed excessive will not be tax deductible for corporate tax purposes. However for specific O&G operators (e.g. under the specific LNG Decree-Law for Rovuma Basin) this ratio is not applicable.

Indirect Taxes

Valueadded tax (VAT)

As per the VAT Code in force, VAT is levied on the supply of goods and services, carried out in the national territory by a taxpayer acting as such and, in any case, on the importation of goods. Mozambique (unique) VAT rate is 17%.

Mozambican VAT is levied on the supply of goods or services carried out within the national territory without exceptions (territoriality concept), as well as on the imports (e.g. entry of goods in the territory, with a few exceptions.

As from 1 January 2017, the new VAT Law revoked the exemption granted to Oil & Gas companies for the acquisition of services related to drilling, research and construction of infrastructures during the prospecting and research phase. The reason why this exemption was revoked is unclear.

VAT payment is required monthly. The payment is accompanied by three copies of the form called Declaração Periódica de IVA – Modelo A. The VAT returns should be submitted on a monthly basis, by the end of the following month. The new VAT Law introduced an additional requirement for submission for periodic declarations when the result for the month is a credit in favour of the taxpayer. If so, the VAT return should be submitted to the relevant tax office until the 15th day of the month following that to which they refer. In addition, all periodic declarations must be submitted with an indication of the first and last order number of the series of invoices issued or other equivalent documents. Please bear in mind that the submission of the Modelo A outside the statutory period is subject to payment of fines and interests (if there is a VAT amount to pay) to the Tax Authority. The submission of the VAT form currently is done by submitting the original forms, since there is no electronic form application currently used by the Tax Authorities.

Custom duties/Import tariffs

Custom duties in Mozambique are levied only on imports. Rates vary for different items, typically from 0% to 20%, and are assessed with reference to the prevailing Harmonized Custom Tariff. The fiscal benefits available for the petroleum operations are the following –

a. Exemption from customs duties, VAT (17%) and excise duties on import of capital equipment, listed in Class "K" of the Customs Tariff Schedule, during a period of 5 years counting from the commencement of activity's date.

b. In addition to those listed in the Class "K" of the customs tariff schedule, the exemptions from customs duties, VAT and excise duties also apply on importation of specified goods/equipment used for exploration purposes.

Other taxes

Employment tax

All remunerations paid to employees are subject to monthly withholding as per the definitive tax rates that are established in a specific schedule approved by law, depending on the gross amounts received and personal and family specific circumstances. The employer is obligated to withhold at source the tax due by the employees.

For resident employees, the monthly withholding rates vary from 0%, to 32%, being withheld definitively at source. For non-resident employees the withholding rates above is reduced to 20%. However, the Expatriate Personnel of the Concessionaire (O&G) and its Subcontractors (OFS) shall be exempt under the EPC (oldest versions) from any and all taxes on or related to the income of non-resident Expatriate Personnel of the Concessionaire or its Subcontractors or any other tax of a similar nature imposed on the work earnings of such Expatriate Personnel.

The amounts withheld by the company shall be delivered to the tax authorities by the 20th day of the following month.

Social security contributions

Pension contribution companies must be registered with the national social security system. In order to register the company (as a contribution payer) with the National Social Security System, a proper form must be completed and a letter must be submitted to such Authorities.

Social Security is payable by employers and employees on their monthly remuneration. The aggregate rate of contribution is 7%, 4% and 3% payable by employers and employees, respectively.

These amounts must be delivered to the Social Security authorities by the 10th day of the following month.

There is no difference between the normal regime and that of O&G companies. However, as stated above, the Expatriate Personnel of the Concessionaire (O&G) and its Subcontractors (OFS) shall be exempt under the EPC from any and all taxes on or related to the income of non-resident Expatriate Personnel of the Concessionaire or its Subcontractors or any other tax of a similar nature imposed on the work earnings of such Expatriate Personnel. This exemption is present in the old Concession Agreements, but is being removed from the latest versions of the Concession Agreements.

Municipal Individual Tax

Municipal Individual Tax (*IPA)* is a fixed value payable annually by all resident individuals aged between 18 and 60. The tax is payable once a year. This tax replaces the National Reconstruction tax within the Municipalities.

It is levied on the salary of the employees. Currently the IPA for the FY17 in Maputo amounts to MZM 295.00. This tax is payable in March of each financial year, and must be withheld from the employees' salary during March.

Municipal Property Transfer Tax

Municipal Property Transfer Tax (SISA) is charged on the onerous transmission of property rights or other minor rights over immovable property (e.g. sale and purchase, accord and satisfaction, constitution of servitudes, etc.) considered as urban tenements located in the Mozambican territory.

A property is considered urban tenement if the source of income from the property is derived from any building on the land, with the grounds on which it is based, and not the land itself.

The obligation to pay the property transfer tax is triggered at the moment that the onerous transmission of a property right or a minor right as referred above is considered transmitted (including as referred above, the signature of promise of sale agreements).

The rate of tax is 2% of the selling price of the building. When the beneficiaries live in a country with a privileged tax regime, the applicable rate is 10%.

Municipal Tax on Real Estate

This tax is levied on buildings situated within a municipality. The rates applicable are 0.4% for buildings used for habitation purposes and 0.7% for buildings used for commercial purposes. This tax is paid in two instalments, being the 1st in January and 2nd instalment in June, and can be paid in one instalment until 31 January. Currently, the value of immovable property is determined on the grounds of a formula established by the State Department for Sale of State Real Estate.

Stamp taxes

Under the Stamp Duty Code, stamp duty is payable on any agreement, bank transactions, and specific acts foreseen in the said Code, and executed in Mozambique. The payment of the stamp tax is due by the 20th day of the following month of first execution of the agreement or other act.

Stamp duty is chargeable either at fixed rates or ad valorem (i.e. in proportion to the value of the consideration) depending on the class of instrument.

Taxation of Oil Field Service Companies (OFS)

The OFS are subject to the normal tax regime as a normal business operator and are not entitled to the specific tax regime applicable to the Exploration and Production Companies.

Corporate Income Tax:

32% (although a penalty rate of 35% may be charged on unsubstantiated payments).

Resident entities are taxed on worldwide income.

Branch tax rate is also 32%. There is no branch remittance tax.

Dividends:

20% final tax (10% for shares listed on the Maputo stock exchange) unless treaty relief applies.

Non-Resident Services WHT:

20% for non-resident entity with no head office, or effective management or control in Mozambique (this is applicable to payments made by OFS to its non-resident service providers.

Value Added Tax:

VAT is chargeable on the supply of goods and services in Mozambique carried out in the national territory by a taxpayer acting as such, and on imports. The VAT rate is 17%. It is deductible and can be offset from output VAT. It can also be carried forward or reimbursed.

There may be a VAT exemption if the acquirer of the services is an O&G Operator (subject to case by case analysis).

Incentives in the oil and gas industry

The fiscal benefits available for the petroleum operations are the following:

- Exemption from customs duties, VAT (17%) and excise duties on import of capital equipment, listed in Class “K” of the Customs Tariff Schedule, during a period of 5 years counting from the commencement of activity’s date.
- In addition to those listed in the Class “K” of the customs tariff schedule, the exemptions from customs duties, VAT and excise duties also apply on importation of specified goods/equipment used for exploration purposes.

The above benefit shall only be granted whenever the goods to be imported are not made in Mozambique or, if so, such goods do not satisfy the specific features in terms of purpose and functionality required by or inherent in the nature of the activity to be developed and exploited.

Whenever the tax benefit refers to the acquisition of goods intended for the direct realization of the purposes of the acquirers, it will be rendered void in case of sale of such goods, or should they be used for a purpose other than the intended purpose, without the prior authorization of the competent entity; in which case the sanctions provided for in the applicable legislation will be applied.

Compliance Requirements

It is established that the taxpayer must obtain a Number of Individual Tax Identification(*NUIT*) for each area of the concession contract and organize a separate accounting for each area of the referred contract.

Tax returns and payments

The Tax Code establishes the following deadlines for payment of this tax:

Two types of provisional payments of income tax: advance and special advance payments:

Advance: 3 equal monthly instalments in May, July and September (or 5th, 7th and 9th if not December year-end) of the tax year to which the tax relates. Total amount = 80% of tax assessed in preceding year, less the amount of tax withheld by third parties in the previous year.

Special advance: 3 equal monthly instalments in June, August and October (or 6th, 8th and 10th if not December year-end). They equal the difference between 0.5% of the company's turnover and the total of advance payments made in the preceding tax year. Minimum amounts = MT 30,000, maximum amounts = MT 100,000.

Final payment: The annual corporate tax return must be lodged and any final payment made by 31 May each year (or 5th month after year end), with all supporting documents to be lodged by 30 June, or 6th month after year end (see below for more details).

Other declarative obligations

Corporate taxpayers should also comply, amongst others, with the following declarative obligations:

Declarative Obligations	Deadline
Annual Income Tax Return (M/22)	By the last working day of May or by the last working day of the fifth month subsequent to the end of the tax period for the taxpayers authorized to adopt a different tax year
Annual Declarations of Accounting and Tax information (M/20) and supporting documents	By the last working day of June or by the last working day of the sixth month subsequent to the end of the tax period for the taxpayers authorized to adopt a different tax year
Annual Communication on the Income Paid to Non-Resident Entities (M/20I)	By the last working day of June
Annual Communication of commencement of activities (M/02)	Fifteen days before start of activities
Declaration of alterations (M/02)	Fifteen days after occurrence of alteration
Declaration of termination of activities (M/03)	Thirty days after termination
Declaration of substitution (applicable when tax assessed is less than tax due, or tax losses declared are higher than effective losses) (M/22)	No legal deadline foreseen by law. However, it is recommended that such declaration be submitted together with the Annual Declaration of Accounting and Tax Information (M/20)

Every company engaged in petroleum operations is required to have separate file returns for each concession and individual tax returns.

Petroleum Production Tax

Companies engaged in petroleum operations are required to pay the following taxes:

Petroleum Production Tax should be paid monthly to the tax authorities by the end of the month following the month of production, and the respective return should be filed jointly with the following information:

- Quantity of petroleum produced during the month;
- Quantity of petroleum sold during the month;
- Quantity of petroleum stored at the beginning and at the end of each month;
- Quantity of petroleum inevitably lost;
- Quantity of petroleum used on the recuperation operations duly authorized by the government;
- Quantity of petroleum subject to tax;
- Amount of tax due in the period; and
- Any other relevant information required for the tax assessment.

Penalty

Late submission of returns: fine that varies from MZN 3.000 to MZN 65.000.

Late payment – fine that can be up to the double amount of tax due, plus daily interest calculated based on the MAIBOR rate + 2%

Tax audits

The statute of limitation in Mozambique is 5 years. Normally the Authorities perform audits in case of reimbursement applications or before the 5 year period expires.

Namibia

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Country profile

The Republic of Namibia is a country in southern Africa whose western border is the Atlantic Ocean. It shares land borders with Angola, Zambia, Botswana and South Africa. As a coastal state, Namibia has its Exclusive Economic Zone delineated with an area of 564,748km², of which 86,698km² relates to the Namibian shelf, with water depths ranging between 0 to 200 metres.

Brief history on oil and gas development

Most of Namibian current open blocks for licensing are at deep and ultra-deep water depths. Prior to 2011, 20 wells were drilled ('95–'99: 13). In 2012, 2 wells were drilled. In 2013, 3 wells were drilled. In 2014, 1 well was drilled. Since 2015, to date no wells have been drilled. While the results of interpretations of the seismic survey data is considered to be very promising, no commercial oil was discovered to date. This is attributed to the limited exploration activities carried out. The petroleum industry in Namibia is thus still in its infant stage.

Significant Developments

Government is still busy with public consultations regarding the New Equitable Economic Empowerment (NEEE) Draft Bill, 2015. The purpose of this Bill, amongst others, is for the implementation, supervision, administration and review of the NEEE Framework ("NEEEF").

The objectives of the NEEEF includes but are not limited to the following:

1. Ensuring the sharing of Namibian resources in an equitable and sustainable basis by the people of Namibia;
2. Creating a socially just society;
3. Implementation of measurable policies of redress and redistribution;
4. Creating vehicles for empowerment;
5. Removing barriers of socio-economic advancement in order to enable previously disadvantaged persons to access productive assets and opportunities for empowerment;
6. Actively guarding against the repugnant tendencies of window-dressing, favouritism, nepotism and self-enrichment;
7. Providing measurement of empowerment targets;

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8. Ensuring that an empowering act is meant to launch individuals to empower themselves in the future using the basis of their initial empowerment;

9. Economic empowerment may be organised in the following forms of ownership: public, private, joint public-private, cooperative, co-ownership, and small-scale family owned; and

10. Equitable empowerment is addressing disparities occasioned by class, gender and generational relationships.

Industry (through the National Petroleum Operators Association) is currently busy with consultations with the various governmental parties involved.

Fiscal regime

The laws that regulate the petroleum industry in Namibia are Petroleum (Taxation) Act 3 of 1991 ("PTA"), the Income Tax Act 24 of 1981 dealing with administrative provisions and the Petroleum (Exploration and Production) Act 2 of 1991 responsible for the levying of royalties.

Petroleum Tax as levied under the PTA, is paid annually for the benefit of the State Revenue Fund in respect of taxable income received by or accrued to or in favour of any person from a licence area in connection with exploration or production operations carried out in any tax year in such licence area. The tax rate is 35% with an additional profit tax payable on a sliding scale of between 15% and 25%.

- Royalties are payable at 5% of gross revenues. The market value of crude oil is used as the basis to levy royalty and petroleum tax.
- Activities relating to downstream activities are not considered to be petroleum activities and are taxed under the Income Tax Act.

Forms of contracts

The current practice in the market is to make use of the Model Petroleum Agreement. The Model Petroleum Agreement serves as a basis of negotiation with applicants for exploration licenses. This Model is a concession type agreement and its clauses are drawn from the international petroleum industry practice and should therefore not hold any surprises for international petroleum companies.

The Model makes provision for the applicant of a license to commit to a minimum exploration work program, and further sets out the procedures to be followed by a licensee on discovery of petroleum.

Forms of Petroleum Leases / Licences

The Minister of Mines and Energy is mandated to appoint the Petroleum Commissioner according to the provisions of the Petroleum Act. This Ministry is responsible for assessing licence applications in respect of oil and gas. According to law, it is the Minister's duty to ultimately recommend the granting or denial of the licence application.

The Petroleum Act stipulates three types of licences for which prospectors can apply, namely:

- Reconnaissance Licence – This licence is granted for the purpose of conducting a preliminary exploration of a considerable expanse of land or sea-bed acreage in order to determine where prospecting should be focused once an exploration licence has been obtained. This licence can be extended twice and is valid for no more than two years.
- Exploration Licence – This licence is used to enable the systematic prospecting for oil and gas deposits. It is issued for a period of four years, and can be extended twice for no more than two years each time.
- *Production Licence* – This licence allows the holder to carry on production activities within a specific production area and to sell or dispose of petroleum derived from such production activities from this area. This licence is valid for 25 years and can be renewed only once, for no more than 10 years.

Namibia adopted an Open Licensing System in 1999 for Reconnaissance, Exploration and Production licenses.

Annual licence fees

License holders are required to pay annual charges to the State Revenue Fund. The charges are calculated by multiplying the number of square kilometers included in the block or blocks by the amounts provided for in Section 67 of the Petroleum Act. In the case of exploration licenses, the charge is calculated as follows:

- During the first four years, N$60 per square kilometer
- During the next two years, N$90 per square kilometer
- During the subsequent two years, N$120 per square kilometer
- Thereafter, N$150 per square kilometer

In the case of the production licenses, the fee is N$1,500 per square kilometer.

Government participation

No applicant is compelled to offer the State a share in a license. However, the State can participate in licenses and this is agreed upon during negotiations.

Taxation regime

Petroleum income tax is levied at 35% of taxable income and an additional profits tax (“APT”) levied on the after-tax net cash flows from petroleum operations. The after tax net cash flows is determined by deducting the exploration and development expenditure as well as the petroleum income tax from gross income.

Income tax is levied in respect of each license area. License areas are taxed separately even if the taxpayer has been granted the right of exploration in different license areas.

Taxable income is calculated as “Gross income” less deductions allowed in determination of taxable income.

Gross income[1] is defined as:

- the total amount, in cash or otherwise, received by or accrued to or in favour of a person from a license area in connection with exploration operations, development operations or production operations; and
- excluding amounts of a capital nature.

There are certain specific inclusions that would form part of gross income:

- Market value of Petroleum produced, saved or delivered (including appropriated for refining purposes);
- Closing crude form inventory (50%);
- Profit on disposal of petroleum asset/licence area or transfer of such asset/licence area;
- Sale of petroleum information in relation to such license area;
- Any income received or accrued to a person as condition of the license ;
- Capital gains arising on sale of assets after production commenced is taxable in hands of licence holder; and
- Insurance proceeds in respect of any loss of petroleum produced or saved or any income that would have been included in gross income had the loss not occurred.

Any amounts received or accrued to the license holder prior to the year of production in respect of these items are carried forward to the year of first production and are included in gross income in that year.

Deductions[2] allowed in the determination of taxable income are:

- expenses actually incurred;
- in respect of the particular license area; and
- in the production of gross income.

Including such expenditure so incurred in respect of:

i. repairs or maintenance of any premises occupied for purposes of carrying out exploration operations, development operations or production or in connection with such licence area, including repairs of machinery, implements, utensils and other articles employed by such person for such purposes;

ii. charges, fees or rent for or in respect of land or buildings occupied for purposes of carrying out production operations in or in connection with such licence area;

iii. contributions to a fund or scheme, approved by the Permanent Secretary, in respect of any person employed by such person in or in connection with production operations in or in connection with such licence area;

iv. interest and other moneys paid during the year of assessment on loans or other debts which, to the satisfaction of the Permanent Secretary, has been utilized or incurred for purposes of carrying out explorations or production operations in or in connection with such licence area;

[1] *Section 7 of Petroleum Income Tax Act*
[2] *Section 8 of Petroleum Income Tax Act*

v. any royalty levied under, and paid in terms of, the provisions *of the* Petroleum (Exploration and Production) Act, 1991, in connection with petroleum produced and saved in such licence area;

vi. the advancement of the education and training of Namibian citizens at institutions approved by the Permanent Secretary, and the provision of educational and scientific material and equipment in terms of any term or condition of a production licence issued in respect of such licence area;

vii. wages and salaries of persons employed by such person in or in connection with production operations carried out in such licence area;

viii. consumable items used in respect of the production, conveyance and storage facilities in or in connection with production operations, carried out in such licence area; the right of use of any plant, machinery, equipment or other article used in or in connection with exploration operations, development operations or production operations carried out in such licence area;

ix. customs duty in respect of the importation for use in or in connection with production operations carried out in such licence area of plant, machinery, equipment spare parts, materials, supplies or consumable items to be used in or in connection with such production operations;

x. General administration and management directly connected with production operations carried out in such licence area. If the expenditure was incurred outside Namibia, and the expenditure is otherwise an allowable deduction under this Act, the deduction will only be allowed to the extent to which provision is made in the terms and conditions of a production licence. If no such terms and conditions exist, the Permanent Secretary can determine the amount which he considers just and reasonable.

xi. the restoration of a licence area, or any part thereof, after cessations of exploration operations, development operations or production operations in such licence area to the extent to which such expenditure may, by virtue of any term and condition of a licence issued in respect of such licence area, be allowed as a deduction in determining such person's taxable income;

    a. any debts due to such person to the extent to which they are proved to the satisfaction of the Permanent Secretary to be bad, provided such amount is included in the current tax year or was included, but not deducted, in any previous tax year in such person's income;

    b. any amount which has been included in the gross income of such person in terms of section 7(1)(d) (closing stock) in the immediately preceding tax year in respect of such licence area.

Royalties

Royalties are payable quarterly and are calculated as 5% of gross revenues using the market value of the crude oil as a basis. The minister may prohibit the removal of petroleum from the production area and any other dealings in respect of the petroleum if the payer fails to remit payment. The royalty paid is deductible in the determination of the taxable income of the license holder[3].

[3] *Section 8 (a)(v) of the Petroleum (Taxation) Act 3 of 1991*

Withholding taxes

The general principle, on which Namibia's tax system is based, is the source principle. This implies that residents and non-residents are taxed on exactly the same basis in respect of income which is from a Namibian source or deemed source. All non-resident taxpayers (individuals as well as companies) have to submit a tax return in respect of their Namibian source income.

In terms of the provisions of the Income Tax Act, certain types of income will be subject to withholding tax. These are:

- Royalties (Withholding tax on royalties of 10%);
- The right to use (i.e. rental) of industrial, commercial or scientific equipment (Withholding tax on royalties of 10%);
- Management, consulting, technical, administration fees (Withholding tax on services of 10%)
- Directors fees (Withholding tax on services of 25%).
- Interest paid to non-residents (Withholding tax on interest of 10%)

Petroleum companies are exempt from withholding taxes on dividends.

Compliance dates

Royalties withholding tax is payable within 20 days after the end of the month during which the liability for payment is incurred.

Taxes withheld on payment for services are payable to Inland Revenue within 20 days after the end of the month during which the amount was deducted or withheld.

Withholding tax on interest is payable to Inland Revenue within 20 days following the month during which the interest was paid. Interest is deemed to be paid on the earlier of actual payment or when due and payable.

Non-resident shareholders tax (NRST) – not applicable to petroleum companies

Dividends declared by a Namibian company to a non-resident holding company are subject to non-resident shareholders tax, which is a form of withholding tax. NRST is payable at the standard rate of 10% where more than 25% shares are held in the Namibian company, unless treaty relief is available. Where less than 25% shares are held in the Namibian company, the NRST payable is 20%, unless treaty relief is available. NRST is payable within 20 days after declaration of a dividend.

Capital gains tax

Petroleum Licences/Rights

In terms of the Namibian Income Tax Act, any " sale, donation, expropriation, cession, grant or other alienation or transfer of ownership of a petroleum licence, or right to mine petroleum in Namibia, and includes a sale, donation, expropriation, cession, grant or any other alienation or transfer of ownership of any share or member's interest in a company that holds a petroleum licence or petroleum right, whether directly", is specifically included in the definition of gross income.

A petroleum licence is defined as "includes exploration licence, reconnaissance licence and production licence as defined in the Petroleum (Exploration and Production) Act, 1991 (Act No 2. Of 1991)."

Section 15 deems these profits to be from a Namibian source irrespective of:

- whether the transaction is concluded in or outside Namibia;
- the place where the payment of such amount is made;
- the place where the funds from which the payment is made are held.

The taxable amount is determined by taxing the consideration received (or payment of like nature) or the open market value (whichever is higher) less the following costs:

i. acquisition costs and exploration expenditure relating to the petroleum license or right;

ii. costs of improving the value of the petroleum license or right.

Note that (i) and (ii) above may not create a loss.

In the context of a petroleum licence or right, the term "directly" can thus be interpreted to imply ownership for the taxpayer's own benefit, whereas "indirectly" would imply that the benefit is available through an intermediate person or arrangement. Therefore the sale of shares in a company that indirectly has an interest in a petroleum licence/right in Namibia would be subject to tax.

The rate of tax applicable would be 32%, however we would propose that this is confirmed with the Namibian Revenue Authority where a disposal takes place.

It may be difficult for Inland Revenue to track the sale of foreign shares in foreign entities, however, we understand Namibian Revenue Authorities is working closely with the Ministry of Mines and Energy, who must be notified when there is a change of shareholding in a petroleum licence.

Further matters that need clarification and should be confirmed with the Namibian Revenue Authorities are:

Sale of listed shares in a foreign country – How must the seller account for the taxes in Namibia? To register in Namibia for tax for only one transaction is not considered reasonable, as the taxpayer is then required to deregister subsequently. Could someone act as agent for the taxpayer in Namibia?

Sale of shares in a company (directly or indirectly) that owns various petroleum licences in more than one jurisdiction – It may be the case that a holding company is established that owns shares in more than one petroleum licence. How should the tax be accounted for as the selling price for the shares relate to more than one company?

Any farm-in and farm-out agreements would likely be captured by this provision where it results in the direct or indirect sale, donation, expropriation, cession, grant or other alienation or transfer of ownership of a licence or the shares in a company that owns a licence.

Petroleum information and assets

Section 7 of the Petroleum Taxation Act[4] determines the amounts to be included in the gross income of companies falling under the Petroleum Tax

[4] *Petroleum (Taxation) Act 3 of 1991*

Act. Paragraph (f) states that"any amount received by or accrued to or in favour of such person in the tax year from such licence area and deemed, under the provisions of section 12(1), to be gross income for purposes of this section;"

Section 12(1) of the Act[5] deals with profit made on the sale/disposal of the licences/assets relating to the petroleum operations.

Where the amount received exceeds the capital expenditure incurred in respect of the licence area;

"the amount of such excess shall be deemed to be gross income received by or accrued to or in favour of such person from such licence area in the tax year in which such amount was so received or so accrued."[6]

Accordingly the profit on sale of assets is included as taxable income. The amounts are only subject to tax in the year that production starts. Capital gains arising on sale of assets after production commenced is taxable in hands of the licence holder.

Thin capitalisation

There are no thin capitalisation provisions in the Petroleum Taxation Act.

In terms of the Income Tax Act, thin capitalisation rules in Section 95A(3) empower the Minister to disallow the interest expense on the portion of a related party/shareholder loan that he considers to be excessive in relation to the equity of the company.

In terms of Section 95A(3), the cost of the financial assistance (interest and finance charges) will not be allowed as a tax deduction in the hands of the borrower where:

- a non-resident (referred to as the "investor") has granted financial assistance, whether directly or indirectly, to:
- any "connected person" (who is a resident) in relation to him; or
- any other person (in whom he has a (25% or more) direct or indirect interest) (other than a natural person) who is a resident (the "recipient"); and
- the Minister is of the opinion that the total value of the financial assistance given by the "investor" is excessive in relation to the fixed capital of the "connected person".

There is no guidance that provides a definition for 'excessive'. Therefore, each case should be considered on the basis of the facts provided. The 3:1 ratio (Debt to equity ratio) is generally applied by the BON for exchange control purposes, and this guideline is therefore deemed suitable until otherwise determined by Inland Revenue.

Transfer pricing

Excessive expenditure incurred under an arrangement between associated persons may be disallowed.[7]

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5 *Petroleum (Taxation) Act 3 of 1991*
6 *Section 12(1)(b) of the Petroleum (Taxation) Act 3 of 1991*
7 *Section 16 of Petroleum Income Tax Act*

When determining gross income, a sale of petroleum is considered to be at arm's length if:

- the price provided in the sale agreement is the only consideration
- the sale is not affected by any relationships other than the relationship created in the sale agreement
- the seller or any associated person to the seller, has not interest in the subsequent resale of the petroleum.

In the absence of an agreement, which is normally used to determine the market value of petroleum produced in a specific licence area, the amount will be determined by the permanent secretary with regard to the amount that would be obtained between a willing buyer and willing seller acting in good faith.

Indirect Taxes

Value-added tax (VAT)

Imposition of VAT

VAT is chargeable on the supply of goods or services in the course or furtherance of a taxable activity (excluding exempt supplies) and on the importation of goods and in certain instances services into Namibia.

"Taxable activity" means any activity that is carried on continuously or regularly by any person in Namibia or partly in Namibia whether or not for a pecuniary profit, that involves or is intended to involve, in whole or in part, the supply of goods or services to any other person for a consideration.

"Continuously" or "regularly" has not been defined in the VAT Act and thus reference is made to a case interpreted by the New Zealand Taxation Revenue Authorities[8] where the two terms are deemed to be complementary – "regularly" being concerned with repeated actions and "continuously" with an ongoing assignment or assignments.

It is however strongly advised to obtain professional advice prior to commencing activities in Namibia and/or written confirmation from Inland Revenue whether the activities, as envisaged, will constitute taxable activities or not.

"Namibia" is defined for the purpose of the VAT Act as including the territorial sea, excluding the economic zone and the continental shelf. As such, for VAT purposes, goods or services supplied by a taxable person up to 200 nautical miles from the low watermark may be subject to VAT.

Compulsory VAT registration

If taxable supplies, being zero-rated and standard rated supplies exceed, N$500,000 in any 12 month period, VAT registration is obligatory.

A person who becomes liable to register will have to apply to the Commissioner of Inland Revenue for registration within 21 days of becoming liable to register.

Voluntary VAT registration

Previously, a person could register for VAT voluntarily where taxable supplies fell below the VAT threshold, and entities in the development phase could

[8] *Case N27 1991 NZTC 3, 229*

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still apply for VAT registration at the discretion of the Revenue Authorities based on detailed motivation provided in support of the VAT registration.

A minimum registration threshold of N$200,000 was however introduced in December 2015 for all voluntary VAT registrations. This effectively means that, where it is not likely that the applicant will be making taxable supplies in excess of N$200,000 in its first year of operation, the applicant will not be able to register for VAT. In such a case, it is however recommended that the Revenue Authorities be approached in writing to motivate voluntary VAT registration.

When VAT registered

As VAT registered person, license holders must levy VAT at 15% on invoices for goods or services supplied locally. Goods sold and exported from Namibia may qualify for zero-rating (0%) where supported by sufficient documentary proof to prove goods have been exported from Namibia by the licence holder. Goods subject to the fuel levy, will be zero-rated (0%) whether supplied locally or exported.

As VAT-registered persons, license holders are entitled to claim credit for VAT paid on invoices issued by Namibian suppliers against VAT charged on supplies made in Namibia or partly in Namibia. Import VAT paid on goods imported into Namibia and used or consumed in making taxable supplies by the VAT registered person may also be claimed against VAT charged on supplies made in Namibia or partly in Namibia, provided sufficient documentary proof is retained to support the VAT and Import VAT claims.

Custom duties/Import tariffs

Import VAT on goods

Imports, generally, are subject to VAT at the standard rate of 15% on the higher of the open market value of the goods or the free-on-board value ("FOB") uplifted with 10%. In the latter case, the effective rate of Import VAT is 16.5%. The importer is responsible for paying the VAT when the goods are imported. It is irrelevant whether or not the importer is a registered person.

Where the importer is registered for VAT and has an Import VAT account (deferment account), Import VAT becomes payable by the 20th of the month following month of import.

In any other case, the VAT is payable when the goods are physically entered into Namibia.

Import VAT exemptions

License holders are exempt from paying import VAT under Schedule V, paragraph 2(f) of the Value-added tax Act 10 of 2000 ("the VAT Act"), and rebated from customs duties (full rebate of duty less ad valorem duties) in terms of rebate item 460.23, Schedule No. 4, Part 2 of the Customs and Excise Act, Act No. 20 of 1998 ("the Customs and Excise Act").

The goods imported by the license holders must be for use solely in operations in connection with the prospecting for or the mining of natural oil or natural gas to qualify for exemption from import VAT, and subject further to the provisions of rebate item 460.23 above for rebate of customs duties, to the extent indicated.

The following will also enjoys Import VAT exemption:

- Goods and services imported by an Export Processing Zone entity ("EPZ") or EPZ management company for use by that entity or company in an export processing zone;
- Fuel levy goods;
- Import of goods donated to the State; and
- Import of goods or services by the State.

VAT returns are to be submitted on a bi-monthly basis depending on the tax period awarded to the VAT registered person i.e. either ending on even months or uneven months e.g. 02/2017 (two months ending Feb 2017) or 03/2017 (two months ending March 2017). VAT returns and payments are due on/before the 25th of the month following the tax period. Import VAT returns and payments are due on a monthly basis on/before the 20th of the month following the month of import.

Customs duties

Imports from member countries of the Southern African Customs Union ("SACU"), i.e. Botswana, Lesotho, South Africa and Swaziland into Namibia do not attract Customs duties[9]. Excise duties on excisable goods not subject to duty at source collection in the SACU country of manufacture, e.g. wine, will attract excise duties on importation into Namibia.

Imports from outside SACU member countries may attract Customs duties which will be a cost to the importer (not claimable).

Goods entered into a bonded warehouse

Only goods subject to Customs duties at a positive rate may be entered or stored in a Customs & Excise storage warehouse ("Customs bonded warehouse") in Namibia.

When goods are cleared into a Customs bonded warehouse, the payment of Customs duties and Import VAT is deferred to the date of clearance and release of the goods for home consumption in Namibia.

If goods are moved to another Customs bonded warehouse, payment of duties and Import VAT is also suspended. The liability to pay Customs duties is acquitted when goods are directly exported from the Customs bonded warehouse.

Goods may stay in a Customs bonded warehouse for period of 5 years.

Control over stock in a Customs bonded warehouse is very important and subject to Customs inspections. This can be quite an administrative burden.

Export Levy

The Export Levy Act, No. 2 of 2016, has been published in the Government Gazette on 20

June 2016. This Act introduces Export Levies on certain raw materials exported from Namibia. The Export Levy ranges between 0% and 2% and applies to specified mineral, fish and agricultural products, with the following rates being applicable to oil and gas product exports:

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9 Article 18 of the SACU Agreement, 2002

Product	Product Form	Export Levy
Gas	Unrefined gas of all types	1.5%
	Refined gas of all types	0.0%
Crude Oil	Unrefined crude oil of all types	1.5%
	Refined crude oil of all types	0.0%

At 30 April 2017, this Act is not yet effective and will become effective on a date to be published by Notice by the Minister of Finance in the Government Gazette.

Export Incentives

In general, export incentives are available where the entity exporting minerals mined in Namibia is approved as an Export Processing Zone Entity ("EPZ entity") by the Minister of Trade and Industry.

An EPZ entity, in short, is not subject to income tax, VAT or Import VAT in Namibia. Thus, the export of minerals from Namibia will not be subject to Namibian VAT and the EPZ entity will not be required to retain all documentation as is required for VAT purposes in order to export the minerals from Namibia.

Proof of export may however be required to be retained for purposes of retaining EPZ status in Namibia.

Note however that the generation and exclusive exportation of electricity could possibly be regarded by the Minister of Trade in Industry qualifying for registration under an EPZ entity. Goods or services must be wholly exported and the Minister only allows upon special application up to 30% of production as local supplies. If the intention is to supply goods or services mainly locally, an EPZ registration will not be possible.

Fuel rebates

Fuel users in the mining sector are entitled to partial fuel levy refunds by the Road Fund of Namibia Administration ("RFA") on bulk fuel purchases (diesel) for off-road use. To qualify for such refunds, fuel users should register with the "RFA" and submit claims on a specified form accompanied by the original purchases invoices issued in the name of the refund claimant by fuel wholesalers registered in terms the Namibian Petroleum Products and Energy Act.

Environmental Duties

The Customs Schedule 1, Part 3 has been amended on 26 September 2016 to include the levying of environmental duties on the import of trucks, including dumpers designed for off-road use and shuttle cars for use in underground mines.

The rate of duty is N$40 for each g/km CO_2 exceeding 140g/km emitted by the vehicle's engine. If a manufacturer's certificate confirming the CO_2 emission cannot be produced at time of Customs clearing, a formula based on the engine capacity of the vehicle is applied.

Environmental duties are also payable on tyres, including tyres for trucks and buses, imported into Namibia. The rate is currently N$10/tyre.

Environmental duties is a final tax (cost) to the importer.

Other taxes

Personal income tax

All persons other than companies are regarded as individuals and their year of assessment runs from the 1st of March to the 28th of February. There is no distinction between different classes of individual taxpayers and married men and women are taxed on the same basis. The same principles apply for individuals and for other taxpayers except for certain inclusions, exemptions and deductions, which relate specifically to individuals.

Services rendered within Namibia will be deemed to be from a Namibian source.[10]

The definition of Namibia was recently added to the Namibian Income Tax Act and reads as follows:

"Namibia means the Republic of Namibia and, when used in geographical sense, includes the territorial sea as well as the exclusive economic zone and the continental shelf over which Namibia exercises sovereign rights in accordance with its national and international laws concerning the exploration and exploitation of the natural resource of the sea-bed and its subsoil and the superjacent waters as defined in sections 2, 4 and 6 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990)".

The impact of this is that Namibia is for income tax purposes now extended from 12 nautical miles to 200 nautical miles from the low watermark. This gives the Revenue Authorities an increased right to Namibian source income.

Therefore if employees render services on a vessel within 200 nautical miles, they will be taxable in Namibia.

The above has a major impact on the oil and gas industry as expats that were otherwise exempted from income tax in Namibia whilst working offshore would now be subject to tax. Furthermore any subcontractors performing work in Namibia were previously not subject to tax, however with the new legislation they are now subject to tax. This will effectively increase the cost of exploring for oil and gas offshore Namibia as the costs would most likely be passed on to the Namibian operators.

This places a significant administrative burden for the following reasons:

1. The Namibian entities employing the foreign crew will have to withhold PAYE from remuneration paid to them.

   The foreign individuals are rendering services and earning income in Namibia and will thus be liable to register as taxpayers with the local office of Namibia Inland Revenue.

   The registered foreign individuals must submit annual income tax returns within 7 months after the tax year end which is 28/29 February for individuals.

2. Employment periods for foreign crew differ between entities in the industry, but on very often foreign crew employment periods last between 3 to 6 months with the foreign crew subsequently returning to their country of residence.

[10] *Section 1 of the Income Tax Act, Act 24 of 1981*

The administrative burden of registering and deregistering all foreign crew members for income tax which involves the following: obtaining information to complete the income tax registration and deregistration forms, compiling PAYE 5 certificates, completing annual income tax returns, obtaining copies of passports as proof of exit from Namibia, obtaining affidavits declaring permanent exit from Namibia etc. This proves to be a logistical hurdle and can be very taxing on the entity and the Human Resources staff responsible for this function with extra costs to be incurred by the entity in certain instances.

There are three ways that payment of normal tax liability takes place:

- Employees' tax by way of employees taxes (Pay-As-You-Earn ("PAYE")).
- Provisional tax payments.
- Assessment when PAYE and provisional tax payments fall short of the assessed liability for the year.

The due dates of annual income tax returns are as follows:

- Persons with taxable income of less than N$50,000 per year are exempt from submitting an income tax return;
- Salaried individuals must submit income tax returns by the 30th of June each year;
- Business individuals need to submit their income tax returns by the 30th of September each year.

Social security contribution

The Social Security Act[11] provides for an income support system designed for the broadest possible number of Namibians. The system provides for maternity leave, sick leave and death/retirement benefits for its members. Social security is based on a principle of 50:50 contributions from employers and employees. This entitles the employee to certain benefits after a set period of time (minimum 6 months membership period).

Employers are required to register with the Social Security Commission as well as register all their employees who are younger than 65 years of age and who work for more than one day per week.

Contributions should be remitted within 30 days after the end of the month.

Both employer and employee contributions are calculated at 0.9% of earnings. The maximum monthly contribution per employee and employer is N$81-00 by each (i.e. N$162 -00 in total). Should the employer choose to carry the full cost of the contribution, there is a taxable fringe benefit to the employee on half of the contribution made by the employer.

Workmen's compensation

Employers are required, under the Employee Compensation Act, to contribute to a fund that provides cash benefits for industrial injury, disability and death.

Contribution rates vary according to inherent occupational risk, from less than 1 percent in most low-risk commercial/administrative occupations, to 8 percent (drilling, tunnelling and rock blasting).

[11] *Social Security Act, 1994 (Act No. 34 of 1994)*

For the purposes of the Employee Compensation Act the term "employee" means any person whether employed permanently, temporarily or casually, with the exception of the following:

- Persons earning more than N$81,300 per annum (N$6,775 per month)
- Outworkers performing work on premises not under the control of the employer;
- Persons employed casually and not for the purpose of the employer's business;
- Seamen or airmen under a contract of service whose remuneration is fixed solely by a share in the takings; and
- Persons employed temporarily outside the Republic of Namibia for a continuous period of more than 12 months, unless their employers have made special arrangements with the Commission.

Assessments are not calculated on that part of an employee's earnings that exceeds N$81,300 per annum and are payable by employers to the Accident Fund in terms of section 69 of the Act.

Foreign exchange regulations

All remittances of dividends, interest, royalties etc. to countries outside the ZAR common monetary area need approval from the central bank. To obtain this, foreign denominated loan, trademark/royalty and similar agreements are submitted to the Bank of Namibia for approval when these are entered into.

It is advised that all foreign investments are registered with the Bank of Namibia ("BON"). In respect of the repatriation of investment money, the BON requires a formal application, through an authorised dealer, to be submitted. We were advised by an authorised dealer that the BON may prescribe a minimum investment period before capital invested may be repatriated.

We advise that an authorised dealer should be consulted prior to effecting any forex movements, as the BON applies regulations exclusively through authorised dealers in Namibia, informing them on a regular basis though dealer circulars of changes in rules and guidelines.

Transfer of funds from Namibia to any destination abroad in respect of imports and other payments can be made on condition that the requisite documentation (e.g. letter of credit, bill of lading / airway bill, sellers' final invoice, inspection certification or such certificate as may be required) and required procedures are followed.

Property taxes – Transfer duty

Natural Persons: Fixed property	
Value of property N$	
0 - 600 000	Nil
600 001 - 1 000 000	1% of value exceeding N$ 600 000
1 000 001 - 2 000 000	N$4 000 plus 5% of value exceeding N$1 000 000
2 000 000 and above	N$54 000 plus 8% of value exceeding N$2 000 000
Other Persons	
Any value	12%

The Minister of Finance announced that the Transfer Duty Act will be amended to levy transfer duty on the sales of shares of entities who own property and/or mining rights. The new legislation is expected to be tabled during 2017/18. The detail and effective date of this amendment was not yet announced. .

Stamp taxes

Certain transactions may attract stamp duty. The amount of stamp duty payable differs and is based on the nature of every individual transaction.

The basic transactions can be summarised as follows:

Transaction	Stamp duty
Agreements or contracts (other than those where duty is specifically provided for in the Act)	N$ 5
Lease agreement or lease	The stamp duty will be based on lease payments, together with additional considerations specified in the lease agreement
Transfer or issue of marketable securities and other share transactions	N$ 2 for every N$ 1,000 or part thereof of the value/consideration, depending on the specific transaction
Authorisation of share capital	N$5-00 for every N$1,000-00 or any part thereof of the nominal value of the shares.
Registration of a bond over immovable property	N$5 for every N$1000 of debt secured
Stamp Duty payable in respect of the transfer of immovable property: Natural persons:	
Where the value of the consideration does not exceed N$600,000	Exempt
and for every N$1,000 or part thereof of the value or consideration in excess of N$600,000 Other persons: On the value or consideration for every N$1,000 or part thereof	N$10.00 N$12

Annual duties

Annual Duty is calculated at 0.04% on the issued share capital of the company and is payable annually. The minimum amount payable is N$ 80 per annum.

Incentives

Prior to production

Accumulated exploration expenditures are deductible in full in the first year of production (unless they have already been transferred to another license area that has gross income from production).

During production

Exploration expenditures incurred when production already commenced are immediately deductible.

Accumulated development expenditures are deductible in three equal instalments commencing in the first year of production.

Losses

Losses resulting from allowable deductions may be deducted as an allowable loss against the gross income from the license area in the next year. Losses may be carried forward without limitation.

Losses arising from different licence areas may, however, not be offset against income from another license area or other operations.

Compliance requirements

Petroleum entities are subject to the administrative procedures set out in the Income Tax Act.

Income Tax compliance requirements for a branch, company, joint venture, business person or close corporation will consist of:

- Submission of provisional tax returns (including payment of provisional taxes); and
- Submission of annual tax returns.

Provisional returns and payments must be made, as follows:

- The 1st provisional tax return and payment is due 6 months before the end of the tax year in question. The payment should be based on the taxable income for the first six-months of the tax year and should be calculated at the relevant corporate tax rate;
- The 2nd provisional return and payment is due at the end of each financial year (determined by the year-end of the company, branch, joint venture or close corporation). Provisional tax payable must be calculated based on actual taxable profit for the year, at the relevant corporate tax rate, less the amount paid on the first provisional.
- The 1st and 2nd provisional payments should be equal to at least 40% and 80% respectively of the tax payable for the year. Penalties and interest may be levied on an underestimation of provisional taxes; and
- A top-up provisional payment should be made no later than 7 months after the financial year-end of the company, equal to outstanding taxes for the year, after deducting 1st.

The company/branch/joint venture is required to submit an annual income tax return to the Directorate Inland Revenue. This return is due no later than 7 months after the financial year end of the company. Extension for the submission of the income tax return may be granted by the Receiver of Revenue for an additional 5 months on receipt of a written request for such.

The Income Tax Act was amended in 2015 to include a number of additional administrative provisions. We have outlined the most significant changes below:

- The Minister may, if he has reasonable grounds to believe that a taxpayer may permanently leave Namibia without paying the full amount of tax due, issue a certificate to the Permanent secretary of the Ministry of Immigration and Home Affairs to prevent that person's departure from Namibia until all taxes are paid in full or arrangements satisfactory to the Minister have been made for payment of the taxes.
- The Minister, or an authorised official, is now authorised, by notice to any person who holds for, or owes money to, a taxpayer, or is liable to pay remuneration to the taxpayer, to require such person to pay the money to Inland Revenue.
- A person who controls or is regularly involved in the management of the overall financial affairs of a taxpayer may now be held personally liable for the tax debts of a taxpayer (i.e. taxes due and payable, penalties and interest) if the Minister is satisfied that the person was negligent or fraudulent in respect of the payment of a tax debt of the taxpayer.
- A joint and several liability exists for any shareholder or member of a close corporation ("CC") to pay the tax debt of the company or close corporation to the extent that the tax debt arose at a time when the person was a shareholder or member.
- A person ("transferee") who receives an asset from a taxpayer who is a connected person in relation to the transferee without consideration or for a consideration below the fair market value of the asset is liable for the tax debt of the taxpayer.

Nigeria

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Country profile

Brief history on oil and gas development

Nigeria, a country located in West Africa along the Gulf of Guinea on the Atlantic Ocean, is a federal constitutional republic comprised of 36 states and its Federal Capital Territory, Abuja. English is the official language of Nigeria, and its currency is the Nigerian Naira (NGN). The petroleum industry is Nigeria's largest industry providing 95% of foreign trade earnings and over 70% of Government's revenue.

Oil was first discovered in Nigeria in commercial quantities by ShellBP at Oloibiri (Yenogoa Province, now Bayelsa State) in 1956. The ownership of mineral resources resided in the British colonial masters at that time. However, the Nigeria government, after its independence in 1960 began to exercise greater control over the industry.

In 1971, Nigeria joined OPEC and in line with OPEC resolutions, the Nigerian National Oil Corporation (NNOC) was established, later becoming Nigerian National Petroleum Corporation (NNPC) in 1977. This giant government parastatal, with all its subsidiary companies, controls and dominates all sectors of the oil industry, both upstream and downstream.

Significant new developments

1. To address the recent recession in Nigerian economy and achieve sustained inclusive growth, the present administration has developed an Economic Recovery and Growth Plan (ERGP). The ERGP, a Medium Term Plan for 2017 - 2020, has three broad objectives that will help achieve the vision of inclusive growth: (1) restore growth, (2) investing in the Nigerian people, (3) building a globally competitive economy.
2. In February 2017, the Presidential Enabling Business Environment Council (PEBEC) announced a 60-day national action plan with the aim of improving the ease of doing business in the country. The goal of the national action plan is to remove critical bottlenecks and bureaucratic constraints to doing business in Nigeria. The policy is inter-ministerial, and various Federal Government (FG) ministries have adopted the initiative. The PEBEC has prioritized 7 reform areas in line with the target to improve in the World Bank Doing Business Rankings for 2018: Starting a business, getting credit, trading across borders, getting electricity, dealing with construction permits, paying taxes, registering property. Further to this initiative, the Acting President, Professor Yemi Osinbajo, on 18 May 2017, signed three executive orders which are all

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aimed at improving private and government's business operations in the country. The three executive orders signed relate to:

a. Ease of Doing Business - The objective of this is to promote transparency, increased efficiency for the Nigerian business environment. It hopes to achieve this by granting default approvals by government agencies (subject to certain conditions), improve entry experience for visitors, sanitize port operations and automate the business registration process.

b. Support for 'Made in Nigeria' - The objective of this is to increase the patronage of locally produced goods and services, by mandating government ministries, departments and agencies (MDAs), to give preference for Nigerian made goods during their procurement processes.

c. Timely submission of MDAs budgets - This aims to improve transparency and accountability in MDAs, by specifying timelines for the submission of their budgets to the Minister of Finance and Minister of Budget and National Planning respectively. It also specifies guidelines to seek approval for extra budget

Reservoir estimates

According to the June 2015 BP Statistical Energy Survey, Nigeria had proven oil reserves of 37.1 billion barrels at the end of 2014, equivalent to 43 years of current production and 2.2 % of the world's total reserves. In addition, proven natural gas reserves stands at 5.1 trillion cubic meters, 2.7% of the world total.

Fiscal regime

The main regulatory framework for the taxation of petroleum operations in Nigeria is the Petroleum Profit Tax Act, 1958 (as amended). According to the Act, petroleum operations refers to upstream activities and is defined as "the winning or obtaining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account by any drilling, mining, extracting or other like operations or process (not including refining at a refinery) in the course of a business carried by the company engaged in such operations, and all operations incidental thereto and sale of or any disposal of chargeable oil by or on behalf of the company".

Activities outside the above definition, including downstream activities, gas operations, crude oil refining activities etc. are not considered to be petroleum activities and are therefore taxed under the Companies' Income Tax Act regime.

Since September 2015, there have been a number of issues which have been decided at the Tax Appeal Tribunal (TAT). The issues and decisions are as follows:

- In November 2015, the TAT held that the Federal Inland Revenue Services (FIRS) should accept tax computations prepared by the Contractor of a Production Sharing Contract (PSC) in assessing PSC parties to Petroleum Profits Tax.
- In December 2015, the TAT ruled that an upstream company can deduct capital allowances (CA) on capital expenditure incurred in line with the provisions of the Petroleum Profits Tax Act (PPTA), regardless of whether or not such costs have been approved by a counter party under a contractual agreement.

- In January 2016, the TAT reinforced the principle established by the Court of Appeal in FIRS v Halliburton and by the Tribunal's earlier decision in Weatherford Services S. de R.L. v FIRS, that a taxpayer filing returns under the deemed profits regime is not entitled to any deduction other than the 80% deemed cost.

- There was a dispute as to whether an oil company can claim tax deductions for cost incurred under a Modified Carry Arrangement (MCA). The case was brought before the TAT by an International Oil Company against the FIRS. The TAT ruled in May 2016 that the IOC was entitled to make deductions in computing its adjusted profit in accordance with the provisions of the Petroleum Profits Tax Act (PPTA), despite the non-execution of a standard MCA.

Regulatory Framework

The Nigerian Senate passed the Petroleum Industry Governance Bill (PIGB) on 25 May 2017. The PIGB introduces a regulator named the Nigerian Petroleum Regulatory Commission ("NPRC" or "the commission"), to serve as the supervisory body for the Nigerian oil and gas industry. The NPRC will replace the Petroleum Inspectorate, the Department of Petroleum Resources (DPR) and the Petroleum Products Price Regulatory Agency (PPPRA), and carry out their functions. The change will be effected once the Bill is approved by the House of Representatives and assented to by the President.

Forms of contracts

The most common forms of petroleum contracts in Nigeria include:

Joint venture arrangement

This is usually an arrangement between NNPC on behalf of the Federal Government of Nigeria (FGN) and oil companies. Companies operating under this arrangement jointly own and develop various oil and gas concessions and contribute towards costs and subsequently derive benefits based on their equity participation in an oil block.

The parties will typically sign a Joint Operating Agreement to govern relations amongst themselves.

Production Sharing Contract

The Federal Government is the holder of the concession (one or many blocks), and appoints a Contractor to conduct petroleum operations in the area.

The Contractor provides the funds and bears the risks until commercial production is achieved. Production is allocated in barrels to royalty, then taxes, then costs and finally profit using a predetermined sharing formula.

Risk Service Contract

The Contractor has no title to oil produced, but undertakes exploration, development and production activities on behalf of the concession holder.

The Contractor is reimbursed and remunerated from the sale of oil produced. The Contractor is subject to tax under the Companies Income Tax Act, since it is carrying out operations on behalf of the concession holder.

Special transactions/arrangements

A farm out arrangement may be a financing or technical arrangement typically adopted when the license holder is incapable of developing the license area on its own. It is also used by the license holder to reduce risks.

The license holder called the "farmor" surrenders a percentage of his rights to the "farmee" in return for funding and provision of technical services required. Such funding may involve partial or full reimbursement of past costs previously incurred by the farmor.

Carry arrangements

A carry arrangement is one in which one party to a joint venture called the "carrying party" finances exploration and development costs in return for a reward out of probable future production. The carrying party is compensated for taking on additional risks based on agreed terms.

Unitization arrangements

Under a unitization arrangement, two or more companies may decide to jointly develop an oil/gas field that cuts across different licenses with different equity interest, as a single unit.

It involves redetermining the interests of the parties to the single unit in consideration. This usually leads to adjustments in the share of each party's production and costs.

Assignment of interest and transfer of shares The Petroleum Act provides that prior consent of the Minister (of Petroleum Resources) is required before a holder of a license area can assign his right to another party. A Nigerian court recently ruled that transfer of shares and ownership of an oil and gas asset amounts to indirect transfer of interest in such asset, and therefore requires Ministerial consent.

Forms of petroleum licenses

Oil Exploration License (OEL): License granted to a company to explore for petroleum. An OEL is not exclusive to the licensee thus another licensee may be granted another OEL to cover the same area.

Oil Prospecting License (OPL): License granted to a company for the purpose of exploring, prospecting and winning petroleum. The duration of the license is 5 years for JV operators and 10 years for PSCs. It covers a fixed area, not more than 2,590 sq km.

Oil Mining Leases (OML): License granted to an OPL licensee who has satisfied all the conditions imposed on the license and discovered oil in commercial quantities. It covers a fixed area, not more than 1,295 sq km.

Oil is deemed to have been discovered in commercial quantity if the Minister is satisfied that the licensee is capable of producing at least 10,000 barrels per day of crude oil. The duration of the license is usually a maximum of 20 years, but is renewable upon approval.

Royalty

The Petroleum Act, 1969 requires the holder of an OPL or OML to pay royalties to the FGN as soon as production starts. This is usually in form of monthly cash payments at the prescribed rate or by way of royalty oil. The prescribed royalty rates are as follows:

JV operations

Area	Rate %
Onshore production	20
Onshore production up to 100 meters	18.5
Onshore production beyond 100 meters water depth	16.67

Production Sharing Contracts

For PSCs operating under the Deep Offshore and Inland Basin Production Sharing Contracts Act of 1999 (as amended), the applicable rates are:

Area	Rate %
In areas from 201 t0 500 meters water depth	12
In areas from 501 t0 800 meters water depth	8
In areas from 801 to 1,000 meters water depth	4
In areas in excess of 1,000 meters water depth	0
Inland Basin	10

Nigerian Local Content in the Oil and Gas Industry

Nigerian Oil and Gas Industry Content Development Act (NOGICDA)

The NOGICDA (Local Content Act) was passed in 2010 to increase the level of Nigerian content in the oil and gas industry. Nigerian Content means "...the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilization of Nigerian human, material resources and services in the Nigerian oil and gas industry.

Compliance with Nigerian content is a condition precedent for:

- Renewal of licenses and permits to operate in the industry;
- Shortlisting companies during prequalification exercises and for the grant of contracts in the oil and gas industry.

The Act introduces a levy of 1% on every contract awarded in the upstream oil and gas sector of the economy. Any violation of the Act is liable to a fine of 5% of the contract value and may result in outright cancellation of the contract.

Marginal fields

In a bid to increase participation of Nigerians in the upstream sector of the oil and gas industry, FGN commenced the first reassignment of marginal fields formerly assigned to IOCs to indigenous players in February 2003 with 24 licenses being awarded. Section 16 of the Petroleum Act provides the criteria for the determination of marginal fields and the Department of Petroleum Revenue (DPR's). Guidelines for Farmout and Operation of Marginal Fields require oil companies to update their portfolio of underdeveloped fields and periodically report to the DPR.

Encouraged by the performance of marginal field operators who currently account for about 1% of the nation's production, and have increased the reserve base of the country from recent discoveries, the government have announced a second licensing round for marginal fields.

Taxation regime

Direct Taxation

Petroleum Profits Tax (PPT) is levied on the profits of corporate bodies engaged in petroleum operations. Individuals (either singly or in partnerships) are not allowed to engage in petroleum operations. PPT is assessed on an Actual Year Basis.

The following computations are relevant for determining the tax payable by a petroleum company:

Revenue

The chargeable income of a company engaged in petroleum activities is the sum of the following:

- The proceeds of all chargeable oil sold by the company in that period;
- the value of all chargeable oil disposed by the company in that period; and
- All income of the company for that period incidental to and arising from any one or more of its petroleum operations.

Adjusted profit

This is computed by deducting from all outgoings and expenses incurred by the company wholly, exclusively and necessarily, in its petroleum operations for that period, whether within or outside Nigeria, from revenue.

Assessable profit

This is obtained after the deduction from the adjusted profit for the period, any loss incurred by the company in any previous accounting period. The loss deducted cannot exceed the adjusted profit for the period.

Capital allowances

A company engaged in petroleum operations is entitled to claim capital allowances on any qualifying capital expenditure (QCE) if it owns the QCE at the end of the accounting period and the QCE was in use for purposes of its petroleum operations. Depreciation is not deductible for tax purposes; capital allowance is however granted in lieu.

Petroleum Investment Allowance (PIA) is granted to a petroleum company in the first year a QCE is incurred. The following PIA rates are applicable to companies in JV operation.

QCE for	Rate %
Onshore Operations	5
Offshore Operations	
Up to and concluding 100m of water depth	10
Between 100m and 200m of water depth	15
Beyond 200m water depth	20

PSC operators are entitled to Investment Tax Credit (ITC) at a rate of 50% of QCE for PSC executed prior to July 1998 and PIA at a rate of 50% for PSC executed with effect from July 1998.

Annual allowance is granted in addition to PIA, in lieu of depreciation. The current rates are 20% for all categories of QCE in the first four years and 19% in the fifth year. The balance of 1% is retained in the books until the QCE is disposed.

Restriction of capital allowance / minimum tax

Capital allowance is restricted to the lower of:

- Actual computation; and
- 85% of assessable profit less 170% of Investment Tax Allowance.

The restriction on capital allowances ensures that there is a minimum tax payable at 15% of the company's assessable profits.

Chargeable profits

This is obtained after deducting allowable capital allowances from the assessable profit.

Assessable tax

This is derived after applying the applicable tax rates (below) on the chargeable profit determined.

- 85% for petroleum operations carried out under a Joint Venture (JV) arrangement with the NNPC or any non PSC over 5 years.
- 65.75% for non PSC operation in its first 5 years during which the company has not fully amortized all preproduction capitalized expenditure.
- 50% for petroleum operations under PSC with the NNPC.

Tertiary Education tax

It is payable by only Nigerian companies and is levied at the rate of 2% on assessable profit, that is, tax adjusted profit before capital allowances. It is deductible for tax purposes in the determination of PPT.

Withholding tax

WHT is an advance payment of income taxes. It is deductible from payments made on qualifying transactions which include payments in respect of contracts, fees, rent, dividend, interest, royalty, commission. However, WHT is not applicable on dividends distribution made out of profits on which PPT has been paid.

The company making payments is expected to deduct the tax and remit the tax deducted in the currency of transaction to the FIRS (for deductions from companies) or the relevant State Internal Revenue Service (SIRS) for deductions from individuals, partnerships and unincorporated bodies. WHT due to the FIRS and SIRS must be remitted not later than the 21st and 30th of the following month respectively. The applicable WHT rates on qualifying transactions can be found in the table below:

Natural of Transaction	WHT Rates%	
	Companies	Individual/ Partnership
Dividend, Interest & rent	10	10
Royalties	10	5
Directors' fees	N/A	10
Charter, Lease, Hire of equipment, vehicles, etc	10	10
Commission, consultancy, technical and management fees, legal fees, audit fees and other professional fees	10	5
Constructive/ Building Contract	2.5	5
All other types of contract, including Contracts for service	5	5
All types of contracts and agency arrangement, other than sales in the ordinary course of business	5	5

The applicable WHT rate may be reduced where the recipient is a resident of a country that has a double tax treaty with Nigeria.

Nigeria currently has DTTs with 13 countries namely: The United Kingdom, The Netherlands, Canada, South Africa, China, Philippines, Pakistan, Romania, Belgium, France, Mauritius, Slovakia and Italy. All the treaties are comprehensive except the treaty with Italy which covers Air and shipping agreement only.

Capital gains tax (CGT)

Gains accruing to a chargeable person (individual or company) on the disposal of chargeable assets shall be subject to tax under the Capital Gains Tax Act at the rate of 10%. There is no distinction between longterm and shortterm gains and no inflation adjustment to cost for CGT purposes.

All forms of assets, including options, debts and foreign currencies, other than those specifically exempt, are liable for CGT.

The gains on the disposal of shares are exempt from CGT. CGT is applicable on the chargeable gains received or brought into Nigeria in respect of assets situated outside Nigeria. Capital losses are not allowed as an offset against chargeable gains accruing to a person from the disposal of any assets.

Transfer Pricing

The Nigerian Transfer Pricing (TP) rules were released in October 2012 and effective for basis periods commencing after 2 August 2012 e.g. a company with an accounting year end of 31 December will be required to have a TP documentation in place for accounting periods commencing 1 January 2013. The regulations give effect to the existing anti avoidance provisions contained in the Petroleum Profits Tax Acts. It aims to provide certainty in the tax treatment of related party transactions and will apply to both domestic and cross border transactions.

Persons covered are "connected taxable persons" which is broadly defined to include individuals, permanent establishments created by head offices, subsidiaries, associates, partnerships, joint ventures and trusts to the extent that they participate directly or indirectly in the management, control or capital of another; or both of which have common control, management or shareholders.

Other highlights of the regulation include:

- Introduction of the Organization for Economic Cooperation and Development (OECD) TP methodology;
- Provision for corresponding adjustments to avoid double taxation for residents in treaty countries;
- Requirement to file an annual declaration and disclosure forms regarding intercompany transactions with tax returns and documentation to be in place prior to returns filed;
- Penalties for noncompliance; and
- Introduction of Advance Pricing Arrangements.

A taxpayer may be exempted from the TP provisions where prices have been approved by other Government regulatory agencies.

Thin capitalisation

Currently, Nigeria does not have thin capitalisation rules, but the FIRS is considering introducing this in the near future.

Deemed Profit Taxation

There is deemed profit taxation in Nigeria. Non-resident companies (NRCs) are generally assessed on deemed profit basis. The FIRS applies a deemed profit rate of 20% on turnover derived from Nigeria. This is then taxed at the corporate tax rate of 30%, resulting in an effective tax of 6% of turnover.

The FIRS on 24 July 2014 stated at a stakeholder meeting that NRCs should file complete tax returns including audited financial statements as well as tax and capital allowance computations. However, the FIRS is yet to enforce this requirement as a result of the associated administrative complexities.

Indirect Taxes

Value-added tax (VAT)

VAT is charged at a flat rate of 5% on the supply of goods and services except those expressly exempted under the Act and those subject to VAT at zero rates.

Exempt items include plants, machinery and goods imported for use in export processing zones or free trade zones, plant, machinery and equipment purchased for utilization of gas in downstream petroleum operations, baby products, basic food items, medical products and services, pharmaceutical products, books and educational materials, and exported services. Zero-rated items include non-oil exports, goods and services purchased by diplomats, and goods and services purchased for use in humanitarian donor funded projects.

Every taxable person (both resident and non-residents) engaged in Vatable activities in Nigeria is required to register as a Vatable person within six months commencement of business and to charge VAT on invoices to customers. For a non-resident company, however, the local recipient of the service is required to withhold the VAT on the invoices and remit it directly to the FIRS.

Oil and gas companies are required to withhold VAT at source from payments to their suppliers/Contractors. The amount deducted must be remitted to the FIRS not later than the 21st of the following month.

Custom duties/import tariffs

Customs duties in Nigeria are levied only on imports. Rates vary for different items, typically from 5% to 35%, and are assessed with reference to the prevailing Harmonized Commodity and Coding System (HS code).

A bill to repeal the Nigeria Customs Services (NCS) Act 2004 and reform the Customs and Excise Management Act (CEMA) 1958 is being considered. The bill would enable all laws guiding the operations of the service to be consolidated in one document. It would also change the basis on which the customs and excise is computed.

Other Taxes

Personal income tax

Individuals including employees, Partnerships and Unincorporated Trusts are liable to tax under the PIT Act. The principal basis of liability to tax under the PIT Act is residency. A person is considered resident if he is physically in Nigeria for at least 183 days (including leave and temporary absence) in any 12month period or serves as a diplomat or diplomatic agent of Nigeria abroad. Resident persons are liable to tax on their worldwide income.

In the case of employment, a non-resident person is liable to tax in Nigeria if the duties of his employment are wholly or partly performed in Nigeria, unless:

- The duties are performed on behalf of an employer who is in a country other than Nigeria;

- The remuneration of the employee is not borne by a fixed base of the employer in Nigeria; and
- The remuneration of the employee is liable to tax in that other country under the provisions of the avoidance of double taxation treaty with that other country. PIT rate is applied on a graduated scale on taxable annual income as set out below:

PIT rate is applied on a graduated scale on taxable annual income as set out below:

Scale	Rate
First NGN 300,000	7%
Next NGN N300,000	11%
Next NGN N500,000	15%
Next NGN N500,000	19%
Next NGN N1,600,000	21%
Above NGN N3,200,000	24%

Taxpayers are entitled to a consolidated relief of the higher of NGN 200,000 or 1% of gross income plus 20% of gross income.

PAYE tax must be remitted on or before the 10th day of the month following the payment of salary. There is a penalty for failure to remit of 10% per annum on the amount plus interest on annual basis at bank lending rate.

Employers must file an Annual PAYE return before 31 January every year in respect of emoluments paid to employees in the preceding year and file an estimated annual return for the current year not later than 31 March. There is a penalty for failure to file returns of NGN500, 000.

Social security contributions

Pension contribution

A new Pension Reform Act was signed into law on 1 July 2014, replacing the old pension law which has been in operation since 2004. The new pension law introduced several key changes including:

- Increase in the minimum contribution into the Scheme. Employers are required to contribute a minimum of 10% of their employees' monthly emoluments while the employees are to contribute not less than 8%. Under the old law, the minimum contribution by both parties was 15% of basic pay, housing and transport allowances with a minimum of 7.5% by the employer;
- Inclusion of less private sector employers. A private sector entity is now subject to the scheme where it has 15 or more employees (previously the minimum threshold was 5 employees); The Act also provides that in the case of private organizations with less than 3 employees participation in the Scheme would be governed by guidelines issued by the National Pension Commission (PenCom). However, the Act is silent on the applicability of the Scheme to private organizations with more than 3, but less than 15 employees. Persons exempted under the Act are substantially the same as under the repealed Act; and
- The imposition of a 10-year jail term for persons found guilty of misappropriating pension funds.

National Housing Fund

This is applicable to Nigerian employees earning a minimum of NGN 3,000 per annum. The employer is required to deduct 2.5% of basic salary from employees earning more than NGN 3,000 per annum and remit same to the Federal Mortgage Bank of Nigeria within one month of deduction. NHF contributions by employees are tax exempt and employers are not required to make any contribution. Expatriate employees are exempted from the NHF contribution.

Employee Compensation Levy

Employers are required under the Employee Compensation Act (ECA) enacted in 2011, to register and contribute 1% of payroll to the fund in the first 2 years of commencement of the Act. The Act was enacted on 18 January 2011. Thereafter, employer's contribution would be based on assessments by the Nigeria Social Insurance Trust Fund (NSITF). The Act provides compensation for employees for any death, injury, disease or disability arising from or in the course of employment.

Industrial Training Fund (ITF)

Employers who have a minimum of 5 employees or annual turnover of NGN 50 million are required to contribute 1% of its annual payroll cost towards the ITF. The due date for payment is the first day of April of the year following that in which the payroll relates. An employer could get up to 50% refund of contributions made if adequate training courses were provided to the employees. Appropriate documentation should be kept to aid refund process.

Property taxes

Property taxes in Nigeria are usually levied by the state government with varying rates depending on the state and the location of the property within the state. Also, Right of Occupancy fee and tenement rates are chargeable by state and local government authorities. The Lagos Land Use Charge law is seen as a unified property tax as it merges the tenement rate, development charges, ground rent and neighborhood improvement rent into one single tax. Edo State's Land Use Charge law is also a combination of various land taxes. A new regulation to impose tax on real property in the Federal Capital Territory (FCT) has been introduced.

Stamp taxes

Under the Stamp Duty Act, stamp duty is payable on any agreement executed in Nigeria, or relating, whatsoever, to any property situated in or to any matter or thing done in Nigeria. Instruments which are required to be stamped under the Stamp Duties Act must be stamped within 40 days of first execution.

Stamp duty is chargeable either at fixed rates or ad valorem (i.e.in proportion to the value of the consideration) depending on the class of instrument. Stamp duty is imposed at the rate of 0.75% on the authorized share capital at incorporation of a company or on registration of new shares.

The PIB waives stamp duties that may accrue on the transfer of rights and assets involving NNPC and the Nigerian Petroleum Asset Management Company, the National Oil Company and the National Gas Company.

Taxation of Oil Field Service (OFS) Companies

Oil Field service companies are subject to a different tax regime. These companies are taxable under the Companies Income Tax Act (CITA) which is administered by the Federal Inland Revenue Service (FIRS). Under the CITA, the tax rate is 30%. Tax returns are due date for filing 6 months from the company's accounting year end and tax payments are due 2 months from the filing due date.

Cabot age levy

The Coastal and Inland Shipping Act (Cabot age) Act 2003 specifically restricts the use of vessels in domestic coastal trade, within the coastal territorial inland waters or any point within the waters of the exclusive economic zone of Nigeria, to vessels wholly owned and manned by Nigerian citizens. However, waivers may be granted to permit the use of foreign vessels in domestic coastal trade. A chargeable vessel is any craft capable of being used for marine navigation and for carriage of persons and property.

A surcharge of 2% of the contract sum performed is levied on any vessel engaged in coastal trade and payable into a fund to promote the development of indigenous ship acquisition capacity.

Gas flaring penalty

The gas penalty fee of NGN 10 per standard cubic feet was introduced to curb gas flaring. Since then, the penalty for gas flaring has increased to USD 3.50 per standard cubic feet. Penalty costs to operators typically form part of their operating expenses and are deductible on a case by case basis. Exploration and production companies are however, permitted to flare, whether or not Gas Flaring Permits/Certificates are granted by the Minister of Petroleum Resources.

This is supported by a recent TAT ruling held on 17 March 2015, in a case between an IOC and the FIRS, where the TAT ruled that the payment made by an oil producing company to flare gas in the course of crude oil production is not a fine to be disallowed for tax purposes but a necessary business expense that is fully tax deductible. This is regardless of whether a written permit was obtained from the government to flare gas.

The Petroleum Industry Bill (PIB) prohibits the flaring of natural gas after a flareout date to be specified by the Minister and also provides for a fine not less than the value of gas flared. Deductions regarding gas flaring penalties will not be allowed as specifically stated in Section 306 (k) of the PIB.

Incentives in the oil and gas industry

Oil exploration and production companies

In addition to capital allowances, the following incentives are available to oil exploration and production companies:

- dividends paid by E&P companies are exempted from withholding tax;
- graduated royalty rates and lower PSC tax rates to encourage offshore production;
- Tertiary education tax is treated as a tax deductible expense for oil exploration and production companies.

Pioneer status incentive

In recent times, indigenous oil and gas companies have sought the relief granted under the Industrial Development (Income Tax) Relief Act

(IDITRA) to exempt their corporate profits from tax for up to five years. The incentives granted by the IDITRA typically apply to companies under CITA and not companies engaged in petroleum operations under the PPTA. Notwithstanding, the Nigerian Investment Promotion Commission (NIPC) continues to process pioneer certificates for exploration and production companies on the basis that, oil and gas exploration and production is included in the list of pioneer industries. The FIRS have in the past challenged the pioneer status awarded to such companies.

In order to address the identified lapses, abuse and loopholes in the pioneer incentive scheme, the Ministry of Industry, Trade and Investment has now released a list of 44 industries and products that are eligible for the pioneer status. The gazette dated 27 May 2015 essentially reproduced the list of industries and products as approved by the Council of Ministers in 1989. This implies that all the industries and products that were added to the approved list within the past 26 years since 1989 are no longer eligible for the incentive. Eligible companies are exempted from income tax for three years and this may be extended for one or two years.

Gas exploitation in the upstream sector

- Capital investment facilities to deliver associated gas in usable form at utilization or designated custody transfer points will be treated for tax purposes as part of the capital investment for oil development;
- All investments necessary to separate oil from gas from the reserves into usable products are considered part of the oil field development;
- Capital allowances, operating expenses and basis for assessment will be subjected to the provisions of the PPT Act and the revised MOU.

The above incentives are subject to certain conditions specified in the PPT Act.

Gas utilization in the downstream sector

- An initial tax free period of three years renewable for an additional two years or an alternative of an additional investment allowance of 35 per cent;
- 15% investment capital allowance which shall not reduce the value of the asset;
- Interest on loans for gas projects is to be tax deductible provided that prior approval was obtained from the federal ministry of finance before taking the loan;
- All dividends distributed during the tax holiday shall not be taxed.

Oil and Gas Export Processing Zone

The Oil and Gas Export Free Zone is located at Onne/Ikpokiri area of Rivers State. It is exclusively for the use of oil and gas companies and related service companies. It focuses exclusively on the oil and gas industry.

Approved enterprises operating within the Zone are exempted from all federal, state and local government taxes, levies and rates. The Export Free Zone offers a range of tax concessions plus other investment incentives including minimal bureaucracy, to ease the flow of business.

Compliance requirements

Tax returns and payments

Every company engaged in petroleum operations is required to file two sets of returns:

1. Estimated tax return: must be filed within two months of the fiscal year (which runs from 1 January to 31 December), that is not later than the last working day in February of every year.

   The estimated tax is paid in monthly installments starting with the first instalment which is payable not later than the third month of the accounting period (i.e. March) with a final 13th installment (if there is an underpayment). Revisions are made if there is any significant change in the parameters used in the estimate i.e. production, cost and price.

2. Actual tax return: must be filed within five months after the end of the accounting period, that is, not later than 31 May. The final installment of tax is payable within twentyone days after the service of the notice of assessment of tax for such accounting period.

Penalty

- Late submission of returns: Initial penalty of NGN 10,000 and NGN 2,000 for each day such failure continues.
- Late payment of tax: 5% of the tax payable.
- Failure to remit WHT due to the FIRS: A penalty of 10% of tax due and interest at commercial rate;
- Failure to remit WHT due to SIRS: A fine of NGN 5,000 or 10% of tax due, whichever is higher, and interest at the bank lending rate.

Electronic Filing

The FIRS recently launched the Integrated Tax Administrative System (ITAS) project, an online portal for taxpayers to file tax returns and remit taxes electronically and a onestop tax database. The first and second pilot stages of the ITAS project have been inaugurated which would allow companies subject to PPT electronically file their estimated tax returns, pay the monthly tax instalments due, and submit revised estimates and the final annual returns.

Tax audits

Companies face tax audits almost on a yearly basis. There is no indication that there will be a reduction in the frequency of tax audits in the near future. Tax audits can be in the form of desk audits or field audits. In both cases, the FIRS carries out a review of the company's records and issues an assessment based on its findings. The company is then required to respond by either settling the liability assessed or formally objecting to the assessment. An objection would normally lead to a reconciliation meeting between the company and the FIRS in an attempt to resolve the points of objection raised by the company. This cycle is repeated until an undisputed liability position is reached, or the parties decide to settle the dispute through legal means.

Other Considerations

- The Federal Government of Nigeria (FGN) in December 2016, exited the correct Joint Venture (JV) funding arrangements with IOCs. Until this announcement, the federal government was required to contribute upfront funds for production activities with its JV partners. However, the FGN would not always meet its obligations, requiring the IOCs to incur the expense, and book receivables which have been very difficult to collect. With the revised arrangement, the IOC would fund 100% of exploration activities, and deduct its cost before sharing the revenue with the government.
- Voluntary Asset and Income Declaration Scheme (VAIDS) - The National Executive Council (NEC) recently approved in principle, the implementation of a Voluntary Assets and Income Declaration Scheme (VAIDS). The Scheme is expected to come into effect from May 2017 once formal guidelines have been issued. The Scheme encourages voluntary disclosure of previously undisclosed assets and income for the purpose of payment of all outstanding tax liabilities. The Scheme will offer a limited waiver for declaration within the specified period of time. The Scheme would grant some waivers as a reward for voluntary declaration of assets and payment of tax liabilities. All individuals resident in Nigeria and companies as well. It will apply to all taxes including Petroleum Profits Tax (PPT). Any taxpayer who fails to embrace the voluntary disclosure Scheme will be investigated and if found culpable will be prosecuted in addition to full payment of tax due including penalty and interest. It is estimated that the scheme would generate $1 billion in tax revenue. This comes off the heels of the Tax Amnesty Scheme carried out in the last quarter of last year, where the government reportedly generated about $89 million. The scope of the last scheme was quite limited in taxes and period covered (thus the small revenue).

Requirements for Upstream Companies to file CIT Returns

In two separate workshops held in June and September 2014, the FIRS has requested that upstream companies start to file CIT returns, to verify expenses incurred prior to production. This is based on Section 55 of the CIT Act which provides for "every company" to file its returns. Although this applies to all upstream companies, emphasis was made on the following:

- Each party in a PSC arrangement is now required to submit an additional return separate from the return filed by the Contractor. However, this would continuously be challenged by the oil companies given certain peculiarities in the CIT Act such as commencement rules and excess dividend tax.
- Sole Risk and Marginal Field Operators (MFOs) are also required to submit CIT returns and compute their PPT returns based on equity interest.

Applicability of withholding tax to Dividends from Gas Profits

In a Tax Appeal Tribunal (TAT) case held in January 2015 between the FIRS and a taxpayer (Agip), the TAT held that since Agip's gas income is liable to tax under Companies Income Tax Act (CITA), Agip is subject to all the provisions of CITA in assessing its gas income. Therefore, Agip is liable to WHT on dividends paid out of its gas profits as provided under Sections 80 and 9(1) (c) of CITA.

The TAT's ruling provides some clarity on the previously divergent interpretations of Sections 11(2) and 60 of the PPTA by players in Nigeria's upstream petroleum industry. By determining that gas income is taxable in its entirety under the provisions of CITA, the TAT's ruling effectively removes gas operations from the scope of the PPTA. This therefore has significant impact beyond the main issue in this dispute in view of the consequential issues that may arise such as the application of commencement rules, excess dividend taxation and so on. It is expected that the judgment will be appealed given that there are tenable arguments for both interpretations on the subject.

In the meantime, companies that have adopted the practice of exempting their dividends paid out of gas profits from WHT and other provisions of CITA should begin to reassess their positions and review their past and current tax uncertainty treatment while awaiting a conclusive ruling by the courts. The entire process could take years.

Tax Deductibility of Intercompany Interest

On 18 September 2014, the TAT ruled that upstream companies can take tax deductions for interest charges on their related party loans, provided that these loans are obtained at arm's length. This ruling was issued in a case brought before the TAT by the Nigerian Agip Oil Company Limited (Appellant) against the FIRS.

Historically, the tax deductibility of intercompany interest expense has posed a major challenge to upstream companies, especially considering that such companies need huge funding to carry out their operations in such a capital intensive industry. The offshore entities are better able to secure such loans on better terms for onlending to their Nigerian entities. The reference to arm's length in the ruling gives credence to the need for a robust transfer pricing analysis to substantiate the arm's length nature of all intercompany transactions including loans.

In addition, the judgement will have impact on tax accounting and reporting by affected companies in terms of their reserve for uncertain tax positions. This requires a reassessment as it remains to be seen whether the FIRS will appeal the judgement.

Oil and Gas Free Zone Authority Establishes Tax Administration Unit

The Oil & Gas Free Zone Authority (OGFZA) has established the Free Zones Tax Administration (FZTA) Unit with effect from January 2015 to streamline the administration of permissible taxes within the tax free zones. According to the OGFZA, this has become necessary to avoid unfriendly situations where various tax agencies relate directly with free zone enterprises often resulting in unending disputes. Going forward, all tax matters relating to the free zones will be coordinated by the FZTA.

Some of the responsibilities of the FZTA unit include:

- To interface between the Free Zones (FZEs) and various tax agencies;
- Harmonize and coordinate the process of collecting allowable taxes in the Oil and Gas Free Zones;
- Serve as a tax collection agent for all tax agencies in the collection of allowable taxes in the free zone;
- Liaise with tax agencies and obtain tax clearance certificates for employees and receipts for contractors of FZEs;

- Submit all tax clearances and receipts to FZEs for distribution to their employees and contractors,
- Conduct periodic tax audit of FZEs to ensure compliance; • Issue tax notifications to FZE to remit tax as and when due; and
- Arbitrate on any tax dispute arising between an FZE and any tax agency. All FZEs were directed to refrain from dealing directly with the various tax agencies.

Applicable Crude Oil Price for PPT Purposes

There has been a long standing dispute between the FIRS and oil producing companies on the applicable price of crude oil to be used for tax purposes. The TAT on 23 January 2015 ruled that the realizable price (RP), and not the official selling price, should be used for the tax years during which the relevant Memorandum of Understanding (MOU) between the government and the oil companies remained valid.

The MOU is an agreement reached between the FGN and oil companies in Joint Venture operations with NNPC. The aim of the MOU was to secure a profit margin for the oil companies during difficult oil market conditions. The MOU, first signed in 1986, was revised in 1991 and again in 2000. The 2000 MOU signed between the NNPC (on behalf of the FGN) and major oil companies stipulated that revenue, royalty and PPT computations should be based on RP being the amount earned by the oil companies from crude oil sale.

The 2000 MOU was neither officially renewed nor terminated until 17 January 2008 via a letter from DPR. The letter stated that the RP will be replaced with the Official Selling Price (OSP) as advised by NNPC effective from 1 January 2008.

In the case referenced above, the TAT decided that the RP was the appropriate pricing methodology applicable to the PPT returns for 2006 and 2007. Although this ruling provides some comfort to affected oil producing companies for the periods in which the MOU remained valid, there are other related issues which have not been addressed. Generally, the FIRS seeks to use the higher of the OSP and the RP in calculating revenue and issuing tax assessments to upstream companies. This ruling does not prescribe the appropriate basis for crude oil pricing for periods and operations not covered by any MOU.

Tax Treatment of Oil Asset Disposals

In a recent decision (February 2015), the TAT held that no capital allowance clawback (balancing charge) should be computed on the disposal proceed relating to intangible assets on which no capital allowance had been previously claimed.

The ruling comes off the backdrop of an ongoing issue in the oil and gas industry, concerning the apportionment of disposal proceeds between tangible and intangible assets, by the buyer and seller. For the case in question, the Company sold its interests in an oil concession to a third party. Under the sale, the consideration for both tangible and intangible assets was apportioned accordingly by the purchaser (presumably agreed with the seller since it was a commercial transaction between unrelated parties); and the Company computed balancing charge only on the tangible assets and some intangible portion categorized as QCE and in respect of which capital allowances had been previously claimed.

The Tribunal found that no capital allowances were claimed or granted by the FIRS in respect of the intangible assets. It therefore held that the assets did not amount to QCE and so should not be included in the computation of balancing charge. The decision clarifies that balancing charge cannot be computed for expenses written off to profit or loss account at the time they are incurred. If they are subsequently disposed and a capital sum received, any excess over original cost would be taxable under capital gains tax at 10% rather than PPT at a much higher rate.

The ruling addressed key principles of capital allowance clawback, but did not address the pertinent issue of the appropriate split of consideration between tangible and intangible components of the disposal. However, based on the outcome of the decision it appears that the FIRS cannot exercise its discretion to allocate consideration between tangible and intangible if two commercially independent parties have agreed on a split.

Pending any further ruling on the allocation of proceed between tangible and intangible portions, taxpayers should ensure that any apportionment is agreed between both buyer and seller and treated the same way by both parties.

PSC Tax Returns – Preparation by Contractor versus NNPC

Under a PSC arrangement, the concession is held by NNPC (or an alternative holder), which engages other companies as contractors to conduct petroleum operations on a designated contract area. The contractors take on the financing risk of operating the field and are entitled to recover costs and a share of profit when commercial production commences.

One of the parties to a PSC arrangement is appointed as the Contractor, to execute petroleum activities on behalf of the parties to a PSC, perform administrative functions and represent the interests of the NNPC. In line with the PSC Act and the individual PSCs, the NNPC is mandated to submit the tax returns prepared by the Operators for each contract area to the FIRS. In practice, the NNPC usually amends these returns to the detriment of the contractors resulting in increased government take in the form of tax oil payable to the FIRS.

In a recent case (May 2015) between PSC parties and the FIRS, the TAT nullified the assessment raised by the FIRS on the basis that the FIRS did not consider the returns prepared by the Contractor, which were significantly different from what was submitted by the NNPC. The TAT asserted that both the PSC Act (Deep Offshore and Inland Basin Production Sharing Contracts Act) and the PSC between the NNPC and the Contractor vest the former with the right to prepare PPT returns for the contract area, while the NNPC had only a responsibility to deliver the returns to the FIRS.

Although the NNPC has the right to participate in preparing the PPT returns, the tax returns prepared by Operator is the foundation for determining tax payable to the FIRS. It was held that the assessment by the FIRS should indicate the names of the parties to the PSC in line with Section 37(1) of the PPTA and Sections 11 and12 of the PSCA, as they were the affected taxpayers in the scenario. The TAT also ruled that the parties to the PSC had the right to object to the FIRS' assessment as they were the affected taxpayers.

Republic of Congo

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Country Profile

Brief history on oil and gas development

The Republic of Congo is a country located in Central Africa. It is bordered by Gabon, Cameroon, the Central African Republic, the Democratic Republic of the Congo, and the Angolan exclave of Cabinda.

The Republic of Congo is divided into twelve regions, with Brazzaville as the capital. The official currency is the "Coopération financière en Afrique Centrale" (Central African CFA) franc (XAF), and the official language is French. However, several regional languages are also recognized.

In 2016, the petroleum industry accounts for an estimated 60% of the State budget[1]. In 2016, despite the decade of modest reforms initiated by the government of President Sassou Nguesso, Congo remains heavily dependent on oil revenues to finance its development.

With the severe strain of continued low oil prices, the Congolese government has initiated political and economic actions to diversify its revenue stream to reduce its dependence on hydrocarbon and increase the contribution of tax-based revenue.

A new Hydrocarbon Code was released under Law 28-2016 dated 12 October 2016. This code aims to also valorize both the oil and gas sectors. Incentives are also granted for the development of other sectors such as agriculture, tourism, etc.

Oil was first discovered in the Republic of Congo in commercial quantities in the 1960s by Elf Congo. Elf mainly prospected in the Grands Fonds area, offshore PointeNoire and they discovered the vast Emeraude deposit.

Société Nationale des Pétroles du Congo – SNPC – is the Congolese state owned Oil Company.

Main producers are Total, Eni and Perenco.

Significant new developments

The O&G downturn has significantly impacted the economic environment, as have the pressure being given by the Congolese Administrations to collect

[1] *Source: The Oil & Gas Year 2016_Republic of Congo _ Projected government revenues, 2016*

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Republic of Congo 2017 Country Updates

taxes, contributions or any duties in the frame of economic operators' activities in Congo.

Fiscal Regime

The tax and legal provisions of the Hydrocarbons Code

The new Code has also implemented or modified tax and legal provisions, as per the following:

The legal provisions of the Hydrocarbons Code

- While previously, the hydrocarbons code provides for the possibility for license holder to be the National Oil Company or an International Oil Company, the new code has consecrated the exclusive granting of hydrocarbons titles to the National Oil Company in Congo, Société Nationale des Pétroles du Congo (SNPC). These provisions are confirmation of an old practice in the country, and will allow the SNPC to have a formal central role under the negotiation phases with international oil companies;
- Regarding the national participation, the new code provides for the establishment of a minimum participation of 15% for national private companies in the PSCs. The interest is carried during the exploration phase. The rate is set at 25% for Cooperation Contracts concluded to continue the production on a field whose production license expired;
- The Operator is allowed to register a branch in country during the exploration phase. During the production phase, the Operator must incorporate a company;
- Regarding the duration of the authorization and licenses (prospection and exploration), the new code measures are more or less unchanged for the initial granted duration (1 year for prospection authorization, 4 years for the exploration license) as well as the extension period (with a twice 3 years extension). However, only more details are provided for licenses in borders zones or marine zones beyond 550 meters of water depth which are granted for 6 years;
- Regarding the Production license, under the previous code, this was granted for an initial 20 years, with 5 years and so forth extension. With the new code, the granting period depends on the expected duration of the production of the deposit. It cannot exceed 25 years for liquid hydrocarbons, 30 years for gas or solid hydrocarbons deposit. It can be extended for 5 years, once;
- Under the previous code, the State's after tax profit oil was negotiable. However, with the new code, a minimum state profit oil is now set at a minimum of 35% of the calendar year profit oil and cash payment or in kind payment is at the request of the State;
- Any member of the Contractor may assign all or part of its participating interest in a petroleum contract, including its rights and obligations under that contract, subject to the approval of the assignment by the Minister in charge of hydrocarbons. Under the previous code, the approval of the Ministry in charge of hydrocarbons was still required, but with the new code, the requirements for such assignment to be approved will be set under a regulation;

- Such transfer of interests was free between related entities, but subject to the approval of the Ministry in charge of hydrocarbons. Now, with the new provisions, the approval of the Ministry in charge of hydrocarbons is still necessary, but the transfer agreements must be tax registered within one month from their date against a fixed registration fee. For the applicable fee, the new code refers to the General tax code provisions;
- Any change in the shareholding of the entities forming the Contractor's group must be reported to the Minister in charge of hydrocarbons;
- Any relinquishment decision by one of the entities forming the Contractor's Group implies the loss of the petroleum cost recovery and the loss of funds advances made to the national oil company;
- Gas flaring which was allowed with approval of the Minister in charge of hydrocarbons only is now prohibited except in few exceptional cases and with the special and prior approval of the Minister in charge of hydrocarbons.

The tax and custom provisions of the Hydrocarbons Code

- The new code has maintained the tax stability clause mechanism and the survival of the existing charter conventions and contracts signed with the State, to ensure the contractor maintaining the general economic balance of the oil contract on change of laws and regulations affecting the taxation regime applicable to the contractor or other members of the contractor after the entry into force of the PSC. However, any amendment to these PSCs must be compliant with the provisions of the new Hydrocarbons Code. In this respect, the new code has granted a 24 months delay to companies to achieve compliance with these provisions;
- The Minister responsible for hydrocarbons, associated with other administrative authorities and the oil companies, will implement the establishment of a national fund for environmental risk prevention to be funded by an annual contribution of 0.05% of net hydrocarbon production valued at the tax price from each operator. The contribution is recoverable and is a tax deductible cost;
- The new code has introduced the bonus mechanism, according to which bonus will be awarded upon Signature of a contract, amendment, the granting of exploration or production license and the extension of production license. The bonuses are not recoverable. However they are tax deductible;
- Contractor's Group members are liable for a provision for diversified investments levied at the rate of 1% on the annual production. It is a recoverable and tax deductible cost;
- For the corporate income tax rate, the new code refers to the General tax code provisions, i.e. 30% at the moment;
- The New Code lists the taxes the Contractor's Group members are liable to;
- The Contractor is jointly liable with its subcontractors for any abuse in the application of the provisions relating to the customs regime of the petroleum operations;
- During the validity of the contracts, Oil & Gas subcontractors can benefit from specific custom regimes, provided these subcontractors were delivered certificates/attestations from the contractors.

Local Content Regulations

The introduction of local content provisions occurred with the publication of the Law n° 3-2000 dated February 1st, 2000 regulating the requirements for carrying out activities under the sub-contracting services.

With the new Hydrocarbons Code, a specific part is dedicated to the reinforcement of the local content regulation with which contractors will have to be compliant.

Some of the key provisions related to the local content rules are the following:

- The obligation of contractors and their subcontractors to implement and enforce training and promotion programmes for Congolese staff in all areas of the upstream oil and gas sector;
- The obligation of contractors and subcontractors to give priority to the realization of works necessary for their operations to Congolese supplies and services companies, insofar as the conditions of price, time and quality are substantially equivalent. It is stated that this obligation remains even if the price offers made by the Congolese companies are 10% higher than those of foreign companies;
- The obligation for other suppliers to partner with Congolese suppliers when the offer of the latter is recognized as technically acceptable;
- The production and development costs of Congolese origin cannot be lower than 25% of the whole production and development costs. When this cap is not met and not justified, the costs representing the difference are not recoverable. In exploration phase, the percentage is set in the minimum works program;
- Under the previous code, unless a waiver was granted, upstream oil and gas risks had to be insured through Congolese and foreign brokers with Congolese insurance companies. The new code provides for insurance through Congolese insurance brokers and with Congolese licensed insurance companies (except for a waiver from the Minister in charge of insurances);

Taxation Regime

Basis of taxation

With the new tax regime, the contractor and contractor members, with respect to oil operations, shall be subject to the following taxes:

- Contributions for licenses or any other substitute contributions;
- Taxes on developed and undeveloped property;
- Property occupation tax or any other substitute tax;
- Sole tax on wages at a reduced rate and social security contributions;
- Withholdings at the source owed by third parties for income taxes for individuals, for corporate taxes, for income tax on securities, and for real estate tax;

- Contributions and royalties from payments for services rendered;
- Corporate tax under the conditions stipulated in Articles 166 to 174 of this law;
- Registration and stamp duties; and
- Tax on effective funds transfers from the Republic of the Congo to foreign countries and vice versa.

Direct Taxes

With the New Hydrocarbons Code, combined with the wording of the PSCs provisions, Hydrocarbons production resulting from each exploitation permit is allocated to the State and to the contractor as follows:

- a portion of net production is allocated toward the proportional mining royalties;
- out of net available production, the contractor is entitled to a portion of production as repayment for recoverable oil costs incurred during oil operations for the exploitation permit (cost oil) up to the cost stop limit; and
- the remaining net available production (profit oil) is divided between the State and the contractor.

Under the PSCs, the quantities of oil allocated to the oil companies' partners on a block are net of taxes, and namely net of corporate income tax (CIT).

Under this regime, the corporate tax (which is calculated at the rate defined in accordance with the general tax code) is paid as a flat and full discharge by delivering to the State its share of the profit oil.

From a State perspective, this secures oil revenues and from an oil company's perspective, this fixes the amount of corporate income tax due and thus the net after tax profit derived from production.

In addition, oil companies have to pay a special reserve for diversified investments (Provision pour Investissements Diversifiés) but this is not really a tax since it is treated as reimbursable petroleum costs. Please note that the fiscal regime that applies to oil companies (i.e. upstream oil & gas companies) differs from the one which is applied to subcontractors.

Although there are no changes regarding the calculation method, the new Hydrocarbons Code provides for the following changes for O&G companies:

- Regarding cost recovery under the previous code, this was set at 60% of annual production and up to 70% of annual production when circumstances call for it. Now, the rate is at 50% of annual production and up to 70% of annual production when circumstances call for it;
- Under the previous code, the State's after tax profit oil was negotiable. However, with the new code, state profit oil is now set at a minimum of 35% of the calendar year's profit oil in cash or kind payment at the request of the State.

Royalties

- During the production phase and before any allocation of cost oil and for oil profit purposes, the State is entitled to a certain percentage of the oil production in consideration of a royalty;

- During the production phase and before any allocation of cost oil and for oil profit purposes, the State is entitled to a certain percentage of the oil production in consideration of a royalty;
- The mining royalty is levied at the rate of 15% on net production for liquid hydrocarbons (12% in remote area) and at the rate of 5% for natural gas and solid hydrocarbons. Unless the State decides otherwise, it is paid in kind or in cash.

Capital gains tax

General Capital gains are taxable and treated as any other revenue.

The new Hydrocarbons Code provides that any contractor member that assigns all or part of its rights and obligations resulting from a production sharing contract must pay a flat tax of ten percent (10%) if capital gains are earned in the assignment. Should be considered as capital gain, the difference between the assignment price obtained by the assignor and the total remaining cost recovered by the assignee contractor member.

Transferor and transferee will be jointly responsible for the tax payment. This tax is not applicable on transfer of interest to a Congolese registered company whose capital is owned at 100% by the transferor. In addition, the code provides that the transferee right for costs recovery is limited to the value of the interests when this value is lower than the value of unrecovered costs.

Based on the General Tax Code provisions, unless a particular exemption applies, the net capital gains realized from direct or indirect transfer of assets giving rise to a change of control in a Congolese company are taxable in the Republic of Congo at the rate of 20%.

Thin capitalisation

Thin capitalisation rules apply to shareholders having an effective controlling/ managing role.

For those controlling/managing shareholders, the debt/equity ratio is 0.5 and the interest rate is limited to the BEAC rate (2.95%)[2] plus two points.

Interests above those two thresholds are not deductible for corporate income tax purpose and are treated as dividends.

Under profit sharing contracts, the taxable profit is grossed up as per provisions of the said contracts, as such, the thin capitalisation rules have no impact in practice.

Transfer pricing regulations

Transfer pricing legislation was introduced in 2012 by the Finance Act. The 2017 and 2018 new legislations amended the transfer pricing provisions as outlined below:

- The increase to XAF 500,000,000 (compared to XAF 100,000,000 previously) of the amount of turnover triggering the obligation to produce a Transfer Pricing documentation;
- The inapplicability of the rules on transfer pricing for companies of the same group located in Congo;
- The setting up of a specific audit for transfer pricing;

[2] *Source : https://www.beac.int/index.php/accueil*

- The setting up of a simplified or light transfer pricing documentation filling requirement, to be transmitted to the administration within 6 months from the filing of the summary financial statements;
- The setting up of a maximum 3 year-validity period for prior agreements on price under certain conditions;
- The Confirmation of the five (5) different methods to set up the arm's length price, derived from the OECD recommendations;
- The definition of the applicable penalties in case of non-production or insufficient production of the documents required as part of a transfer pricing audit;
- Failure to produce the light documentation or uncompleted light documentation provision will trigger a fine of F CFA 5,000,000;
- The failure to reply to the formal notice mentioned issued by the Tax Administration will trigger a fine of 10,000,000 FCFA for each audited financial year (5,000,000 FCFA for each financial year in case of partial response).
- Amounts invoiced by the foreign company deemed to not reflect the arm's length conditions are added back to the fiscal year result of the Congolese company at the rate of one-third (1/3) of their amount.

Profit repatriation issues

Profit repatriation is guaranteed in the PSC.

Double Tax Treaties

Applicable DTTs concluded by the Republic of Congo include:

Congo-France (September 1st, 1989);

Congo-Italy (October 8th, 2014);

Congo-Mauritius (June 26th, 2014);

UDEAC DTT (December 14, 1965);

Tunisia (October 4th, 2005 - Not in force).

Indirect Taxes

Value added tax (VAT)

Oil & Gas companies are exempted from VAT on all their oil and gas related transactions. In this regard, transaction that are not directly intended for petroleum works (not directly related to the studies, research, exploration, development, exploitation, production, transport and stock of Oil) are subject to VAT at the rate of 18%, plus a 5% surtax applied on the amount of VAT (classified as private /domestic expenses). A list of providers and subcontractors being exempted from VAT is provided to the tax authorities. Any transaction realised by entity not listed under the said list will be subject to VAT.

For expenses not directly related to petroleum works and not included in the list of exempted companies:

- VAT return must be submitted on a monthly basis on the 20th at the latest of the month following the realisation of the operation;
- The payment must occur at the same date as the filing, i.e. on the 20th. Please note that if it is a nil declaration, it still must be filed.

Custom duties

Oil & Gas companies are benefiting from a specific regime with regard to their imports and exports.

Imports are classified in four categories and custom duties range from zero to standard rate. It is understood that most imported items are exempted.

Additionally, oil exports are exempted from exports duties.

When applicable, import duties are payable at rates ranging from 5% to 30% on the customs value of imported goods:

- Basic necessities - 5%;
- Raw materials and capital goods - 10%;
- Intermediate and miscellaneous goods - 20%; and
- Consumer Goods - 30%.

The following additional entry taxes apply on importation of goods:

- Economic and Monetary Community of Central Africa (CEMAC) integration tax: 1% on CIF value;
- Statistic tax: 0.20% on CIF value;
- Organization for the Harmonization of Business Law in Africa (OHADA) contribution: 0.05% on CIF value; and
- Economic Community of Central African States (CEEAC) contribution: 0.04% on CIF value.

Oil and Gas companies benefit from a specific regime with regard to their imports and exports.

Imports are classified in four categories and custom duties range from zero to standard rate. It is understood that most imported items are exempted. Oil exports are exempted from exports duties.

A 2% computer royalty to cover expenses incurred by the Customs Administration on computer data processing is applicable without exception or exemption to all importation and exportation of goods. The royalty is levied at the entry and at the exit for temporary imported goods.

The New Hydrocarbons Code provided that the contractor shall be jointly and severally liable with its suppliers, sub-contractors, and service-providers to the customs administration for any impropriety in the application of provisions of the customs regime applicable to oil operations, including their penalties.

The hydrocarbons administration has the power of general inspection and communication rights over all oil operations activities. In this respect, as provide under the new Hydrocarbons Code, the hydrocarbons administration may, at any time, perform or cause to perform any inspection in the field it deems necessary to learn how the oil operations are being conducted, including the methods and techniques being used and the oil costs incurred. The contractor shall assist the administration in any way necessary.

Registration fees and stamp duties

Unless otherwise stated in a specific charter convention signed with the State, oil companies are not exempted from registration fees and stamp duties.

Registration fees are due on specific acts and especially contracts entered into with sub-contractors, as well as lease agreement. Registration fees are proportional or fixed.

Unlike registration fees, stamp duties are not significant.

Other Taxes

Personal income tax

As required of any employer, oil companies are required to withhold personal income tax on the salaries paid to their employees according to a sliding scale with rates ranging from 0 to 45%.

Personal tax rates are applied progressively (they increase with the taxpayer's taxable income). The rates for the tax year ending December 31, 2016 are as follows:

Annual Taxable Income (Francs CFA)	Rates Applicable to Income Band
Up to 464,000	1%
From 464,001 to 1,000,000	10%
From 1,000,001 to 3,000,000	25%
From 3,000,001 to 8,000,000	40%

The tax is withheld by the employer.

A single tax at the rate of 7.5% based on the gross remuneration of employees shall be borne by the employer.

Social security contributions

Social security contributions are due in connection with salaries paid to employees according to the following table:

Name	Basis	Rate
Family allowance	Salary including benefit in kind capped at XAF 7,200,000	10.035% borne by the employer
Labour accidents	Salary including benefit in kind capped at XAF 7,200,000 per year	2.25% borne by the employer
Retirement	Salary including benefit in kind capped at XAF 14,400,000	8% borne equally by the employer and the employee 4%

Property Tax

It is established as an annual contribution on buildings based on masonry foundations, such as homes, shops, warehouses and factories with the exception of those specifically exempted.

The property tax on building for residential use is set on the taxable cadastral value of the property, less 75% in consideration of the decay, maintenance and repair costs.

The property tax on leased or allocated buildings for professional use is set at the taxable rental value of these properties, less 75% in consideration of the decay and maintenance costs and repair.

Any private property must be imposed under the name of the owner on January 1 of the year of taxation. However, when a property is encumbered with usufruct or leased long lease, land tax is established in the name of the beneficial owner or the lessee, pursuant to Article 608 of the Civil Code.

For the calculation of the property tax, it is applied to the net taxable income of the rate fixed by resolution of the People's Councils of the Municipalities and Regions.

The land tax on non-built property is set at the rate of the taxable value of said properties. The assessed value is 50% of the cadastral value.

The rate is in principle fixed by Municipalities and approved by the Minister of Finance within the limits of a maximum amount determined annually by the National Assembly.

To the best of our knowledge, the rate of the tax was set at 20% for the City of Brazzaville and 15% for Pointe-Noire as at 2005. No update information was available while completing this survey.

Rent tax

The changes introduced by the new 2018 Finance Act is the reintroduction of the fixed rate of rent tax as before FY 2017 Act, which represents one-twelfth of the rents due within a year.

The rent tax applies on built property and also applies on non-built property for business purposes. The rent tax is imposed on the occupant of the premises (whether the occupant is the owner, a tenant, or a subtenant).

If the occupant is a tenant, the rent tax is paid by the latter on behalf of the owner, or by the subtenant on behalf of the tenant. The tenant/subtenant has the legal obligation to pay this tax on behalf of the lessor

Since the 2018 FA amended only the tax rate, the other provisions related to the rent tax introduced by the Finance Act 2017 should still be applicable.

The Finance Act 2017 provided for the possibility to pay the tax on a quarterly basis by 20 March, 20 June, 20 September and 20 December of each year for former taxpayers. With the modification of the rate, and without any change of the payment modalities, the payment of the one twelfth of the annual rents should comply with the regulation in force.

However, without any practical examples because of the recent release of the law, we cannot anticipate on the applicability of these provisions.

Although, the quarterly payment provisions are still applicable, these do not prevent the taxpayer from paying the rent tax on an annual basis (once a year) on or before 20 March as provided before the Finance Act 2017.

A 50% fine, assessed on the amount of the tax, is due for any late payment of the rent tax.

For newly signed lease agreements, the tax is payable on the quarterly deadline set for former taxpayers on the basis of rents due on 31 December of that year.

The property tax paid quarterly is deductible by the tenant when paying rent in March, June, September and December.

The occupancy tax is collected by declaration and self-payment is made by the taxpayer no later than 20 April of each year for residential premises and 20 February for professional use premises.

Occupancy Tax

Occupancy tax is paid for any construction of durable materials or facilities occupied by individuals or legal entity.

It is ranged from XAF 12 000 to XAF 60 000 for premises used for residential purposes and from XAF 120 000 to XAF 500 000 for professional use premises.

In order to prevent agencies from being taxed at the same rate as their headquarters, the 2017 Finance Act set up by the new Act reduces the tax rate for companies with several agencies or other professional entities as follows:

- For very small and small size companies, non-profit organisations, other professions and non-commercial organizations and secondary establishments for medium-sized enterprises: XAF 60,000;
- Medium size companies for the principal establishment and secondary establishments of large enterprises: XAF 120,000;
- Large size companies: XAF 500,000.

Oil Companies Non-declared Contracts Fines

The Finance Act 2018 introduced penalties for omissions relating to declarations subscribed by oil operators with respect to contracts concluded with petroleum subcontractors (Article 126d, paragraphs 7 and 8).

Oil companies are required to produce two declarations:

- the quarterly return of the exhaustive list of subcontractors with whom they have signed a contract; and
- the monthly return of remunerations paid and WHT levied on the amounts paid to subcontractors.

Failure to comply with the monthly or quarterly obligation as well as for not withholding taxes is sanctioned by a fine of three million (3,000,000) FCFA.

Any omission or inaccuracy information in the declarations referred to above will trigger a fine of ten thousand (10,000) CFA francs incurred as many times as it is found of omission or inaccuracy in the information provided.

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Incentives

The applicable taxation regime includes some incentives, mainly through exemptions, which are provided for in the PSC and described herein.

Compliance requirements

Despite no corporate income tax due/payable, oil companies are nevertheless required to file an annual tax return (Document Statistique et Fiscal) before May 20 of each year. For the 2017 Financial Year, the deadline is May 18, 2018

Monthly returns must be filed for salaries and other withholdings. An arbitrary taxation will be made on taxpayers who omit to file their taxes returns.

The Tax Administration has adopted in the course of the 2016 year, a four-part general tax return, covering all taxes and duties filed on a monthly, quarterly and annual basis.

Based on these new provisions:

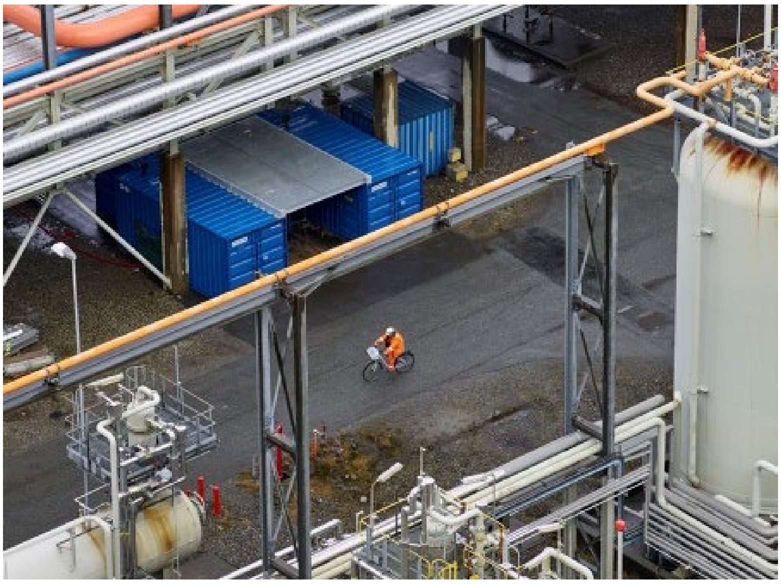
- There is no obligation for taxpayers to attach appendices to the tax return;
- Down payment on various taxes at the customs cord is no longer required;
- No sanctions will be levied for the omission of wording on tax exemptions or not by virtue of Charter Convention.

Please however note that we have not yet experienced this new form of declaration.

Audit and Other Reporting Requirements

Tax authorities conduct audits on a very regular basis. Whenever a year can become statute-barred, they automatically launch a tax audit before the deadline. In practice, tax inspectors are very aggressive in the frame of tax audits. All financial statements (if any) are scrupulously analysed and additional documents are often requested.

However, beside the aggressiveness of the tax inspectors in the frame of tax audit, taxpayers have the possibility to discuss with these inspectors, provide additional documents (if required) before the issuance of the assessment. With the economic situation of the country, the discussions are tougher with the Tax Authorities.



Senegal

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Country profile

Senegal is the westernmost country of Africa and covers an area of 196,190 km². It borders the Atlantic Ocean in the West and has terrestrial borders in the north with Mauritania, in the East with Mali, in the Southeast with Guinea and in the Southwest with Guinea-Bissau.

Senegal is one of only a handful of countries to have a near-enclave within its borders.

The official language is French.

Significant new developments

On August 2016, the Strategic Orientation Committee for Oil and Gas was created and is in charge of assisting the President of the Republic and the Government in defining, supervising, evaluating and monitoring the implementation of the State policy on the development of oil and gas projects.

Regulatory Framework

- Petrosen: It is the State petroleum company that prepares and negotiates all petroleum conventions and contracts;
- Ministry of Petroleum and Renewable Energy: This department controls oil and gas operations carried out in Senegal;
- AGC: This agency is a joint committee set up to manage petroleum, mineral and fishing activities in the Common Maritime Zone between Guinea-Bissau and Senegal.

Forms of contracts

Production sharing contract

It is a risk service contract whereby the State or a State Company awards exclusive hydrocarbon exploration and exploitation rights within a defined perimeter, to one or several qualified persons or companies.

The production sharing contract specifies the rights and obligations of the holder and of the State or a State Company, including the conditions for the

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sharing of the hydrocarbons produced and the recovery of petroleum costs incurred by the holder and its remuneration.

Service contract

It is a risk service contract for the exploration and exploitation of hydrocarbons whereby the State or a State Company grants to a qualified entity, which assumes the financial risks, exclusive rights for the exploration and exploitation of hydrocarbons within a defined perimeter.

The oil company may be remunerated only if commercially exploitable reserves are discovered.

Government participation

The State, either directly or through a State Company, reserves the right to participate in all or part of the petroleum operations, by entering into partnerships with the holders of conventions or service contracts. The conditions of participation will then be specified in the related convention or service contract.

The conditions of participation will then be specified in the related convention or service contract.

Taxation regime

The taxation of the petroleum operations is regulated in Senegal by the General Tax Code and the Petroleum Code.

Holders of exploration permits are not subject to the following taxes:

- Employer payroll tax;
- VAT;
- Business license tax;
- Tax on built real estate;
- Tax on nonbuilt real estate;
- Customs duties on all items of plant, equipment and materials intended to be used solely for petroleum activities (ranging from 0% to 20%).

Holders of exploitation permits are not liable, during the exploitation phase, to the following taxes:

- Minimum corporate tax, during 3 years after the issuance of a exploitation permit;
- Tax on built real estate, during the investments phase, plus 3 years after the issuance of a exploitation permit;
- Tax on non-built real estate, during the investments phase, plus 3 years after the issuance of an exploitation permit;
- Customs duties on all items of plant, equipment and materials intended to be used solely for petroleum activities (ranging from 0% to 20%).

A convention or contract may provide additional exemptions other than those provided by the law and mentioned above. It could be an exemption of withholding taxes on services.

Besides, the convention or contract may provide a stabilization clause to insulate the project from adverse changes to the legal and fiscal environment.

It is noteworthy that the General Tax Code and the Petroleum Code do not provide for a special status, from a tax perspective, for subcontractors. So the latter will be taxed according to the ordinary law.

Finally, there is no deemed profit taxation in Senegal.

Direct Taxation

Corporate Tax

Entities operating in the oil/gas sector are subject to corporate tax at a rate of 30%. This is the sole rate.

The corporate tax rate is applied on the taxable profit determined after deductions of all expenses which are deductible against that income according to the General Tax Code.

In order to be deductible, the expenses must meet the following conditions:

- leads to a reduction of the assets;
- paid in the interest of the company;
- be regularly recorded in the accounts of the entity and justified by receipts;
- relate to the current fiscal year; and
- relate to a taxable income.

It should be noted that losses can be carried forward within a period of 3 years whereas depreciation recorded during a deficit year can be carried forward indefinitely.

The CIT return and the annual financial statements shall be submitted latest by April 30 of each year. Two prepayments are made by February 15 and April 30, before a final payment is made by June 15.

Royalties

Holders of exploitation permit are subject to the payment of a royalty based on the value of hydrocarbons produced.

More precisely, the royalty is calculated based on the total quantities of hydrocarbons produced in the concession and not used in the petroleum operations

The royalty rates applicable to the production of crude oil or natural gas are determined as follows:

- liquid hydrocarbons exploited onshore: 2%;
- liquid hydrocarbons exploited offshore: between 2% and 8%;
- Gaseous hydrocarbons exploited onshore or offshore: between 2% and 6%.

Withholding taxes

Under the common tax law, any resident entity or permanent establishment shall withhold taxes on payments made to resident and non-resident, under certain conditions.

The applicable rates depend on the type of transactions and/or the country of residence of the suppliers (existence of a double tax treaty).

The withholding taxes applicable on payments are as follows:

- payment made to a local suppliers for services rendered: 5%;
- payment made to foreign suppliers for services rendered or used in Senegal: 20%;
- payment of dividends: 10%;
- payment of bond interest: between 6% and 13%;
- Deposit or guarantee interest on accounts with a Senegalese bank: 8%;
- Payment of interest on loans: 16%.

Senegal has a DTT in force with 19 countries. Since 2015, Senegal has concluded a DTT with UK and Portugal in addition to the OECD convention on mutual administrative assistance on tax matters and the multilateral competent authority agreement on the exchange of country-by-country reports.

Capital gains tax

The 30% corporate income tax rate is applicable on the capital gains from disposal of shares.

The capital gains are equal to the difference between the sale price (arm length price) less the acquisition value.

Property Tax

Tax on built real estate is due by owners or usufructuaries of premises or assets permanently attached to the ground. The applicable rate is 5% for common buildings and 7.5% for factories and industrial premises.

Tax on non-built real estate: it is due by owners or usufructuaries of lands at 5%. E&P companies are exempted from both of these taxes during the exploration and investment phases, plus 3 years after the issuance of the exploitation permit.

Transfer pricing

The transfer pricing regulation has been very recently introduced within the Senegalese law, with the most recent version of the General Tax Code, i.e. law 201331 dated December the 31st, 2012.

It applies to intercompany transactions or transactions with a company located in non-cooperative States or territories or with privileged taxation regime.

There is no practice with regard to the legislation, but only the general guidance provided within that law.

The regulation globally corresponds to the OECD requirements standards, i.e. identifying related party transactions, choosing the suitable transfer pricing method and preparing the documentation to support the selection of such method.

The documentation should be available upon first request of the tax authorities. Otherwise, the tax authorities may set the prices themselves and apply the correlative tax reassessment accordingly.

Thin capitalisation

There is no limitation of total debt on equity.

However, there is a limitation of deductibility, for corporate tax purpose, of the interests paid or recorded for a loan granted by a shareholder (directly or via other entities).

Indeed, the interests are deductible only if the following 3 conditions are met:

- the share capital of the company receiving the loan shall be, beforehand, fully paid up;
- the deductible interests are calculated based on the amount of the loans within the limit of the share capital;
- the interest rate shall not exceed the base rate of the Central Bank (3.54% for FY 2017) plus 3 percentage points (i.e. 6.54%).

Indirect Taxes

Value added tax (VAT)

The standard rate of VAT is 18%. There is a 10% reduced rate which applies to hotel activities. The 18% rate is applicable to oil and gas companies. Legally, holders of exploration permit are exempted from VAT during the exploration phase. In addition, PSAs and service contracts often provide VAT exemption.

VAT returns must be filed and the associated payments made within 15 days after the end of the month within which the tax event occurred.

Customs and Excise Duties

The customs duties vary between 5% and 35% depending on the type of goods. Minor royalties shall be added with total percentage of 2.9%. Legally, customs are exempted during the research and development phases for equipment intended to be used solely for petroleum activities. PSAs usually provide such exemption.

Excise tariffs are as follows: XOF 21,665 per hectoliter for premium gasoline / XOF 19,847 per hectoliter for regular gasoline / XOF 3,856 per hectoliter for canoe gasoline / XOF 10,395 per hectoliter for diesel fuel.

Other Taxes

Personal income tax

Pay as you earn tax

- Senegal operates a fairly straightforward PAYE system, in which the employer withholds monthly from each employee's gross taxable remuneration the tax due.

- Indeed, resident and non-resident individuals earning revenues from employment in Senegal (subject to any double tax treaty in force) are subject to monthly taxation.

The amount due is calculated by applying a progressive tax scale going from 0% to 40%. The income bracket put under the 40% rate is easily reached, but there is a possibility to benefit from a tax reduction due to dependent family.

Minimum Withholding Tax

Any employee is liable to a minimum withholding tax payable monthly and calculated on an annual basis.

The tax due ranges between XOF 900 and XOF 36,000 annually.

If the spouse of an employee is unemployed, the latter has to pay then for himself and for his/her spouse (limited to one spouse).

Employer tax

Employers are subject to a 3% tax applicable on the total gross taxable salaries paid to the employees.

Social security contributions

The social security contributions are exclusively borne by the employer. The maximum monthly basis of calculation is XOF 63,000.

The cumulative rates are as follows:

Sector	Rate of contributions	Capped basis
Family	7%	XOF 63,000
Industrial accident / Occupational disease	1%, 3% or 5% depending on the activity of the company	XOF 63,000

Pension contributions

The pension contributions include a part borne by the employer and a part borne by the employee:

Regime	Employer part	Employee part	Capped basis
Genera	8.4%	5.6%	XOF 360,000
Executive	3.6%	2.4%	XOF 1,080,000

Medical coverage

The employer shall subscribe for all employees a medical coverage. The level of coverage depends on the type of agreement concluded with the dedicated organization.

Usually, the employee is reimbursed up to 80% of his medical expenses, even though the law provides a range between 50% and 80%.

The monthly rate is 6% to be levied on a base between 60,000 XOF and 250,000 XOF, for both the employee and the employer.

Oil Field Service (OFS) Companies

OFS companies are not subject to the same taxation regime as E&P companies. They do not have a special tax status therefore they are taxed in accordance with the ordinary law, unless a PSA for instance provides an exemption.

Tax audits

The tax administration has its own agenda to conduct tax audits, but we can confirm that tax audits and tax reassessments are frequent. In practice, an objection letter is transmitted to the tax administration within the statutory deadline and then meetings are scheduled to discuss items that need more clarification.

South Africa

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Country profile

Brief history on oil and gas development

South Africa comprises of 9 provinces and its currency is the South African Rand (ZAR). South Africa remains a largely unexplored region in which there have been modest discoveries, mainly in gas, to date. However, refer to recent developments below:

South Africa currently has four upstream regions of interest:

- South Coast: This is the only producing area in South Africa.
- Orange River Basin: Situated off the northwest coast of South African adjacent to the Namibian border this is a vast and underexplored region.
- East Coast: This is the offshore area off the eastern part of the country. Interestingly, this region sits at the southern end of the Mozambique Channel in which a number of significant discoveries have recently been made further north.
- Onshore: Significant recent interest in onshore unconventional gas resources as indicated below.

South Africa has proven oil reserves of 15 million barrels at the beginning of 2015. In addition, proven natural gas reserves stand at 0.54 trillion cubic feet. At present, South Africa does not have significant proven oil and gas reserves and produces oil and gas from coal and imported crude oil. The relative under-utilization of gas is as a result of the abundant coal resources in the country that allowed South Africa to produce petroleum and byproducts as well as electricity cheaply from coal.

However, declining coal resources and the relative cost of coal-produced electricity and petroleum in financial and environmental terms has seen South Africa make attempts to diversify its energy mix, including a proposed 2,600 kilometer terrestrial gas pipeline from Mozambique.

Should offshore exploration and onshore shale gas exploration prove to be successful, South Africa will have a localised supply of oil and gas to enable and promote the diversification of the country's energy mix.

South Africa has significant potential for unconventional gas discovery in the form of Coal Bed Methane and Shale Gas, for which it is ranked 12th and 8th in the world, respectively.

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South Africa seems intent on developing its shale gas potential. In May 2015, the South African Government launched the ongoing Strategic Environmental Assessment of Shale Gas Development –some of the focus areas are measuring the impact of shale gas extraction on the environment, livelihoods and the Square Kilometer Array radio telescope.

Offshore exploration off South Africa's coast was previously limited primarily by the depth of the potential resources and secondly by the ocean currents. Recent improvements in exploration technology, coupled with the need for South Africa to diversify its energy mix, has seen increased interest in exploration activity off South Africa's coast, with 20 exploration licenses issued.

Coal bed methane exploration interest in South Africa continues to grow with 25 exploration rights awarded to date and some companies applying for production rights.

To date, five Technical Cooperation Permits have been issued for Shale Gas exploration. The Petroleum Agency of South Africa states that although shale gas volumes are highly uncertain, scenarios suggest the technically recoverable volumes may range from 30 Tcf to 500 Tcf in the main Karoo Basin.

Fiscal regime

The fiscal regime applicable to the oil and gas industry may be said to consist primarily of corporate tax, various indirect taxes, and a mineral and petroleum royalty regime.

South African companies are subject to corporate income tax in terms of the Income Tax Act No 58 of 1962 ('the Act'). However in addition, the taxation of oil and gas companies, as defined, is regulated by the Tenth Schedule to the Tax ('the Tenth Schedule'), which provides for specific treatment of various items applicable to these companies. 'Oil and gas companies' either hold any oil and gas right (as defined), or engage in exploration or production in terms of any oil and gas right.

South Africa also imposes a mineral and petroleum resources royalty that is payable to the State in respect of the extraction of inter alia oil and gas within 'South Africa' as defined.

Since September 2015, significant changes in the overall oil and gas regime in South Africa include the following:

1. Further progress has been made on the "Amendment Bill to The Mineral and Petroleum Resources Development Act", which includes the proposal of a 20% stake in all new energy projects by the State. This Bill is currently being re-evaluated due to the outcry by industry professionals that the Bill is discouraging investment and eroding profits. The expected date for the revised Amendment Bill is unknown, however, in recent months the Bill has been making its way through Parliament with a few changes, one being that the 20% stake by the government will possibly not be free. There is no certainty at this time on the changes to the Bill and when it will come into force.
2. There have also been discussions regarding "clean fuel standards" whereby oil and gas companies will be expected to adhere to strict blend specifications, however, due to the high costs of incorporating these standards into practice, the government has not provided a deadline for the compliance of these regulations. Officially, the industry is meant to start producing low-sulphur fuels from 2017. The

South African government has stated they are expecting the industry to invest R38bn into the programme for South Africa's petroleum industry to produce clean fuels, but they are unclear as to how to make this happen. There is talk of a new target, possibly 2022, or perhaps 2025. There is no revised date, but investment hasn't taken place and refineries are still producing fuels at Euro IV specifications.

3. Technical Regulations for Petroleum Exploration and Exploitation have been promulgated under the Mineral and Petroleum Resources Development Act.

Regulatory Framework

The key regulators in the oil and gas industry include:

- The National Energy Regulator (NERSA) is a regulatory authority established as a juristic person in terms of Section 3 of the National Energy Regulator Act, 2004 (Act No. 40 of 2004). NERSA's mandate is to inter alia regulate the Piped-Gas and Petroleum Pipeline industries in terms of the Gas Act, 2001 (Act No. 48 of 2001) and Petroleum Pipelines Act, 2003 (Act No. 60 of 2003).
- The Petroleum Agency South Africa (PASA), one of the Central Energy Fund (CEF) subsidiary companies, manages the promotion and licensing of oil and gas exploration, development and production in South Africa including the coastal areas offshore South Africa as part of creating a viable upstream oil and gas industry in the country. PASA could divest its operations to the Department of Energy (DoE) if recent proposed amendments to the governing legislation are enacted.

Forms of contracts

The most common forms of petroleum contracts in South Africa are defined by the Mineral and Resource Development Act which is in the process of being amended, and include:

- Reconnaissance permit – Permits are typically applicable for 12 months on a nonexclusive basis;
- Technical cooperation permits (TCP) – 12 months exclusive desktop study, exclusive rights to apply for exploration rights;
- Exploration rights – Granted in respect of a specified area. These are typically exclusive, transferable, and extend for 3 years, but may be renewable for a maximum of 3 periods of 2 years each;
- Production rights – These are governed by a signed non-standard Production Sharing Contract (PSC) between the operators and the State, and are typically exclusive, transferable, and extend for 30 years, but are renewable.

Mineral royalties

A royalty is payable to the State on the extraction of resources in terms of the Mineral and Petroleum Resources Royalty Act and the Mineral and Petroleum Resources Royalty (Administration) Act of 2008.

The royalty is based on value, taking into account two critical variables, namely the value of the minerals (the tax base) and the royalty percentage rate.

The tax base (i.e. the value of the mineral) is broadly speaking determined with reference to 'gross sales', subject to certain adjustments and exemptions. The royalty liability is thus only triggered when the minerals are sold or deemed to be sold, instead of at the time of extraction.

The royalty liability is equal to the tax base multiplied by the royalty percentage rate. The royalty percentage rate is in turn governed by two respective formulae – one dealing with 'refined' mineral resources and the other dealing with 'unrefined' mineral resources. Oil and gas falls into the category of a 'refined' mineral resource for purposes of this regime – on this basis a minimum royalty percentage of 0.5% and maximum of 5% will apply for oil and gas.

Local Content Regulations

South Africa has released a Mining Charter which specifies regulations for holders of mining rights (including production rights for oil and gas companies). The regulations include, but are not limited to the following:

- There must be a minimum of 26% black ownership. The company must further ensure that of that 26% a minimum of 5% is held by an Employees Share Ownership Scheme, 5% held by black entrepreneurs and another 5% held by the local community;
- Each year, multinational suppliers of goods must contribute 1% of annual turnover generated from local mining companies towards a social development trust fund.

Management levels for mining companies are expected to be as follows:

a. Executive management must have not less than 50% black employees of which 15% of this must be black females.

b. Senior management must have not less than 60% black employees of which 30% of this must be black females.

c. Middle management must have not less than 75% black employees of which 38% of this must be black females.

d. Junior management must have not less than 88% black employees of which 44% of this must be black females;

e. The company must have not less than 2% of black employees with disabilities.

It is encouraged that medium and larger mining organisations are to support smaller BEE companies by:

a. Purchasing 60% local capital goods from local black suppliers (50% of the 60% is to come from small BEE suppliers);

b. Purchasing 70% consumables from local black suppliers; and

c. Obtaining 80% of services from local black suppliers.

There is a requirement to invest 5% of the annual payroll levy of which 15% of this will now go towards a ministerial skills development trust fund;

Companies are expected to comply with the updated Mining Charter (released April 2016) within 3 years. Any non-compliance will be considered a breach and subject to relevant sanctions.

Taxation regime

South African tax resident entities are subject to South African tax on their worldwide income and gains, whereas non-resident entities are taxable on their South African 'source' income and certain specified gains, to the extent that these are not exempt in terms of a double taxation treaty.

'South Africa' is specifically defined for these purposes, and includes the territorial sea and areas beyond the territorial sea within which South Africa may exercise sovereign rights or jurisdiction with regard to the exploration or exploitation of natural resources.

Qualifying non-capital expenditure that is incurred in the production of taxable income is allowed as a deduction for income tax purposes.

The South African taxation of 'oil and gas companies' is determined in terms of the above principles, but is also further regulated by the Tenth Schedule as summarized below. The Tenth Schedule defines an 'oil and gas company' as any company that either holds any oil and gas right (as defined), or engages in exploration or 'post-exploration' in terms of any oil and gas right.

The current corporate tax rate is 28% for both South African resident and non-resident companies. The Tenth Schedule confirms that the rate for oil and gas companies in respect of their oil and gas income, shall not exceed this.

No branch remittance tax applies.

Direct taxes

Petroleum / oil taxation

The Tenth Schedule contains various specific provisions relating to oil and gas companies – the main ones are summarized below.

Oil and gas deductions

The following specific dispensations regarding deductibility apply to oil and gas companies:

- All exploration / post-exploration (previously 'production') expenditure and losses are deductible from the company's oil and gas income (other than certain expenditure in respect of the acquisition of a right). References to post-exploration expenditure include expenditure incurred after the completion of the appraisal phase, to the extent that these processes are preliminary to refining.
- In addition, the following additional deductions are available against oil and gas income (also excluding the above expenditure in respect of acquisition of a right):
- 100% of capital exploration expenditure in terms of an oil and gas right; and
- 50% of capital post-exploration expenditure in terms of an oil and gas right.
- As a general rule, any assessed losses in respect of exploration and post-exploration losses are ring-fenced against oil and gas income and income derived from refining gas, with only 10% of the remaining

losses being able to be offset against other income. The excess losses may be carried forward to a future year.

Oil and gas income is defined as the receipts and accruals derived by an oil and gas company from exploration or post-exploration (processes preliminary to refining) in terms of any oil and gas right, or from leasing or disposal of such rights.

Foreign currency gains or losses

A specific dispensation exists to determine currency gains and losses for tax purposes in relation to oil and gas companies with reference to the functional currency of the company.

Disposal of oil and gas rights

Special rules apply to disposals of oil and gas rights, which allow a disposing oil and gas company and the purchasing company (a new company or an existing oil and gas company) to agree in writing that one of the following treatments will apply to the disposal instead of the normal capital gains tax treatment, subject to various criteria and requirements:

- Rollover treatment, in terms of which the disposing company is deemed to dispose of the right at its tax cost. The acquiring company is also deemed to acquire the right for the same amount.
- Participation treatment, in terms of which the gains are treated as ordinary revenue, with the acquiring company obtaining an immediate corresponding deduction against its oil and gas income.

Fiscal stability

The Minister may enter into a binding agreement with any oil and gas company in respect of an oil and gas right held by that company (or to be acquired), which agreement will guarantee that the provisions of the Tenth Schedule (as on the date of the agreement) will continue to apply in respect of that right for as long as it is held. The oil and gas company may unilaterally terminate the above agreement.

Further detailed provisions apply in this regard.

Capital gains tax

Effective 1 March 2016, for companies, 80% of gains are included in taxable income and taxed at the standard corporate rates. Refer to special dispensation on disposal of oil and gas rights above. Non-residents are only subject to capital gains tax on certain specific disposals.

Non-residents are only subject to capital gains tax on the following categories of assets:

1. Immovable property or any interest or right of whatever nature to or in immovable property situated in South Africa;
2. Equity shares in a company when 80% or more of the market value of those equity shares, is attributable directly or indirectly to immovable property in South Africa; and
3. The assets of any permanent establishment of a non-resident in South Africa. A permanent establishment is generally considered to be a fixed place of business through which the business of an enterprise is wholly or partly carried on.

Please note that the interest or right per (1) above includes a prospecting right, mining right, exploration right or production right as per the Mineral and Petroleum Resources Development Act 28 of 2002.

In terms of compliance, the capital gains from a sale of the above is declared as part of the income tax return of the non-resident and not as a separate return.

The capital gains tax inclusion rate is as per the above.

Thin capitalisation and transfer pricing

South Africa's thin capitalisation provisions seek to prevent taxpayers from deducting interest in respect of excessive amounts of 'connected party' debt in certain circumstances. The provisions are contained within the transfer pricing legislation, which are based on the 'arm's length' principle. Previously a safe harbour debt to fixed capital ratio of 3:1 applied for thin capitalisation purposes, however this has been withdrawn for years of assessment commencing on or after 1 April 2012 and a draft Interpretation Note in this regard was released by SARS.

The current legislation simply requires that the quantum of debt and interest rates are at arm's length. This requires a functional analysis to be performed to support the appropriateness of the taxpayer's arm's length debt assessment as well as a comparability analysis taking into account the quantitative and qualitative factors that third party lenders would consider when making lending decisions. In addition, per the Interpretation Note SARS will adopt a risk-based audit approach in selecting potential thin capitalisation cases for audit, and will consider transactions in which the Debt:EBITDA ratio of the South African taxpayer exceeds 3:1 to be of greater risk. It is stressed that this is not a safe harbour. It is not clear when the Interpretation Note will be finalised.

The Tenth Schedule previously provided a safe harbour for oil and gas companies in terms of which no adjustment was to be made provided the interest-bearing debt in question did not exceed three times the market value of the shares of the South African borrower. This has been removed and the normal transfer pricing provisions now apply.

Transfer pricing provisions apply as indicated above – updated guidance in support of the 'arm's length' test is awaited.

Withholding tax (WHT)

The South African legislation sets out various withholding taxes, which may be reduced or exempted in terms of an applicable double taxation agreement.

Royalties

A 'royalty' withholding tax of 15% applies to payments to a non-resident for the use of certain 'intellectual property' (as defined) in South Africa or by a South African resident, as well as for payments for certain specific, technical, industrial or commercial knowledge or information or related assistance.

Dividends

As of 22 February 2017, the rate of dividends tax increased from 15% to 20% for any dividend paid by a South African tax resident company or foreign company whose shares are listed on the JSE. Dividends paid by an "oil and gas company" as defined that are derived from "oil and gas income" as defined are however subject to dividends tax at 0%.

Interest

A 15% withholding tax applies to South African sourced interest payable to non-residents since 1 March 2015. WHT is 0% on any interest paid in respect of loans applied to fund exploration and post-exploration expenditure.

Services

South Africa does not withhold tax on service fees, however, certain service fees are reportable to the revenue authority if they exceed or are expected to exceed R10 million.

Disposal of immovable property

Sale of an interest in an oil and gas right by a non-resident may be subject to withholding tax of 5% to 10% of the amount payable by the purchaser. This would be an advance payment and not a final tax, and may be waived by the Tax Commissioner.

Profit repatriation issues

South Africa has a system of exchange controls, which regulate the flow of funds into and out of the country.

Various payments to non-residents require prior exchange control approval.

Dividends and disposal proceeds on shares should be able to be remitted from the country provided the share certificates were properly endorsed as 'non-resident'. Interest on loans is able to be remitted, subject to certain limits on the rates, provided the loan has been approved. Capital loan repayments require prior approval, but this is usually a formality.

Double Tax Treaties

South Africa has 82 double tax treaties currently in force. Since July 2015, the double tax treaties that have come into effect are Qatar, Hong Kong, Chile, UAE and Lesotho.

Registration of foreign companies

A foreign company is required to register as an 'external company' in terms of the Companies Act No 71 of 2008, with the Companies and Intellectual Property Commission (CIPC), within 20 days of commencing to 'conduct businesses in SA.

Registration as an external company does not result in the creation of a separate entity – it is rather the statutory registration of the foreign company for South African company law purposes. Registration results in the requirement to submit an annual company law return, with abridged details of turnover etc.

Indirect taxes

Value-added tax (VAT)

There is no specific VAT dispensation for oil and gas companies.

VAT is charged at a flat rate of 14% on the supply of goods and services except those expressly exempted under the Act and those subject to VAT at the zero rate.

While all fee-based financial services are subject to VAT, the charging of interest is exempt. Other exempt supplies include residential rentals, non-international passenger transport by road or rail, and educational services. VAT at zero rate is applicable on exports and international transport. Other goods that may be zero rated are basic foodstuffs, specified goods utilized for farming purposes, the sale of an enterprise as a going concern, fuel subject to the fuel levy, petroleum oil and oils obtained from bituminous minerals (known as crude), illuminating kerosene for illuminating or heating, and deemed supplies by welfare organizations.

Every taxable person (both resident and non-residents) engaged in enterprise activities in South Africa as defined is required to register as vendor. In terms of a new amendment, the transfer of goods by a non-resident before the clearance for customs purposes (though within the defined territory of South Africa) is not liable to VAT.

Import of goods and services into South Africa are liable to import VAT. However, in the case of services no import VAT is payable if the services are used wholly for making taxable supplies. The importation of (inter alia) fuel levy goods, crude and illuminating kerosene (for illuminating or heating) is exempt from VAT.

VAT returns must be submitted on a monthly or bi-monthly basis depending on turnover. VAT payments are due by the 25th day of the first month commencing after the end of the tax period.

Custom duties/Import tariffs

Ordinary customs duties are charged on importation of goods into South Africa which range between 0% and 20% (other industries than tobacco and textiles). The import duties may also include anti-dumping and countervailing duties of up to 150%.

No customs duties are charged on trade between South Africa and Botswana, Lesotho, Namibia, and Swaziland as these five countries constitute a Southern African Customs Union (SACU), provided the goods are of SACU origin or import duties were paid at first point of entry into the SACU.

Specific customs duties (imported goods), in addition to ordinary import duties and specific excise duties are charged in South Africa on excisable goods (oil, beer, spirits, tobacco and wine industry). The rate of specific import duty or specific excise duty is based on volumes / quantity of excisable goods imported or produced locally.

Other taxes

Personal income tax

Non-residents are subject to tax on South African 'source' income unless exempt in terms of a double taxation treaty.

South African employers and certain non-resident employers are required to register for and withhold employees' tax ('Pay-As-You-Earn', or PAYE') from remuneration paid to employees in South Africa. The employee's tax rates are charged on a sliding scale up to 45%.

Social Security

South Africa does not have social security per se, however we do have skills development levies ("SDL") and Unemployment Insurance Fund ("UIF") contributions. The SDL is 1% of remuneration payable by the employer. UIF contributions are 1% of remuneration paid by the employee and 1% of the employee's remuneration paid by the employer (currently, UIF is not payable where the employee is required to repatriate at the end of the contract).

In addition to SDL and UIF, there is also contributions to COIDA in specific circumstances.

Property taxes

Transfer duty is levied on the acquisition of any immovable property in SA as follows, and is payable by the purchaser, determined on the value of the property:

- R0 to R900,000 : 0%
- R900,001 to R1,250,000 : 3% on the value above R900,000
- R1,250,001 to R1,750,000 : R10,500 plus 6% on the value above R1,250,000
- R1,750,001 to R2,250,000 : R40,500 plus 8% on the value above R1,750,000;
- R2,250,001 to R10,000,000 : R80,500 plus 11% on the value above R2,250,000; and
- R10,000,001 and above : R933,000 + 13% of the value exceeding R10,000,000

Transfer duty is usually not due where VAT is due.

Ongoing municipal rates and taxes are usually payable on fixed property, depending on where this is situated.

Property means land and any fixtures thereon and includes, but is not limited to:

a. Real rights in land, excluding rights under mortgage bonds or leases;

b. Rights to minerals or the rights to mine for minerals including leases or sub-leases to mine for minerals;

c. A share or member's interest in a "residential property company" as defined;

d. A contingent right to residential property or share or member's interest in a residential property company; or

e. A share in a share block company.

The disposal of shares in a property-rich company by a non-resident will constitute the disposal of interest in immovable property, which may be subject to South African capital gains tax. A withholding tax of 5%, 7.5% or 10% may be levied on the transaction, but this will not be a final tax. The final tax payable to SARS will be determined when the non-resident submits its tax return.

Securities Transfer Tax

Securities Transfer Tax (STT) applies on the transfer of shares and other securities, at 0.25% on the higher of consideration or market value of the securities transferred.

Donations tax

Disposals of assets below their market value may constitute a donation on which donations tax is payable at 20%, subject to various requirements and exemptions.

Levies

Various additional levies exist, such as air passenger tax, vehicles emissions tax, and a fuel and electricity levy.

Taxation of Oil Field Service (OFS) Companies

OFS are subject to the rules of the normal income tax regime in South Africa and do not qualify for the special dispensation that is available to oil and gas companies in terms of the Tenth Schedule to the South African Income Tax Act.

Deemed Profit Taxation

South Africa does not have any deemed profit taxation. Income is taxed at 28% of taxable income (calculated in accordance with the South African Income Tax Act).

Reportable Arrangements

In February 2016, SARS issued a revised list of reportable arrangements to include an arrangement relating to certain services rendered by foreign persons. The services comprise consultancy, construction, engineering, installation, logistical, managerial, supervisory, technical, or training services rendered to a resident person or to a permanent establishment of a non-resident person in South Africa. In order to be reportable, the non-resident person (or an employee, agent or representative of that person) must be or must be anticipated to be physically present in South Africa in connection with or for the purpose of rendering the services. The services are only reportable if they exceed or are expected to exceed R10 million in aggregate.

Tax incentives

Regime for oil and gas companies

There are no specific tax incentives for oil and gas companies, however, as ‘oil and gas companies’ enjoy special tax treatment, e.g. no withholding tax on dividends and certain interest and additional capital allowances. For further analysis please see section 6 above (Taxation regime – Direct tax).

Capital / special allowances

Specific capital allowances apply depending on the assets and their usage. Refer above for deductibility of capital exploration/post-exploration expenditure by oil and gas companies.

Certain manufacturing projects qualify for incentivised tax allowances.

A 150% income tax deduction is available for qualifying research and development expenditure incurred in South Africa, however, approval from the Department of Trade and Industry is required prior to claiming this deduction.

Industrial Development Zones

South Africa has certain specified Industrial Development Zones (IDZ), linked to international air or sea ports, to which certain VAT and customs dispensations apply. In addition, income tax incentives provide for additional allowances depending on the status of the industrial policy project and whether the project is located in an Industrial Development Zone. Special Economic Zones Special Economic Zones (SEZ) have been introduced into the Income Tax Act as a result of the initiative launched by the Department of Trade and Industry (DTI) to stimulate industrial growth in particular geographical areas. All SEZ's will qualify for VAT and customs relief and the employment tax incentive (refer below). Businesses operating within approved SEZs will be eligible for two additional tax incentives. Firstly, all such businesses can claim accelerated depreciation allowances on capital structures (buildings) and, secondly, certain companies (carrying on qualifying activities within an approved SEZ) will be subject to a reduced corporate tax rate (i.e. 15 per cent instead of 28 per cent).

The DTI is currently investigating the feasibility of ten additional SEZs.

Employment tax incentive

Employers who are required to be registered for Employees' Tax (PAYE) are able to reduce the PAYE due to SARS by a determined incentive. The value of the incentive is determined using a formula which takes into account the "monthly remuneration" of "qualifying employees". There are various requirements for an employee to be considered to be a "qualifying employee", including a range of remuneration and the requirement that the employee is between the ages of 18 and 29 or is employed by an employer within a special economic development zone.

Group relief South Africa operates on an entity basis for tax purpose, and hence there is no fiscal unity. However, certain transactions can be undertaken within a 'group of companies' as defined (typically common 70% equity ownership) on a rollover relief basis.

Compliance requirements

South African companies and all non-resident companies, trusts or other juristic persons deriving South African sourced income (with the exception of certain exempt income) are required to register for corporate income tax purposes. The resultant compliance obligations include the following:

- The filing of three provisional tax returns and related payments, on a 6-monthly basis - the first within 6 months after the commencement of the tax year, the second on the last day of the tax year, and a voluntary third provisional filing and top-up payment 6 months after tax year-end; and
- A more detailed annual income tax return, which must be filed (usually) within 12 months after the financial / tax year-end.

Provisional tax should be paid based on a realistic estimate of what the actual tax payable will be for the applicable tax year. Depending on certain parameters, penalties are levied if provisional tax is underpaid.

An annual mineral royalty return must be filed within 6 months of the taxpayer's year end. In addition, provisional mineral royalty returns must also be filed on a six monthly basis with the same timing as for the above provisional tax returns.

VAT returns must be submitted on a monthly or bi-monthly basis depending on turnover.

Additional compliance requirements may arise depending on the liability for the other taxes set out in this document.

Tax Audits

The South African Revenue Service ("SARS") has not provided detail on how they select companies to audit. It is understood that SARS looks at "red flag" items which they then audit. Tax audits by SARS are common in South Africa, expect every 5 years or so.

Uganda

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Country profile

Brief history on oil and gas development

Geological field expeditions for petroleum exploration were first carried out by E.J Wayland in the early 1920's and are documented in the publication "Petroleum in Uganda" 1925. Shallow stratigraphic wells drilled by the African – European Investment Company between 1936 and 1956 revealed numerous shows and recovered free oil on test. Oil exploration activities started again in the beginning of the 1980's when an aeromagnetic survey was carried out over the entire Albertine Graben in an effort to establish the presence of sedimentary basins as an initial step towards a systematic evaluation of its petroleum potential. This survey was very successful because it identified three depo centers along the entire length of the Graben. As a follow up to this survey, the petroleum unit in the Department of Geological Survey and Mines carried out a significant amount of geological and geophysical work from the late 1980's up to the early 1990's. This unit was transformed into Petroleum Exploration and Production Department (PEPD) in 1991.

As at the end of 2017, there were seven Production Sharing Agreements (PSA) between the Government and the oil companies. These include the four PSAs that are held by Total E&P, Tullow and CNOOC and additional three signed in September 2017 with Armour Energy Limited and Oranto Petroleum Limited.

To date, a total of 39 exploration and 81 appraisal wells have been drilled in the country. Out of these, hydrocarbons been found in 106 wells representing a success rate of approximately 90%. So far 21 oil / gas field discoveries have been made. This discovery relates to exploration in only about 40% of the prospective acreage. With new entrants like Oranto and Armour Energy, more discoveries are anticipated in the short to medium term.

The oil discoveries are estimated at 6.35 billion barrels of oil out of which 1.4 – 1.7 billion barrels are estimated to be recoverable. Of the discoveries made, nine production licenses have already been issued:

- One to CNOOC Uganda Ltd (CNOOC) over the Kingfisher area;
- Five granted to Tullow Uganda Operations Pty Ltd (Tullow); and
- Three granted to Total E&P Uganda B.V.

The Government's development plan for Lake Albert Rift Basin includes a refinery, a crude oil pipeline, an industrial park which will accommodate petro-chemical and energy based industries and storage terminals.

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Significant new developments

Issuance of production licenses

On 30 August 2016, the Government of Uganda issued five production licenses to Tullow Uganda Operations Pty Limited and three production licenses to Total E&P Uganda B.V over the oil fields EA2 and EA1 respectively. The licenses have been issued for a period of 25 years and renewable for an additional 5 years. Following the issuance of production licenses, companies are expected to commence preparation activities for production of petroleum.

The licensees are expected to invest over US$ 8bn in infrastructure required for oil production for all the production licenses. The volumes of petroleum production is estimated between 200,000 and 230,000 barrels of oil per day from all the production licenses granted in Uganda to date. The expected revenue per year for the duration of production is US$ 1.5 bn.

The Government of Uganda, through the Uganda National Oil Company Limited (UNOC) has a participating interest of 15% in all the production licenses.

b) Negotiations for new PSA's

In August 2016, four new oil companies were invited to commence negotiations of PSAs' with Government as a result of the first competitive exploration licensing round. The negotiations of PSAs are believed to be the final milestone before granting the exploration rights. The four firms are Armour Energy Limited from Australia; Walter- Smith Petroman Oil Limited, Oranto Petroleum International Limited and Niger Delta Petroleum Resources Limited from Nigeria. Of these, three PSAs were issued in September 2017 to Oranto and Amour Energy.

Construction of the oil pipeline

The Government of Uganda and Tanzania agreed to develop and construct a crude oil pipeline from Hoima in Uganda to Tanga in Tanzania. The Inter-Governmental Agreement for the construction of the East African Crude Oil Pipeline was signed in May 2017. A special-purpose company will be formed to run the pipeline in which oil companies and the two governments will have shares. The construction cost estimates are set at $3.5 billion and the pipeline will transport 200,000 drums of oil per day.

Construction of the refinery

The Government of Uganda agreed to build and operate a refinery that will process part of the crude oil extracted from oil fields in Uganda. The first phase of production is expected to produce at least 30,000 barrels a day of refined fuel products such as diesel, gasoline and kerosene for supply to the domestic market which is anticipated to eventually increase to 60,000 barrels. The investors are expected to carry 60% interest and the Uganda Government, through the national oil company, a 40% stake in the refinery. Up to 70% of the financing of the refinery will be through debt and 30% as equity from the project partners. The completion date for the refinery is expected in 2020.

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Institutional overview and regulatory framework

The legal framework that currently governs the operations of the petroleum industry includes the Petroleum (Exploration, Development and Production) Act 2013, the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 2013, the Public Finance Management Act 2015 and the various regulations.

The upstream and midstream Acts were passed because the previous legislation did not cover the midstream petroleum operations, environmental protection and conservation, and the new emerging challenges created by the discovery of commercial petroleum resources in Uganda.

The two Acts provide for the establishment of the Petroleum Authority of Uganda and the National Oil Company. The National Oil and Gas Policy which was operationalized by the Petroleum (Exploration, Development and Production) Act also provides for the creation of a Directorate of Petroleum, the Petroleum Authority of Uganda (PAU) and the National Oil.

The three institutions are expected to play separate but complimentary roles. The Petroleum Directorate is responsible for coordinating development of the oil and gas sector in Uganda and is also responsible for coordinating national capacity building for the oil and gas sector.; the PAU monitors and regulates exploration, development and production in the sector and the Ugandan National Oil Company (UNOC) handles the commercial aspects of the sector and the participating interests of the State.

In 2014, the Parliament of Uganda approved the Board of Directors for the Petroleum Authority and the Uganda National Oil Company. The Petroleum Directorate was established and the Acting Director of the Directorate appointed in 2016.

The Government of Uganda incorporated the National Oil Company under the Companies Act, 2012, on 12 June 2015 under the name, Uganda National Oil Company Limited.

The incorporation of the company is a step forward in taking the oil sector to the next stage of production following years of exploration. In accordance with the National Oil and Gas Policy and the Petroleum (Exploration, Development and Production) Act, the company will be responsible for handling the state's share of petroleum, managing the business aspects of state participation, and developing in-depth expertise in the oil and gas industry.

Other functions of the National Oil Company will include:

- Managing the business aspects of the State's participation in PSAs including the marketing of the industry's share of the petroleum received in kind;
- Developing an in depth expertise in the oil and gas industry;
- Optimizing value for shareholders, administer contracts with joint venture, participate in meetings of licensees; and
- Investigating and proposing new upstream, midstream, and downstream ventures both locally and internationally.

The National Oil Company is a wholly owned state enterprise incorporated under the Companies Act and managed in accordance with the Companies Act, the Petroleum (Exploration, Development and Production) Act 2013, the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 as well as other laws governing state enterprises.

Under the new Acts, the Government has powers to enter into agreements relating to petroleum activities with any person. The Minister of Energy and Mineral Development will be responsible for granting and revoking of licenses.

The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 enables Uganda to develop the petroleum industry in a sustainable and efficient manner, regulate petroleum refining activities, gas processing and conversion, transportation and storage and in particular promote value addition to the petroleum. The Act also promotes state participation and national content in midstream operations.

The regulations are as follows:

a. The Petroleum (Refining, Conversion, Transmission and Midstream Storage) National Content Regulations 2016;

b. The Petroleum (Exploration, Development and Production) National Content Regulations 2016;

c. The Petroleum Exploration, Development and Production) Metering Regulations 2016;

d. The Petroleum (Exploration, Development and Production) Health and Safety and Environment Regulations 2016;

e. The Petroleum (Exploration, Development and Production) Regulations 2016; and

f. The Petroleum (Refinery, Conversion, Transmission, Midstream and Storage) Health, Safety and Environment Regulations 2016.

Regulatory Framework

Key regulators in the petroleum sector include:

- Ministry of Energy and Mineral Development (MEMD) and the Petroleum Authority: the implementation and regulation of petroleum resources is the mandate of the Petroleum Authority which is under the MEMD. Under the provisions of the Petroleum (Exploration, Development and Production) Act, 2013 the Petroleum Authority (Authority) has taken over the functions of regulating the sector originally performed by the PEPD.
- Uganda Revenue Authority: administering collection of revenue from the oil and gas sector in accordance with the relevant laws; monitoring and assessing the impact of oil revenues in the economy; and participating in the formulation of tax measures to regulate collection of the correct revenues from oil and gas activities.
- The Central Bank: managing and administering the Petroleum Fund; and advising the Government on the impact of the petroleum sector on the economy to ensure that oil and gas activities do not impact negatively on the monetary policy and macroeconomic stability.
- National Environment Management Authority (NEMA): coordinating processes of environmental impact assessment for the sector;

environmental monitoring and audits of the sector; issuing environmental guidelines and ensuring compliance of the sector with environmental guidelines and international standards.

- Uganda Wildlife Authority: monitoring impact of oil and gas activities on wildlife protected areas and compliance to regulations governing operations in wildlife-protected areas; participating in evaluation of environmental impact assessments and environmental audits; and issuing consents to undertaking operations in wildlife protected areas.
- The office of the Auditor General: providing independent oversight of the Government's operations through financial and other management audits in accordance with the Constitution and other relevant legislation; and ensuring adherence to national and international accounting standards.
- Other Government Ministries and Agencies: all ministries that are responsible for policies relevant to oil and gas, and agencies dealing with implementation and regulation will be responsible for guiding and monitoring the work of operational and managerial agencies placed under them. These include Ministry responsible for Justice and Constitutional Affairs; Ministry responsible for Finance, Planning and Economic Development; Ministry responsible for Water and Environment; Ministry responsible for Forests and Wetlands; Ministry responsible for Tourism and Wildlife; Ministry responsible for Labor; Ministry responsible for Trade and Industry; Ministry responsible for Education.

The Uganda National Oil Company Limited ("UNOC") appointed the first Chief Executive Officer ("CEO") effective 1 August 2016. The CEO will lead the setting up of the UNOC and manage its transformation into a world class oil and gas company as Uganda prepares for commercial oil production. The UNOC is responsible for managing Government's interest in the Production Sharing Agreements with the licensed oil companies.

The first Executive Director of the Petroleum Authority of Uganda ("PAU") was appointed on 18 August 2016, following a recommendation by the Board of Directors of PAU. The function of PAU is to monitor and regulate exploration, development and production of the petroleum in Uganda. These roles were carried out by the Ministry of Energy and Mineral Development and have been taken over by the Authority.

Forms of Petroleum licenses

- A Petroleum Exploration license confers on the licensee, the exclusive right to explore for petroleum. Under the new Act, a petroleum exploration license will remain in force for a period not exceeding 2 years after the date of the grant of the license, subject to renewal for a period not exceeding two years. The license shall not be renewed more than twice. In the old Act, a license was granted for a period not exceeding 4 years from the date of grant of the license. Holders of petroleum licenses may apply for renewal of the petroleum exploration license, not later than ninety days before the license is due to expire.
- A Petroleum Production license is granted to the holder of a petroleum exploration license who has made a discovery of petroleum in an exploration area over any block or blocks in the areas which, following appraisal, can be shown to contain a petroleum reservoir or part of a petroleum reservoir. A production license confers on the licensee exclusive rights to carry on petroleum activities in the license area. However, a person may apply for the grant of a petroleum production license in respect of a block or blocks or part thereof which, the person satisfies to the Minister, contains a petroleum reservoir or part of a

petroleum reservoir notwithstanding that the person does not hold a petroleum exploration license in respect of that block.

Upstream sector

Upstream sector is governed by the Petroleum (Exploration, Development and Production) Act, 2013. In Uganda, upstream activities are undertaken by companies that are party to a PSA and have an exploration or production license (licensee). Generally, in the upstream sector a significant amount of the activities are subcontracted to specialised companies (subcontractor).

Where appropriate due to the nature of the services or the equipment provided and the length of time the services are required in Uganda, the non-resident service providers usually register local branches or local subsidiary companies in Uganda.

Midstream activities such as construction of the refinery and pipeline

The midstream sector activities will be governed by the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013.

In line with the GoU's commitment to build and develop product value-addition chains, government has already identified and acquired land for a refinery at Kabaale in Hoima District and an oil pipeline from Kabaale via Nakasongola at a budgeted spend of USD4.6b (comprising USD2.05b for the refinery and USD2.57b for a processing plant) and USD144m respectively. Construction of the refinery in Uganda is expected to address the issue of having to transport Uganda's oil in its crude form which is said to be very waxy and heavy. This will in turn reduce costs associated with transporting such waxy and heavy oil such as heating the pipeline at several points on the way to the ports.

Downstream

Downstream activities are regulated by the Petroleum Supply Act, 2003. This Act provides for the supervision and monitoring, the importation, exportation, transportation, processing, supply, storage, distribution and marketing of petroleum products.

Capital investment regulations

The Investment Code of Uganda requires any investor operating a business in Uganda to be in possession of an investment license issued by the Uganda Investment Authority. A foreign investor is defined as a company having majority shares held by non-Ugandans/foreigners or a company controlled by non-Ugandans.

Forms of contracts

The Government of Uganda has four Production Sharing Agreements (PSAs) with International Oil Companies (Contractors) for the execution of exploration and production activities. The Government is represented by the

MEMD which is responsible for implementation and regulation of petroleum resources. Petroleum (Exploration, Development and Production) Act is the basis of all PSAs.

The duration of contracts is stipulated in the Act. Typically, each agreement will last for about 30 years. For example, first exploration period of 2 years followed by second exploration period of 2 years. The relinquishment at the end of each exploration period is based on a pre-agreed formula specified in the Act and the PSAs.

The licenses will be permitted to use the money from produced oil to recover capital and operational expenditures, known as "cost oil". The remaining amount known as "profit oil", will be split between the Government and the licenses.

The PSAs include royalty and tax payments to be made by the contractors as well as profit sharing with the Government. Royalties will be computed on the basis of gross daily production. The contractor's share of profit oil is then subject to tax at the corporation tax rate of 30%.

All the contractor's exploration, development, production and operating expenditures as defined in the Income Tax Act are recovered as a percentage of the total gross oil production. For purposes of cost recovery, a ring fence applies around each contract area. This means that if a contractor has more than one contract area, then cost recovery shall apply on a contract by contract area basis. The PSAs have a limit to the amount of costs that a contractor can recover, and if the actual costs incurred exceed the allowed limit, the balance is carried forward and recovered in future years against profits from that same contract area, until they have been fully recovered. The cost recovery limit ensures that the Government gets a share of the profit in all circumstances where there is oil production. As a result of the cost recovery limit, the contractor will always pay tax on their share of the profit oil as long as there is oil production.

Typical contract terms in the PSAs include bonuses (such as signature bonus), work commitments, time lines (such as exploration and production periods, extension provisions, etc.), relinquishments and decommissioning rules at the end of exploration and production, guarantees, national content and participation by Ugandans, training and skill transfer, ring fencing, contract stability, investment incentives, etc.

There is a new model PSA that is currently the subject of discussion between the Government of Uganda and the four new companies that were selected from the new licensing round. However, the model PSA is not a public document.

Government participation

According to the Petroleum (Exploration, Development and Production) Act, 2013, the Government may participate in petroleum activities through a specified participating interest of a license, or contract granted under the Act or in the joint venture established by a joint operating agreement in accordance with the license and the Act.

The Petroleum (Exploration, Development and Production) Act, 2013 provides for a NOC to be formed under the Companies Act to manage the commercial aspects of petroleum activities and participating interests of the State in the PSAs. The function of the NOC will include managing the business and commercial aspects of the state's participation in the subsector; to develop an in-depth expertise in the oil and gas sector; to optimize value to its shareholders; administer contracts of joint ventures; to participate in contractor's meetings; and to investigate and propose new upstream, midstream and downstream ventures locally and later internationally.

Since the NOC will be more relevant when production commences, it will use the period before production to build capacity so that it can effectively perform its role when production starts.

Local content requirements

There are two regulations in respect of national content, namely:

a. The Petroleum (Refining, Conversion, Transmission and Midstream Storage) National Content Regulations 2016;

b. The Petroleum (Exploration, Development and Production) National Content Regulations 2016.

The above regulations operationalize the local content provisions within the petroleum acts for upstream and midstream sectors.

The local content regulations apply to both the O&G E&P licensees and the OFS. Key highlights include:

- The requirement to employ at least 70% Ugandans and a succession plan for the expatriates employed.
- The requirement for OFS companies to register a Ugandan subsidiary or form a JV with a Ugandan company.
- In case of a JV, the Ugandan company must hold at 48% of the shareholding.
- The requirement to use available local raw materials and supplies.
- Ring-fencing of specific goods and services to be provided by Ugandans and Ugandan companies.

Taxation regime

Basis of taxation

The taxation of petroleum operations in Uganda is based on the concept of economic rent. Economic theory focuses on the produce of the earth derived from labor and capital. Rent theory deals with how this produce is divided among the laborers, owners of the capital and land-owners through wages, profit and rent. Therefore, economic rent in the petroleum industry is the difference between the value of production and the costs to extract it.

In Uganda, broadly income tax is charged on every person who has chargeable income for the year of income. Chargeable income of a person for any given year of income is defined as the gross income of a person for that year less total deductions allowed under the Income Tax Act (ITA). The gross income of a person for a year of income is defined as total amount of business income, employment income and property income derived by a person during the year of income, other than income exempt from tax. Business income is further defined as any income derived by a person in carrying on a business.

Therefore on the basis of the above, provided a contractor and, or, subcontractor is carrying on a business in Uganda, the income they will derive from these operations will be subject to tax in Uganda in accordance with the above provisions of the Uganda tax law.

Direct Taxation

Taxation of petroleum operations

Royalties and cost oil are deducted from gross production in arriving at profit oil which is shared between the government and the contractors according to the terms of the PSA. Contractors are then taxed on their gross income (being the sum of cost oil, their share of the profit oil and any credits earned from petroleum operations) adjusted for allowed deductions in accordance with the ITA. The rate of tax applicable to the contractor's share of the taxable profit is the standard corporation tax of 30%.

Part IXA of the ITA contains special provisions relating to the taxation of petroleum operations. Significant changes were made to this part effective 1 July 2015 and these have been included in this publication. The taxing provisions contained in this part of the ITA prevail over provisions in other parts of the ITA and any petroleum agreement, in case of any inconsistency.

Tax allowable expenditures which are deductible from gross income include:

- petroleum exploration expenditure for the year of income and allowed deductions for amortization of intangible assets;
- the allowable deductions for depreciation of petroleum development expenditures for the year of income;
- the amount of any operating loss from previous years of income, determined in accordance with the ITA;
- Decommissioning expenditure.

Principle of ring-fencing

Each contract area of a contractor is taxed as if it is a separate taxpayer (that is it is ring-fenced). Ring-fencing puts a limitation on consolidation of income and deductions for tax purposes across different activities or different projects, undertaken by the same taxpayer. Tax deductible costs or expenditure incurred in respect of a contractor's petroleum exploration and development expenditure in one contract area or block or oil field are only deducted from income derived from that contract area only.

Withholding taxes

Participation dividends are subject to a withholding tax of 15%. Also, payments made by contractors to non-resident subcontractors for services are subject to withholding tax at the rate of 10%. A lower rate of withholding tax may apply if the dividend is paid to a resident of a country with whom Uganda has a favorable Double Taxation Agreement, if directly related to petroleum operators under a petroleum agreement.

Where a resident shareholder controls at least 25% of the voting power in the petroleum company, there is no withholding tax on the dividend paid to the resident shareholder.

All contractors are designated persons and are required to withhold tax on payments to a resident person unless the resident person is exempt.

Therefore, payments by a contractor to a resident subcontractor in respect of a right to use any tangible moveable property in Uganda are subject to withholding tax at the rate of 6%.

According to section 119 of the ITA a contractor paying an amount or amounts in aggregate of UShs 1,000,000 to a resident person in Uganda for the supply of goods or services should withhold tax from the payment where the supplier of goods and services is not exempted from withholding tax.

Contractors are also required to withhold tax on payments to non-residents in respect of services rendered or provided to them in Uganda at the rate of 6%.

Tax withheld must be paid to the Uganda Revenue Authority (URA) within 15 days after the end of the month in which the payment subject to withholding tax was made. Failure to withhold tax makes the contractor personally liable to the tax to the URA. The contractor is required to maintain, and keep available for inspection by the Commissioner, records showing payments made to a payee and tax withheld from those payments.

There are specific provisions for taxation of contractors. A non-resident contractor who derives a fee for provision of services/ service fee to a licensee is liable to pay non-resident contractor tax at 10% which is final tax. Licensees are required withhold tax at the earlier of the time they credit the service fee to the account of the non-resident contractors or at the time of actual payment.

Thin Capitalisation

The general thin capitalisation rules in Uganda provide for a debt-to-equity ratio of 1.5:1. Therefore a tax deduction is disallowed for interest paid by a company on that part of the debt which exceeds the 1.5 to 1 foreign debt to foreign equity ratio.

This means that exploration and development operations can get tax relief to a maximum of the 1.5:1 ratio. Considering that exploration and development operations require significant funding which in many cases is obtained through related party debt rather than raising additional equity, the 1.5:1 ratio is a challenge as it does not reflect the economic and commercial financing profile of the petroleum industry.

Capital gains tax

A capital gain derived from disposal of an interest in a petroleum agreement is subject to tax at the rate of 30%. The gain is computed by comparing the proceeds to the cost base. The cost base is defined as the amount paid or incurred by the taxpayer in respect of the interest including incidental expenditures of a capital nature incurred in acquiring the interest, and includes the market value at the date of acquisition of any consideration in kind given for the asset.

Consideration for capital gains tax purposes is defined as the excess of the amount of money received (including the value of work undertaken by the transferee in respect of the part of the interest retained by the transferor) over any deductions allowed for expenditure incurred by the transferor in respect of the transferred interest. The part of the consideration attributed to the allowed deductions to the transferor is treated as recouped expenditure and is taxed as income in the year of income in which is received.

For indirect transfers involving a non-resident transferor, resident contractor is liable for the tax as an agent of the non-resident transferor.

The compliance requirements are governed by Section 89 GE.

Section 89 (1) GE lists the conditions to be met for a transfer of an interest to be considered a farm out. That is:

a. the existence of an agreement between the transferor or licensee and a transferee for transfer of part of the interest.

b. The transferee must include as part of the consideration a commitment to undertake part or all of the work commitments of the transferor in respect of the part of interest retained by transferor.

The capital gains arising from disposal of an interest in a petroleum agreement is subject to tax of 30%. There is a requirement to notify the URA in writing by the person disposing of an interest where there is a change in the underlying ownership of the licensee. The resident licensee is liable to tax as the agent of the non-resident person. The disposal of an interest in immovable property located in Uganda by a non-resident person is viewed as a disposal giving rise to tax in Uganda which is subject to capital gains tax.

Transfer pricing (TP) regulations

Transfer pricing rules apply to a transaction (a "controlled transaction") where a controlled relationship exists between the parties involved. A controlled transaction for these purposes is defined by the TP regulations as a transaction between associates. A controlled relationship will exist where a person acts in accordance with the directions, requests, suggestions or wishes of another person, whether or not those directions, requests, suggestions or wishes are communicated to the person.

In the case of companies, a company in which a person either together or alone with an associate or associates controls 50% or more of the voting power of that company either directly or indirectly is considered to be an associate.

Loans raised by the contractor from its affiliates (related companies) to finance petroleum development operations should reflect interest rates and financial charges that do not exceed prevailing commercial rates.

All loans from affiliated companies shall be subject to review and approval by the Government and approval shall be given on condition that the terms of the loan are comparable to those which may be obtained on an arm's length basis from an unaffiliated company lender.

Materials purchased from affiliated companies shall be charged at prices no higher than prices prevailing in a normal arm's length transactions on the open market.

Profit repatriation issues

Participation dividends are subject to a withholding tax of 15%. A lower rate of withholding tax may apply if the dividend is paid to a resident of a country with whom Uganda has a favorable Double Taxation Agreement.

For branches, a tax is charged at the rate of 15% on repatriated profits. Repatriated profits are computed according to the following formula:

$$A + (B - C) - D$$

Where

- **A** is the total cost base of assets, net of liabilities, of the branch at the commencement of the year of income;

- **B** is the net profit of the branch for the year of income calculated in accordance with generally accepted accounting principles;
- **C** is the Ugandan tax payable on the chargeable income of the branch for the year of income; and
- **D** is the total cost base of assets, net of liabilities, of the branch at the end of the year of income.
- The rate of 15% applies irrespective of whether profits have been physically repatriated out of Uganda or not provided the above formula yields a positive result.

Double Tax Treaties

There are 9 DTTs which have not changed. There has been a change in the limitation of benefits clause effective 1 July 2016. A resident of a country with which Uganda has a DTT may only benefit from the treaty if they receive the income from Uganda in the capacity of beneficial owner (with full and unrestricted ability to enjoy the income and determine its future uses) and if they possess economic substance in the country of residence.

Indirect Taxes

Value added tax (VAT)

Registration for VAT and items subject to VAT

Effective 1 July 2015, companies operating in the upstream sector that are not making or about to make taxable supplies are allowed to register for VAT. This implies that such companies can now recover any input VAT incurred effective 1 July 2015 during the period they are not making taxable supplies. Further, deeming provisions have been introduced under which any VAT charged to a contractor in respect of supplies for use solely and exclusively in petroleum operations, is deemed to have been paid by the contractor without actual movement of cash.

During the production phase which is the final phase of the upstream activities, sale of residual oils for use in thermal power generation to the national grid is exempt from VAT. Sale of crude oil for any other purpose other than for thermal power generation is subject to VAT. Sale of crude oil on local market for local consumption is also subject to VAT. Supply of Liquid Petroleum Gas is also exempt from VAT.

Services rendered by non-residents

A supply of services takes place where the services are rendered. Therefore where services are rendered locally in Uganda through a branch, subsidiary or permanent establishment of any form, there is an obligation to register for VAT in Uganda.

On the other hand, if the contractor is making the payment for services rendered directly to the non-resident sub-contractor's offshore head office as opposed to paying for them locally, the contractor may be required to treat the services as imported from outside Uganda and therefore account for reverse VAT on the payment for the services if the services are not exempt. Services are said to be imported from outside Uganda if they are supplied by a foreign supplier to a contractor in Uganda.

Effective 1 July 2015, output VAT on imported services is recoverable as input VAT.

VAT on equipment, plant and machinery

Machinery and inputs for direct and exclusive use in the petroleum exploration and development is exempt from VAT but the exemption only applies at the time of importation of the goods into Uganda – as a result of the Fifth Schedule of the EACMA. This means that the local supply of such machinery by way of sale, lease or hire by a local supplier (subcontractor) to a contractor does not qualify as a VAT exempt supply unless the equipment being supplied is specifically exempt from VAT and listed in the Second Schedule of VAT Act. As a result, when one imports the equipment, no VAT applies, but when one buys, leases or hires the equipment locally, VAT is payable.

In order for a contractor to benefit from the VAT exemption they must import the goods themselves, or be the consignees of the goods at the time of importation of the goods into Uganda. Hiring the goods from a subcontractor and paying lease, hire or rental fees would give rise to VAT since the lease, hire and rental is not exempt from VAT. Further, the goods must be considered to be machinery and input for direct and exclusive use in oil and gas exploration and development activities.

Currently, there is no exemption from both VAT and Custom duties on imports of the goods and equipment required for the construction of the pipeline and/or refinery. This will obviously increase the overall cost of the midstream operations if the position is not reviewed by the Government.

VAT on importation of petroleum fuels

According to the VAT Act, petroleum fuels subject to excise duty (that is motor spirit, kerosene and gas oil), spirit type jet fuel, kerosene type jet fuel and residual oils for use in the thermal power generation to the national grid are all exempt from duty. All these products are currently imported from outside Uganda.

Compliance requirements

The applicable VAT rate is 18%. The VAT Act allows for voluntary registration of entities undertaking upstream and midstream operations in the petroleum sector (including refining, conversion, transmission and storage) regardless of whether they are making taxable supplies.

Further the law allows licensees and contractors to claim input VAT in respect of imported services which results in a nil net VAT payable position in respect of imported services. This is an incentive to the oil and gas sector as VAT on imported services is a cost to other sectors of the economy (other entities providing business process outsourcing services).

Compliance requirements are governed by the Tax Procedure Code Act (TPC) 2014 which consolidates all administrative sections for specific tax laws including VAT Act. The monthly VAT returns are due for filing and payment is due within 15 days after the end of the month.

Custom duties

Machinery and inputs for direct and exclusive use in the petroleum exploration and development are exempt from import duties. In order for a contractor to benefit from this exemption, the contractor itself must import the goods, or be the consignees of the goods at the time of importation of the goods into Uganda.

There has been an amendment to the customs duty exemption (contained in the East African Customs Management Act) effective 1 July 2017. The exemption now applies to equipment and inputs, other than motor vehicles, imported by a licensed company for direct and exclusive use in petroleum exploration, development and distribution. Previously the exemption covered machinery and inputs imported by a licensed company for direct and exclusive use in petroleum exploration and development.

Other tax issues

Personal income tax

Resident individuals are liable to tax on worldwide income while non-resident individuals are liable to tax on only income derived from sources in Uganda or which accrues from an employment exercised or services rendered in Uganda.

An individual is considered resident for tax purposes if the individual:

- has a permanent home in Uganda;
- is present in Uganda;
- for a period of, or periods amounting in aggregate to, 183 days or more in any twelve-month period that commences or ends during the year of income;
- during the year of income and in each of the two preceding years of income for periods averaging more than 122 days in each such year of income; or
- is an employee or official of the Government of Uganda posted abroad during the year of income.

Employment income includes among other things any wages, salary, leave pay, payment in lieu of leave, overtime pay, fees, commission, gratuity, bonus, or the amount of any travelling, entertainment, utilities, cost of living, housing, medical, or other allowance and benefit granted such as accommodation, company vehicles, shares and share options.

Employees whose only source of income is employment income derived from a single employer in Uganda are not required to file tax returns. The employer is required to withhold tax from the employee and pay the tax to the URA on the employee's behalf.

Below are the annual tax bands and rates applicable to individuals:

Resident individuals:

Chargeable income	Rate of tax
Not exceeding Ushs 2,820,000 (Approx. USD1,000)	Nil
Exceeding Ushs. 2,820,000(approx. USD1,000) but not exceeding Ushs. 4,020,000	10% of the amount by which chargeable income exceeds Ushs. 2,820,000.
Exceeding Ushs. 4,020,000) approximately USD1, 500) but not exceeding Ushs. 4,920,000 (approx. USD1,800)	Ushs. 120,000 (approx. USD45) plus 20% of the amount by which chargeable income exceeds Ushs. 4,020,000

Chargeable income	Rate of tax
Exceeding Ushs. 4,920,000 (approx. USD1,800)	(a) Ushs. 300,000 (approx. (USD110) plus 30% of the amount by which chargeable income exceeds Ushs. 4,920,000 and (b) Where chargeable income of an individual exceeds Ushs 120,000,000 an additional 10% charged on the amount by which chargeable income exceeds Ushs. 120,000,000 (approx. USD42,600)

Non-resident individuals:

Chargeable income	Rate of tax
Not exceeding Ushs. 4,020,000 (approx. USD1,500	10%
Exceeding Ushs. 4,020,000 (approx. USD1, 500) but not exceeding Ushs. 4,920,000 (approx. USD1,800)	Ushs. 402,000(approx. USD145) plus 20% of the amount by which chargeable income exceeds Ushs. 4,020,000.
Exceeding Ushs. 4,920,000 (approx. USD1,800)	(a) Ushs. 582,000 (approx. USD210) plus 30% of the amount by which chargeable income exceeds Ushs. 4,920,000 and (b) Where chargeable income of an individual exceeds Ushs 120,000,000 an additional 10% charged on the amount by which chargeable income exceeds Ushs. 120,000,000

Social security tax

All employers with five or more employees are specified as persons who are required to register as contributing employers to the National Social Security Fund (NSSF).

Contributions made for NSSF may be standard contributions or special contributions, depending on the eligibility status of an employee.

Standard contributions: These are made by eligible persons who are above the age of 16 but below the age of 55. They do not include:

- an employee employed in excepted employment;
- a non-resident employee; and
- an employee not employed in Uganda.

Eligible individuals' contribution to the National Social Security Scheme is 5% of gross cash wages. The 5% social security contributions should be paid on gross wages (cash wages). The employer's contribution is 10% of the employee's gross cash wages (cash payments). The employer's contribution is tax deductible on the employer.

Special contributions: For non-resident employees who opt not to register for standard contributions, special contributions are made by employers and are computed at a rate of 10% of the employee's gross wages.

A non-resident employee is defined under the NSSF Act as an employee not ordinarily resident in Uganda who is to be employed in Uganda for a continuous period of not more than three years or such longer period as is allowed in any particular case by the managing director of the NSSF.

Therefore contractors and subcontractors who employ non-resident employees as defined above are required to make contributions for the NSSF as discussed above.

The NSSF Act provides for an exemption from the payment of a standard or special contribution or both in respect of persons not ordinarily resident in Uganda who are liable to contribute to or are or will be entitled to benefit from the social security scheme of another country, if that scheme is approved by the Minister for this purpose.

Taxation of Oil Field Service (OFS) Companies

The OFS companies are taxed using the same regime as non-oil companies (which regime differs from exploration and production companies). The OFS are subject to tax at the rate of 30% on the taxable income less allowable expenses incurred in production of income.

There are exceptions to the taxation regime for OFS which is different from the non-oil companies as follows:

VAT

Deemed VAT relief was introduced where any VAT charged to a licensee by a contractor in respect of supplies solely used for petroleum operations is deemed to have been paid by the licensee without actual movement in cash. The contractor is not required to account for deemed VAT payment as output tax. Also, the licensee does not claim the deemed VAT payment as input tax.

WHT

A non-resident contractor who derives a fee for provision of services/ service fee to a licensee is liable to pay non-resident contractor tax at 10%, which is a final tax. Other sectors are subject to 15%.

Property tax

The property tax rates are levied based on the area of location of the property, unless if specifically exempt. Properties located in Kampala Capital City are charged a rate of 6% of the value of property (determined by qualified and registered valuation surveyors) and are payable once in a financial year.

A property means immovable property and includes a building (industrial or non-industrial) or structure of any kind, but does not include a vacant site. There are specific properties exempt from property rates such as residential owner-occupied properties.

Deemed Profit Taxation

There are no specific taxes on deemed profit in the ITA.

The general rules on taxation of deemed repatriated income for a non-resident company carrying on business through a branch in Uganda will apply for both oil and gas E&P and OFS.

There is a branch repatriation tax of 15% on the repatriated income of a branch of a foreign company. The repatriated income is determined in accordance with a pre-determined formula.

Compliance requirements

Filing of returns

A contractor is required to file a number of returns as follows:

- An annual estimate return – to be filed not less than 30 days before the beginning of the year of income showing estimates for each calendar quarter of the year;
- A monthly provisional tax return – to be filed not later than 7 days after the end of the month; and
- An annual consolidated petroleum revenue tax –to be filed not later than 90 days after the end of the year of income. A return required by the Commissioner should include particulars of Government petroleum revenues and other taxes prescribed by the Commissioner.

A return required by the Commissioner should include particulars of Government petroleum revenues and other taxes prescribed by the Commissioner.

A return required for any period should be furnished, whether the contractor has Government petroleum revenues or other taxes are payable for the period or not.

Collection and recovery of taxes

Petroleum revenues include income tax, government's share of production, signature bonus, surface rentals, royalties, and any other duties, fees payable to the government. Petroleum revenues and other taxes charged in any assessment are payable within 7 days after the due date for furnishing a return. A contractor is required in each calendar quarter, to make a provisional payment consisting of;

- in the case of income tax, one quarter of the contractor's estimated income tax for the year; and
- in the case of petroleum revenues other than income tax, the amounts payable for the quarter under the petroleum agreement.

Payments must be made in USD, and all payments are to be made to the URA. Late payment of petroleum revenues shall be subject to interest computed on a daily rate, compounded.

Tax Audits

Ordinarily, the Uganda Revenue Authority (URA) tends to carry out an audit of a company every three years. However, due to the nature of the oil and gas industry, we expect that more frequent audits will be carried out (e.g. annual). In practice, the audit starts with a notification from the URA to start an audit, followed by:

- A discussion between the URA and the taxpayer to agree start date of the audit;
- A detailed review of information by the URA;
- Reconciliation meetings between the URA and the taxpayer;

- Communication of the final audit position; and
- An assessment of the tax liability.

The process of dealing with the assessment is as follows:

- URA serves an assessment of the outstanding tax liability based on the audit findings.
- The company may lodge an objection (within 45 days of receiving the assessment notice) for the assessment issued by URA.
- The Commissioner makes a decision on the objection raised by the company to the tax assessment within 90 days.
- The company may either concede and pay the outstanding tax liability or appeal to the Tax Appeals Tribunal/High Court (within 30 days of being served with an objection decision notice) if dissatisfied with the Commissioner's decision.

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