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Oil and Gas Tax Guide for Africa 2013

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

Foreword

We are proud to present you with the first edition of our Oil and Gas Tax Guide for Africa. Our PwC oil and gas country specialists have provided up to date information on the oil and gas fiscal and regulatory regimes in their countries along with recent significant developments. We have included information for 14 countries and we plan to expand our coverage to other countries in future editions.

If you have any further questions or require detailed advice, please reach out to the country contacts provided in each country summary.

I hope you find this publication useful and informative and I look forward to receiving your comments, contributions and feedback.

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Angola

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Country profile

Significant developments

None.

Brief history on oil and gas development

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

Since the global economic slowdown and the crude oil price drop that triggered domestic fiscal and balance of payments shocks, the country has been gradually recovering.

Its GDP growth slightly increased from 3.4% in 2010 to an estimated 3.5% in 2011, driven mainly by rising oil prices and strong non-oil sector growth of 7.7% which helped to offset production problems in the oil sector.

The country is expected to record GDP growth rates of 8.2% and 7.1% in 2012 and 2013 respectively. This will be driven mainly by the start of the USD 9 billion liquefied natural gas project and the expected increase of oil production to over 2 million bpd.

Inflationary pressures remained high at 14.5% in 2010 and an estimated rate of 13.5% in 2011 mainly as a result of strong growth in domestic demand. However, this is projected to fall to 10.0% and 9.4% in 2012 and 2013 respectively.

Fiscal regime

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

Resident entities and Angolan-based permanent establishments of non-residents engaged in hydrocarbon exploitation and production operations 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.

Activities outside the above definition are not considered to be petroleum activities and are therefore taxed under the Companies' Corporate Income Tax normal regime.

Regulators

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 income tax (PIT) 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 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.

Angola

Taxation regime

Petroleum income tax
PIT is payable, per development area, on profit oil attributed to each oil company, less the oil shared with Sonangol.

The oil produced is split in two parts: cost oil and profit oil. Cost oil is a 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 to be incurred to produce the oil. Profit oil is the remaining oil produced.

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 during exploration, development and production, as well as cost of administration and services (A&S). A&S costs, either capitalized 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 capitalized and amortized 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 concession agreement, at a rate of 50%.

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.

Oil companies operating under joint venture investment arrangements may deduct as investment costs up to 50% of their oil output.

The flat rate is 20% on the officially controlled crude oil output or sales per year.

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 output of crude oil and liquid gas taken into account for PIT purposes; and
- An investment premium (prémio de investimento) equivalent to a certain percentage of the capitalized investment per year.

Non-deductible expenses
- 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%.

Surface charge
A surface charge is due at an annual amount of USD 300 per Km2.

This charge is payable in the month following that when 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]

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.

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 500,000.00
- Late payment of tax: 50% of the tax payable

Angolan local content regulation in the Oil and Gas Industry

The Angolanisation concept
In Angola there is no specific or legal definition of what local content or the Angolanisation policy is. It can however be defined as follows:

a. The need of Angolan individuals and/or companies to acquire majority shareholding of companies operating and/or providing services to the oil sector
b. Obligation for service provider companies to recruit and train a minimum percentage of Angolan citizens and provide the same employment conditions to Angolan citizens and expatriates.

Despite the lack of a legal definition, there are several laws that refer to the above rules, namely:

- Law 10/04, dated 12 November 2004, Law of Petroleum Operations, states in its Article 26 that the Government should implement actions so as to promote and motivate the participation of companies (held by Angolan individuals) in the oil sector.

- Dispatch 127/03, dated 25 November 2003, issued by the Ministry of Petroleum, establishes the policy concerning the contracting of goods and services for the oil sector. As prescribed in its article 1, the main purpose of the referred Dispatch is to protect the incorporation of the local entrepreneurs into the oil sector.

  In addition, this Dispatch also states in its article 2, §2.1, that the services listed therein should be carried out through association between foreign and national companies. In its Article 16 it is clearly defined that preference should be given to national companies, provided that their fee quotes are not 10% higher than the fee quotes of the others.

- It is also important to make a specific reference to Decree 48/06, dated 1 September 2006, which approved the requirements for public bids in the oil sector. This Decree clearly states in its article 6, §5, the definition of an Angolan company, which basically consists of having a no less than 51% of the capital held by Angolan individuals or entities. This Decree also refers in article 16, §9 that the Supervisory Ministry should prepare and keep an updated list of Angolan entities that provide services and goods to the oil sector, which must be consulted by the operators whenever a public bid is released.

- Sonangol’s prior approval of the contracts

- According to Law 10/04, dated 12 November 2004, which regulates the oil activities, contracting of services as well as acquisition of goods for oil operations should be preceded by a public bid, and, as stated in its article 26, the Government should implement actions to promote and motivate the participation of companies owned by Angolan individuals in the oil sector.

- 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 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.

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.

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.

Withholding tax (WHT)

Services provided to Angolan entities by resident or non resident entities, attract WHT (Law 7/97). The rates of WHT on services vary as follows:

- 3.5% in case of construction, improvement, repair or conservation of immovable property assets;
- 5.25% for other services.

Following new expected changes in the general tax regime, both rates above are likely to increase to 6.5% by the end of the year.

Investment Income Tax (IAC)

Dividends paid by an Angolan incorporated 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 month following the month in which the dividends were paid or payable.

Interest on loans, granted by third parties or shareholders, are liable to IAC at a 15% tax rate. The IAC on interest is paid and assessed by the receiving entity through the filing of a tax return in January of the following year the tax respects to. If the interest is paid to foreign entities, then the obligation above shifts to the Angolan resident entity paying the interests. For shareholders loans, the tax on the interests paid is withheld at the same time of payment or when the interest is earned.

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 falls into the Angolan tax authorities' concept of royalties.

Some IAC exemption (e.g. on dividends) may be available in specific PSAs and Concessions Decrees provided through Sonangol.

Capital gains tax (CGT)

There is no CGT in Angola. However any value/profit of goodwill will be taxed under PIT rules.

Thin capitalisation and transfer pricing

There are no thin capitalisation rules in Angola.

Currently there are no detailed regulations in Angola on transfer pricing, but the arm's length principle exists and it is likely that the Tax Authorities may seek to adjust inter-group charges.

We expect that new tax regulations will soon be in force relating to transfer pricing rules and documentation.

Further, the PSAs define specific transfer pricing rules to the work inherent to petroleum operations in relation to subcontracting services, acquiring materials, equipment, machinery and consumable goods.

Value-added tax (VAT)

There is no VAT or sales tax in Angola. A consumption tax exists but is similar to an excise duty as explained below:

Custom duties (Direitos Aduaneiros)

Duties are levied on imports at ad-valorem rates varying from 2% up to 30%. Listed equipment may be imported temporarily, if a bank guarantee is provided. A 0.1% statistical fee and 1% stamp duty is also due on importation. The range of taxation for both consumption tax and import duties varies according to the type of goods. The rates are set out in the tariff book.

According to Law 11/04 importation of goods for the oil and gas sector is exempt. The 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.

Consumption tax

The Angolan consumption tax is applicable to the local production and importation of certain goods and supply of certain services.

The standard rate is 10%, with a reduced rate of 2% on essential foods and medical supplies. Increased rates of 20% and 30% apply to certain luxury items.

Consumption tax is due on imported or locally produced goods at rates varying from 2% up to 30%. The Consumption Tax is also due in some services (rates 5%-10%), as follows:

- Lease of areas designated for collection and parking of motor vehicles
- Leasing of machinery and other equipments, as well as work carried out in tangible assets
- Leasing of areas used for conferences, colloquiums , seminars, exhibitions, showrooms, advertising or other events
- Consultancy services, namely legal, tax, financial, accounting, IT, engineering, architecture, economics, real estate, audit services and legal services
- Photographic services, film processing and imaging, IT services and construction of web sites
- Port, airport and custom agent services
- Private security services
- Tourism and travel services promoted by travel agencies or equivalent tour operators
- Canteen, cafeteria, dormitory, real estate and condominium management services
- Access to cultural, artistic and sporting events
- Road, sea, train and air transportation of cargo and containers, including the management of warehouses related to this transport, and passenger transportation, if provided in Angolan territory

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, in practice, increases the final price attributed to the goods produced or services rendered.

However, if the service providers are non-resident entities in Angola, the obligation will revert to the resident entities acquiring the services, if they are liable to pay Corporate income tax. It is not clear in the Law, whether the tax paid by the Angolan entity should be withheld from payment to the non resident person, a cost borne by the resident person, or a contractual option between the two on which entity should bear the cost.

Employment income tax

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 at rates progressing from 0% to 17%.

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

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

For self-employed persons, companies must withhold tax from any payments made to them at a rate of 10.5% (corresponding to 70% of the 15%). Self-employers have annual filing obligation.

Social security contributions

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

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 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 Angolan Kwanza	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, if requested by July each year and approved, the IPU is payable over four installments in January, April, July and October of the following year.

Stamp taxes

Stamp tax is payable on documents, contracts and acts.

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%.

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 institution, 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.

Egypt

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Country profile

Significant new developments

A new version of profit sharing agreements has been introduced to the market in Egypt and is similar to the profit sharing agreements currently in use with some changes as mentioned below. This new version will be used in the new round of 2012 which will be effective in 2013.

The major and main changes are as follows:

- royalties payable on exports will be borne by the foreign investor and not the government;
- taxes payable on exports will be borne by the foreign investor and not the government;
- There are obligations for decommissioning based on certain rules and procedures; and
- Tariffs will be paid for using the national facilities / infrastructure OR rather the foreign investor will connect to the end users using his own facilities.

Brief history on oil and gas development

From 1963 until 1976: Egypt used the tax & royalty agreements. In this type of agreements, royalty and taxes were paid as a percentage of the oil explored.

From 1976 until 2012: production sharing agreements were used instead of the tax & royalty agreements.

In this type of agreement, part of the explored and produced oil is called “Recovery Oil”. The foreign investor takes 100% of this recovery oil as a recovery of costs incurred by him during the exploration 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 royalties instead of the foreign investor.

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 are classified as the upstream, midstream and the downstream operations.

- The upstream industry: finds and produces crude oil and natural gas. The upstream is sometimes known as the exploration and production (E&P) sector. The corporate income tax rate for this type of activities is 40.55%.
- 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 corporate income tax rate for these activities is 20% for companies with net profits of less than EGP 10 million and 25% for companies whose net profits equal or exceed EGP 10 million.
- The midstream industry: The midstream industry processes, stores, markets and transports commodities such as crude oil and natural gas. Midstream operations are usually included in the downstream category. The corporate income tax rate for these activities is 20% for companies deriving net profits below EGP 10 million and 25% for companies deriving net profits of at least EGP 10 million.

Please note that according to the proposed law number 101 for the year 2012, the applicable corporate income tax rate would be 25% flat rate instead of the above tax brackets. However, this law is currently suspended, and no announcements have been made to date on when it will be enacted.

Please note that there are bonuses called signature and production bonuses that are payable to the Government for each of the respective Petroleum Concession Agreements.

Notes on the fiscal regime in Egypt

- Egypt does not apply consolidation rules.
- Profits realized from upstream activities can be offset against losses from downstream or midstream activities performed by the same entity.

Egypt

Regulators

The key regulators in the oil and gas industry include

- EGPC: The Egyptian General Petroleum Corporation
- IOC: International Oil Company
- Egyptian Tax Authority: for 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.

Forms of petroleum leases

Not applicable.

Royalty

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

Taxation regime

As mentioned, the royalty and taxes in the upstream activities are borne by EGPC. The tax rate is 40.55% and the royalty differs from one agreement to another.

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, the applicable tax rate is 20% / 25%. Please refer to the above note regarding the new proposed law.

Compliance Requirements

Tax returns and payments

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

EGPC would 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.

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.

Penalty
There is a penalty for failure to file the tax return to the tax authority by the due date.

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 the life time of the concession agreement.

Tax losses
Income tax losses may be carried forward for 5 years.

Withholding tax (WHT)

The upstream activities are exempt from withholding tax.

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%.

However, payments made from a resident company to a non-resident company for this type of services will be subject to withholding tax at the rate of 20%.

For royalty and interests paid from resident to nonresident, withholding tax of 20% should be deducted. However, this rate could be reduced based on any double tax treaties 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 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; and
- World stock exchange introduction.

Capital gains tax (CGT)

There is no CGT in Egypt. The capital gains realized are added to the net profit of the company and subject to corporate income tax.

The above treatment applies for the midstream and the downstream activities.

Thin capitalisation and transfer pricing

Thin capitalization:

Thin capitalization rules apply for the midstream as well as the downstream activities are as follows:

- Interest expense deductions are only allowed if the following conditions are fully met;
- The interest expense should relate to loans complying with the local thin capitalisation rule: 4:1 debt-to-equity ratio. 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 isn't proven to be at 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.

Transfer pricing

Transfer pricing rules 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 whose 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.

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, and advanced pricing agreements.

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.

The Egyptian Tax Authority explained that 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 were compared to the Organisation for Economic Co-operation and Development (OECD) by an OECD representative and were found to be similar.

Indirect Taxes

Value-added tax (VAT)

The upstream activities
In general (and according to the standard concession agreements), oil and gas exploration entities working in Egypt are exempt from the sales tax on supplies made to them by other suppliers, but excludes passenger cars. It is mandated that such supplies are used for exploration and development purposes.

The midstream and downstream activities
Subject to the normal sales tax treatment depending on the services provided. The general sales tax rate is 10%.

Custom duties/import tariffs

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.

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.

Social security contributions

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

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

- A treaty exists between Egypt and the employee's country, and it allows to him to join the Social Insurance scheme, or;
- The employment contract exceeds one year.

Employers and employees are both liable to pay the contributions, although it is the responsibility of the employer to remit the amount. The amount is calculated by reference to payments made by the employer to the employee.

The current monthly thresholds for calculating social insurance are EGP 912 on basic salaries and EGP 1050 on variable elements. Variable elements include the remainder of the basic salary, if it is in excess of EGP 912 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.

The rate of tax differs according to the residency status of the employee.

A person is considered to be resident in Egypt if:

- He has a permanent domicile in Egypt, or
- He resides in Egypt for more than 183 continuous days, or intermittent days, within a 12 month period, or
- He is an Egyptian, who is working for an Egyptian company outside Egypt.

Please note that if a double taxation agreement exists, the applicable double tax treaty (determined according to the employee's nationality) may give a different duration for constituting residency.

Resident employees are taxed according to the following brackets; and are entitled to salary tax deductions/exemptions.

EGP 0 - 5,000	0%
EGP 5,001 – 20,000	10%
EGP 20,001 – 40,000	15%
EGP 40,001 – less than EGP 10 million	20%
EGP 10 million and more	25%

Non resident employees are subject to tax at a flat rate of 10% with no right to any deductions.

Please note that the new proposed law number 101 for 2012 has amended the income brackets to be as follows:

EGP 0 - 5,000	0%
EGP 5,001 – 30,000	10%
EGP 30,001 – 45,000	15%
EGP 45,001 – EGP 1 million	20%
More than EGP 1 million	25%

Others

Property taxes

The real estate tax law takes into consideration the different variables that can affect the value of a property, such as location, value of similar buildings, and the economic situation of the district in which the property is located. This is to be updated every five years.

Real estate tax is levied annually on all constructed real estate units. This covers land and buildings, excluding plants and machinery.

Such tax is assessed based on the rental value of the land and building, and these value assessments are set by the committees, after approval of the Minister or whoever the Minister delegates such powers to, and published in the Official Journal. Based on the announcement, any taxpayer can appeal the rental value assessment.

The real estate tax rate is 10% of the rental value, and the calculation of the rental value differs for residential units and non-residential units. Specific percentages of deduction are provided by the law to account for all the expenses incurred by the taxpayer, including maintenance costs.

Law no. 118 of 2011 was issued by the SCAF amending the Real Estate Tax Law no. 196 of 2008, whereby the implementation of the 2008 Law became effective from 1 January 2012. So starting from that date, taxpayers were required to remit the real estate taxes due.

However, the Ministry of Finance has recently confirmed that it intends to revisit such a Law to amend the following and to be effective January 2013 instead:

- Increase the threshold for real estate tax application.
- Exempt owner occupied houses from this tax.

It is worth noting though that the above amendments are still being considered and therefore cannot be guaranteed.

Stamp taxes

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.

A proportional tax is due at the rate of four per thousand on the balances of the credit facilities and the loans and advances provided by Egyptian banks during the financial year; and the banks are liable to pay two per thousand on the balance at the end of each quarter of the year. The bank and the customer bear the tax on a 50-50 basis.

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.

Gabon

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Country profile

Gabon is a developing country situated in the western part of Central Africa. Straddling the Equator, Gabon covers an area of 267,667 km². It borders the Atlantic Ocean in the west with a coastline stretching 800 km along the seafront. It has terrestrial borders in the north with Equatorial Guinea and Cameroon, and with Congo-Brazzaville in the east and in the south. The main towns are Libreville (Estuaire), Port-Gentil (Ogooué-Maritime), Oyem (Woleu-Ntem), Franceville (Haut-Ogooué), Lambaréné (Moyen-Ogooué), Mouila (Ngounié), Tchibanga (Nyanga), Makokou (Ogooué-Ivindo) and Koulamoutou (Ogooué-Lolo). The official language is French.

Significant new developments

In June 2011, the government created a national oil company, the Gabon Oil Company, to increase the government's involvement in oil production by taking equity stakes in future awards.

New regulatory terms to facilitate new deepwater exploration are to be enacted in the near future.

An oil licensing round (the 10th round) was to take place in October 2010. The round was expected to include 42 deepwater and ultra-deepwater blocks. This round was cancelled and the government has indicated that a licensing round should take place in June 2013.

The Government has limited the number of foreign workers in the oil sector to 10 percent of the total labour force. The Government is also trying to prevent oil companies from operating as branches.

Gabon

Brief history on oil and gas development

According to Oil and Gas Journal (OGJ), Gabon which has proven oil reserves of 2 billion barrels as of 2012, is the fourth-largest oil producing country in sub-Saharan Africa after Nigeria, Angola, and Sudan. The country's production of crude oil and lease condensate decreased to 246,000 bbl/d in 2010. Most of Gabon's oil fields are located in the Port-Gentil area and are both onshore and offshore.

Gabon's greatest success was the Rabi oil field. It has now matured and production has gradually declined to about 23,000 bbl/d in 2010. No new large field has yet emerged, since recent exploration has yielded only modest finds.

Currently, Gabon's oil sector is dominated by foreign oil companies. The four largest production entities are Total, Shell, Perenco and Addax Petroleum.

Fiscal regime

Upstream business activities can be conducted by business entities on the basis of Cooperation Contracts entered into with the Gabonese Republic.

The basic provisions of a Cooperation Contract need to be in accordance with prevailing laws and regulations and after consideration of the level of risk and greatest possible benefit to the Government.

Cooperation contracts are required to contain clauses covering the basic provisions, such as state revenues, obligation to organise funds, transfer of ownership of the proceeds of oil and gas production, resolution of disputes, obligation to supply crude oil and/or natural gas for domestic needs, ending of contracts, obligations following mining operations, occupational safety and health, management of the natural environment, transfer of rights and responsibilities, reporting requirements, field development plans, priority on use of domestic goods and services, and priority on the use of Gabonese manpower.

There are historically two categories of agreements and contracts for Gabon's petroleum activities.

Concessionary system

The concessionary system was the first system used in Gabon's fiscal arrangements. These fiscal arrangements consisted of taxes and royalty. Under the concessionary system (also called a royalty/tax system), the Government transferred title of the minerals to the oil company. The oil company was to pay royalties and taxes to the Government. As Government gained experience and bargaining power, concessionary contracts were abandoned and replaced by Production Sharing Contracts (PSCs).

Production sharing system

The second category refers to the bundle of rights and obligations granted to an investor to invest in cooperation with the Government in oil and gas exploration and exploitation. These types of contracts are the PSCs, which state that:

- A Cooperation Contract for oil and gas exploration may be between the Gabonese Republic and a private investor (which can include foreign or domestic companies);
- The operator is the supervisor or manager of the PSC;
- Investors are participating interest holders and Contractors;

- The Government's share is stipulated in the production sharing arrangement. This agreement indicates that both the Government's share and the Contractor's share are drawn from production measured in revenue which is based on PSC-agreed percentages;
- Operating costs are recovered from production through Contractor cost oil formulas as defined by the PSC;
- The Contractor has the right to take and separately dispose of its share of oil and gas; and
- Title of the hydrocarbons passes to the Contractor at the export or delivery point.

PSCs must cover certain provisions, including:

- Cost of oil recovery terms;
- State revenue terms (tax oil, other taxes and royalties);
- Transfer of working interest restrictions and approval;
- Domestic supply obligations; and
- Post drilling obligations, health and safety matters and environment management.

The participants in the PSC generally also enter into separate agreements on how they conduct the petroleum operations. These are known as Joint Operating Agreements and they are :

- separate agreements in addition to the Cooperation Contract. JOAs govern the relations of the participating interest holders, defining their rights and obligations, an describing the procedures by which the Contractors will abide.

The JOA typically includes:

- The scope of operations;
- Financing of costs and management of Joint Account between the partners;
- Financing of participating interest holders contribution to petroleum costs, and management of advance accounts;
- Designation, rights and obligations of the Operator;
- Establishment of an Operating Committee;
- Production disposition;
- Relinquishment, withdrawal and assignment;
- Confidentiality;
- Force majeure; and
- Dispute resolution and choice of law.

Taxation regime

Contractors are required to pay state revenues in the form of tax and non-tax revenues. These taxes are provided within the PSC. The PSC may refer to the common tax regime.

The taxes consist of corporate income tax, proportional mining royalty, built land taxes, stamp duties, registration fees, and other levies on services. With the exception of the abovementioned taxes, the Contractor is generally exempt from all other applicable taxes set forth by the General Tax Laws.

The non-tax revenues consist of the state's share in the form of bonuses, surface (rental) royalties, some custom duties, social expenditure and diversified contributions.

Gabon

Corporate tax
While the law provides that the income tax is calculated on the profits of the fiscal year, in practice, the calculation of income tax for PSC entities differs from the calculation applying to other Gabonese taxpayers.

PSC entities are entitled to take their share of production on a “net of tax” basis (i.e. with the payment of Gabonese income tax made on their behalf by the Gabonese Republic).

The PSCs tax oil is a somewhat specific corporate income tax, since it is, at the time the tax return is filed, deemed to have been already paid. It is rather a notional corporate income tax provided in the PSC for foreign tax purposes only.

The oil company will however be required to file a tax return in which, unless otherwise provided by the Gabonese Republic, the corporate income tax would be based on general accounting principles and determined according to the difference between profit and charges, as provided in the General Tax Code.

Therefore, the calculation of corporate income tax has to reconcile the petroleum taxation principles as they result from the taxation system of production sharing net of tax organized by the PSC with common taxation general principles referred to expressly by the PSC.

In this respect, it is important to underline that, to some extent, the calculation of the amount of corporate income tax implies that, for tax purposes only, the Contractor is deemed to have generated revenues higher than those of which it has disposed effectively for legal purposes.

From a disclosure standpoint, the amount of tax paid by the company must be shown, yet the share which the State has taken, calculated as a percentage of production, is not entirely tax and thus cannot be considered directly as the tax paid by the company.

The problem is solved by grossing up the net results of the company to arrive at a notional income tax paid by the Contractor, a theoretical amount to be disclosed to group-level tax inspectors.

In a few contracts, the rate at which notional taxation is to be calculated is specified.

In most contracts, the notional tax rate is not specified, begging the question of what rate is to be used. There would appear to be two options:

- the common rate, as given by common law. The problem is whether one should apply the common rate in Gabon of 35%, or the rate already used in the oil sector by oil companies under Concession Arrangements, as these may vary significantly
- a calculated rate in the best interest of the company.

In practice, the corporate income tax is considered to be levied at the rate provided by the tax code i.e. 35%.

Ring fencing
An entity may hold interest in several PSCs. However, there is no group or similar relief available in Gabon. This means that costs incurred in respect of one PSC cannot therefore be used to relieve the tax obligations of another.

Each exploration permit and the exploitation permits based thereon shall be subject to separate accounting without any consolidation of losses and profits among different exploration permits.

However, when the scope of the exploration and development work, the utilization of a particularly costly technology or the exceptional difficulty of the zone justifies it, a consolidation among several exploration permits may be authorized by Parliament.

Royalties

Rental royalties

Under Law No. 15/62 and its subsequent amendments, the holder of exploration or exploitation permits is required to pay rentals royalties.

The terms and conditions of payment of the rentals royalties are defined in the PSC arrangements.

This royalty is paid in cash, in advance and per complete calendar year, on the basis of the surface area on 1 January each year, and for the first year, on the surface area on the date of effect of the PSC arrangement.

If the arrangement is signed during a Calendar Year, this royalty is paid on the basis of the existing area on the date of effect of the PSC arrangement pro-rated on the basis of time.

Every year, the Hydrocarbons Department (DGH) sends to the holder of the mining title the notice of payment, which indicates:

- Name of the license
- Surface area
- Period of validity
- Amount of the sums to be paid

The Tax administration recovers the surface royalty on the first 45 days of the notice every year. The surface royalty is cost recoverable.

The rates are varied from time to time.

As a consequence and for the respect of the stability clause included in the PSC contracts, the new rates established by the State should be only applicable to the PSC which have been signed after the implementation of the new rates.

One may not be able to use the proportional mining royalty as a tax credit abroad.

Therefore, its nature could be negotiated and clearly defined in the PSC so that it might be recoverable abroad. The company must obtain from the Tax Administration “a quitus” for the payment of these royalties.

Proportional mining royalty

Once production starts, the Contractor shall pay a proportional mining royalty (PMR) amounting to a flat percentage of the total available production. This flat percentage varies according to the level of production.

As the Contractor does not have the mining titles attached to the Delimited Zone, the PSC signed in the early 1980s provided that the Contractor was exempt from paying any fixed mining rights, superficial royalties and proportional mining royalties.

However, the last PSC established by the State provides that oil companies, despite the fact that they do not own mining titles, owe a PMR which is not included in the cost oil. The PMR rate varies and may be negotiated.

The total available production means the total hydrocarbon production ownership which passes to the Contractor from the exploitation of all fields located within the delimited area, computed on said area after degassing, dehydration, stabilization, decantation, desalting and gasoline recovery, at the time when it is sent towards the evacuation lines or, if no pipelines are available, towards storage facilities.

The total available production subject to the PMR is reduced by various quantities such as any amounts of hydrocarbons re-injected into the field of the exploration area, quantities lost or burned at the time of the production tests, quantities used for preparation of drilling fluids for the requirements of the delimited area.

Calculation of the PMR is based on the FOB value of the hydrocarbons. For determination of this FOB value, the price adopted is the set price defined in the guide.

The modalities of payment of the PMR are set forth in the PSC arrangement and the payment can be made in cash or in kind which is determined by the State og Gabon

In practice, the PMR is generally paid in kind at the lifting point. However, most PSCs provide for an option reserved for the Ministry of Hydrocarbons according to which they can notify the company of a payment in cash.

With the exception of the PMR calculated on the hydrocarbons consumed during petroleum works, the PMR is non-cost recoverable.

Withholding taxes
For PSC entities, the WHT obligations are largely identical to those of other taxpayers. On this basis, there is an obligation for the entity to withhold and remit Income Tax, and to file WHT returns, in accordance with the various provisions of the General Tax Code.

For PSC entities the most common WHT obligations arise in regard to:

- Payment for the provisions of services, etc. by resident independent Contractors that are self-employed (rate of 9.5%)
- Payment for the provisions of services, etc. by foreign vendors (rate of 10% before applicable treaty relief)
- Payments of dividends to shareholders (rate of 15%, 20% if the shareholder is a person)
- Directors' fees (15% or 20%)
- Personal income tax (progressive scale)
- Social security contribution (employees' share)

VAT
- For deliveries of goods and services relating to the oil industry, the Contractor, its Subcontractors and affiliates are exempt from VAT.

- For deliveries of goods and services not relating to the oil industry, Contractor, its Subcontractors and affiliates shall pay VAT at the normal rate of 18% to the vendors but they will be allowed to claim the VAT paid to the vendors. VAT repayments are denominated in CFA Francs.
- Failing to receive a repayment of VAT from the Tax Administration within the prescribed deadline, the Contractor its Subcontractors and affiliates may be allowed to deduct the VAT credits from any other tax payment.

Import Taxes
The PSC lists the categories of goods and equipment that are:

- Exempt from customs duties, or
- Subject to the temporary admission regime and free of customs duties, or
- Liable for customs duties at the reduced rate of 5%, or
- Liable for the general customs regime.

Computer royalty
Importations are subject to a computer royalty levied on the CAF value.

Some of the PSC entities have entered into individual agreements with the Minister of Finance according to which they have agreed to pay a predetermined amount for a predetermined period (usually three years) to cover their contribution to the improvement of the Customs computer system. These agreements cover all oilfield equipment imports and exports made by them and or by their Subcontractors on their behalf.

Export Taxes
Exports made by a PSC entity are exempted from customs duties.

Exemption includes crude oil, equipment for reparation, spare parts, samples of crude, oil or chemicals, cores, samplings, etc.

Compliance

General reporting requirements
The General Tax Code stipulates that a company should maintain documents and records such as the journal and ledgers, balance sheet, income statement and any other documents describing rights, obligations and other matters relevant to the company. The law also requires that these records be kept for ten years.

The records must be kept in French unless approval is obtained to maintain them in another language.

However, as part of their audit operations, the tax auditors are allowed under the general tax law to require certified translation into French of documentation that is used for the preparation of tax returns. In addition to the obligation to keep records, management is required to prepare financial statements in compliance with the OHADA accounting standards within four months of the end of the financial year (except otherwise provided, especially for the first fiscal year). As indicated above, tax law provides that books and records must be retained for ten years.

Gabon

Statutory reporting requirements
While the submission may in practice be conducted either by management or the auditor, the responsibility to ensure that filing is carried out rests with management.

The management is responsible for completing the form and content requirements of the financial statements.

The financial statements should be prepared based on the OHADA Accounting System and audited by a registered public accountant (except for branches and certain private limited companies).

The audited financial statements should be submitted to the Tax Authorities, along with the tax return, within four (4) months after the financial period ends.

Practice In upstream oil and gas industry
It is common for a PSC to keep three sets of records:

- One set of accounting records under PSC principles in Gabon,
- One set under the PSC Contractor's home office's promulgated GAAP, which may or may not be maintained in Gabon, and
- One set under the OHADA accounting system to meet OHADA requirements imposed on any trader.

Accounting records are subject to audit by the Gabonese Republic, and requires PSC Contractors to be audited by an independent auditor.

Ongoing tax obligations include:

- Filing of annual income tax returns (for each interest holder);
- Filing of monthly returns for withholding, including on employees' salaries;
- Filing of monthly VAT returns; and
- Maintaining of books and records in Gabon supporting the tax calculations.

US Dollar bookkeeping
The PSC entity is automatically entitled to maintain its books, and calculate its income tax liability in US Dollars. However, VAT and WHT are calculated in CFA Francs.

Payment of Tax
The corporate income tax payments of a PSC entity are effectively counted by the Gabonese Republic as oil revenue, rather than as an income tax receipt. The corporate income tax is remitted in kind to the State, as opposed to the Public Treasury.

A tax certificate proving the payment of corporate income tax can generally be obtained by taxpayers (say for home country tax credit purposes).

Corporate income tax payments are due on each lifting.

New PSCs may include a provision according to which, subject to prior notice the Gabonese Republic can ask for a payment of the tax oil in cash. In return, the Contractor will receive the equity oil in favor of the Republic at the lifting place.

Audits
Audits are performed under the joint authority of the Ministry of Hydrocarbons and the Ministry of Finance.

Ministry of Finance focuses on WHT and VAT liabilities rather than corporate income tax.

The PSCs include a predetermined annual budget for the audits performed by the Ministry of Hydrocarbons or the international audit firm selected for the audit.

Transfer pricing issue and thin capitalisation

Thin capitalisation

There is no specific rule but OHADA Uniform Act requires shareholders' equity to be above half of the company's authorized share capital where the company has losses.

Transfer pricing

Transfer pricing rules exist whereby deemed gain on non arm's length transactions will be subject to tax at a rate of 35%.

Double tax treaties

Gabon has signed a significant number of double taxation treaties: Belgium, Canada, France, OCAM (consisting of Cameroon, Central African Republic, Congo, Democratic Republic of Congo, Ivory Coast, Benin, Gabon, Burkina Faso, Madagascar, Mauritius, Niger, Rwanda, Senegal, Chad, Togo : today OCAM has been dissolved but application remains for limited countries) and UDEAC (consisting of Cameroon, Central African Republic, Congo, Gabon, Chad, Equatorial Guinea)

Other tax issues

Employee income taxes

For PSC entities, the taxation arrangements for employees are largely identical to those for other employers. On this basis, there is an obligation for the entity to withhold and remit income tax, and to file monthly returns, in accordance with the General Tax Code. The tax rates vary according to the family status of the employee.

An individual is regarded as tax resident if he/she:

- Is domiciled in Gabon; or
- Is present in Gabon for more than 180 days within a fiscal year.[1]

Note: the provisions of tax treaties may modify these rules.

Non-resident individuals are nevertheless subject to taxation in Gabon on Gabonese sourced income.

For the computation of income tax, the method of the family allowance is applied. This means that the revenue is divided into a determined number of shares according to the marital status and the dependents of the taxpayer, considered on 1 January of the year of taxation.

[1] The Gabonese Labour Code, according to which the Gabonese Labour Laws are not applicable when the foreign employee is assigned in Gabon for less than three consecutive months. Consequently, employees assigned in Gabon for less than three consecutive months do not have to enter into local a labour contract.

However, in the event of marriage or in the event of an increase in the number of dependents during the fiscal year, the marital status and the dependents as at 31 December of the fiscal year have to be considered.

The revenue per share is taxed according to a progressive scale.

Personal income tax

Personal income tax is computed according to the following progressive rates based on the employee's dependents.

Part of the taxable income for one part (XAF)		Rates in %	
-	1 500 000	0 % x Q -	0
1 500 001	1 920 000	5 % x Q -	75 000
1 920 001	2 700 000	10 % x Q -	171 000
2 700 001	3 600 000	15 % x Q -	306 000
3 600 001	5 160 000	20 % x Q -	486 000
5 160 001	7 500 000	25 % x Q -	744 000
7 500 001	11 000 000	30 % x Q -	1 119 000
More than	11 000 000	35 % x Q -	1 669 000

Q = gross salary (S) minus the lump sum tax allowance of 20 % (T) divided by the employee's dependents (D)

$$Q = \frac{S-T}{D}$$

Social security and Social Housing Fund

The contributions for pension are jointly borne by the employer and the employee; the employer share is 20.1 % of wages with an annual ceiling of XAF 18,000,000, and the employee share is 2.5 % of wages with an annual ceiling of XAF 18,000,000.

A contribution to the housing national fund of 2% shall be calculated on the same basis and borne and paid by the employer.

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Country profile

Brief history on oil and gas development

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

In the current 4th Republic which began from 1993, the search for commercial quantities of oil and gas has intensified. Petroleum agreements with Kosmos in 2007 and the EO Group in 2004 for the Jubilee Field resulted in a commercial oil find.

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 in 2013.

The Floating Production Storage Offloading (FPSO), called FPSO Kwame Nkrumah, arrived in Ghana on 21 June 2010 and was commissioned in the last quarter of 2010 . The FPSO has a storage capacity of 1.6 million barrels. It is expected that the FPSO will be able to process up 120,000 barrels of oil a day.

Reservoir estimates

Total proven reserves in the Jubilee Field is about 660 million barrels. Ghana is forecasted to have 5 billion barrels of reserves.

Ghana

Significant new developments
In the last couple of years, the upstream petroleum industry has experienced a number of reforms aimed at the regulation and improvement of activities within the industry. Three significant developments have been:

- The establishment of the Petroleum Commission in July 2011 as a regulator of the upstream oil and gas industry taking over from the Ghana National Petroleum Cooperation (GNPC) – which played the role of regulator;
- The introduction of local content regulations to ensure the use of Ghanaian goods and services as a means of increasing the rate of Ghanaian participation in the petroleum industry;
- The enforcement of increased license and renewal fees for Petroleum Operators and service providers.

Fiscal regime

Institutional oversight and regulatory framework
In July 2011, the Petroleum Commission (PC) was established as a body corporate by an Act of Parliament and given institutional oversight of the upstream petroleum industry. Prior to the establishment of the PC, the GNPC had such oversight (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 Law, 1984 (P.N.D.C.L 84) (PEPL)* – to provide the framework for the management of oil and gas exploration, development and production in Ghana. The law also establishes the basis of contractual relationship between the Republic of Ghana, GNPC and the petroleum operators in the upstream operations through the basic terms and the conditions of a Petroleum Agreement (PA);
- *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 carrying out upstream petroleum operations;
- *Internal Revenue Act, 2000 (Act 592) (IRA)* – which is the prevailing principal tax legislation in Ghana and provides general rules on taxation. To a lesser extent, the IRA rules affect the taxation of Petroleum Operators (Contractors) and their services providers (Subcontractors). Beyond these two groups, the IRA has significant impact on the taxation of service providers within the industry which make supplies mainly to Subcontractors and other service providers (which provide services within the industry to enterprises which are neither Contractors nor Subcontractors);
- *Petroleum Agreements* – which are agreements entered into under the PEPL between the Republic of Ghana, GNPC and Contractors in the upstream operations. PAs have provisions have govern some aspects of the taxation of Contractors as well as the Subcontractors; and

- Any Double Taxation Agreements (DTA) in Force between the Republic of Ghana any Country.

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 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 a 10% carried interest at the exploration and development stage of any petroleum operations. This is converted into 10% paid interest at the production stage. The State is granted the right and may opt for additional paid interest at the development and the production stages.

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

The upstream industry (to which this summary relates) 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 Energy Commission and mainly taxed according to the IRA. 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 capital investment regulations in the oil and gas industry.

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

- provide for the development of Ghana content in the Ghanaian petroleum industry;
- provide for the Ghana Content Plans and a mechanism for coordination, 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 to GNPC, Contractors, Subcontractors are required to have joint venture arrangements with indigenous Ghanaian companies that provide them with an equity participation of at least 10%.

To further support the need for inflow of economic benefits to Ghanaians (and to guard against the mere use of Ghanaian companies as fronts), the Regulations give the PC the power to investigate participating companies.

Financing consideration (thin capitalisation issue)
On one hand, 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. On the other hand, Subcontractors are subject to final tax at 5% on revenues on petroleum services and therefore should not experience any impact of thin capitalisation rules.

Taxation regime

Basis of taxation
Types of tax
Direct taxes

Petroleum / oil taxation
A Contractor is subject to corporate tax at a rate of 50% but subject to rate prescribed in a PA. Most PAs in Ghana apply a corporate tax rate of 35%.

The corporate tax rate is applied on taxable profit (termed “assessable income) calculated according to the tax laws. 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.

Under the PITL, 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;
- 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 national 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 allowances are granted in place of the depreciation).

Contractors can carry forward tax losses indefinitely.

Income earned by a Subcontractor from petroleum operations is taxed through final withholding on gross revenue at a rate specified in the Contractor's (Customer's) PA. Taxation of Subcontractors is further discussed below under withholding taxes.

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.

Subcontractors are not liable to royalties.

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

Liquefied natural gas 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.

Depending on the Contractor's PA, Subcontractors are subject to final withholding tax rate of 5% to 10% of gross revenue for works and services connected to petroleum operations provided to Contractors. This tax is a final tax as such the income would not be calculated in determining the taxable income of the Contractor.

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 IRA.

The withholding taxes applicable on payments by Contractors are as follows:

Payment	Rate %
Resident Persons	
Payment to Subcontractors for works and services (including rental of tools and equipment)	5
Rent (for individuals and investment income)	8
Supply of goods and series exceeding 500	5

Ghana

Payment	Rate %
Non-Resident Persons	
Payment to Subcontractors for works and services (including rental of tools and equipment)	5
Royalties, natural resource payments and rents	10
Management, consulting and technical service fees and endorsement fees	15
Short term insurance premium	5

The withholding taxes applicable on payments made by Subcontractors are as follows:

Payment	Rate %
Resident Persons	
Interest (excluding individuals & resident financial institutions)	8
Dividend	8
Rent (for individuals and investment income)	8
Fees to lecturers, invigilators, examiners, part-time teachers and endorsement fees	10
Commissions to insurance agents, sales person and fees to directors, board members, etc	10
Commission to lotto agents	5
Supply of goods and series exceeding 500	5
Non-Resident Persons	
Dividend	8
Royalties, natural resource payments and rents	10
Management, consulting and technical service fees and endorsement fees	15
Repatriated Branch after tax profits	10
Interest Income	8
Short term insurance premium	5
Income from Telecommunication, shipping and air transport	10

Capital gains tax (CGT)
Contractors are not subject to CGT on the sale of assets.

Subcontractors are liable to CGT at 15% on gains made on assets disposed based on the provisions of the IRA.

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 payable to the State per square kilometre of the area remaining the beginning of each contract year as part of the contract area usually of the following amounts:

Phase of Operation	Surface Rentals per Annum
Initial Exploration Period	US$30 per sq km
1st Extension Period	US$50 per sq km
2nd Extension Period	US$75 per sq km
Development & Production Area	US$100 per sq km

Indirect taxes

Value added tax and National Health Insurance Levy (VAT / NHIL)

VAT / NHIL (VAT) in Ghana is at a rate of 15% on taxable supply.

Under most PAs, Contractors, their Subcontractors and Affiliates are not subject to VAT. As such 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 VAT charged. Therefore, a Contractor is not required to account for VAT, but would necessary 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.

Consumption tax

There is no such tax in Ghana

Sales tax

This tax was replaced with VAT.

Custom duties

Based on the provisions of most PAs, Contractors and Subcontractors are exempt from the payment of customs duties, except for minor administrative charges, on all items of plant, equipment and materials intended to be used solely for petroleum activities. However, if items imported free of duty are later sold within Ghana, import duties would then apply. Further on any such sale, most PAs give GNPC the right of first refusal to purchase the items sold.

Stamp duty

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

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 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.

Group relief
Group relief is not available under Ghanaian tax laws

Compliance requirements

Extraction (oil, gas, etc.) profits returns – types of returns, filing and payment due dates, etc.

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 other remuneration of the employees of the Contractor;
- 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.

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 of 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.

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 GNPC with summaries of production cost of their petroleum operations at the end of the quarter.

Profit repatriation issues
Currently, dividends paid by Contractors to shareholders are exempt from tax. However dividends paid by Subcontractors to shareholders are subject to a final withholding tax at a rate of 8%.

Branch profits repatriated are subject to tax at 10%. 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.

Transfer pricing regulations
The PITL allows the Commissioner-General to adjust transactions between related 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 recently 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 regulations also allow, but with approval from the Commissioner-General, the use methods other than prescribed if those methods can be proven to be most appropriate.

Transfer pricing documentation is required 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.

Other tax issues

Personal income tax

The taxation of employment income is addressed through interplay of the provisions of the PAs and the IRA. 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 rate of tax
Less than 30/60 days*	Exempt	N/A
30/60 days to 182 days	Full employment income	15%
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

Social security tax

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

Other statutory contributions

No other statutory contributions applicable.

Ivory Coast

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Country profile

Significant developments

Within the last 5 years, the tax administration has created a special Department in charge of the Petroleum industry, which deals with the daily tax matters related to the industry.

Several amendments have been made to the General Tax Code thus increasing the filing obligations of the oil companies to the Tax Authorities responsible for petroleum activities.

The rationale for these amendments is to monitor the activities of the sub-contracting oil companies operating in Ivory Coast in order to ensure that they are in total tax compliance.

Oil companies are in some instances responsible for the filing and payment of the taxes of their Subcontractors under the Simplified Tax Regime.

Brief overview on the development of the Oil and Gas sector

Ivory Coast, a country located in West Africa along the Gulf of Guinea on the Atlantic Ocean, has Abidjan as its capital city and French being its official language. The currency for Ivory Coast is the CFA Franc (XOF).

Production of oil and gas started a few years ago and by 2011, the production was estimated to be about 90,000 barrels /day.

Most of the major companies present in Ivory Coast are mostly involved in exploration and development programs.

According to available data, about 29 PSCs have currently been signed on for petroleum operations in Ivory Coast.

Ivory Coast

Fiscal regime

The main framework that regulates and makes provision for the taxation of petroleum operations in Ivory Coast is the Petroleum Code which came into force on 29 August 1996.

The Petroleum Code stipulates that petroleum activities are possible in Ivory Coast, only for those companies which have signed Petroleum contracts (PSC or Concession Contacts) with the Government of Ivory Coast.

The provisions of the Petroleum Code are applied along with the relevant provisions of the General Tax Code and the tax provisions of the Petroleum Contract (PSC or Concession) originally signed by the oil companies.

Understanding the tax features of the oil and gas sector in Ivory Coast thus involves being familiar not only with the drafting of the rules related to the Petroleum Contract, but also with the provisions of the Petroleum Code and the General Tax Code.

Regulators

The key regulators in the oil and gas industry include:

Department of Hydrocarbons: regulates and supervises oil and gas operations carried out under the various contracts.

PETROCI (National Petroleum Company of Ivory Coast): manages and supervises government's interest in the oil industry.

Department of Petroleum Operations of the Tax administration (DGI): deals with taxation issues related to the Petroleum activities.

Forms of contracts

The most common form of petroleum contract in Ivory Coast is the Production Sharing Contract.

Production Sharing Contract

The Ivorian Government is the holder of the block (one or many fields), and appoints a Contractor, which is generally a group of oil companies, to conduct petroleum operations in the area.

Each oil company has a participating interest in the block however the operations are technically conducted by an Operator, which is usually the oil company with the largest participating interest.

PETROCI (the National Petroleum Company of Ivory Coast) is always one of the Contractors and is granted a free 10% participating interest. But the initial 10% participating interest of PETROCI may be increased up to 20% upon payment for the subscription of the additional participating interest

The companies which are contracted provide the funds and bear the risks until commercial production is achieved.Production is allocated in barrels to Cost Oil accrued by the Contractor up to the commercial production, with a recovery limit, then the remaining production (Profit Oil) is shared between the Contractor and the Government using a predetermined sharing formula.

Forms of Petroleum Contracts

According to the provisions of the Petroleum Code, Oil and Gas exploration and exploitation activities are carried out through Petroleum Contracts which might either be Concession Contracts or Production Sharing Contracts (PSC).

However, all the available petroleum contracts are Production Sharing Contracts, signed by group of oil and gas companies including the National Oil Company (PETROCI).

The provisions of the PSC cover the exploration and exploitation periods as well as applicable taxes during these phases (period).

Once a commercial discovery is made, an exclusive authorization for exploitation is issued which spans a period of 25 years and can be extended further upon a request issued at least 12 months before the end of the first period to 10 more years.

After the first extension, it is possible to apply for another extension provided the request is made at least 12 months before the end of the second period. The period for the second extension will be decided by the Government and the oil and gas companies involved.

Royalties – Bonuses

The 1996 Petroleum Code provides that a monthly royalty is determined on the production of the oil companies signing Concession contracts, but no Concession Contract has been actually signed so far.

The Petroleum Code also provides that oil companies which are the Contractor may be required to pay signature and production bonuses.

The signature bonus is paid upon the signing of the PSC and its amounts varies, (based on our experience) from USD 2,000,000 to USD 20,000,000.

Production Sharing Contracts

For a PSC signed in 2012 (as example), the applicable rates are:

Production	Production share for the Contractor (%)
From 0 to 50,000 barrels/day	46% x H
From 50,001 to 100,000 barrels /day	41% x H
From 100;001 to 150,000 barrels /day	36% x H
Above 150,000 barrels / day	32% x H

H = 1.629 – 0.141 ln
H = 1.08 when the barrel price is lower than USD 50; H = 0.88 when barrel price exceeds USD200.

Ivory Coast

Taxation regime

Any oil company qualifying as a Contractor benefits from the tax features included in the PSC.

The most important feature in the last section of the PSC is that the Corporate Income is included in the Production share received by the Government. However in practice, the oil companies calculate the due corporate income tax according to the general tax rules in the General Tax Code with the specifics included in the PSC, but do not actually pay the due tax.

Oil companies receive a corporate income tax clearance certificate when the Government (through PETROCI) receives its production share.

Only a few PSC include the payment of the corporate income tax (old ones).

The following computations are relevant for determining the tax payable by a petroleum company:

The taxable revenue of oil and gas companies includes the following:

- Revenue directly derived from the sale of its share in the produced oil and gas;
- Any revenue derived from the Petroleum Operations, including the sale of deriving minerals, treatment, transportation stocking services provided to third parties using infrastructure and equipments dedicated to the petroleum activities;
- Capital gain derived from the transfer of assets including PSC interest (farm out – farm in), unless the payment is made in kind;
- Any exchange gain.

The expenses deductible for the purpose of the CIT computation include the following:

- The petroleum cost, in the recovery limit provided by the PSC (generally 70%);
- Expenses related to the petroleum operations (salaries, services, rentals, purchase, interests on loans, etc.);
- However, the expenses paid to related entities of oil companies are deductible provided they are based on arm's length principles;
- Previous years' losses;
- Capital allowances;
- Provisions allowed by the Tax Code and the PSC.

Compliance requirements

Tax returns and payments

Corporate income tax returns must be filed in the 3rd month following the end of the fiscal year (31 December).

Corporate income tax due will or will not be paid depending on the content of the PSC. The Government however will issue payment certificates to Contractors based on the share of oil production it will receive.

Incentives in the oil and gas industry

The PSCs provide that, with the exception of the corporate income tax paid in cash or in kind, the oil companies benefit from a general tax exemption, which covers all the due taxes, contributions, levies and duties applicable to the petroleum operations.

The tax administration however restricts the general exemption clause in the PSC so that only the single taxes actually listed as exempted in the PSC are considered as exempted.

The exemptions may be extended to the vendors and Subcontractors of the oil companies by the PSC.

The oil companies signing the PSC do not qualify for the general tax incentives provided by the Investment Code.

Withholding tax (WHT)

Subcontractors
Local oil companies are not subject to WHT.

The non-resident Subcontractors of oil companies are likely to bear WHT. The general WHT rate is 20% but intervention of tax treaties mitigates the WHT or reduces its rate to 10% only on royalties. The UK / Ivory Coast will allow reduced WHT rate of 10% on management services as well.

Most of the recent PSC includes an exemption from WHT for the non-resident Subcontractors.

A simplified tax regime is enforced for the Subcontractors of oil companies under the PSC, and this involves the payment of composite taxes included in an aggregate rate of 5.636% or 3.136% on their taxable revenue, whether a corporate income tax exemption is available or not.

Dividend and interest
Oil companies and their affiliated companies are exempted from WHT on the dividends and interest paid with respect to petroleum operations.

Capital gains tax – transfer fee

There is no special tax on capital gains . They are taxed along with the corporate income tax.

The transfer of participating interest in PSC is subject to a fixed fee of USD 100,000 per transfer.

Thin capitalisation and transfer pricing

Currently, Ivory Coast does not have any regulation on thin capitalisation.

The deduction of the interest paid to related parties is possible provided the rates do not exceed the rates on the financial markets.

Transfer pricing rules are provided for by the general tax code and they allow the tax administration to adjust the corporate income tax of companies, when the prices of transactions between related parties are not based on arm's length principles.

As far as the petroleum operations are concerned, the transactions with related parties must be approved by all the oil companies which qualify as the Contractor.

Indirect Taxes

Value-added tax (VAT)

VAT is charged at a flat rate of 18% on the supply of goods and services except when exempted.

Both the Petroleum Code and the PSC include exemption from VAT for the supply of goods and services to oil companies which have signed PSC with the Government, provided the supply relates to petroleum operations.

Petroleum exploration and exploitation operations are exempted from VAT, this is to ensure that the oil companies do not file VAT returns, unless they have other activities.

The exemption applies to the 100% Subcontractors of oil companies as well.

Custom duties / import tariffs

Customs duties in Ivory Coast are levied only on import. Rates vary for different items, typically from 0%, 5%; 10% to 20%, and are assessed with reference to the prevailing Harmonized Customs tariff applicable in the UEMOA Zone.

Oil companies in Ivory Coast are entitled to import equipments (to be re-exported) under the suspension customs regime.

Goods and materials imported solely for the purpose petroleum operations are exempted from customs duties. The exemption is only granted upon confirmation from the Department of Hydrocarbon that the imports relate to petroleum operations.

Social security contributions

Social security contributions

Social security contributions are paid by the oil companies on the basis of the wages paid to their employees:

Social security contributions include family allowance contributions, work injury contribution and pension contributions.

	Employer	Employee	Total	Monthly Wages (XOF)
Family allowance	5.75%	-	5.75%	70,000
Work injury	2% to 5%	-	2% to 5%	70,000
Pension	7.7%	6.3%	14	1,647,315

Payroll contribution

Payroll contribution is exempted for oil companies signing PSC.

Employees are however still subject to WHT on their wages.

The due WHT on the employees' wages must be withheld and paid out to the tax administration by the oil companies.

Others

Property taxes

Properties used for petroleum operations are exempted from property tax.

Stamp taxes

Stamp duties related to deeds used for the petroleum operation are exempted.

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Country profile

Significant new developments

The Oil Minister, Abd al-Bari' al-Arusi, has proposed the separation of the Libyan National Oil Corporation (LNOC) into two functionally focused entities in different locations, with one focusing on upstream, based in Tripoli, and the other in Benghazi, focused on refining. The current LNOC would be split into a Benghazi-based entity, the National Corporation for Oil Refining and Petrochemicals, responsible for overseeing and launching projects in its domain, while in Tripoli would be the National Corporation for the Exploration and Production of Oil and Gas. Both entities would have offices in the other region and report to the Ministry of Oil and Gas.

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 or Berber and 97 % being Sunni Muslim. In 2011, the civil war overthrew a dictator who had been in power for 42 years. The newly elected government is drafting a new constitution to determine how Libya will be governed in the future.

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 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 in the oil sector during the 1970s and 1980s coupled with diplomatic issues which forced the American IOCs to withdraw in 1986, UN sanctions enforced in 1992 and US sanctions enforced in 1996, seriously hit the oil production due to a lack of investment and the inability to use the latest technology. 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 what was produced at the end of the 1960s.

Oil accounts for approximately 95 per cent of Libyan export earnings, 75 per cent of government receipts and 25 per cent of its Gross Domestic Product (GDP) prior to the events of 2011.

Reservoir estimates

According to the Oil and Gas Journal, Libya had total proven oil reserves of 47.1 billion barrels as of January 2012 – the largest in Africa and in the top 10 globally. Approximately 80 per cent 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

The 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 two remaining CAs. 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 ensures the contracts with their main service providers have been appropriately registered.

Libya

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 five 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 four 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 then, 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.

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 per cent to Italy, 15 per cent 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 seven 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 five domestic refineries that, according to the OGJ, have a combined capacity of 378 thousand barrels per day. The largest refinery is at Ras Lanuf and 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.

Through its overseas retail arm Oilinvest, Libya has refinery operations 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 the LNOC would have control of the newly formed operator.

Financing consideration (thin capitalisation)
Libya has no thin capitalisation regulations.

Libya

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 per cent 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 three years on a straight line basis.

Capital gains tax
Libya has no separate capital gains tax. Capital gains are added to the taxpayers normal taxable income and assessed accordingly.

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.

Witholding taxes (WHT)
Libya has no withholding taxes.

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, receiving 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 supply to the European market. In addition only 25% of Libya's oil has only 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 the statement relates to.

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 filed quarterly, 30 days after the quarter-end. The final annual notional Financial Declaration should be filed 3 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.

Profit repatriation issues

Libya has no profit repatriation issues. The international oil companies operate 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.

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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

Mozambique

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Country profile

Significant new developments

Mozambique has recently made discoveries in the mining and oil and gas sector. With these new challenges ahead, the country needs to be updated in terms of legislation.

Mozambique is a country located in Southern Africa, comprised of 11 provinces, and the capital is Maputo. Portuguese is the official language, and the official currency is Meticais (MZN).

Currently Mozambique has one of the major unexplored sedimentary basins of Africa. It has also been proven that the country has natural gas at two sedimentary basins yet to be explored.

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. 3/2001, of 21 February (Petroleum Law);
- Regulations on Petroleum Operations, approved by Decree no. 24/2004, of 20 August (PO Regulations);
- Law no. 12/2007, of 27 June (Petroleum Production Tax Law or PPT Law);

- Law no. 13/2007, of 27 June (Fiscal Benefits for the Petroleum Industry“ or FBPI Law);
- Petroleum Production Tax Regulations, approved Decree no. 04/2008, of 9 April (PPT Regulations);

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).

Recently, the Corporate Income Tax (IRPC) regime was changed in order to accommodate some specific rules related to the oil and gas sector and ensure a greater competitiveness in the sector, including:

1. the introduction of ring fencing rules, that can be summarised as follows -
    - An entity that has more than one concession must assess the taxable income of each concession separately, as if each was an independent taxpayer;
    - Oil & gas companies are now required to organize their statutory accounts and comply with tax and accounting obligations separately per concession;
    - Oil & gas companies are required to have different tax registration numbers per concession;
    - Offset of losses assessed in one concession with gains assessed in another is not allowed;
2. Petroleum Production Tax paid is no longer deductible for Corporate Tax purposes;

Regulators

The key regulators in the oil and gas industry include:

Ministry of Mineral Resource (MIREM): This ministry regulates the activities of companies operating the oil and gas sector.

National Institute of Petroleum (INP): This Institute is subordinate to MIREM, and is responsible for the negotiation of the petroleum concession contracts on behalf of the government.

ENH: The entity that manages and holds the participating interests on behalf of the State.

Ministry of Energy: Administers the downstream activities relating to the industry.

Forms of contracts

As per the petroleum law there are three types of concession contracts, namely:

a. *Recognition contract*: Is the contract that the Government grants to an entity which gives the entity the right to execute preliminary research activities relating to geological, topographical and geophysical matters. This contract is valid for a period of two years and allows entities to undertake the activities of drilling offshore and onshore up to 100 metres of deep.

b. *Exploration and production contract:* Is the contract that the Government grants to an entity which gives an entity the right to research and produce the oil, as well as the right to build and operate pipeline system for transportation of crude oil or natural gas. Maximum exploration period is 8 years and maximum production period is 30 years.
c. *Pipeline Contract*: Under this contract, the Government grants an entity the right to build and operate the pipeline system, in the case that there is no contract of research and production in place. Duration of pipeline contracts depends on the project.

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 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 (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, for exploration or production at 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 non-exclusive 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.

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.

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.

Compliance requirements

Tax returns and payments

Companies engaged in the petroleum operations are required to pay the following taxes

Petroleum Production Tax

PPT 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 –

a. Quantity of petroleum produced during the month;
b. Quantity of petroleum sold during the month;
c. Quantity of petroleum stored at the beginning and at the end of each month;
d. Quantity of petroleum inevitably lost;
e. Quantity of petroleum used on the recuperation operations duly authorized by the government;
f. Quantity of petroleum subject to tax;
g. Amount of tax due in the period; and
h. Any other relevant information required for the tax assessment.

Penalty

Late payment of tax: daily interest's correspondent to MAIBOR rate + 2%.

Corporate tax

The tax code establishes the following deadlines for payment of this tax.

Corporate Tax Payments	Comments
Advance on-account payments	Advance on account payment must be made in three equal instalments in May, July and September.
Special advance on-account payments	Special advance on account payments must be made in three equal instalments in June, August and October.
Final Tax	The deadline for payment of final tax is due by the last working day of May or 5th month after the tax year end in case a different tax period is adopted.

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 Declaration 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

Declarative Obligations	Deadline
Annual Communication on the Income Paid to Non-Resident Entities (M/20-I)	By the last working day of June
Declaration of commencement of activities	fifteen days before start of activities
Declaration of alterations	fifteen days after occurrence of alteration
Declaration of termination of activities	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	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.

Penalty

- Late submission of returns: fine that varies from MZN 3,000,000 to MZN 65,000,000.
- Late payment – fine that can be up to the double amount of tax due, plus daily interests calculated based on the MAIBOR rate + 2%

Incentives in the oil and gas industry

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.

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 to the nature of the activity to be developed and exploited.

Withholding tax (WHT)

WHT is an advance payment of income taxes. It is deductible from payments made on qualifying transactions which include payments in respect 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 definitive withholding tax of 20% on the income listed on the specific legislation.

Exceptionally, the income listed below is subject to definitive withholding tax at a rate of 10%:

a. telecommunications services and international transport services, including assembly and installation of the equipment made by such service providers;
b. construction and rehabilitation of infrastructure of production, transport and distribution of electricity in rural areas, within the scope of public rural electrification projects;
c. chartering of seafaring vessels for fishing and cabotage activities;
d. 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 (when 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 WHT rate may be reduced where the recipient is a resident of a country that has a double tax treaty with Mozambique.

Mozambique currently has double taxation treaties (DTTs) in force 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%).

Recently the following changes were introduced to the Corporate Income Tax Code regarding capital gains, with effect from 2013:

- Capital gains 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;
- Capital gains of non resident entities are wholly considered for taxation.

Thin capitalisation and transfer pricing

The Mozambican thin capitalization legal regime is applicable when an entity (taxpayer) that is subject to pay Corporate Income Tax (IRPC) has excessive indebtedness situation with a non-resident entity with which it maintains a special relation, whenever any of their relevant debt to equity ratios exceeds a factor of two.

"Relevant debt to equity ratio", within the context of the law, means the ratio between, on one hand, the amount of direct and indirect indebtedness of a Mozambican company towards a specially related non-resident, and on the other, the amount of equity that this non-resident holds in the Mozambican company.

Regarding transfer pricing rules, currently the Corporate Income Tax Code only have generic rules, according to which the Tax Authorities may proceed with the necessary corrections for assessing the profits for tax purposes

- By virtue of special relations between the taxpayer and other entity, different conditions from those which should be normally agreed between independent entities have been established, and
- In consequence of those conditions, the profits for accounts purposes are different from those that would have resulted had such special relations not existed.

Please note, however that recently the Corporate Tax Code was changed, and the change will take effects as from 2013, in order to include additional transfer pricing rules, namely with regards to the definition of the concept of special relations.

Indirect taxes

Value-added 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).

The VAT regime was also recently subject to changes introduced by Law no. 3/2012, of 23 January (amended VATC) and complemented by Decree no. 4/2012, of 24 February (amended CIRPCR). The change that directly affects oil & gas companies exempts the acquisition of services related to drilling, exploration and construction of infrastructures within the oil industries during exploration phase.

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.

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 Securities authorities by the 10th of the following month.

Others

Municipal individual tax (Imposto Pessoal Autárquico – IPA)
This is a fixed value payable annually by all resident individuals aged between 18 and 60. The tax is payable once a year in February. This tax replaces the National Reconstruction tax within the Municipalities.

It is levied on the salary of the employees. Currently the IPA in Maputo amounts to MZM 200. This tax is payable in March of each financial year, and must be withheld from the employees' salary during February.

Municipal property transfer tax (Sisa)
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 an urban tenement where the source of income depends mainly on the existing structures on the property and not on the land itself.

The obligation to pay the property transfer tax is triggered when 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 current rate of property transfer tax is 2% of the transfer value.

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. 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
Stamp duty is payable on any agreement, bank transactions, and specific acts foreseen in the said Code, 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.

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

License blocks are deep and ultra deep water depths. Prior to 2011, 20 wells were drilled ('95– '99: 13). In 2012, 2 wells were drilled. While seismic survey data is considered to be very promising, no oil has been discovered to date with the limited exploration activities carried out. The petroleum industry in Namibia is thus still in its infant stage.

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, 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.

Namibia

Government participation

No applicant is compelled to offer the State a share in a license. However, the State can participate in licenses if this is offered during negotiations.

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. The Petroleum Commissioner confirmed that this will change and revert to bid rounds in future.

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, Namibian Dollar (NAB) 60 per square kilometer
- During the next two years, NAB 90 per square kilometer
- During the subsequent two years, NAB 120 per square kilometer
- Thereafter, NAB 150 per square kilometer

In the case of the production licenses, the fee is Nab 1,500 per square kilometer.

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 follows.

Gross income[1] is defined as the total amount in cash or otherwise received by or accrued to or in favor of a person from a license area in connection with exploration operations, development operations or production operations, 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
- 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 in the production of gross income.

[1] Section 7 of Petroleum Income Tax Act
[2] Section 8 of Petroleum Income Tax Act

Including such expenditure so incurred in respect of:

a. (i) repairs or maintenance of any premises occupied for purposes of carrying out exploration operations, development operations or production in 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;
(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;

b. 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;

c. 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].

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 (30% x 34% corporate tax rate = 10.2%);
- Management, consulting, technical, administration and directors fees (withholding tax on services, 25%)

Petroleum companies are exempt from withholding taxes on dividends.

Compliance dates

Royalties withholding tax is payable within 14 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.

Capital gains tax

Mining 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 licence or right to mine minerals is specifically included in the definition of gross income. The definition also includes a sale of shares in a company for a licence or right to mine minerals in Namibia.

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.

In terms of the Mining and Prospecting Act 33 of 1992 a; "mineral licence" means a reconnaissance licence, an exclusive prospecting licence, a mining licence or a mineral deposit retention licence and includes the renewal of any such licence.

[3] Section 8 (a)(v) of the Petroleum (Taxation) Act 3 of 1991

The definition of "mineral" as per the Mining and Prospecting Act 33 of 1992, specifically excludes "petroleum, as defined in section 1 of the *Petroleum (Exploration and Production Act), 1991 (Act 2 of 1991);*"

It can therefore be argued that the scope of the newly introduced paragraph (o) of gross income does not include petroleum licences (including gas and oil) in its scope. Accordingly the sale of mining rights/sale of shares in a company holding such a right would not be subject to paragraph (o) of the definition of gross income.

Please note that the wording of paragraph (o) is currently under review, and there is a possibility that it might be changed to include petroleum rights / licences.

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 Act. Paragrah (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.

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.

[4] Petroleum (Taxation) Act 3 of 1991
[5] Petroleum (Taxation) Act 3 of 1991
[6] Section 12(1)(b) of the Petroleum (Taxation) Act 3 of 1991

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 administartive 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
- 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 and 2nd provisional payments (if necessary).

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.

Indirect Taxes

Value-added tax (VAT)
VAT is chargeable on the taxable supply of goods by every registered person under Section 6(1)(a) of the VAT Act. Taxable supplies are defined in Section 1 of the VAT Act as the supply of goods or services in the course or in the furtherance of a taxable activity. 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.

If taxable supplies exceed NAB 200,000, registration for VAT is obligatory. For VAT purposes, 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 consideration.

No guidelines define the terms “continuously” or “regularly” and it is 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.

License holders must levy VAT at 15% on invoices for goods or services.

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 and import VAT paid on goods imported into Namibia.

Custom duties / import tariffs

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.

Individuals

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.[7]

Included in Namibia is *“the sea within a distance of 12 nautical miles measured from the low water line shall be the territorial sea of Namibia”*.

Therefore if employees render services on a vessel within 12 nautical miles, they will be taxable in Namibia.

[7] Section 1 of the Income Tax Act, Act 24 of 1981

There are three ways that payment of normal tax liability takes place:

- Employees' tax by way of 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$40 000 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[8] 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 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 is NAB 81 by each (NAB 162 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).

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 NAB 76,000 per annum, NAB 6,333.33 per month;
- Persons employed casually and not for the purpose of the employer's business; and
- Seamen or airmen under a contract of service whose remuneration is fixed solely by a share in the takings.

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Assessments are not calculated on that part of an employee's earnings that exceeds N$76,000 per annum and are payable by employers to the Accident Fund in terms of section 69 of the Act.

Others tax issues

Thin capitalisation

There are no thin capitalization provisions in the Petroleum Taxation Act.

Transfer pricing

Excessive expenditure incurred under an arrangement between associated persons may be disallowed.[9]

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 no 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.

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 through 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.

[9] Section 16 of Petroleum Income Tax Act

Property taxes – transfer duty
Amendments to the Transfer Duty Act that will levy transfer duty on the sales of shares / members interest in property-owning entities are expected to be tabled in the near future.

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)	NAB 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	NAB 2 for every NAB 1,000 or part thereof of the value/consideration, depending on the specific transaction
Authorisation of share capital	NAB 5 for every NAB 1,000 or any part thereof of the nominal value of the shares.
Registration of a bond over immovable property	NAB 5 for every NAB 1000 of debt secured
Stamp Duty payable in respect of the transfer of immovable property:	
Where the value of the consideration exceeds NAB 20,000	NAB 100
and for every N$ NAB 1,000 or part thereof of the value or consideration in excess of NAB 20,000	NAB 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 NAB 80 per annum.

Nigeria

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Country profile

Significant new developments

The legislative process is ongoing to combine 16 different Nigeria petroleum laws into a single document called the Petroleum Industry Bill (PIB). The PIB seeks to set out a new legal framework for the organisation and operation of the entire oil industry in Nigeria as well as update the existing laws to reflect the changing dynamics of the oil and gas industry worldwide. The bill has been under review since 2002 when it was first drafted. Since then, the passage of the bill has been delayed with several versions in circulation. To fast track passage, the petroleum minister set up a special task force in August 2012 to review the various versions submitted and produce a new bill for presentation to the National Assembly.

In the last draft version circulated in July 2012, the PIB sought to improve administrative efficiency by creating two distinct entities for the two different subsectors – the upstream and downstream oil sectors. When passed, the law will replace the current Petroleum Profit Tax regime with Nigerian Hydrocarbon Tax and Companies' Income Tax.

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 about 40% of Government's revenue.

Oil was first discovered in Nigeria in commercial quantities by Shell-BP 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 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.

According to the June 2012 BP Statistical Energy Survey, Nigeria had proven oil reserves of 37.2 billion barrels at the end of 2011, equivalent to 41.5 years of current production and 2.3 % of the world's reserves. In addition, proven natural gas reserves stands at 5.1 trillion cubic metres, 2.5% of the world.

Fiscal regime

The main regulatory framework for the taxation of petroleum operations in Nigeria is the Petroleum Profit Tax Act, 1990 (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.

Regulators

The key regulators in the oil and gas industry include:

Nigeria National Petroleum Corporation (NNPC): manages and supervises government's interest in the industry.

Department of Petroleum Resources (DPR): regulates and supervises oil and gas operations carried out under the various licenses and leases.

Federal Inland Revenue Service (FIRS): administers the PPTA and other taxation issues relating to the industry.

Nigeria

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 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.

Forms of petroleum leases

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.

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.

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 federal government of Nigeria 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	Rates (%)
Onshore production	20%
Offshore production up to 100 meters water depth	18½%
Offshore production beyond100 meters water depth	16⅓%

Production Sharing Contracts

For PSCs operating under the Deep Offshore and Inland Basin Production Sharing Contracts Decree No 9 of 1999 (as amended), the applicable rates are:

Area	Rates (%)
In areas from 201 to 500 metres water depth	12%
In areas from 501 to 800 metres water depth	8%
In areas from 801 to 1,000 metres water depth	4%
In areas in excess of 1,000 metres water depth	0%
Inland Basin	10%

Taxation regime

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 Qualifying Capital Expenditure (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 including 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 amortised all pre-production capitalised expenditure
- 50% for petroleum operations under PSC with the NNPC

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.

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 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 installment 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). Revision are made if there is any significant change in the parameters used in the estimate i.e. production, cost and price
- Actual tax returns 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 twenty-one 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.

Nigerian Content in the Oil and Gas Industry

The Nigerian Oil and Gas Industry Content Development Act (the "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 utilisation 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.
- short-listing companies during pre-qualification 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 for a fine of 5% of the contract value and may result in outright cancellation of the contract.

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.

- education tax is treated as a tax deductible expense for oil exploration and production companies.

Gas exploitation in the upstream sector

- All investments necessary to separate oil from gas from the reserves into usable products are considered part of the oil field development;
- Capital investment facilities to deliver associated gas in usable form at utilisation or designated custody transfer points will be treated for tax purposes as part of the capital investment for oil development;
- Capital allowances, operating expenses and basis for assessment will be subjected to the provisions of the PPT act and the revised memorandum of understanding (MoU).

The above incentives are however subject to certain conditions specified in the PPTA.

Gas utilisation 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.

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 12-month 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;

First N300,000	7%
Next N300,000	11%
Next N500,000	15%
Next N500,000	19%
Next N1,600,000	21%
Above 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 N500,000.

Withholding tax (WHT)

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:

Nature of Transactions	**WHT Rates**	
	Companies %	**Individuals/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
Construction/Building Contract and all other types of Contracts, including Contracts for Service	5	5

Nature of Transactions	WHT Rates	
	Companies %	Individuals/Partnership %
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.

Penalty

- 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.

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 long-term and short-term 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 and thin capitalisation

The Nigerian 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 Organisation 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 form regarding intercompany transactions with tax returns and documentation to be in place prior to returns filed;
- Penalties for non-compliance; 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.

Currently, Nigeria does not have thin capitalisation rules.

Cabotage levy

The Coastal and Inland Shipping Act (Cabotage) 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. Although the PIB does not state the penalty for gas flaring, it is expected that the penalty will be increased. There are no clear and specific timelines when the flaring of gas will be prohibited.

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 utilisation 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.

Social security contributions

Pension contribution

Under the Pensions Reform Act 2004, employers that have 5 or more employees are required to participate in a contributory pension scheme in favour of their employees. Employers with less than 5 employees may voluntarily elect to participate.

The rate of contribution is 15% of monthly emoluments (with a minimum contribution of 7.5% by the employer and up to 7.5% by the employee). The employer and /or employee may make additional voluntary contributions. All contributions under the Act by the employee and the employer, whether mandatory or voluntary, are tax deductible.

The Pension Reforms Act also requires every employer to take out life insurance cover for its employees.

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.

Others

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 neighbourhood improvement rent into one single tax. Edo State's Land Use Charge law is also a combination of various land taxes. A bill for tax on real property in the Federal Capital Territory (FCT) is being considered.

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 authorised share capital at incorporation of a company or on registration of new shares.

Republic of Congo

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Country profile

Significant new development

The existing hydrocarbon code is currently being reviewed with the objective to have a new code passed in 2013 for the next round of block awards.

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 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 recognised.

The petroleum industry accounts for an estimated 80% of the State budget.

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 Pointe-Noire and they discovered the vast Emeraude deposit.

Société Nationale des Pétroles du Congo, SNPC, is the Congolese state owned oil company.

The main producers are Total, ENI, Perenco and Murphy.

During 2011, daily production averaged 295,000 barrels.

Reservoir estimates
According to the 2011 BP statistical energy survey, the Republic of Congo had proved oil reserves of 1.9 billion barrels at the end of 2011.

Fiscal regime

Institutional oversight and regulatory framework
Until mid 1990s, oil companies were operating under a concessionary system where corporate income tax was due on the net profits realized.

In 1994, Congo introduced a new hydrocarbon code with Profit Sharing Contracts (PSCs) as the standard tool to govern relationships between the State and the oil companies.

The applicable tax regime is a combination of the provisions in the hydrocarbon code and in the PSC, as well as all existing tax legislation.

The quantities of oil allocated to the oil companies are net of taxes and the corporate income tax burden is deemed to be included in the oil allocated to the State.

Except for royalties, the other taxes an oil company is subject to are not very significant.

The 2012 Finance Act introduced a pollution tax in the Congolese tax system. This tax is calculated at a rate of 0.2% on turnover.

Forms of contracts
Since 1994, oil and gas activities have been governed by profit sharing contracts which are ratified by law and thus have the force of a law.

Under production sharing contracts, the oil companies finance exploration at their own risk. If exploration is successful, oil production is allocated in kind (in barrels) to royalty, cost oil and profit oil under the terms and conditions of said production sharing contract.

Exploration permits are granted by decree for an initial period of four (4) years and can be renewed twice for three (3) years (i.e. total maximum duration of ten (10) years), with a reduction of surface for each renewal.

Exploitation permits are granted by decree for an initial maximum period of twenty (20) years and can be renewed once for a maximum duration of five (5) years.

State participation
There is no participation of the State in the PSC; The State’s interests are channeled through the SNPC, the National Oil Company.

In practice, the SNPC's interest in the blocks does not exceed 20%.

Local content regulations
Since the mid 1990s, the Congolese authorities have pushed to promote local content.

Under Decree no. 2000-160 of 7 August 2000, there is a requirement of having a minimum of 30% local shareholding in companies involved in contractual relationships with Congolese oil and gas companies.

Financing consideration (thin capitalization issue)
Thin capitalization rules apply to shareholders who have 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 (4%) plus two points.

Interest expense above the two thresholds are not deductible for corporate income tax purposes and are treated as dividends.

Comment:
Under profit sharing contracts, the taxable profit is grossed up as per provisions of the said contracts, the thin capitalization rules have no impact in practice.

Taxation regime

Basis of taxation
Oil and gas companies are subject to a limited number of taxes and thus exempted from, as follows:

- Corporate income tax, it is worth noting that this tax is included in the profit from oil production allocated to the State;
- Royalties;
- State's share of profit from oil production;
- Business taxes;
- Surface fees;
- Taxes relating to real estate properties;
- Registration fees; and
- Taxes paid in consideration of services rendered.

Direct taxes
Under existing PSCs, the quantities of oil allocated to the oil companies' partners on a block are net of corporate taxes.

As a result and as per provisions of the PSC, there is no real basis of taxation; the reason being that the basis for determining the corporate income tax included in the profit allocated to the State is theoretical.

In other words, it means that the corporate income tax burden has been factored in the allocation of the profit from oil production between the State and the oil companies.

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 in effect 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.

Royalty

The State is entitled to a royalty which is payable at a rate of 15% in cash or in kind prior to the allocation of any cost oil and profit oil.

The applicable rate is 15%.

Royalties can be paid in kind or in cash.

Withholding taxes

A 20% withholding tax is due on certain payments made by Congolese companies to non-residents as consideration for intellectual property, non commercial activities, interest and services rendered or used in Congo.

Dividends are subject to a 20% withholding tax.

The applicable withholding tax rate may be reduced by a tax treaty.

In addition, employers are required to withhold individual income tax on the salaries paid to their employees.

Capital gain tax

Capital gains are taxable as revenue.

Specific rules apply to capital gain realized upon termination of activity/business.

Indirect taxes

Value added tax

Oil and gas companies are exempted from VAT on all their oil and gas related transactions.

Custom duties

Oil and gas companies are under a specific regime with regard to their imports and exports.

Imports are classified under 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.

Registration fees and stamp duties

Unless otherwise stated in a specific charter or 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.

Stamp duties are not significant.

Incentives
The applicable taxation regime includes some incentives, mainly through exemptions, which are provided for in the PSC and described herein.

Compliance requirements
Although no corporate income tax is due/payable, oil companies are nevertheless required to file annual tax returns (Document Statistique et Fiscal) before 30 April of each year.

Monthly returns must be filed for salaries and other withholding taxes. An arbitrary tax is imposed on taxpayers who fail to file their taxes.

Audit and other reporting requirement
Congolese authorities are entitled to audit oil companies.

Such audits are conducted:

- By the Petroleum Department if the audit relates to petroleum costs charged,
- By the Tax Administration if tax related.

Profit repatriation issues
Profit repatriation is guaranteed in the PSC.

Transfer pricing regulations
Transfer pricing legislation was introduced in 2012 by the Finance Act.

Transfer pricing policy must be documented for all companies with a turnover in excess of XAF 100 million.

Other tax issues

Personal income tax
As 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%.

The employer is also subject to a single tax of 7.5% of the gross remuneration of its employees.

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 per year	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 per year	8% borne equally by the employer and the employee 4%.

Sao Tome And Principe

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Country profile

Significant new developments

The petroleum industry is new in Sao Tome and Principe and is regulated by the following Acts:

- Law n°15/2009 (Petroleum Taxation Law);
  Law n°16/2009 (Fundamental Law on the Petroleum Operations);
- Law n°8/2004 (The Oil Revenue Law); and
- Standard Production Sharing Contract (PSC).

Brief history of oil and gas development

Sao Tome and Principe is an archipelago made up of two main islands and some islets located in the heart of the Gulf of Guinea in West Africa. The time zone is the same as the Greenwich meantime and the country has a surface area of 1,001 km2.

Sao Tome and Principe is located 300 km from main land Africa and shares maritime borders with Equatorial Guinea, the Federal Republic of Nigeria and the Republic of Gabon.

The official language of Sao Tome and Principe is Portuguese.

Although the petroleum industry is in its early stages, it is believed that Sao Tome and Principe has the potential to become one of Africa's largest oil producers as the country lies in a region where major oil discoveries have been made over the last two decades.

From the year 2010 to date, the Government has granted five oil blocks to different companies. These blocks are currently under exploration.

Sao Tome And Principe

Fiscal regime

The main regulatory framework for taxation in the petroleum industry is Petroleum Taxation Law.

Petroleum Taxation Law applies to all profit realised from the oil and gas operations in the territory of Sao Tome and Principe, regardless of the residency of the beneficiary.

A non-resident entity which performs oil and gas operations in Sao Tome and Principe is deemed to have created a permanent establishment.

Regulators and institutional oversight

The key regulators in the oil and gas industry include:

National Petroleum Agency (ANP): A public institution responsible for the management and implementation of the Government's policies in all areas related to hydrocarbons. ANP tracks and regulates all economic activities related to the oil industry.

Management and Investment Committee: The Committee was created to manage the petroleum accounts and also ensure that the income from the investments of the oil revenues is deposited in these accounts.

Petroleum Oversight Commission: An independent body created to oversee all activities related to the hydrocarbon resources and the revenues arising from the petroleum operations.

Forms of contracts

ANP on behalf of the Government may only sign two types of petroleum contracts:

Production Sharing Contract (PSC)

In a PSC, the State of Sao Tome and Principe remains the sole owner of the block. The Contractor shall provide the necessary funds for the petroleum operations and bear the risks.

If the commercial discovery is made, the oil production is shared between the State and a Contractor in accordance with the terms and conditions set out in the PSC.

Risk Service Contract (RSC)

In a RSC, the State of Sao Tome and Principe remains the sole owner of the block. The Contractor shall provide the necessary funds for the petroleum operations and bear the risks.

If a commercial discovery is made, the Contractor is entitled to a share of revenues in accordance with the terms and conditions set out in the RSC.

Subject to the approval from the ANP, two or more companies may enter into a Joint Operating Agreement and sign an oil contract with the Government.

Prospecting Authorisation (PA)

Prospecting: ANP may grant a PA to companies for the purpose of carrying out feasibility studies and for the acquisition and processing of the information which may allow a better assessment of the potential of the petroleum in the concerned area.

A PA allows the companies to perform geological, geophysical and geo-chemical surveys in the concerned area. The authorisation may also include the right to drill the wells.

Pursuant to the provisions of the PSC, the sole fact that a company has been granted with a PA for a specific area does not give this company any preference or right to enter into a petroleum contract with the Government. Moreover, the PSC provides that more than one PA can be granted in respect of the same specific area.

The PA shall be granted for an initial period of three years and can be successively renewed annually up to six years.

The application for a PA should indicate the objectives to be accomplished, the intended work program, the intended area, the technical and financial resources, the provisional budget and all other information deemed relevant for the authorisation purpose.

Petroleum discovery shall be deemed commercial, if the Contractor declares its commerciality based on the exploration and appraisal activities.

Royalty

The State is entitled to royalties on the petroleum produced based on percentages calculated in accordance with the daily production.

The amount corresponding to 2% of the daily production shall be allocated to the State from the first day of production.

Sharing of the petroleum production

Article 10 of the standard PSC provides as follows: profit oil, being the balance of available crude oil after deducting royalty oil and cost oil, shall be allocated to each party based on the pre-tax, nominal rate of return calculated on a quarterly basis for the contract area in accordance with the following sliding scale:

Contractor's rate of return for contracted area (% per annum)	Government share of profit oil	Contractor share of profit oil
<16%	0%	100%
>=16%<19%	10%	90%
>=19%<23%	20%	80%
>=23%<26%	40%	60%
>=26%	50%	50%

Production bonuses

The Contractor shall pay to the State through a deposit into the national petroleum account, production bonuses based on the attainment of cumulative production of petroleum from each development area in accordance with the terms of the PSC.

Sao Tome And Principe

Taxation regime

Taxable income

The taxable income of any entity arising from petroleum operations during a fiscal year is based on the gross receipts of a given fiscal year less the deductible expenses.

The gross receipts shall mean all income received in connection with the oil activity carried out in Sao Tome and Principe regardless of the fiscal domiciliation of the beneficiary.

Corporate income tax = taxable income x corporate income tax rate

Deductible expenses are vast and include:

Expenses regarding the relocation of the employees, living expenses, housing and other customary allowances, general office expenses and other expenses incurred in respect of the petroleum operations.

The corporate income tax rate in the oil sector is 30%.

Compliance requirements

Tax returns and payments

Every company engaged in petroleum activities shall pay monthly instalments of corporate tax for the fiscal year. The tax amounts due are paid as follows:

- the installments of the corporate tax are payable by the 15th day following the end of the month to which they relate.
- the amount of each instalment for the fiscal year shall be one-twelfth of the companies' income tax liability for the previous fiscal year.
- for companies in the first year of activity, the amount of each installment shall be one- twelfth of the amount of the income tax estimated to be due for the whole fiscal year.
- if the monthly average tax liability for the previous fiscal year cannot be determined or, changes occurred in the circumstances of the company, the ANP may determine the amount of monthly instalment.

All companies must submit an estimate of their income tax liability for the first fiscal year to the ANP by the 15th day following the month in which activities commence.

The estimated tax liability submitted to ANP shall remain in force for the whole fiscal year, unless a revised estimate is submitted to the ANP. In such case, the revised estimate shall apply retroactively.

Adjustment of the installments

Any underpayment prior to the submission of the revised estimate shall be paid together with the first installment due after the revision. Any overpaid installment shall be credited for future installments.

In case a complete adjustment cannot be done in the same fiscal year, the overpaid amount shall not be refunded. The overpaid amount will instead be credited for the following fiscal year.

Petroleum Taxation Law allows other arrangements between ANP and oil companies for dealing with tax payments.

Penalties

Oil companies can be subject to penalties if their tax estimates, including any revised estimate, for the first fiscal year is less than ninety percent of their effective tax liability for the year. The under-estimated difference shall be referred to as "tax shortfall".

Unless the ANP is comfortable with the specific circumstances leading to the tax shortfall and therefore waives the penalty, the penalty shall be applied as follows:

a. fifty percent of the tax shortfall, if the under-estimate is due to fraud or willful neglect.
b. ten percent of the tax shortfall in any other case.

Saotomean Content in the oil and gas industry

The concept of Saotomean Content (National Content) is provided by the Petroleum Fundamental Law.

The National Content requirement aims to promote the Saotomean Business Community. The Saotomean State shall adopt measures which guarantee the following:

- the promotion of Saontomeans' investments in the petroleum sector;
- that the local companies have the pre-emption rights on the award of participating interests, contracts for the provisions of goods and services, etc. Pursuant to the petroleum legislations, it shall be considered as local companies, companies in which the majority of the shares are held by Saotomeans;
- the training and employment of Saotomeans at all positions in the oil companies. The Contractors shall only engage expatriates if suitably qualified citizens with the required qualifications cannot be found in Sao Tome and Principe;
- oil companies shall preferentially acquire materials, equipment, machinery, consumable goods and services available in the national market, provided that the prices for these goods and services are not higher than 10% when compared to the goods and services of the same quality available in a foreign market.

In the assessment of the prices for foreign goods and services, the transportation, the insurance, the customs duties and any local tax due, shall be taken into consideration.

Pursuant to the provisions of the Petroleum Fundamental Law, any cost or expenses incurred by companies in breach of the above requirements cannot be recovered and the contract itself shall be deemed null and void.

Incentives in the oil and gas industry

Incentives to oil companies and their Subcontractors

- expenses incurred on employees who are directly engaged in the conduct of petroleum operations whether temporarily or permanently assigned and irrespective of the location are deductible;

- expenses incurred in connection with the construction of building, structures or works of a permanent nature including workshops, warehouses, offices, roads, wharves, furniture and fixtures related to employee housing and recreational facilities are deductible;
- expenses incurred in connection with the design, installation and construction of pipelines, transportation, storage and terminal facilities in respect of the petroleum operations, are deductible;
- dividends paid by companies registered under the laws of Sao Tome and Principe, out of profits, arising from petroleum operations are exempt from income tax.

Oil and gas export processing zone

Currently there is no specific regime which can be identified with the oil and gas industry.

Withholding tax (WHT)

Companies engaged in the petroleum industry are subject to a specific withholding tax regime.

In accordance with the provisions of the Petroleum Taxation Law, the payment for goods or services contracted for carrying out petroleum operations in Sao Tome and Principe is subject to withholding tax at the rate of six percent on the gross amount.

The source of income is deemed to be Sao Tome and Principe if the payment is made by a resident company or made by the permanent establishment of a non-resident company.

The six percent withholding tax is a final tax on the gross amount and cannot be subject to any other income tax in Sao Tome and Principe.

The tax withheld shall be paid into the National Petroleum Account by the 15th of the month following that in which the tax was withheld.

Capital gains tax / Corporate income tax

Capital gains are considered as corporate income and thus, subject to the corporate income tax treatment. The Petroleum Taxation Law provides the following *"Any profit realized by any entity (whether resident or non-resident) on the disposal of shares, convertible bonds or other equity interest of any kind in a company, partnership or legal entity which derives the greater part of its value, directly or indirectly, from petroleum operations in the territory of Sao Tome and Principe is subject to income tax, unless any specific exemption provided by any international agreement applies, and the transferor is jointly liable for any income tax liability of the non-resident, as the result of the disposal"*.

The tax rate is 30% of the gross amount.

Thin capitalisation and transfer pricing

Sao Tome and Principe does not have thin capitalisation rules. Tax legislations do not provide specifically transfer pricing rules. However, the General Corporate Income Tax Legislation provides that the tax authorities or the related tax department (National Petroleum Agency) may proceed with the necessary adjustments to determine the taxable income if there are grounds to believe that due to a special relationship between companies, the prices applicable between them led to a taxable difference from what would have been the case if competitive prices were applied.

Indirect taxes

Excise tax

Excise tax is applicable for few consumable goods ranging from 5% to 20%. The provisions of services are subject to excise tax at the rate of 5%.

Custom duties / import tariffs

The Fundamental Petroleum Law and the standard PSC provide that the Contractor, its Subcontractors or other entities acting on their behalf, are entitled to import and export all goods, materials and equipment destined exclusively and directly for the execution of petroleum operations in Sao Tome and Principe and such goods, materials and equipment shall be exempt from all and any customs duties.

The Contractor shall undertake that these equipment and materials will be exported after a certain period.

For other goods, the customs duties are levied on the buyer on the value of imports, C.I.F and ranges from 5% to 20%.

Social security contributions

A contribution amounting to 10% of the gross salary of an employee should be paid as social security. The employer is responsible for the portion of 6% and the employee is responsible for the portion of 4%.

The employer must withhold the employees' portion and pay it to the tax administration.

Real estate transfer tax

Real estate transfer tax is levied on all transfers of real estate and payable by the purchaser.

The tax base is the value of the transfer or the assessed income from the property shown in the real estate register, whichever is higher. The tax base may also be determined through direct assessment. The rate for rural and urban property is 10% and for barter deeds is 5%.

Sao Tome And Principe

Personal income tax

It is the responsibility of the taxpayers to declare their annual total income to the tax administration. The declarations should be done by the end of February of the following year. Subject to specific requirements, tax payers whose income includes income arising from business activities or liberal profession, may proceed with the declaration by 30 April of the following year. The applicable personal income tax rate ranges from 0% to 25%.

Others

Stamp taxes

Stamp taxes are levied in the form of revenue stamps, stamped forms, stamped bills, revenue stamps, collection advice stamps, customs stamps, check stamps, pharmaceutical stamps, and miscellaneous stamps.

The stamp tax is levied upon assessment and payment, it is due on acts and contracts subject to it, and when products subject to it are exhibited or sold.

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Country profile

Significant new developments

In the past few years there has been a trend of increasing investment into South Africa's offshore blocks, with more than USD 1billion spent on oil and gas exploration.

In addition, it is estimated that South Africa could have the 5th largest shale gas reserves in the world with 485 tcf. There are still many hurdles to overcome for this to be realised. The first step was taken in September 2012, when the South African government lifted its 18-month moratorium on shale gas development. Hydraulic fracturing, or fracking, would however be prohibited until mining regulations have been adapted. Exploration and pilot studies from the largest owner of acreage are likely to get under way soon, with possible commercial development starting as early as the next seven to nine years.

There is also currently interest in coal bed methane exploration as companies look at monetising these gas opportunities from reserves that are estimated between 10 -30 tcf.

Certain changes are also proposed to the Mineral and Resource Development Act of 2004, which may have an impact on the oil and gas industry. Changes proposed include a free carried interest to be granted to the State in new exploration and production rights. This has however not been finalised.

Brief history on oil and gas development

South Africa comprises 9 provinces and its currency is the South African Rand (ZAR). Currently, South Africa is largely an unexplored region in which there have been only modest discoveries (mainly gas) to date. However, refer to the recent developments mentioned above.

South Africa

South Africa currently has four upstream regions of interest:

- *South Coast:* This is the only oil and gas producing area in South Africa.
- *Orange River Basin:* Situated off the northwest coast of South Africa, 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 where a number of significant discoveries have recently been made further north.
- *Onshore:* Significant recent interest in onshore unconventional gas resources as indicated above.

According to the 2013 first quarter Business Monitor International, South Africa had proven oil reserves of 14.9 million barrels at the end of 2012. In addition, proven natural gas reserves stood at 0.54 trillion cubic feet.

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' are defined as either holding any oil and gas right, or engaging 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.

Regulators

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 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).

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 non-exclusive basis;
- Technical cooperation permits (TCP) – 12 months exclusive desk-top 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; and
- 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 7% will apply for oil and gas.

Taxation regime – direct tax

Basis of taxation

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 summarised above.

Tax rates

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.

A dividend withholding tax is payable at 15% on dividends declared by a South African company, unless various specific exemptions apply, or unless this is reduced in terms of a double taxation treaty. This withholding tax is limited to 5% for distributions by oil and gas companies out of their oil and gas income, or 0% in certain specific circumstances.

No branch remittance tax applies.

Petroleum / oil taxation

The Tenth Schedule contains various specific provisions relating to oil and gas companies – the main ones are summarised below.

Oil and gas deductions

The following specific dispensations regarding deductibility apply to oil and gas companies :

a. All exploration / production expenditure and losses are deductible from the company's oil and gas income (other than certain expenditure in respect of acquisition of a right).
b. 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):
   a. 100% of capital exploration expenditure in terms of an oil and gas right; and
   b. 50% of capital production expenditure in terms of an oil and gas right.
c. As a general rule, any assessed losses in respect of exploration and production losses are ring-fenced against oil and gas income and income derived from refining gas, with only 10% of the remaining losses 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 production 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 enable a disposing oil and gas company to elect one of the following treatments, subject to various criteria and requirements:

a. Rollover treatment, in terms of which the 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.
b. 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, 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.

Withholding tax
See below.

Capital gains tax
For companies, 66.66% 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.

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: 'fixed capital' ratio of 3:1 was applied for thin capitalization purposes, however new guidance in this regard is awaited following recent amendments to the legislation – it is expected that the safe harbor ratio may be reduced or replaced with another test.

The Tenth Schedule currently provides a safe harbour for oil and gas companies. In terms of this, no adjustment should be made provided the interest-bearing debt in question does not exceed three times the market value of the shares of the South African borrower. Relief is also granted for temporary breaches in certain circumstances.

For years of assessment commencing on or after 1 January 2014, the above oil and gas safe harbour will be removed and replaced with an arm's length test.

Transfer pricing provisions apply as indicated above – updated guidance in support of the 'arm's length' test is awaited.

Indirect tax

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 utilised 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 organisations.

Every taxable person (both residents 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.

Customs duties / import tariffs
Ordinary customs duties are charged on importation of goods into South Africa which range between 0 % and 45% (tobacco and textile Industries) and between 0% and 20% (other industries). 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.

The same rate of ordinary import duty, specific import duty and specific excise duty applicable by tariff in South Africa also applies to goods imported into or produced by the other member states of SACU.

Tax incentives

Regime for oil and gas companies
See above.

Capital / special allowances
Specific capital allowances apply depending on the assets and their usage. Refer above for the deductibility of capital exploration / production 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.

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.

Group relief
South Africa operates on an entity basis for tax purposes, 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 certain specified foreign companies (including those in receipt of 'gross income', which includes 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 the 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 6-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.

Withholding tax (WHT)

The South African legislation sets out various withholding taxes, which may be reduced or exempt in terms of an applicable double taxation agreement.

Royalties
A royalty withholding tax of 12% (15% from 1 March 2014) 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 or for certain scientific, technical, industrial or commercial knowledge or information or related assistance.

Dividends
Refer above.

Interest
A 15% withholding tax will apply to South African sourced interest payable to non-residents on certain debt instruments from 1 March 2014.

Services
It is expected that a withholding tax of 15% will apply on fees paid for services, from 1 March 2014. Details are awaited.

Disposal of immovable property
A withholding tax of 5%, 7.5% or 10% may be levied where a non-resident company sells South African immovable property.

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 remittable from the country, provided the share certificates were properly endorsed as 'non-resident'. Interest on loans is remittable 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.

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 business' in South Africa.

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.

Other tax issues

Personal income tax
Individuals are subject to South African income tax at rates up to 40% on a sliding scale. 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 (PAYE) from remuneration paid to employees in South Africa.

Additional payroll-based taxes may also be payable, including the following:

a. A Skills Development Levy (SDL) is payable by the employer, other than employers with an annual payroll of less than ZAR 500,000. SDL is levied at a rate of 1% of the leviable remuneration, and is payable monthly to the SARS together with PAYE.
b. Employers are required to contribute on behalf of their employees to the Unemployment Insurance Fund (UIF), at 1% of gross remuneration (the monthly remuneration is capped at ZAR 14,872 and thus the maximum UIF contribution payable by the employer per employee is currently ZAR 148.72). Another 1%, subject to the same limitation above, is payable by the employee and withheld by the employer. Both the employer and employee contribution is payable monthly to SARS together with PAYE and SDL.
c. Employers are also liable for making annual contributions to the Compensation for Occupational Injuries and Diseases Act (COIDA). COIDA contributions are a payroll cost that cannot be deducted from the employee's salary with a maximum salary cap of ZAR 292,032 per annum, applying from 1 April 2012. The rates vary depending on the employer's industry.

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:

ZAR 0 to 600,000: 0%

ZAR 600,001 to 1,000,000: 3% on the value above ZAR 600,000

ZAR 1,000,001 to ZAR 1,500,000: ZAR 12,000 plus 5% on the value above ZAR 1,000,000

ZAR 1,500,001 and above: ZAR 37,000 plus 8% on the value above ZAR 1,500,000

Transfer duty is usually not applicable where VAT is due.

Ongoing municipal rates and taxes are usually payable on fixed property, depending on where this is situated.

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.

Other

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.

Tanzania

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Country profile

Significant new developments

In November 2012 the first draft of Tanzania's Natural Gas Policy was released for public comment. Other regulations under development include the following: Gas Utilisation Master Plan; Natural Gas Act; Upstream Act; Petroleum Policy.

With effect from July 2012 any change of more than 50% in the underlying ownership of an entity resident in Tanzania will automatically result in a deemed realisation at the Tanzanian level, and therefore income tax on any gain deemed to arise.

Brief history on oil and gas development

East Africa is a fast emerging destination for investment in oil and gas exploration, and could soon come to rival West Africa as a world class producer of oil and gas.

Since 2000, hydrocarbon exploration activities in Tanzania have intensified with the number of active production sharing agreements (PSAs) increasing from 3 to 26 by the end of 2012. This interest has accelerated in the period 2010 to 2012 following discoveries of commercial quantities of gas in the deep water offshore.

Tanzania is already producing gas for domestic use from Songo Songo and Mnazi Bay gas fields – in operation since 2004 and 2006 respectively.

Reservoir estimates
As at June 2012 Tanzania's estimate of recoverable natural gas reserves (from both onshore and offshore basins) was 33 trillion cubic feet (tcf).

Regulatory regime

Institutional oversight and regulatory framework
Petroleum exploration and development is governed by the Petroleum (Exploration and Production) Act 1980. Under this Act the Government can grant a company exclusive rights in relation to a particular licence area to explore for and produce petroleum.

There is no separate tax legislation for the oil and gas tax sector in Tanzania. As such, the general legislation applicable to all other companies also applies to oil and gas companies, however such legislation does incorporate certain provisions that are specifically relevant to the sector.

Forms of contracts
An entity seeking to engage in oil and gas activities in Tanzania is required to enter into a PSA. The parties to a PSA are the Government of the United Republic of Tanzania, Tanzania Petroleum Development Corporation (TPDC'), which is the state oil and gas corporation and which is granted the licences, and the company (Contractor). A PSA can cover more than one licence.

Forms of Petroleum Leases
The Petroleum (Exploration and Development) Act 1980 provides for the following two types of licences:

- Exploration licence – Grants the licencee exclusive rights to explore in a specified exploration area for petroleum, and to carry on such operations and execute such works as are necessary for that purpose. The licence is granted for a period of four years and upon approval can be extended for additional periods of four years and three years for the first and second extensions respectively. Upon renewal, there will be a requirement to relinquish part of the licence area – normally 50% of the retained contract area.
- Development licence – Grants the licencee exclusive rights to: carry on exploration and development operations in the development area; sell or otherwise dispose, of the petroleum recovered; and carry on operations and execute such works in the development area as are necessary for the purpose of the license. The license is granted for twenty-five years and upon approval can be extended for an additional twenty years.

In addition to a fee that is payable upon the grant of a licence, the licencee is also subject to an annual licence charge of such amount as specified by the Government.

Government participation
The Government's participation in the oil and gas industry is through TPDC, which under the PSA arrangements receives a share of production.

Expenses are recovered against "Cost Oil" or "Cost Gas" (up to 50% of production in a calendar year).

The share of “Profit Oil” or “Profit Gas” depends on tranches of daily total production, with the Contractor share diminishing as the production level increases, as follows:

	“Profit Oil”	“Profit Gas”
Contractor Share	30% - 10%	40% - 15%
TPDC Share	70% - 90%	60% - 85%

Capital investment regulations
Currently, there are no capital investment regulations restricting the oil and gas industry except that the Contractor needs to provide evidence that they have the resources to carry out the petroleum operations.

Local content regulations
The Model PSA sets out terms for local content regulations. Some of these regulations are that the Contractor should:

- Give preference to the purchase of Tanzanian goods, services and materials provided such goods and materials are of an acceptable quality and are available on a timely basis in the quantity required at competitive prices and terms;
- Make maximum use of Tanzanian service companies, where services of comparable standards with those obtained elsewhere are available from such Contractors at competitive prices and on competitive terms;
- Maximize to the satisfaction of the Minister the level of usage of local goods and services, businesses, financing and the employment of Tanzanian nationals;
- Carry out an effective training and employment program for Tanzanian employees in each phase and level of operations, and employ Tanzanian citizens having appropriate qualifications to the maximum extent possible.

The draft Natural Gas Policy includes several policy statements in relation to local content and capacity building.

Taxation regime

Fiscal clauses in the PSA
The model PSA (2008) incorporates three clauses on taxation namely:

- Taxation and Royalty (article 14)
- Additional Profits Tax (article 15)
- Import Duties (article 21)

The taxation and royalty article sets out the taxes to which the Contractor and its shareholders will be subject, including income tax on the Contractor in accordance with the terms of the Income Tax Act 2004, as well as import duties, local Government taxes (not in excess of those generally applicable), stamp duties, land rent and other imposts for services.

Royalties are payable by TPDC by delivery to the Government of 12.5% of petroleum production.

Additional profits tax applies where rates of return exceed certain defined thresholds, with a 25% rate applicable to the first tranche (First Accumulated Net Cash Position) and 35% to the second tranche (Second Accumulated Net Cash Position).

The import duty article provides for relief from taxes on import of goods required for carrying out exploration and development operations under the agreement.

The PSA does not of itself override tax law and therefore in principle any exemption from taxes contemplated in the PSA must also be reflected in the principal tax legislation, or a gazette notice issued under such legislation, so as to be effective.

Income tax

Residence and source

A Tanzanian resident is taxed on worldwide income, irrespective of source. Non-residents are taxed on income with a source in Tanzania.

A company is tax resident if it is incorporated or formed under the laws of Tanzania or if the management and control of its affairs is exercised in Tanzania.

Income tax rate

Income tax is charged at a rate of 30% on income of a resident corporation and of a permanent establishment (PE) of a non-resident corporation.

A PE is subject to tax of 10% on repatriated income calculated based on a specific formula. This mirrors the 10% withholding tax rate normally applicable when a resident corporation pays a dividend.

Certain payments to non-residents are subject to tax at the relevant non-resident withholding tax (WHT) rates (see further details below).

Capital allowances

Capital expenditure in relation to petroleum exploration and production will normally be written off at a rate of 20% straight line. This basis of tax depreciation applies to *"natural resource exploration and production rights and assets in respect of natural resource prospecting, exploration, and development expenditure"*.

Otherwise, expenditures on plant and machinery are generally written off on a reducing balance basis at rates of 37.5%, 25% or 12.5%, depending on the category of the asset. Expenditures on buildings qualify for a depreciation allowance of 5% per year on a straight-line basis. For intangible assets, the write-off is over the useful life of the asset.

Transfer pricing

Transactions between related parties are required to be on an arm's-length basis. If the Commissioner considers that a person has failed to comply with this requirement, the Commissioner may make such adjustments as the Commissioner thinks appropriate.

Thin capitalisation

Relief for interest costs incurred by exempt-controlled resident entities is subject to a thin capitalisation restriction where the debt to equity ratio exceeds 7:3.

Environmental expenditure

Special rules apply in relation to tax deductions for environmental expenditure costs.

Investment disposals / capital gains tax
Income from the disposal of investments is subject to income tax where such investments fall within the source rules. In such a case the income of a company is taxed at the normal corporate rate, namely 30%.

Alternative minimum tax
Alternative minimum tax is payable at 0.3% of turnover by a resident corporation with perpetual unrelieved losses (for the year of income and the preceding two years of income).

Withholding tax
There is no special withholding tax regime for the oil and gas sector and hence the general rates apply.

Where payments are made to non-residents, the rates are as follows:

- 15% on natural resource payment, rent, royalty, service fees
- 10% on dividends (normal rate), interest
- 5% on insurance premium

A number of payments to residents are also subject to withholding tax.

Payroll taxes

Personal income tax
PAYE for resident employees is deducted at the statutory personal income tax rates, with a top marginal rate of 30%. For non-resident employees, a flat rate of 15% applies.

Skills and development levy
An employer (with at least four employees) is required to account for skills and development levy at a rate of 6% of payroll cash costs.

Social security contributions
20% social security contribution is mandatory and normally half of the contribution is borne by employers with the other half deducted from the employee.

Value added tax – mainland Tanzania
VAT is chargeable on all taxable goods and services supplied in, or imported into, mainland Tanzania.

The standard rate of VAT is 18%.

The export of goods and certain services is eligible for zero rating.

Supplies of certain goods and services are exempt from VAT.

For imported goods, VAT is payable at the time of importation together with any customs duties. For imported services, VAT is accounted for by registered businesses through a “reverse charge” mechanism.

Businesses with an annual taxable turnover (including imported taxable services) of more than 40 million Tanzanian Shillings (TZS) must register for VAT. The Commissioner has the discretion to register as intending traders, investors whose projects have not commenced production, but who wish to be VAT-registered in order to reclaim the tax they incur on start-up costs.

Certain goods and services supplied to specified entities are eligible for "special relief" from VAT. The "special relief" provisions enable supplies, which would otherwise be chargeable with VAT, to be made VAT free provided certain administrative requirements are followed. Amongst other things, special relief applies to "capital goods" as well as for "the importation by or supply to a registered licensed exploration, prospecting company of goods which, if imported, would be eligible for relief from duty under customs laws, and services for exclusive use in exploration and prospecting of petroleum or gas".

Registered businesses must submit VAT returns, with any tax due, on a monthly basis.

Businesses entitled to VAT refunds can claim any remaining credit six months after a refund first became due, subject to all intervening returns being rendered. Any claim for a VAT refund must be supported by an auditor's certificate. Businesses in a consistent refund position (e.g. exporters) can apply for approval to lodge their refund claims on a monthly basis.

Value added tax – Zanzibar

A separate but similar VAT Act applies in Zanzibar.

Custom duty

Tanzania is a member of the East African Community (EAC), which became a Customs Union on 1 January 2005.

The customs duty rates generally applicable under the EAC's common external tariff (CET) are as follows: 0% (raw materials, capital goods); 10% (semi-finished goods); 25% (finished final consumer goods).

However, the CET does also provide for customs duty exemption of equipment related to exploration and prospecting activities (subject to following set procedures).

Tanzania is also a member of the Southern African Development Community (SADC). Where goods are subject to a lower rate of duty from another trade bloc such as SADC, the lower duty rate applies until such a time as the trading arrangements between the trading blocs are harmonised.

Excise duty

Excise duty applies on a range of goods and services such as tobacco, alcohol, petroleum products, motor vehicles, carbonated drinks, mobile phones, and satellite television services.

Stamp duty

Examples of instruments giving rise to stamp duty obligations include conveyances, leases, share transfers, and issue and transfer of debentures. Stamp duties are generally at ad valorem rates of up to 1%.

Local taxes
Local government normally charges a 0.3% service levy based on turnover generated in the relevant district.

Local government also levies a property tax based on the value of a premises.

Incentives

Refer to comments above in relation to capital deductions, customs duty exemption and VAT special relief.

Tax exemptions

Customs duty, VAT
Refer to comments above in relation to customs duty exemption and VAT special relief.

Mtwara Oil and Gas Freeport Zone
The Export Processing Zones Authority has declared 110 hectares in Mtwara to be a Freeport Zone so as to facilitate the speedy handling of cargo for gas and oil exploration works. This zone includes 10 hectares at the existing Mtwara port, which are scheduled for immediate development. The Special Economic Zone Act 2006 and the EAC Customs Union (Freeport Operations Regulations) stipulate that companies seeking to be investors in such a zone should be limited to companies that undertake the following services for oil exploration and gas extraction companies: warehousing and storage; labelling, packaging and repacking; sorting, grading, cleaning and mixing; breaking bulk; simple assembly and grouping of packages.

Operating in a Freeport means that all goods entering the Freeport zone are free from import duties and taxes and will be deemed to be outside the customs territory and not subject to the usual customs controls.

Compliance requirements

Extraction profits returns – types of returns, filing and payment due dates etc.
Every six months, the registered holder of a license is required to provide summaries of all geological and geophysical work carried out, drilling activity and results obtained, and a list of maps, or reports and other geological and geophysical data for the period.

In addition, within sixty days of the end of each licence term, the licencee is required to provide a record of the results of all exploration and development operations, estimates of economically recoverable reserves of crude oil and natural gas and summaries of wells drilled.

Audit and other reporting requirement
The Companies Act requires the preparation of audited accounts, and these have to be filed with the Registrar of Companies.

The model PSA requires the Contractor to maintain at its business office in Tanzania accounting records relating to petroleum operations under the PSA and gives TPDC the right to audit the records of a Contractor for compliance with reporting requirements as provided by the PSA terms. The model PSA terms include a requirement that a Contractor shall prepare the following reports with respect to each Calendar Quarter: (i) Production Statement (ii) Value of Production and Pricing Statement (iii) Statement of Receipts and Expenditure under the Agreement (iv) a Cost Recovery Statement, which must be submitted to Government and TPDC within twenty one days of the end of the Quarter. Other required reports include an End-of-Year-Statement (to be submitted to Government and TPDC within sixty days of the end of the calendar year) and a Budget Statement (normally, no less than ninety days before the start of the relevant year).

In December 2012 Tanzania was declared as an Extractive Industries Transparency Initiative (EITI) compliant country – thereby becoming the 18th country to become EITI compliant. EITI compliance means that the country has an effective process for annual disclosure and reconciliation of all revenues from its extractive sector.

Tax filing and payment requirements

There are a number of tax filing and payment requirements including the following:

- *Income Tax:* A statement of estimated tax payable is due for filing by the end of the first quarter, and estimated tax (installment tax) is then paid on a quarterly basis during the accounting year. An annual income tax return (supported by a tax computation and audited accounts) is required to be filed within six months of year end with any remaining unpaid tax due at the same time.
- *Withholding tax including PAYE:* The tax is required to be remitted to the TRA within 7 days after the end of the month in which the tax is withheld. The withholding agent is also required to file a withholding tax return disclosing certain details with the TRA within 30 days after the end of each six-month calendar period.
- *VAT:* Once registered, a person is required to file monthly VAT returns by the end of the following month declaring output tax charged on supplies made and deducting input tax incurred on goods and services acquired for the purpose of the business (subject to documentary and other requirements).

Profit repatriation issues

There are no profit repatriation issues so long as the appropriate taxes are withheld.

Foreign exchange controls

The PSA gives the Contractor the right (i) to freely export any petroleum received by the Contractor as their share of production and (ii) to retain the proceeds of the sale of such petroleum outside Tanzania.

The general rules in relation to foreign exchange control are reasonably liberal. Foreign currency may be changed at authorised banks, foreign exchange bureaux and designated hotels. Any person, whether resident or not may open and maintain a foreign currency account with a bank which is an authorised dealer in the United Republic. Foreign currency remittances do require production of relevant supporting documents and evidence of payment of relevant taxes where applicable.

Uganda

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Country profile

Significant new developments

The legal framework that currently governs the operations of the petroleum industry includes the Petroleum Exploration and Production Act Cap of 1985 and the Petroleum Supply Act of 2003. The Petroleum (Exploration and Development) Act was found to be inadequate for the current oil and gas sector as it does 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.

In February 2012, the Government of Uganda (GoU) tabled two Bills to regulate the operations of the petroleum companies in the upstream, midstream and downstream sectors. These are the Petroleum (Exploration, Development and Production) Bill, 2102 and the Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Bill, 2102.

On 7 December 2012, Parliament passed the Petroleum (Exploration, Development and Production) Act, 2012. The Act is now awaiting Presidential assent.

Under the new Act, 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 licences.

The Act establishes the Petroleum Authority of Uganda, whose major function will be to monitor and regulate petroleum activities in Uganda. The Authority will give directions to licensees on best petroleum industry practices to ensure proper and optimal production of petroleum and encourage best conservation practices in licensed areas. Other functions of the Petroleum Authority of Uganda will include: monitoring and regulation of petroleum activities including reserve estimation and measurement of the oil and gas produced; reviewing and approving proposed exploration operations contained in the licensee's work program, reviewing and approving budgets submitted by the licensee; advising the Minister in the negotiation of Production Sharing Agreements (PSAs); assessing production and cessation of petroleum activities, decommissioning and ascertaining cost oil or gas oil due to licensees and administering petroleum agreements.

The new Act provides for the formation of a National Oil Company (NOC) whose functions will include the following:

- Managing the commercial aspects of petroleum activities and participating interests of the State in the PSAs;
- 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;
- Optimising value for shareholders, administer joint venture, participate in meetings of licensees; and
- Investigating and proposing new upstream, midstream, and downstream ventures both locally and internationally.

The NOC shall be 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 as well as other laws governing state enterprises.

The Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Bill, 2102, is still under discussion. When this Bill is enacted, it will enable Uganda 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.

Brief history of 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 1980s 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 indentified three depocentres 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 1980s up to the early 1990s. This unit was transformed into Petroleum Exploration and Production Department (PEPD) in 1991.

Five PSAs have been signed by the Government with oil companies. One production license has been issued. The Government's development plan for Lake Albert Rift Basin includes a refinery and an international pipeline.

Reservoir estimates

To date, a total of 77 exploration and appraisal wells have been drilled in the country. Out of these, oil and/or gas has been found in 70 wells representing a success rate of over 90. So far 20 oil / gas field discoveries have been made. This discovery relates to exploration in only about 40% of the prospective acreage. With key players like Tullow, Total and CNOOC continuing to invest significantly in the sector, more reserves are expected to be discovered.

Fiscal regime

Institutional oversight and regulatory framework

The Petroleum (Exploration, Development and Production) Act, 2012 together with the Petroleum (Exploration and Production) (Conduct of Exploration) Regulations, 1993 provide the current legal framework for exploration and production of petroleum in Uganda.

Key regulators in the petroleum sector include:

Ministry of Energy and Mineral Development (MEMD) and the *Petroleum Department* (PEPD): the implementation and regulation of petroleum resources is done by the MEMD and the PEPD. Once the Petroleum (Exploration, Development and Production) Act, 2012 is assented, the Petroleum Authority (Authority) will take over the functions performed by the PEPD. Under the new Act, the Minister has powers to grant, transfer, suspend and revoke licences as well as giving relevant consents to the licence holders. The Authority will be responsible for monitoring and regulating exploration, development and production of petroleum.

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 macro economic 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 the 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 Labour; Ministry responsible for Trade and Industry; Ministry responsible for Education.

Forms of Petroleum licences

- A Petroleum Exploration licence confers on the licensee, the exclusive right to explore for petroleum. Under the new Act, a petroleum exploration licence will remain in force for a period not exceeding 2 years after the date of the grant of the licence, subject to renewal for a period not exceeding two years. The licence shall not be renewed more than twice. In the old Act a licence was granted for a period not exceeding 4 years from the date of grant of the license. Holders of petroleum licences may apply for renewal of the petroleum exploration licence, not later than ninety days before the licence is due to expire.

- A Petroleum Production licence is granted to the holder of a petroleum exploration licence, 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 licencee exclusive rights to carry on petroleum activities in the license area. However, a person may apply for the grant of a petroleum production licence 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 licence in respect of that block.

Forms of contracts

The Government of Uganda has five 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. The 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 licencees 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 licencees.

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.

Government participation

According to the Petroleum (Exploration, Development and Production) Act, 2102, the Government may participate in petroleum activities through a specified participating interest of a licence, or contract granted under the Act or in the joint venture established by a joint operating agreement in accordance with the licence and the Act.

The Petroleum (Exploration, Development and Production) Act, 2102, 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 states participation in the subsector; to develop an in-depth expertise in the oil and gas sector; to optimise 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.

Industry sectors – upstream, midstream, downstream

Upstream sector

Upstream sector will be governed by the Petroleum (Exploration, Development and Production) Act. In Uganda, upstream activities are undertaken by companies that are party to a PSA and have an exploration or production licence ('licensee'). Generally, in the upstream sector a significant amount of the activities are sub-contracted to specialized 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

Currently there is no specific legislation to regulate the midstream sector activities. Last year the GoU tabled the Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Bill, 2102. This Bill is expected to be passed before refining activities start.

There is currently no company engaged in the midstream activity in Uganda. 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 $4.6b (comprising $2.05b for the refinery and $2.57b for a processing plant) and $144m 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 oil 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.

The first phase of production is expected to produce at least 20,000 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. Construction of the pipeline is planned before 2015.

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 licence issued by the Uganda Investment Authority. A foreign investor is defined as a company having majority shares held by non Ugandans or a company controlled by non Ugandans.

Local content requirements

According to the National Oil and Gas Policy for Uganda, 2008, national participation through shareholding in licencing, and provision of goods and services in the oil and gas sector is one of the key avenues for achieving the desired value creation in Uganda. Companies in the oil and gas sector are expected to facilitate participation of Ugandans in sectors of the economy which are necessary to support the oil and gas sector. The GoU has defined local content as value created in country through deliberate utilisation of local human and material resources.

The Petroleum (Exploration, Development and Production) Act, 2102 and the National Oil and Gas Policy provide a legal basis for implementation of local content requirements. The Act requires Contractors and Subcontractors to give preference to goods which are produced or available in Uganda and services which are rendered by Ugandan citizens and companies, unless the goods and services are offered on terms which are not equal to or better than imported goods and services with regard to quality and availability at the time and in quantities required. Contractors and Subcontractors are required to notify Ugandan citizens and companies on the quality, health, safety and environment standards required, and notify Ugandans of the upcoming contracts as early as practicable.

The Petroleum (Exploration, Development and Production) Act provides for training of Ugandans by the licensees, their Contractors and Subcontractors in all phases of petroleum activities and submission to the Petroleum Authority of a detailed programme for recruitment and training of Ugandans.

The new Act also provides for technology transfer. According to the Act, oil companies are required to train local people either in Uganda or abroad through scholarships and other financial support for education. The licencees are required to include a clearly defined training programme for the Ugandan employees of the licensee, which may be carried out in or outside Uganda and may include scholarships and other financial support for education. The Licencees are also required to commit to maximisation of knowledge transfer to Ugandans and to establish in Uganda, management and technical capabilities and any necessary facilities for technical work, including the interpretation of data.

The Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Bill contain similar provisions on employment and training of Ugandans as those in the Petroleum (Exploration, Development and Production), Act

Compliance with the local content requirements is a condition precedent to renewal of licenses and permits in the oil and gas sector.

Financing consideration (thin capitalisation issue)

The general thin capitalization rules in Uganda provide for a foreign debt to foreign equity ratio of 2:1. Therefore a tax deduction is disallowed for interest paid by a company on that part of the debt which exceeds the 2 to 1 foreign debt to foreign equity ratio.

However, the provisions for taxation of petroleum operations provide for a maximum debt to equity ratio of 1:1.

This means that despite the debt to equity ratio of 2:1 currently provided in the general tax legislation, exploration and development operations can only get tax relief to a maximum of 1:1 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 1:1 ratio is a challenge as it does not reflect the economical and commercial financing profile of the petroleum industry.

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 landowners 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.

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 share of the profit oil in accordance with the ITA. The rate of tax applicable to the Contractor's share of the profit oil is standard corporation tax of 30%.

Part IXA of the ITA contains special provisions relating to the taxation of petroleum operations and the taxing provisions contained in this part of the ITA together with those contained in the PSAs prevail over other parts of the ITA, in case of any inconsistency.

Tax allowable contract expenditures which are deductible from cost oil consist of the sum of:

a. the petroleum operating expenditures for the year of income
b. the allowable deductions for depreciation of petroleum capital expenditures for the year of income;
c. the amount of any operating loss from previous years of income, determined in accordance with the ITA.

'Petroleum operating expenditures' are defined as the contract expenses which qualify as exploration expenditure and operating expenses while 'Petroleum capital expenditures' are defined as the contract expenses which qualify as development and production expenditures.

Petroleum capital expenditures are depreciated for income tax purposes using a straight line method over the expected life of the petroleum operations as specified in the petroleum agreement, or over a period of six years, whichever is the lesser.

However, capital costs relating to transport facilities installed up to delivery point, are to be depreciated on a "unit of production" basis. The "unit of production" depreciation method is an attempt to match capital costs with the production those costs are associated with. The formula for computing the annual depreciation is;

$$\frac{\text{(Initial capital cost – Accumulated depreciation)}}{\text{The deductible reserves in bopd in the contract area}} \times \text{Barrels of oil produced during the year}$$

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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.

Losses arising from activities in one contract area are only carried forward and offset against future income derived from petroleum operations of 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 in respect of services rendered in Uganda are subject to withholding tax at the rate 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 favourable Double Taxation Agreement.

Dividends paid to resident shareholders are also subject to withholding tax but where a resident shareholder controls at least 25% of the voting power in the petroleum company, 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%. 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.

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. For the initial disposal, 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.

In case of a subsequent disposal of the whole or part of the interest disposed in the initial disposal, the cost base for the purposes of calculating any capital gain or loss on disposal of the interest is the amount of the transferor Contractor's capital gain on the prior disposal of the interest if any, less the sum of

(i) the costs in excess of cost oil up to the date of the disposal that are deductible by the transferee Contractor; and
(ii) the depreciation of capital expenditure incurred up to the date of disposal that is deductible by the transferee Contractor

Also for a subsequent disposal, the amount of the transferor Contractor's capital loss on disposal of the interest, if any, is treated as income of the transferee Contractor on the date of the transfer of the interest.

Value added tax (VAT)
Registration for VAT and items subject to VAT
Based on the current VAT registration rules, following the abolition of the Investment Trader Regime, companies operating in the upstream sector that are not making or about to make taxable supplies cannot register for VAT. This implies that such companies cannot recover any input VAT incurred during the period they are not making taxable supplies.

During the appraisal and development phases, companies may have some output VAT during well testing. In such case, registration for VAT would be possible.

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 Subcontractor'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.

Output VAT on imported services on self charging basis (reverse VAT) on imported services previously recoverable as input VAT is no longer applicable with effect from 1 July 2011. VAT on imported services is therefore a cost of the Licensee.

VAT on equipment, plants and machinery

Plants, machinery, equipment and inputs for direct use in the petroleum exploration, development and production are 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 equipment 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.

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.

Custom duties

Plant, machinery, equipment and inputs for direct use in the petroleum exploration, development and production 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.

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
- 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 for any period should be furnished, whether the Contractor has Government petroleum revenues 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:

- one quarter of the Contractor's estimated income tax for the year; and
- the amounts payable on petroleum revenues other than income tax for the quarter under the petroleum agreement.

Payments must be made in US$, and all payments are to be made to the URA. Late payment of petroleum revenues shall be subject to interest computed on a compounded daily rate.

Offences and penalties

A Contractor who fails to furnish a return or any other document within the time prescribed by the ITA is liable to a fine of not less than USD 50,000 and not exceeding USD 500,000. A Contractor who files false or inaccurate returns commits an offence and is liable on conviction to a fine of not less than USD 50,000 and not exceeding USD 500,000 or its equivalent in Uganda Shillings. In case of fraud, a fine of not less than USD 500,000 or its equivalent in Uganda Shillings. The Commissioner has the powers to appoint a third party to file a return on the Contractor's behalf.

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 favourable 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.

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 a non affiliated 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.

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:

a. he has a permanent home in Uganda;
b. is present in Uganda –
(i) 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;
(ii) 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
c. 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 withholding 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 UGX 2,820,000 (approx USD 1,000)	Nil
Exceeding UGX 2,820,000 (approx USD 1,000) but not exceeding UGX 4,020,000 (approx USD 1,500)	10% of the amount by which chargeable income exceeds UGX 2,820,000.
Exceeding UGX 4,020,000) approximately USD 1,500) but not exceeding UGX 4,920,000 (approx USD 1,800)	UGX 120,000 (approx USD 45) plus 20% of the amount by which chargeable income exceeds UGX 4,020,000.
Exceeding UGX 4,920,000 (approx USD 1,800)	(a) UGX 300,000 (approx (USD 110) plus 30% of the amount by which chargeable income exceeds UGX 4,920,000 and (b) Where chargeable income of an individual exceeds UGX 120,000,000 an additional 10% charged on the amount by which chargeable income exceeds UGX 120 ,000,000 (approx USD 42,600)

Non-resident individuals:

Chargeable income	Rate of tax
Not exceeding UGX 4,020,000 (approx USD 1,500)	10%
Exceeding UGX 4,020,000 (approx USD 1,500) but not exceeding UGX 4,920,000 (approx USD 1,800)	UGX 402,000 (approx USD 145) plus 20% of the amount by which chargeable income exceeds UGX 4,020,000.
Exceeding UGX 4,920,000 (approx USD 1,800)	(a) UGX 582,000 (approx USD 210) plus 30% of the amount by which chargeable income exceeds UGX 4,920,000 and (b) Where chargeable income of an individual exceeds UGX 120,000,000 an additional 10% charged on the amount by which chargeable income exceeds UGX 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
- 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.

Total Tax Contribution

Delivering shareholder value and managing corporate reputation

Businesses are facing greater pressure from a range of stakeholders to be more transparent about their tax positions. At the same time, the growing international reach of business together with further regulation and competition between countries for business investment means that tax is even more complex and high risk.

Having a clear understanding of your total tax contribution can help your business make informed decisions, demonstrate your wider social and economic impact and better monitor and manage tax risk.

Our Total Tax Contribution framework provides a standardised approach to identify and measure a company's overall tax contribution. It's a framework that can be used on a country-by-country, industry and/or global basis.

How can the Total Tax Contribution framework help me?

Our Total Tax Contribution framework can help your company to identify its true tax contribution. We will help you collect data, consider appropriate benchmarks and help you decide how to communicate your total tax contribution to stakeholders.

Using our robust methodology, standardised across industries, we can help you collect this data which can then be used to:

- Highlight the importance of all taxes as well as corporate income tax
- Manage tax costs
- Make strategic decisions
- Benchmark the business
- Communicate the Total Tax Contribution of the company internally with departments responsible for areas such as corporate responsibility and also to brief the Board
- Communicate tax contributions externally in financial statements, corporate responsibility or other reports, PR and marketing campaigns and investor communications
- Facilitate dialogue with your tax authorities

We can also benchmark your company against those in your industry sector so that you can better manage and report your tax position.

For more information, please contact:

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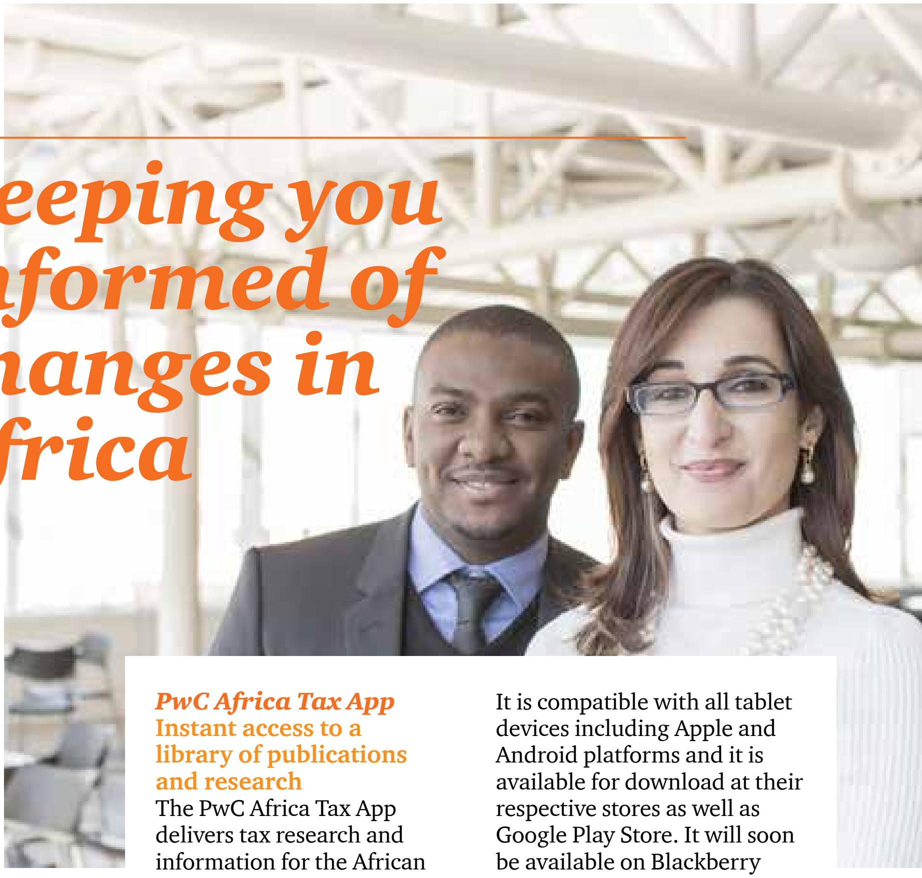

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