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Navigating Ghana's oil and gas tax regime

Tax Guide for Petroleum Operations in Ghana

2015

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Message from Ghana's Oil and Gas Leader

It is with great pleasure that we present you with the 2015 issue of our tax guide for the upstream petroleum sector in Ghana.

There have been a few developments since our last edition in 2013. Primarily, the introduction of Local Content regulations has dramatically changed the business landscape in Ghana.

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

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

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

Ayesha Bedwei, Tax Partner

Overview of tax in Ghana

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

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

Gold and cocoa production, as well as remittances from citizens working abroad, are the major sources of foreign currency. Following the discovery of oil resources in 2010, the receipts from oil production have significantly increased the real gross domestic product (GDP), which currently stands at an actual rate of 6.9%.

In its 2014 budget, the government indicated that it had plans to expand the existing infrastructure to create sustained confidence in the future of the Ghanaian economy, modernise agriculture, and support local industries to be more competitive. In the coming year, it is shifting its focus to securing the medium-term prospects of the economy to meet its transformational agenda.

Ghana's domestic economy continues to revolve around agriculture, which accounts for more than a third of GDP and employs more than half of the workforce, mainly small landholders. Meanwhile, the services sector has shown impressive results in recent years, accounting for approximately 50% of GDP from 2012 to 2014.

PwC is one of the largest professional services firms in Ghana. PwC Ghana is located in Accra with a second office in Takoradi, the main hub for the newly discovered oil industry in Ghana. In 2013, PwC Ghana also opened offices in Sierra Leone. The Ghana firm has over 250 employees and 11 partners providing audit, assurance, tax, and advisory services to our clients across the country.

The Tax Services line provides direct tax services to companies and individuals, including strategic tax planning services, tax advisory services, lobbying government agencies and regulatory authorities, salary planning, payroll management and international assignment services, transfer pricing services, withholding tax (WHT) management, and indirect tax products such as value-added tax (VAT) advisory and compliance services. Services around customs and excise duties are also provided. Furthermore, PwC Ghana is involved in several thought leadership initiatives such as seminars on taxes in various industries and contributing to the national budget through our pre-budget and post-budget forums.

The legal framework

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

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

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

Petroleum Exploration and Production Law, 1984 (P.N.D.C.L 84) (PEPL)

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

Petroleum Income Tax Law 1987 (P.N.D.C.L. 188) (PITL)

The PIT law provides for the taxation of income earned by contractors carrying out upstream petroleum operations.

Internal Revenue Act, 2000 (IRA)

The IRA provides for the taxation of income earned by subcontractors and transactions outside the scope of the PITL.

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

Collectively referred to as the 'VAT' legislation, these laws provide for the taxation of the supply of goods and services made in or imported into Ghana.

Petroleum Agreements (PAs)

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

- The applicable income tax rate;
- Definitions for the applicable exploration, development and production periods;
- Benefits to be derived by the State in the form of royalties and income tax;
- Accounting methods; and
- Foreign exchange control rules.

Petroleum Commission Act, 2011 (Act 821)

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

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

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

Transfer Pricing Regulations, 2012

These regulations govern transactions between related parties and associated persons.

Customs and Excise Act 512, 2012 (HS Code)

This provides for a harmonised system of customs and import duties.

Ghana Maritime Authority Regulations, 2012

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

Taxation of contractors

Corporate Income Tax

Unless specifically provided for in a PA, contractors are required to pay tax on chargeable income at a rate of 50%.

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

The PAs incorporate accounting rules for contractors within the exploration, development or production periods. Generally, all costs associated with petroleum operations are capitalised until production. At that time, costs may be recovered and used as deductions against petroleum revenue.

Deductions allowed

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

- Capital allowance;
- Bad debt;
- Tax losses brought forward from previous years;
- Rental and royalties;
- Contribution to a pension or provident fund to the extent that the total contribution by both the employer and the employee does not exceed 25% of the total remuneration of the employee; and
- Training and education of Ghanaian citizens and nationals in approved institutions.

Deductions not allowed

Expenditures that are not allowed include:

- Interest, charges and fees on borrowed amounts in excess of the commercial rate;
- Capital expenditure;
- Expenditure recoverable under an insurance contract;
- Any income tax or profit tax or similar tax; and
- Depreciation.

Capital allowances

Capital allowances are granted to contractors from the year of commencement of commercial production on petroleum capital expenditure at a rate of 20% on a straight-line basis.

Carry-over of tax losses

Contractors may carry forward tax losses indefinitely.

Thin capitalisation

Thin capitalisation provisions currently do not apply to contractors.

However, interest charges on borrowed amounts in excess of the commercial rate are disallowed in assessing the tax liability of contractors.

Transfer pricing

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

Capital Gains Tax (CGT)

Contractors are subject to CGT at a rate of 15% on the sale or transfer of petroleum assets.

Value Added Tax/National Health Insurance Levy

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

The PAs generally state that contractors are not subject to VAT. The GRA issues VAT Relief Purchase Orders (VRPOs) to the contractors to relieve them from the payment of VAT. Invoices the contractor receives may contain a VAT charge. In lieu of payment of the VAT, the contractor provides a VRPO to the supplier in order to fulfil the VAT obligation.

Royalty payments

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

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

Rental payments

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

The following are the standard surface rental amounts payable. These may vary, depending on the contractor's PA.

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

Rental payments made by contractors are tax-deductible costs in assessing their tax liability.

Additional Oil Entitlement (AOE)

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

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

The AOE is computed monthly, quarterly or yearly, depending on the provisions of the contractor's PA.

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

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

Customs and import duties

The PAs generally provide for an exemption from all customs and import duties and taxes associated with equipment imported for petroleum operations. Administrative charges do apply to the imports, though.

The exemption extends to the exportation of petroleum.

Local Content Requirements

New contractors wishing to operate in Ghana must comply with the new local content requirements. These include:

- Entering into a joint venture (JV) with a local partner who holds at least 5% of the equity;
- Submission of a local content plan outlining the succession plan for any expat employees;
- Support for the transfer of technology to indigenous Ghanaian companies; and
- Compliance with limitations on the import of materials, equipment, services and employees.

Foreign Exchange Controls

The PAs provide the right for contractors to open and maintain bank accounts in foreign currency and Ghanaian currency (Ghana Cedi). Furthermore, contractors may report and pay their taxes in US dollars or Ghanaian Cedis, as stated in their PAs.

Employment taxes

Foreign national employees of contractors are generally taxed at a flat tax rate of 20%. PAs generally provide for exemptions from taxation if the foreign national employees are only present in Ghana for a short period (e.g., 30 days).

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

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

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

Withholding tax

Payment *Resident persons*	*Rate %*
Payment to subcontractors for works and services (including rental of tools and equipment)	5
Rent (for individuals and as investment income)	8

Non-resident persons

Payment to subcontractors for works and services (including rental of tools and equipment)	5
Royalties, natural resources payments and rents	15
Management, consulting and technical service fees and endorsement fees	20

Compliance

Annual PIT return	30 April
Quarterly PIT return	30 January, April, July, October
Annual transfer pricing return	30 April
Monthly VAT returns	End of following month
Monthly payroll return	15 of following month
Annual payroll return	30 April
Monthly social security return	14 of following month

Taxation of subcontractors

Corporate income tax

The PITL provides for a final withholding tax on payments made to subcontractors for services performed. The withholding tax rate is determined by the PA. Those currently in effect state that tax shall be withheld at a rate of 5% on the gross amount.

Subcontractors providing goods are taxed under the standard regime, the IRA.

Carry-over of tax losses

Subcontractors may ***not*** carry forward tax losses.

Thin capitalisation

Thin capitalisation provisions apply to subcontractors. Interest and foreign exchange loss deductions are limited on related-party debt that exceeds a 2:1 debt-to-equity ratio. However, as subcontractors are generally taxed at 5% on the top line, interest deduction may not be relevant if the subcontractors do not earn non-petroleum income.

Transfer pricing

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

Value Added Tax/National Health Insurance Levy

Value Added Tax (VAT) and the National Health Insurance Levy (NHIL) are charged on taxable supplies at a rate of 15% for VAT and 2.5% for NHIL, totalling 17.5%.

The PAs generally state that contractors are not subject to VAT. The GRA issues VAT relief purchase orders (VRPOs) to the contractors to relieve them from the payment of VAT. Invoices issued by subcontractors to contractors will contain a VAT charge. In lieu of payment of the VAT, the contractor then provides a VRPO to the subcontractor in order to fulfil the obligation.

As a result of this, subcontractors that pay input VAT may find themselves in a 'perpetual VAT credit' position. Taxpayers may apply to have this credit refunded.

Customs and import duties

Subcontractors do not benefit from the same exemptions as contractors. As a result, customs, ranging from 0-20%, may apply on the importation of equipment. Administrative levies may also apply.

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

Local content requirements

The Petroleum Commission requires that all companies participating in the upstream petroleum industry in Ghana must comply with local content regulations. These include:

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

Foreign exchange controls

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

Employment taxes

Non-resident foreign national employees of subcontractors are generally taxed at a flat tax rate of 20%. PAs generally provide for exemptions from taxation if the foreign national employees are only present in Ghana for a short period (e.g., 30 days).

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

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

Generally, subcontractors must make contributions of 13% of their employees' salaries to the national pension scheme. Employees must contribute 5.5% of their salary to the national pension scheme. Foreign nationals may apply for a refund from the tax authority for amounts contributed.

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

Withholding tax

Payment	*Rate %*
Resident persons	
Interest (excluding individuals and resident financial institutions)	8
Dividend	8
Rent (for individuals and as investment income)	8
Supply of goods and services exceeding GH¢500	5
Non-resident persons	
Dividend	8
Royalties, natural resources payments and rents	15
Management, consulting and technical service fees and endorsement fees	20

Compliance

Annual CIT return	30 April
Annual transfer pricing return	30 April
Monthly VAT return	End of the following month
Monthly payroll return	15 of following month
Monthly social security	14 of following month
Annual payroll return	30 April

Glossary

AOE – additional oil entitlement

CGT – capital gains tax

CIT – corporate income tax

GDP – gross domestic product

GHS – Ghana Cedi

GNPC – Ghana National Petroleum Company

GRA – Ghana Revenue Authority

HS Code – Harmonised Systems and Customs Tariff Schedule

IGC – indigenous Ghanaian company

IRA – Internal Revenue Act

JV – joint venture

NHIL – National Health Insurance Levy

PA – petroleum agreement

PC – Petroleum Commission

PEPL – Petroleum Exploration and Production Law

PITL – Petroleum Income Tax Law

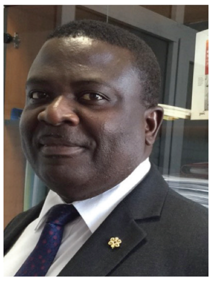
TCC – tax clearance certificate

VAT – value-added tax + national health insurance levy

VRPO – VAT relief purchase order

WHT – withholding tax

Contacts



George Kwatia
Partner and West Africa Mining Tax Leader

Background
George is a Tax Partner in our Tax Line of Service and Company Secretarial Services. He is the Mining Tax Leader for West Africa as well as a member of the PwC Global Energy, Mining and Utilities team for PwC's central cluster which covers Africa and Europe. George has more than 22 years of tax and regulatory working experience with several local and multinational clients.

Experience in Energy and Mining
George has over 12 years professional tax experience in the energy and mining sectors. George has also proactively worked with Government institutions and the private sector in Ghana advising on issues of Tax policy and Administration. He also made presentations to Government on the tax laws i.e Internal Revenue Act, 2000 and Petroleum Income Tax Law on various occasions.

For the private sector, George is responsible for delivering tax services to mining companies in West Africa and beyond (i.e., Ghana, Sierra Leone and Liberia). He has provided tax services in respect to tax compliance, tax advisory, tax planning and restructuring as well as lobbying and negotiating assignments with the tax and regulatory authorities.

As regards Tax policy and Administration, George is a Council member of the Chartered Institute of Taxation, Ghana where he is responsible for providing Government with the fiscal implications of various policy initiatives including for the energy and mining industry.

George has also been engaged in several thought leadership activities and programmes that have contributed to the shaping of tax policies in the industry within Ghana. He has been a speaker at various Energy and Mining conferences in Ghana.

Qualifications
George has a Bachelor of Science in Administration (Accounting option), a Masters in Business Administration ("MBA") in Accounting and is a Fellow of the Chartered Institution of Taxation Ghana ("CITG").

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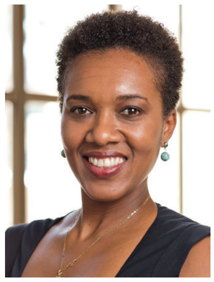

Ayesha Bedwei
Partner Africa Oil and Gas Tax Leader

Background
Ayesha is a Tax Partner based in Ghana and the lead partner for Tax Oil and Gas matters in Ghana and Africa. Ayesha is also a member of the PwC Global Energy, Mining and Utilities team of tax experts that provides tax services to the firm's global energy companies. With over 17 years of professional accounting experience, Ayesha has become adept at helping energy companies solve their tax problems and manage their tax affairs efficiently.

Experience in Energy and Mining
Ayesha has been involved in Ghana's energy sector since Ghana's oil discovery in 2007 and since then, she has built up a network of clients and associates, and led teams on assignments and projects such as: Tax due diligence and health check projects, company acquisitions and tax structuring, assistance during start-up operations, acquisitions of oil concessions and farm-outs, resolving tax disputes and monthly and annual tax compliance.

Ayesha has gained experience on various lobbying and negotiation assignments with the revenue and regulatory authorities in Ghana on behalf of clients. In particular, Ayesha presented a paper to the Ghana Revenue Authorities on the proposed amendment to the Internal Revenue Act, 2000 (Act 592), as amended to incorporate the Petroleum Income Tax Law. Ayesha has also organised various oil and gas focused workshops and facilitated at training sessions during PwC international conferences in the U.S.A, U.K, Mozambique, South Africa and Mauritius.

Ayesha is a Corporate Membership Director for the Ghana Oil Club, a non-profit friendly organisation for the Energy industry in Ghana.

Qualifications
Ayesha has a Bachelor of Science in Business Economics and is also a Fellow of the Association of Chartered Certified Accountants (FCCA) UK, Member of Institute of Chartered Accountants Ghana (ICAG) and Member of Chartered Institute of Taxation Ghana (CITG) .

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