



Africa Energy and Utilities

Tax Guide 2022

www.pwc.com

Click to launch

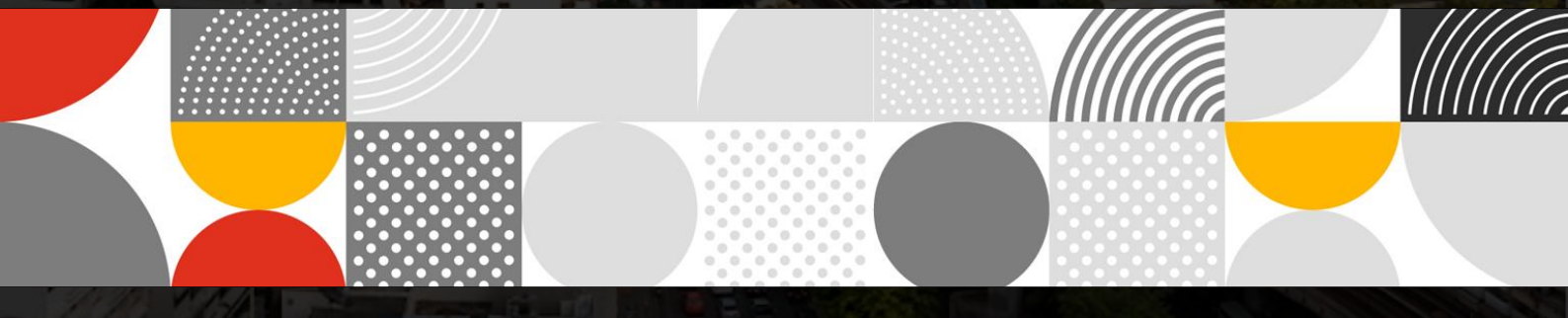




Table of Contents



04		Algeria	191		Madagascar
24		Angola	200		Mauritania
52		Cameroon	209		Morocco
78		Chad	220		Mozambique
93		Côte d' Ivoire	242		Namibia
105		Egypt	268		Nigeria
125		Equatorial Guinea	291		Republic of Congo
136		Gabon	308		Senegal
148		Ghana	319		South Africa
160		Kenya	345		Tanzania
177		Liberia	361		Uganda
184		Libya	379		Zambia



Foreword



Chijioke Uwaegbute

Partner: Africa Energy Tax Leader

Chijioke.uwaegbute@pwc.com

+234 706 401 9039

I welcome you to the Fifth Edition of the Africa Energy, Utility and Resources Tax Guide!

We have put together an extensive array of insights from our experts across the continent detailing tax, regulatory and compliance issues within the Energy, Utilities and Resources (EUR) industry.

We have put together our understanding of the operational environment of the energy, utilities and resources industry by answering pertinent questions. Is Africa's energy industry exposed to energy transition? What policies are African countries relying on to attract investments? How can investing companies remain competitive in the energy sector? These are pertinent questions which we have sought to answer with our piece.

At COP27 held in Egypt, many African countries reiterated their commitment to emissions targets pledged at COP26. Such countries include Botswana, the Democratic Republic of the Congo, Egypt, Ghana, Kenya, Morocco, Nigeria, and South Africa. The resolutions include making various commitments to restrict methane emissions, halt and reverse forest loss, phase out coal, and end international financing for fossil fuels. This is in contrast with the current realities.

Many countries such as Angola and Nigeria have economies that are still energy sales dependent. Tax, from energy sales, is a critical focus for many African countries with large oil and gas deposits. We see sustained focus on green energy investments during the year. This will likely yield in more complex transactions from foreign investors which will test the robustness of our tax laws. Also, as less focus from foreign investors plays on the oil and gas sector, local investments will thrive. We see governments taking proactive steps to integrate local participation in oil and gas to drive participation. Fiscal incentives will follow suit.

At PwC, we observed these key changes in the EUR sector and summarised our observations for key strategic decision makers. Our guide is full of local participants who are experts with keen insight of these developments. Our understanding of the tax and regulatory landscape around our vast jurisdiction aptly positions us as key partners in discussions, compliance and advisory support, and business partnership. We are able to offer in-depth opinions based on experience and data gathered from our regions for your benefit. If you wish to have a deeper conversation around the information and developments presented in this publication, please contact us.



Algeria

Contact

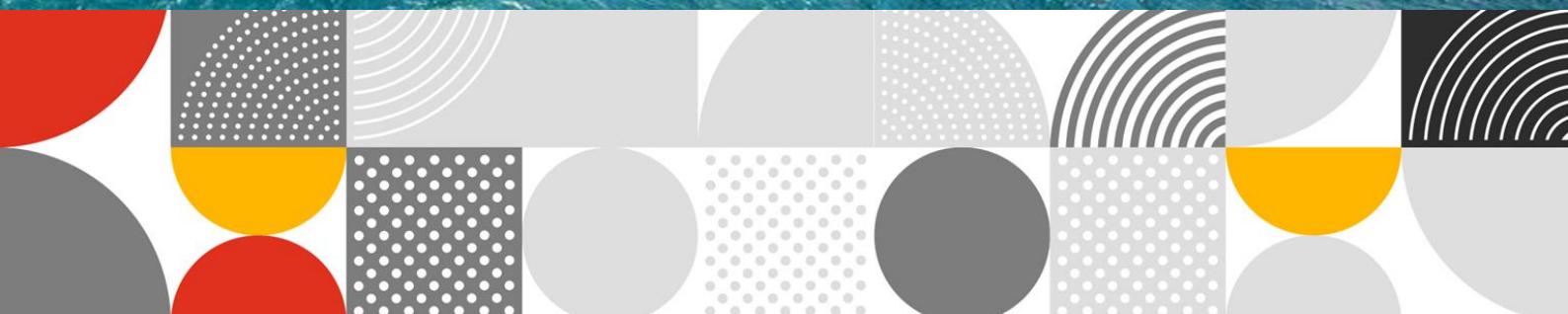


Lazhar Sahbani

lazhar.sahbani@avocats.pwc.com



Oil and Gas Sector



Brief overview of the oil & gas development in Algeria

Algeria's first commercial oil discovery occurred in 1956 with production beginning in 1958. Algeria's proven reserves is currently 12.2bn barrels and crude oil production of 898,7000 bpd. The oil & gas sector is the backbone of the economy, accounting for about 20% of the GDP, and 85% of total exports. Other natural resources of the country include iron ore, phosphates, uranium and lead. The country is considered the leading natural gas producer in Africa. All the proven oil reserves of the country are held onshore, and there has been limited offshore exploration.

The Algerian economy is reliant extensively on petroleum activities through which the Algerian national oil company, Sonatrach plays a key role in developing the hydrocarbon resources of the country.

Algeria's hydrocarbon endowment is dominated by its larger natural gas reserves compared to crude oil. Algeria has been producing, consuming and exporting natural gas for several decades, however, it has reached a point where its gas balance is facing multiple challenges. A declining natural gas production and a rapid growth in domestic gas consumption have combined to constrain the potential of the country's gas export.

According to the latest estimations, approximately two-thirds of Algerian territory remains underexplored or unexplored. This means the country is ripe for investment with a high probability of reward. For this purpose, a new legal framework governing hydrocarbon activity was set up by the Algerian government, namely the hydrocarbon law no.19-13 dated 11 December 2019 with 40 executive decrees whose main purpose is to provide clarifications to the provisions introduced by the said law, in order to rearrange this sensitive sector for the Algerian economy.

The Algerian territory has been divided into zones A, B, C and D with specified tax rates applicable in each registered Zone.

Political Updates

The actual president of Algeria is M. Abdelmadjid Tebboune elected in December 2019 for a 5 years term, and his Prime Minister is M. Aïmene Benabderrahmane, who was appointed on 30 June 2021.

Economic Updates

Algeria has been affected by the decline of oil prices

since 2014, which has triggered a significant negative balance in the national budget. This situation is coupled with a decline in hydrocarbon exports due to a sharp rise in domestic consumption and the lack of investments in the oil & gas industry. Developing new oil & gas reserves will be a critical issue for the Algerian government; due to the financial crisis.

In response to the crisis, Algeria adopted a new economic model, more specifically in terms of budget trajectory. Significant evolution of the Algerian tax legislation is to be expected, notably in the hydrocarbon sector.

Algeria's new hydrocarbon law was approved during a government meeting chaired by the former Prime Minister Noureddine Bedoui on 2 October 2019 with a vote by the National Assembly on 14 November 2019.

The country's GDP for 2020 (latest data available) decreased by 15,19% since 2019. On the external front, the current account deficit is expected to widen to 6% of GDP.

Of the major Economic changes occurring recently, the new developments of the finance act for 2020 which provides for the abrogation of the 51/49 rule except for strategic sectors of the Algerian economy.

The Finance Law for 2022 (FL2022) excludes some activities from the list of strategic sectors. These excluded activities are the exploitation of the hydrocarbon and mining upstream sectors, as well as any other activities governed by the Hydrocarbon and mining Law, within the meaning of the former wording of Article 50 of the Supplementary Finance Law for 2020.

Despite the above, these activities remain subject to the local partnership rule under the conditions provided for by laws applicable to them specifically.

Furthermore, import of goods and services encountered tax rate change in the finance act for 2020 where there has been an increase from 1% to 2% in the rate of the solidarity contribution applicable to imports of goods and another increase of the bank domiciliation tax to 4% instead of 3% for imports of services, and 1% instead of 0.3% for imports of goods intended for resale.

A new list of 2,608 goods subject to the Provisional Additional Safeguard Duty (DAPS) applicable on all imports transactions was released for 2022.. Introduction of a CIT instalment payment at the import of goods intended for trading activities, Article 113 of the FL2022 introduced a CIT instalment payment at the rate of 2% which will apply to the import of goods intended exclusively for resale in the same condition.

The filing and payment obligations of this instalment will be performed according to the following procedures:

- The taxable base shall be the total value of the imported goods, including import duties and taxes and excluding the provisional additional safeguard duty (DAPS);
- The payment of this instalment is made at customs at the time of import under the same rules as those applicable to VAT on imports;
- This instalment is deducted from the final CIT due at the filing of the annual CIT return.

Tax regime

Standard tax regime

Resident companies

The standard tax regime is applicable to all tax resident companies, which are taxed in Algeria on their worldwide income. The standard tax regime includes the following taxes:

- Corporate Income Tax (CIT) is at the rate of **19%** for production activities, **23%** for construction and public works activities, **26%** for services and other activities, and a **10%** reduced rate for manufacturing companies which, during the financial year in which the profit is made, acquire production equipment related to the activity carried out. This rate is also applicable when the reinvestment results in the acquisition of equity shares and stocks or similar securities of at least 90% in the share capital of other manufacturing, construction, or service companies subject to paying up the total amount of the share acquisition.
- Tax on professional activity (TPA) is at the rate of 1,5% for all activities, except any specific exemption. However, TPA rate is set at the rate of 3% concerning hydrocarbon pipeline transport activity.
- Value-added tax (VAT) is at the rate of 19% or 9% (except any specific exemption).
- Branch tax is set at the rate of 15% calculated on net profit after CIT subject to more favourable rates provided by DTT.

Non-resident companies

In the absence of a double tax treaty (DTT), the basic principle that governs taxation of non-resident entities is that such entities are taxable in Algeria on their Algerian-source income regardless of the location the

work is carried out, provided only that the same are rendered or used in Algeria.

Therefore, an entity will be liable for CIT via the WHT regime in Algeria through the execution of a related contract (services contract) to be performed in Algeria. From an Algerian point of view, such a contract is not an investment and is, by nature, temporary service. Note that it is possible to execute several contracts under the same permanent establishment (PE).

In the presence of a DTT, a foreign company will be taxed according to the standard tax regime in Algeria if it has a PE only.

Regulatory Framework

Key regulators in the oil & gas industry include:

Key regulators in the sector consist of the following bodies:

Ministry of Energy

The main role of the ministry of Energy is to set up the global energy policy of the country and coordinate with other hydrocarbon governmental agencies.

National Agency for Hydrocarbon Resources Valorisation (ALNAFT)

ALNAFT has the role to promote the hydrocarbons industry, managing Algeria hydrocarbons database, evaluating competitive bids, awards exploration and exploitation areas, as well as exploration and exploitation contracts and approving development plans.

Based on the new law, ALNAFT will no longer take part of the hydrocarbon exploration and/or exploitation contracts. As such, ALNAFT will confer SONATRACH and its foreign partners the right to carry out hydrocarbons activities in the frame of the contract execution.

Hydrocarbons Regulatory Authority (ARH)

ARH implements and enforces the regulations pertaining to hydrocarbons exploration and production activities in Algeria, including technical regulations as well as regulations pertaining to transportation tariffs, third party access to transportation infrastructures, health, safety and environmental standards.

Forms of contracts

Exploration and production agreements provided by the 1986 hydrocarbons law (No 86-14), includes joint ventures, partnerships, production sharing, and risk service contracts. Whereas the 2005 hydrocarbons law includes two main instruments:

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

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

Law No 05-07 provides that the contract follows an exploration period of a maximum of 7 years and an exploitation period of a maximum of 25 years (however, if oil is discovered in the first 7 years, the exploitation period will increase proportionately). When the exploitation period is concerned with gas deposits, this period could be extended five (5) more years.

For unconventional liquid gas, the exploration period is 11 years with an exploitation period of 30 – 40 years depending on the resource. The production period may be extended by up to 10 years.

The new Hydrocarbon law provides for four contract forms as follows:

- Concession contract, which concerns Sonatrach exclusively by a unilateral act issued by ALNAFT;
- The Production Sharing contract ;
- The Risk services contract ;
- The participation contracts.

These forms of hydrocarbon agreements are effective as of 2020 and applicable on newly negotiated agreements or amendments of the former hydrocarbon contracts.

Concerning the former contracts signed under law no. 86-14 and law 05-07, they remain available until their expiration date, unless the said contract is amended.

Hydrocarbon contracts concluded under the law no. 05-07, which did not enter the production phase before 24 February 2013 could make an election to use the New Hydrocarbon law (No 19-13) subject to ALNAFT approval.

Local Content Regulation

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

For the automotive industry, the local content requirement is forecasted at the rate of 40%. Experts note that home electronics and domestic electrical appliances have achieved significant integration rates in a few companies, ranging from 20% for mobile phones and tablets to more than 40% for televisions, 65% for mobile phones and tablets. cooking products, including more than 50% for air conditioning products and 75% for refrigeration products. It is required for the operators of electronics and domestic electrical appliances to achieve a minimum integration rate of 20% from the third year of activity.

The new hydrocarbon law 19-13 provides for a local content requirement, which gives preference to the products and services supplied by Algerian national suppliers. The integration rate was not specified in the law.

Taxation regime

Direct Taxation

The applicable tax regime is determined by the date of conclusion of the contract and by the Zone in which the field is located. Thus, the Algerian tax regime applicable to oil & gas upstream industry, is governed either by Law No 86-14 ,by Law No. 05-07 (as amended and supplemented) or Law No 19-13 for new contracts.

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

Royalties

Royalties on gross revenues are paid by Sonatrach for the whole production. The standard royalty rate is 20%, however it can be reduced to 16.25% or 12.5% for Zones A and B respectively. Sonatrach is liable for the monthly payment of the royalty (articles 39, 40, 41 of the law No 86-14, as amended).

Income tax

Under a production-sharing contract (PSC), the payment of income tax is ensured by Sonatrach, and included in the foreign partner's share of hydrocarbon production.

- Income tax applies to the foreign company's share of "profit oil". Profit oil is calculated as the foreign company's gross revenue less royalties, transportation costs, depreciation costs and exploitation costs borne by the company.
- The profit oil is subject to tax at the rate of 38%, which is withheld and paid by Sonatrach on behalf of the foreign partner. Oil companies are not authorised to consolidate all their activities in Algeria to determine their corporate income tax liabilities.
- Tax on corporate earnings: This tax only concerns the share of profit oil belonging to Sonatrach. The share amounts to profit oil minus the foreign partner's share and the corresponding income tax. The maximum tax is 85%. Reduced rates of 75% for Zone A and 65% for Zone B apply.
- The Windfall Tax (Tax on exceptional profits (TPE)): TPE applies to exceptional profits on contracts under Law 86-14. When the monthly fixed average of FOB Brent oil exceeds USD 30, a tax rate of 5% to 50% is applied to the foreign partner's production. According to article 10 of the Executive Decree° 06-440, Sonatrach will be liable for the monthly withholding and the remittance of this tax to the tax authorities, based on the share of production of the Contractor.



Local Income Taxes

There are no local or provincial taxes on income in Algeria. The TPA is being distributed for each district/location where there is a principal or secondary establishment.

Hydrocarbon Tax Regime

Taxation of oil & gas activities are governed by the hydrocarbons code and its implementing rules, the Algerian tax codes and by the specific provisions of the exploration & production contracts concluded by Sonatrach (the national oil & gas Company).

The Law 86-14 implemented the former hydrocarbons code (hereafter referred to as "Law 86-14"), which remains applicable to any contract concluded with Sonatrach before the entry into force of the new hydrocarbons law introduced by the Law N°. 05-07 in 2005 (hereafter referred to as "Law 05-07") as modified and completed by ordinance N°06-10 of 29 July 2006 and by Law N° 13-01 of 20 February 2013. A new hydrocarbon law No.19-13 was published on the 11th of December 2019 in order to rearrange the hydrocarbon sector, especially in terms of boosting investments and attracting new foreign partners.

As a result, the tax system has been restructured by providing more attractive tax rates and by simplifying the computation of taxes.

- Surface Tax;
- Hydrocarbon royalty;
- Tax on Hydrocarbon Income;
- Income tax for Sonatrach;
- Tax on the Remuneration of the Foreign Co-contractor;
- Other taxes such as gas flaring tax, water royalty tax;
- Transfer tax in case of transfer of participating interests in hydrocarbon contracts.

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

Surface tax

The surface tax is an annual tax paid per square kilometre of the licensed area. It is not tax deductible and the tax is dependent upon the territorial Zone (A, B, C and D) the operations are conducted.

Unconventional oil & gas exploration and production surface taxes are calculated in line with Zone A fees. The rates of the surface tax per square kilometre are in Algerian Dinars (DZD) as follows:

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

Royalty

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

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

BOE: Barrel of Oil Equivalent.

Petroleum Income Tax (PIT)

PIT calculation is based on the law applicable to the contract. In this regard, law No. 13-01 enacted on February 20th, 2013 has amended law No. 05-07, by introducing new calculation methods. In both cases, the taxable income is the production value (PV) by each perimeter, where exploitation activities are undertaken, less deductible expenses (e.g. royalties, exploration and development costs, abandonment reserves, training fees related to activities governed by this law, purchase cost of gas for enhanced recovery, Article 86).

Contracts agreed before 20 February 2013

For contracts entered before 20 February 2013 and regulated under Law No. 13-01, PIT is calculated based on accrued production. Where accrued production is under 70×10^9 Algerian Dinars, PIT is levied at 30%. Where it is in between 70 and 385 a marginal percentage is calculated as shown below. Where accrued production is 385 or higher, the second level PIT rate is applied at 70%.

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

Contracts agreed after 20 February 2013

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

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

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

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

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

		Case 1	Case 2	Case 3
PIT rate	$R1 \leq 1$	20%	30%	20%
	$R1 > 1$ and $R2 < 1$	$20\% + 50\% \times R2$	$30\% + 40\% \times R2$	$20\% + 50\% \times R2$
	$R2 \geq 1$	70%	70%	70%

- Case 1 includes all exploitation perimeters except the perimeters included in case 3 where the daily production is less than 50,000 BOE;
- Case 2 includes all exploitation perimeters excluding the perimeters included in case 3 where the daily production is more than 50,000 BOE;
- Case 3 includes small deposits and underexplored perimeters with complex geology and/or which lack infrastructure.

Additional profits tax (APT)

APT is calculated by reference to the annual profits less PIT, royalties, depreciation and abandonment reserves. In accordance with article 88 of law 05-07, APT rate is the same as the Corporate Income tax.

However, when the profits are generated from activities in relation with unconventional oil & gas, small deposits and underexplored areas, the rate is 19% as provided for by article 88 bis of law 13-01.

The said rate is applicable if the coefficient R2 is less than 1. When said coefficient R2 is equal to or higher than one, the applicable Additional profit tax rate is 80%.

Tax on flaring

ALNAFT may grant a flaring authorization for up to 90 days to allow the operator to undertake gas flaring although it is against the law. The tax is levied at AD 8,000 per thousand normal cubic metres (nm³) and is not tax deductible. This amount is annually indexed by :

ALNAFT and notified to the contractor. Concerning remote and isolated areas, specific pricing conditions are fixed by regulation. Foreign companies are exempted from the flaring tax, quantities of gas flared during research period as well as the quantities flared during start-up period of production (commissioning phase).

Key taxes and measures applicable under Law No 19-13:

Surface tax

The calculation of this tax, as mentioned in Article 165 and 166 of this law, is based on the surface of the contractual nature and the indexation rate per square kilometre.

The rate differs depending on the phase of the project perimeters related to exploration, retention, or exploitation, and the duration concluded in each phase. This tax is declared and paid annually during the term of the concession or oil contract from the effective date of the contract.

Contracts subject to the surface tax consist of upstream concession, production sharing contract, risk service contract, and by the contracting parties in the case of a participation contract.

However, this tax is not deductible for the calculation of the hydrocarbon revenue and the income tax.

The amount of the tax in Algerian dinar surface area per square kilometre (km²) is set as follows

Period	Search period		Exceptional extension period / Period of extension / Period of Retention	Exploitation Period
	From 1st to 4th year included	From 5th year to 7th year included		
Unit Amount in DZD/km ²	7.000	14.000	40.000	30.000



Hydrocarbon royalty

The royalty introduced in the new law No. 19-13 in Articles 167 to 176 is applied on the quantities of hydrocarbon extracted payable to the public treasury on a monthly basis. The taxable base of the royalty is set on the value of the quantities of hydrocarbon extracted from the exploitation perimeter computed at the measurement point, excluding those quantities consumed for production purposes, the quantities lost and the quantities reinjected into the hydrocarbon deposit.

The rate applicable to the value of the quantities extracted and defined above is accounted for 10%. Unlike the surface tax, the hydrocarbon royalty is deductible for the calculation of the tax on hydrocarbon revenue and the income tax.

With regard to the hydrocarbon royalty, the Law sets the minimum rate of 10% that will be systematically applied regardless of the size of the hydrocarbon deposit in question.

Tax on hydrocarbon revenue

The calculation of this tax is based on the value of annual production used to calculate royalties subtracted by authorised annual deductions, including, but not limited to, royalty fees, exploration and development instalments, abandonment provisions, training costs, etc.

The rate depends on the project profitability, which is capped between 10% to 50% using a ratio (R). This ratio is equal to the cumulative net income divided by the cumulative expenses:

- If (R) is less than or equal to 1, the applicable rate is 10%.
- If (R) is equal to or greater than 3, the applicable rate is 50%.
- If (R) is greater than 1 and less than 3, the applicable rate is: $20\% * R - 10\%$.

For Upstream Concessions covering a hydrocarbon field in production, the applicable rate is 50% for the year of entry into force, while the annual investment tranches are calculated by applying an annual rate of 25% for a deductible period of four years.

The tax on hydrocarbons revenues is paid in twelve provisional instalments on a monthly basis.

Articles 177 to 187 provides that the tax on petroleum revenues (TRP) has been replaced by the tax on hydrocarbon revenues (IRH where the key difference

between the two is the basis of income calculation. As of the new introductions, the investment instalments are no longer computed progressively).

Contrary to the current formula under law 05-07, does not take into account the time value of money. Furthermore, the applicable rates for this tax had been reduced, and vary between 10% to 50% instead of between 20% to 70% for the previous law.

Income tax

Articles 188 to 192 of the 2020 hydrocarbon law introduced an income tax.

The taxable income of the financial year is calculated including depreciation rates set forth by the local law, and the research expenses borne at the end of the research period stipulated in the hydrocarbon law at a fixed rate of 30% on the taxable base.

The income tax is payable to tax authorities within the same deadline of the annual tax return submission. In terms of the application scope per contract, the income tax is entitled for financial years' incomes performed by the National Company in execution of the upstream concessions, production sharing contracts, risk services contracts, or by the contracting parties in the case of a participation.

Tax on the remuneration of foreign co-contractors

Articles 193 to 197 provide for the introduction of a specific tax.

This tax is the application of the income tax on gross remuneration of foreign co-contractors under a production-sharing contract or a risk services contract at a fixed rate of 30% of the gross remuneration. The tax is paid by the National Company in twelve provisional instalments on a monthly basis for the financial year in the name and on behalf of the foreign co-contractor.

Flat-rate royalty on anticipated production:

Articles 198 to 201 introduced this royalty, that is based on the value of production same as provided in the hydrocarbon royalties (any quantity of hydrocarbon extracted from the exploitation perimeter) at an imposition rate accounted for 50%.

The royalty is declared and paid monthly by the National Company in the case of an upstream concession, a production sharing contract or a risk service contract and by the contracting parties in the

case of a participation contract. The said royalty will be regularised by the National Company or by the Contracting Parties no later than 1 March of the year following the year concerned.

Other tax-related provisions

Tax applicable on the transfer of rights and obligations

Concerning the tax applicable on the transfer of rights and obligations in a hydrocarbon contract, or on the change of control of one of the contracting parties, the applicable rate remains as previously applied accounting for 1% in accordance with Article 205 of the 2020 hydrocarbon law.

Flaring tax

In section 1 of Chapter 30 of the new hydrocarbon law, it is provided for the upholding of the Flaring Tax, this non-deductible tax, is applied at a rate of DZD 12,000 per thousand normal cubic metres (Nm³).

Duration of the hydrocarbon contracts under law 19-13

Articles 56 and 57 of the new law governing hydrocarbon activities provide details on the duration of hydrocarbon contracts. Thus, taking into account the research and exploitation phase, which may not exceed 7 years, the average duration of all hydrocarbon contracts is set at 30 years.

Nevertheless, contracts for the exploitation of deposits already discovered are set at 25 years. In both cases (with or without a research and exploration phase), this period may be extended for another 10 years.

Transitional measures and provisions

Article 230 of the 2020 hydrocarbon law provides that contracts concluded under previous laws, in particular laws 86-14 and 05-07, shall remain in force in accordance with their provisions, and could not be extended or renewed under the former laws.

In addition, a company that is a party to a hydrocarbon contract governed by law 05-07 may request to benefit from a new contract under the new law provided that no production has been carried out prior to February 23, 2013. Hence, in accordance with Article 231 of the 2020 hydrocarbon law, the request must be submitted by the concerned company to ALNAFT for

consideration within a period no later than one year from the date of publication of this new hydrocarbon law.

The provisions of the new hydrocarbons law concerning the abandonment and restoration of sites are immediately applicable to exploration/operating contracts and parallel contracts or any other type of contract signed under the provisions of law 05-07.

Redefining the roles of government agencies

As per the new dedicated Hydrocarbon law for 2020 No 19-13, provides that ALNFAT will exercise its authority exclusively over upstream research and exploitation activities, while the ARH will have a more prominent role with regard to downstream activities. It is also important to note that the new law gives the exclusive right onto the National Agency for the Development of Hydrocarbon Resources (ALNAFT) and the Hydrocarbon Regulatory Authority (ARH) to terminate a contract signed with a foreign or national partner failing to comply with the required clauses and standards, without going through the Minister of Energy.

On the other hand, ALNAFT will no longer be a party to hydrocarbon exploration and/or exploitation contracts. According to the new law, ALNAFT no longer has the same prerogative in hydrocarbon contracts. On the contrary, the 19-13 law gives ARH more prerogative. In addition, ALNAFT will no longer be a party to hydrocarbon exploration and/or exploitation contracts.

As a result, ALNAFT no longer has the same executive power as in the previous hydrocarbon laws. On the contrary, the 19-13 law gives ARH more aim.

Main taxes under the general tax law

Withholding tax

The Hydrocarbons Laws does not apply any withholding taxes on companies carrying out exploration and exploitation activities. However, when oil & gas operators conclude service agreements with foreign companies, the exploration and exploitation companies are liable to withhold the tax and pay the WHT to tax authorities on behalf of the Foreign Service Provider.

Non-resident entities performing service contracts in Algeria are subject to the WHT regime. The 30% WHT (Since Supplementary Finance Law of 2020), which encompasses the CIT, the TPA, and the VAT, is required to be levied on services only. The calculation base is the gross amount of the service(s) invoiced.

Please note that since 2017, contracts that had been taxed to WHT are also subject to the Algerian VAT when its basis of calculation benefited from a reduction in the rate or rebates as provided for by the local tax legislation or the DTTs (i.e. software licence contracts, international lease agreements, etc.).

Services

Foreign companies performing services in Algeria are subject to Withholding tax, levied at the rate of 30% on remuneration of (consulting fees, management fees, services, remuneration, lease equipment, royalties etc.).

The tax is withheld and paid by the local contractor on behalf of the foreign service supplier, who does not hold a permanent establishment in Algeria.

However, the Foreign Service Supplier is required to calculate the amount of the tax on its remuneration on a yearly basis and will prepare the tax return to be submitted to the Algerian tax authority.

Dividends

Subject to double taxation treaties provisions, the withholding tax rate on dividends is 15% to a non-resident company.

Royalties

Subject to double taxation treaties provisions, the general withholding tax on royalties is 30%.

Interest

Cross border loans are prohibited in Algeria. Concerning local operation, the general interest withholding tax rate is 10%.

Nevertheless, withholding tax rates may be reduced where the recipient is a resident of a country that has concluded a double tax treaty with Algeria. Algeria has signed 33 double tax treaties.

Thin capitalization and Transfer Pricing

There are no thin capitalization rules in Algeria.

An arm's-length approach to transfer pricing applies. All entities registered with the tax department responsible for large-sized companies (Direction des Grandes Entreprises), and other foreign companies established in Algeria, must submit their transfer pricing

documentation along with annual tax returns (before April 30th of the following year). There is a penalty of DZD 2 million (equivalent to USD 20,000) if the documentation to support transfer pricing practices is not provided by the deadline date and within 30 days after a first request is made by the Algerian tax administration. Moreover, tax authorities are entitled to apply a 25% penalty on the deemed transferred profits.

Double Tax Treaties (DTT)

Algeria has concluded 33 DTTs. Since 2015, 5 DTTs have entered into force:

- The DTT with Kuwait on 18 January 2016;
- The DTT with Saudi Arabia on 1 March 2016;
- The DTT with Mauritania 04 November 2016;
- The DTT with United Kingdom on 1 January 2017;
- The DTT with the Netherlands on 31 July 2020.

Indirect Tax

Value added Tax

Since January 2017, Value-added tax (VAT) standard rate is set at 19% while the reduced rate has been established at 9%. However, VAT is not applicable for oil & gas activities as provided by the hydrocarbon law (article 89 of Law 05-07).

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

It is important to note that goods and services exempted from VAT are defined by regulation (decree 14-06 of 14 January 2014).

Customs and Excise Duties

Customs rights rates in Algeria are as follows: 0%, 5%, 15% and 30%. This is in addition to a maximum rate of 60% provided for by Article 80 of the Finance Law for 2018. Subject to this, article 105 of the Finance law for 2020 has provided another right called a "solidarity contribution" which is applied on the customs value of all imports at the rate of 2%.

This contribution is applicable for all importation of goods, whether it is under an exempted regime or otherwise.

In this regard, all imported goods (equipment, merchandise, raw materials etc.) are subject to this contribution, except goods imported in the frame of the temporary admission regime.

It is important to note that Article 2 of the Complementary Finance Law for 2018 has provided for an additional temporary safeguard right applicable to importation of goods into Algeria. The rate for this additional right is set between 30% and 200%. However, please note that a new list of 2,608 goods subject to the Provisional Additional Safeguard Duty (DAPS) for 2022 applicable on all imports transactions has been released.

Please note that Algeria has signed a free trade agreement with the European Union and is a country member of the Greater Arab Free Trade Area (GAFTA). Excise rights concerns mainly alcoholic and tobacco products.

Furthermore, upstream oil & gas companies are exempted from customs duties, provided that imported goods are included in a list enclosed to Executive Order n° 14-06 of 15 January 2014. Currently, A new customs code is under development and will focus on the digitalization of the customs procedures.

A new customs code is being adopted and will focus on the digitalization of the customs procedures.

Finance Law 2018 provided an increase in customs duties for products such as sunflower seeds, plastic material structure, cooking ovens and smoking articles. As mentioned above the law also introduced a new solidarity contribution tax at the rate of 2% applicable to the import operations of goods released for consumption in Algeria. This tax will be collected in the same way as customs duties. The contribution is collected for the benefit of the National Pension Fund (La caisse nationale des retraites).

The Finance Law 2021 provides a reduced customs duty rate of 5% on equipment acquired by legally titled start-ups.

FL for 2021 provides also for the extension of the said reduced customs duty rate to young entrepreneurs benefiting from financial assistance and investment incentive arrangements, most precisely: CNAC, ANADE (Agence d'appui et de développement de l'entreprenariat), and ANGEM.

Finance Law 2020 increased the rate of customs duties on computers and components of computer devices to 30%. The CFL 2020, introduced a temporary exemption from custom duties for pharmaceuticals and medical devices and equipment used to address the COVID-19 crisis.

The SFL 2020, introduced a temporary exemption from custom duties for pharmaceuticals and medical devices and equipment used to tackle the COVID-19 pandemic.

Other Taxes

The following taxes are applicable to the contractor, where Law 86-14, and Law No 05-07 and Law 19-13 do not expressly exclude them:

Capital Gains tax

Capital gains realised by resident companies are taxed as any other income under the applicable CIT rate, which may vary depending on the nature of the company's activity. Capital gains realised generated by non-resident companies are subject to a Withholding tax (WHT) levied at 20%. However, such WHT rate could be reduced or neutralised by a Double Tax Treaty.

Payroll related taxes

Personal income tax is withheld at source by the employer according to a progressive scale (up to 35%). The progressive scale is illustrated below:

Not exceeding DZD 240.000	0%
From DZD 240.001 DA to 480.000 DZD	23%
From DZD 480.001 DA to 960.000 DZD	27%
From DZD 960.001 to DZD 1.920.000	30%
From DZD 1.920.001 to DZD 3.840.000	33%
Greater DZD 3.840.000	35%

However, allowances, bonuses and allocations which are not paid on a monthly basis are taxes at a PIT at a flat rate of 10%.

In addition, all remuneration from all other occasional activities of an intellectual nature, which are not paid on a monthly basis, are taxed at a PIT flat rate of 15%, without the application of reduction.

Additionally, training tax and apprenticeship tax are each levied at the rate of 1% of the payroll cost.

Other provisions introduced by the FL for 2021:

- Introduction of the possibility to offset PIT overpayments against future instalments until fully absorbed or otherwise request for their refund;
- Suppression of the 20% reduction for PIT purposes on remunerations paid under a consulting or a training contract;

- Introduction of a new income threshold for the application of the additional PIT payroll relief for people with disabilities. The new threshold ranges between DZD 30,000 and DZD 42,500 (instead of 40,000 DZD) applicable to workers with motor, mental, vision impairment or deaf-mute disabilities, as well as retired workers under the general regime;
- Introduction of a permanent PIT exemption for export operations carried out by natural persons generating foreign currency. The foreign currency revenues have to be generated from goods and services export transactions in order to be eligible for the exemption;
- Introduction of an exemption of allowances related to special residence and isolation conditions. The new exemption is granted to taxpayers within a 70% limit of the basic salary. However, no specific definition of "special residence and isolation conditions" is provided by LF 2021.

New tax regime for non-commercial profits introduced by the FL 2022

The FL 2022 introduced a new tax regime applicable to non-commercial profits (NCPs) made by individuals taking into account the particular nature of this category of income. Since the introduction of the Finance Law for 2015, NCPs have been subject to the same tax regime as that of industrial and commercial profits. These two categories of income have been grouped under the heading of professional incomes.

FL 2022 provides for (i) the split of the BIC and BNC tax regimes by considering these two incomes as separate categorial incomes for PIT purposes and

(ii) introduces the simplified regime for non-commercial professions. The aim is to consider the different particularities of these activities and to simplify the tax reporting and payment obligations incumbent on these taxpayers.

Training and apprenticeship taxes

In addition, training tax and apprenticeship taxes are calculated at the rate of 1% on the annual payroll for each tax. Where the company provides a training effort certificate (from labour public authorities), the latter could reduce the tax rate according to the employer's effort dedicated for training and apprenticeship.

Both taxes are now due annually. They must be filed and paid by employers for a considered financial year before 20 February following the taxable period year end.

Social security contributions

Social security contributions of 35% of the annual payroll are split into 26% and 9% between the employer and the employee respectively. However, the 2005 Hydrocarbon Law provides an exemption for social security contributions on the salaries of the employees of foreign oil companies when their social security is covered by their home country.

Land taxes, Stamp duties etc.

It is important to note that land taxes, registration fees and stamp duties apply at various rates.

Taxation of Oil Field Services (OFS) companies

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

- Tax on Professional Activity (TPA – 1,5%) calculated on the collected turnover;
- Corporate income tax (CIT – 26% for services) since the Complementary Finance Law for 2015. However, some oil services activities are subject to CIT at the rate of 23%, since their activities are assimilated to construction works i.e. oil & gas drilling.
- Income tax / Tax on wages (Personal income tax, and social security contributions);
- Value added tax (VAT – 19% since January 2017).

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

Furthermore, OFS and E&P companies are also required to submit an annual tax return (G04 form) along with a Transfer Pricing documentation justifying the arm's length character of their inter-company transactions (if any) before April 30th.

Deemed Profit Taxation

The FL 2022 provides changes regarding the single deemed profit tax (Impôt forfaitaire Unique "IFU"),

These changes include:

- Decreasing the eligibility threshold of the SFT regime from mDZD 15 to mDZD 8;
- The exclusion of "civil companies of a professional nature" from the SFT regime;
- And lastly, the exclusion of non-commercial professions from this tax regime, following the introduction of a new simplified tax regime for this category of taxpayers.

IFU rates are established as follows:

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

Hence IFU does not apply to OFS and does not concern E&P companies.

Incentives in the oil & gas industry

Considering the research and exploitation phase, the duration of the hydrocarbon agreements has been set at between 25 and 30 years with the possibility of extension for an additional 10 years. The latter aims to give a better visibility to foreign investors and maximise the recovery of the hydrocarbon deposits' potential.

The research period will be defined in the contract with the national oil company Sonatrach, to consider the nature and complexity of the perimeters.

In this respect, a preferential tax rate is granted to encourage exploring complex oil & gas deposits such as the reduced rate of royalty of 5% instead of 10% in the general case (Article 204 of the law 19-13).

Upstream incentives

Sonatrach and its foreign contractors are exempt, with respect to their prospecting, research and exploitation activities, from:

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

- VAT on services, including surveys and leasing, rendered by the Contractor or for its account;
- Customs duties but limited to the imported equipment used for oil activity purposes.
- Bank domiciliation tax on imports of services dedicated for upstream activities;

Downstream incentives

The Hydrocarbons Law provides other exemptions to downstream activities such as transport by pipeline of hydrocarbons, refining and processing:

- Value Added Tax (VAT) on capital goods, materials, products and services related to the above-mentioned activities;
- Customs duties, taxes and fees on imports of capital goods, materials and products related to the said activities.

The foreign employees of petroleum companies are not subject to social security contributions in Algeria if they remain subject to social security protection in their home country.

Also, different depreciation rates of investments in exploration and development are subject to an uplift mechanism that increases them, depending on the nature of the work(s) and the zone in which the works are performed. Depreciation rate is 25% but can be adjusted by an uplift to be approved by the Ministry of finance and the Ministry of Energy.

Finally, the new hydrocarbon law provides for a simplification of the tax system in terms of computation of taxes and duties in addition to simplifying of all administrative and operational procedures for carrying out oil activities and reduction of costs and delays that could hinder the proper functioning of these activities.

Compliance Requirements

Annual corporate income tax (ICR) return

Foreign oil companies, in the frame of the law 05-07, must be present in Algeria in the form of a branch, the latter is managed under the general tax regime. Conversely, law 19-13 gives the freedom for operators in the oil & gas sector to select their appropriate structure.

Although oil companies are exempted from Additional profit tax (APT) during the exploration phase, they remain subject to file an APT return calculated at the rate of CIT, (G4 form) annually before April 30 of each year.

Concerning the OFS companies, they remain liable to

file the CIT return before the 30th of April of each fiscal year. CIT is calculated in accordance with the following rates (article 2 of complementary finance act for 2015):

19% for manufacturing activities;

23% for building activities, public works, and hydraulics, as well as tourist and thermal activities, excluding travel agencies;

26% for all other activities not mentioned above;

Article 44 of FL 2022 introduces a reduced CIT rate of 10% applicable to manufacturing companies that proceed, during the year of realisation of the profit, with an acquisition of production equipment relating to the business activity.

This rate is also applicable when the reinvestment results in the acquisition of equity shares and stocks or similar securities of at least 90% in the share capital of another manufacturing, construction, or service company subject to paying up the total amount of the share acquisition.

The entitlement to the application of this reduced rate is subject to the fulfilment of requirements presented in the above-mentioned article.

CIT is to be paid following an instalment payment regime, in this regard, if the company is a local company registered under the Algerian law, there are three instalments to pay in the G50 (article 356 of the direct tax code):

- First instalment, to be paid before the 20th of March;
- Second instalment, to be paid before the 20th of June;
- The third instalment, to be paid before the 20th of October.

Each instalment is calculated at the rate of 30 % of the CIT relating to the last closing period.

About foreign companies (permanent establishments), instalments are calculated at the rate of 0.5% on each collected turnover, as set forth by article 356 bis of the direct tax code.

In addition to CIT instalments, a CIT liquidation balance (payable CIT), is to be paid before the 20th of May, after filing the annual tax return (article 13 of finance act for 2018).

Where the OFS fails to file its annual tax returns before April 30 of the relevant year, the OFS will be required to pay a penalty of 25% on the tax liability. However, if there is no tax to declare ("NIL" mention). Failure to submit the above-mentioned listed documents by the due date, will incur a lump sum penalty of DZD 10,000.

per document.

Monthly G50 forms

In Algeria, withholding tax on wages paid to employees, or on remunerations paid to non-resident services suppliers, are withheld at source by the employer or by the beneficiary of the services, while paying the remunerations, and the amount withheld must be declared on a monthly basis under the G 50 tax return.

This form must be filed within the 20 days following the end of the month of the remuneration payment.

Lack of filing

The penalty for failure to withhold/insufficient taxes is 25% of the tax due.

After the administration has given the taxpayer formal notice to regularise his situation within one month after the end of this period, it is proceeded to:

- Automatic taxation;
- Penalty equal to 25% of the fees due;
- Issuance of a tax roll immediately due (art. 361 of the CIDTA).

Late filing

Filing marked "nil" → Application of a fiscal fine of DZD 500 (art 360 of the CIDTA).

Late filing of the monthly return gives rise to the application of a penalty equal to 10% of the levied duties.

This penalty is increased to 25% after the administration has given formal notice to the taxpayer to regularise his situation within one month (art 360 of the CIDTA). If not, a penalty of 3% for each month of delay mounted up to 25% is applied.

Failure to pay the related tax within the allotted time frame is subject to a 10% tax penalty for the first month, plus 3% for each month of delay up to 25%.

Annual declaration of wages and salaries (G29)

Oil companies are required to file an annual declaration of salaries under a G29 form. The form requires details of the beneficiaries (local or expatriate), as well as the gross payment, the tax withheld, the net payment, and the period to which the payment relates. Employers paying wages and salaries must file the declaration before April 30 of each year.

Statute of limitation

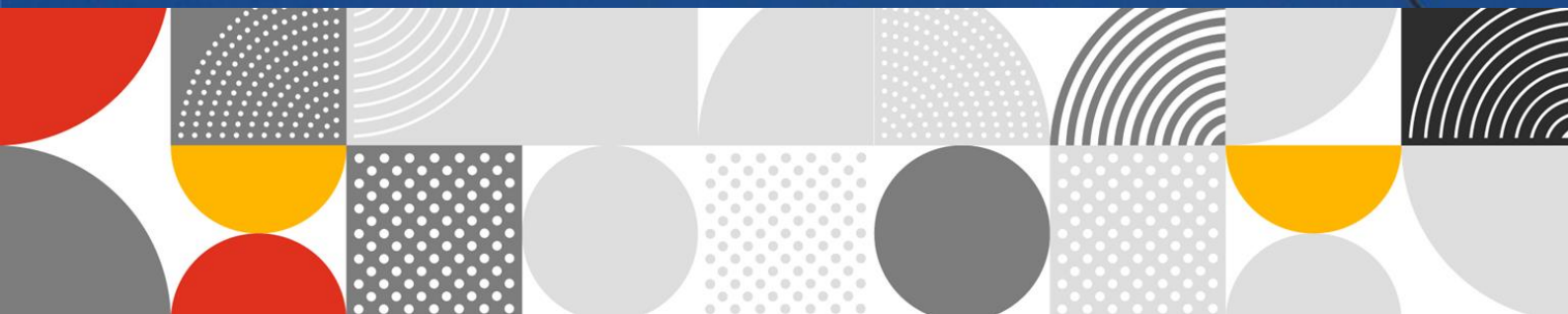
In Algeria, the statute of limitation expires at the end of the fourth financial year following that for which tax is due.

Tax audits

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



Power and Utilities Sector



Brief overview of the Power and Utilities development in Algeria

The economic sector of energy in Algeria occupies a predominant place in the economy of Algeria, hydrocarbons alone represent 60% of budget revenues and 98% of export earnings. Energy production and consumption, including the electricity sector, is derived from hydrocarbons at over 99%. However, the Algerian state is beginning to consider ecological solutions by investing in renewable energies. According to Algeria's Program for the Development of Renewable Energy and Energy Efficiency (PENREE) in 2012, Algeria is aiming for a renewable installed capacity of 22,000 MW by 2030. Nevertheless, three years after this plan, the achievements are unrealised: the annual report of the Global Wind Energy Council on wind does not mention Algeria, and that of the International Energy Agency on solar only announced that Algeria has installed 300 MW.

The sector is highly regulated and organised around a single national player Sonelgaz. Therefore, understanding the key factors of the Algerian energy market, both structural and socio-economic, is a key element in Sonelgaz's reorganisation strategy. The Algerian market is characterised by strong growth in demand, under the impact of population growth, increased housing production and its economic and industrial development. As part of its social policy in a socio-economic context of low purchasing power, there is a significant subsidy in the sector by the government in order to maintain a low cost of energy and ensure accessibility.

Since its independence in 1962, Algeria has heavily invested in the development of the energy sector, as part of a national policy aimed at providing the population with access to electricity and natural gas, hence, improving the citizen's life quality and the economic situation of the country.

During the past few years, the demand for electricity has significantly increased, particularly during summer season, where a consumption peak is recorded as reaching a total network power demand of 13,227 megawatts.

In order to meet the growing energy demand, the Algerian government has launched a USD 17 billion investment program for the period 2017-2027.

The objectives of this investment program are the diversification of energy sources, the development of the power plants, while also developing electricity and gas distribution facilities.

The main indicators of electricity distribution (as of December 2017):

- The installed electrical generation capacity: 19,471 megawatts;
- Electricity transport network: 29,379 Km;
- Electricity distribution network: 329 782 Km;
- Coverage rate of the population with an electrical network: 98%.

The main indicators of gas distribution (as of December 2017):

- Gas transportation network: 20,722 km;
- Gas distribution network : 99 136 km;
- Coverage rate of the population in households : 57%.

Legal Framework

The main law governing the electricity and gas sector in Algeria is Law 02-01 of 5 February 2002 relating to Electricity and Gas distribution by pipes (hereafter referred to as "Law 02-01"). The promulgation of Law 02-01 has led to the reorganisation of the sector and the opening of the electric market to the competition, dominated until then by the public company, Sonelgaz.

The promulgation of Law 02-01 has also allowed the reorganisation of Sonelgaz, with the creation of the holding company "Sonelgaz" as well as all its subsidiaries. Sonelgaz is now an industrial group composed of 39 subsidiaries and 5 joint ventures. Business subsidiaries are responsible for generating electricity, transporting and distributing electricity and piped gas.

Regulatory framework

The law No.02-01 of 5 February 2002 amended in the finance law for 2018 is the key determinant of significant evolutions of the gas and electricity market and its partial opening to the competition, putting an end to the monopoly of the company national Sonelgaz. Electricity and gas transmission activities remain under the Group's monopoly. The downstream activity of the value chain, namely distribution to end-users, is intended to be put into competition progressively.

To adapt to this legislative framework, the public industrial and commercial company Sonelgaz, has restructured into a holding company under a joint-stock company (SPA). The State remains the majority

shareholder of the Sonelgaz SPA holding company at 100%. Sonelgaz SPA may exercise in Algeria and abroad all activities that contribute directly or indirectly to its purpose, including exploration, production and distribution of electricity.

Tax regime

Unlike the petroleum sector, Law 02-01 does not provide for any specific taxation regime for the electricity and gas distribution sectors. Therefore, these activities fall under the common tax regime, provided for by the tax legislation in force as mentioned above.

However, it is important to note that electricity investments realised in this sector are generally encouraged by a specific mechanism, on which tax incentives are awarded to Sonelgaz as the public operator, in the frame of the National Agency for Investment Development (Agence Nationale du Développement d'Investissement/ANDI). These are the tax incentives granted under this regime:

Realisation phase of the investment

- Exemption from customs duties on the acquisition of the investment equipment;
- VAT exemption on goods and services imported or acquired locally, destined for the purpose of the investment realisation;
- Exemption from transfer duties and legal publication fees on property acquisitions performed in the framework of the investment;
- Exemption from registration duties, legal publication fees and the public domain royalties on built and unbuilt properties concessions allocated to the investment;
- 90% reduction on the amount of any public domain royalties set by the Public domain authorities during the implementation phase of the investment;
- Exemption from the real estate tax on properties entering directly into the investment (for a period of 10 years from the acquisition);
- Exemption from the registration duties applicable to corporate documents and capital increases.

Investment operationalization phase

After effective acknowledgement by tax authorities at investor diligence of the investment entry into operation, the exemptions below are provided for a period of three (3) years:

- Corporate income tax (CIT) exemption;
- Tax on professionals activity exemption; and
- Reduction of 50% on the amount of the annual public domain royalties set by the public domain authorities.

It is important to note that the power and energy sector is subject to other parafiscal taxes such as the tax on sales of energy products to industrialists, amended in the finance law for 2018, and the tax on energy efficiency; applicable to products imported or locally produced using electricity, gases and petroleum products, whose consumption exceeds the energy efficiency standards introduced in the new finance law for 2020.





Angola

Contact



Jaime Esteves

Jaime.esteves@pwc.com



Rosa Areias

rosa.areias@pwc.com



Cristina Teixeira

cristina.teixeira@pwc.com

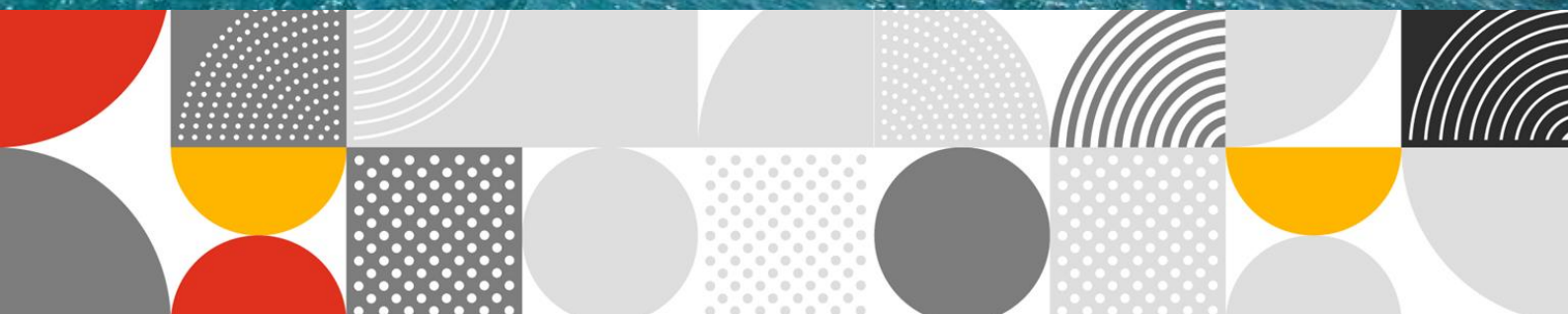


Ines Barbosa Cunha

ines.barbosa.cunha@pwc.com



Oil and Gas Sector



Brief history on Oil & Gas development in Angola

Angola is Africa's second largest oil producer, producing up to 1.1 million barrels per day (bpd) in 2022.

Europe's urgent need to diversify away from Russia has spurred interest in the African gas export market. European focus has been to boost natural gas and LNG imports from Nigeria, Angola, the Republic of the Congo, Egypt and Algeria. The Russia-Ukraine conflict has also significantly impacted the global supply prices of key commodities, such as oil and gas; fertilizer; wheat; corn; and barley. The commodity price increases are already feeding through into higher consumer prices and this will continue into 2023.

The "Sanha Lean Gas Connection project" is the first production of a gas pipeline system that will deliver lean gas to Angola's LNG onshore facilities, and it is expected in 2023.

After suffering for years from the effects of lower oil prices and production levels, Angola is starting to show some signs of economic recovery. Despite significant progress on macroeconomic stability and structural reforms, Angola, since 2015, has been suffering the impact of the sharp decline of the oil sector, which was aggravated since 2020 by the COVID-19 pandemic. In fact, the Brent price (USD/bbl) decreased 33% in 2020, but it should recover in the next few years, with a forecasted growth of 45% by 2025 (compared to 2020).

Main drivers were an increase in oil production levels as well as continued strong performance of non-oil sectors. Mostly as a result of high oil prices, Angola experiences favorable macroeconomic conditions such as a high level of net international reserves, exports, and fiscal revenues, a strengthening currency, and declining public debt to GDP. However, the scars of the COVID-19 shock and the lengthy recession – GDP declined by a cumulative 10.2 % between 2016 and 2020 – remain evident. Over the long term, it is projected that Angola's refined fuel consumption will gradually pick up, averaging 3.9% year-on-year growth, to reach 120,000b/d in 2030.⁷

Economic Updates

Economic growth is forecast to average around 3% over the coming years, with higher non-oil growth compensating for a structural decline of oil production. Around a third of the population lives in poverty (less than US\$ 2.15 per day as per the updated international poverty line), facing high unemployment and a rising cost of living. Food inflation remains high at 24% in July 2022, though it is declining (from 31.6 % a year prior).⁷

Given rapid population growth, per capita GDP is expected to remain fairly flat, presenting challenges to poverty reduction. This highlights the need to accelerate economic growth and promote inclusion by deepening reforms and making strategic investments in human capital, infrastructure, and the productive sectors of the economy.

According to Fitch's forecast an improvement in consumer spending in Angola in 2023 and Angola's real GDP will grow by 1.6% over the year. Real GDP growth will slow over 2023 when compared to 2022, owing largely to the slowdown in global oil prices. Private consumption will be a key growth driver over 2023, benefitting from increased agricultural and oil productions which will improve the wage and employment prospects of people employed in these sectors.

The inflation remains high, at 14.0% for 2023, a reduction from an average of 21.9% in 2022, and a peak of 27.7% in January 2022.

According to the most recent data from Angola's statistics agency Instituto Nacional de Estatística, food price inflation will trend around 8.5% in 2023, a significant reduction from the latest level of 16.8% in September 2022. According to Famine Early Warning Systems Network, most of Angola has experienced a normal seasonal onset of rains in the latter half of 2022, which is expected to improve food supply. Given that food accounts for over 60% of the consumer price basket, this will drive headline inflation lower, that said food price will remain a major concern for the income-sensitive consumers over 2022-2023.

Mostly as a result of high oil prices, Angola experiences favorable macroeconomic conditions such as a high level of net international reserves, exports, and fiscal revenues, a strengthening currency, and declining public debt to GDP. Using this momentum, public spending picked up in the first quarter of 2022 compared to the first quarter of 2021, notably on goods and services and investments. This spending boost mostly benefited the education, social protection, housing, agriculture, and communication sectors as well as defense and security.⁸

Fiscal and Taxation Regime

The major recent tax changes were the following:

- Order 1083/22, of 15 March 2022, issued by the Ministry of Finance of Angola, updates the List of Large Taxpayers. This Order follows the requirements established by Presidential Decree 147/13, of 1 October 2013, that approved the Statute of Large Taxpayers and clarifies that besides the entities already included therein, oil companies and financial institutions are also considered subject to the said Statute.
- Ratification Letter 1/22, of 16 March 2022, ratifies the Convention between the Republic of Angola and the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (Convention), signed in Beijing on 9 October 2018 and approved for ratification by Parliament's Resolution 29-A/19, of 23 January 2019.
- Law 8/22, of 14 April, approves the Tax Benefits Code ("TBC"). The Law introduces new tax benefits and aims at condensing in a single diploma all the tax benefits foreseen in multiple legal diplomas. It also includes definitions and sets out deadlines, rules and principles to be observed when granting tax benefits, as well to assess the lack of compliance with the underlying assumptions.
- Presidential Legislative Decree No. 4/22, of 23 July 2022, published in the Official Gazette, approves the new Special Tax Regime applicable to the Province of Cabinda.
- Law 27/22, of 22 August, published in the Official Gazette, amends the Corporate Income Tax Code. This law reduces the CIT withholding rate applicable to 6.5% applicable on income from services provided by non resident entities.

Regulatory Framework

The key regulators in the oil & gas industry include:

- Angola National Agency for Oil, Gas and Biofuels (ANPG): the national concessionary, and the oil & gas regulator;
- Ministry of Mineral Resources and Petroleum (MIREMPET): Regulates and supervises oil & gas operations carried out under the various licences and leases.
- Ministry of Finance (MINFIN): Administers the petroleum taxes and other taxation issues relating to the industry. In practice, the General Tax Administration (AGT) regulates the process with MINFIN.

Under the Presidential Decree 271/20, of 20 October, approving the legal regime for the promotion and development of local content activities in the petroleum sector, which aims at promoting the acquisition of national goods and services and the promotion of business and the hiring of national employees, it is established three hiring regimes of goods and services for oil operators, namely:

- Exclusivity regime - oil & gas companies can only contract the goods and services included in this regime from Angolan companies. For this purpose, "Angolan companies" means those companies 100% held by Angolan citizens;
- Preference regime - oil & gas companies can only contract the goods and services included in this regime from foreign companies if they offer better conditions (in terms of quality, technical capacity, prices and deadlines) than the Angolan companies or Angolan incorporated companies. In case of equality, Angolan companies and Angolan incorporated companies will have preference; and
- Competition regime - oil & gas companies are free to hire foreign companies.

The Presidential Decree establishes that goods and services to be included in the Exclusivity and Preference regimes will be defined in an annual list to be published by the National Agency for Petroleum, Gas and Biofuels (ANPG), which was released for the first time in October 2021.

Local Content regulation in the country

The local content rules are provided for in various legal statutes, amongst which the most significant are:

- Presidential Decree 271/20, of 20 October 2020, which establishes the Legal Regime of the Local Content of the Oil Sector, on the legal regime for the contracting of goods and services by oil & gas companies, establishing a protection scheme for Angolan companies in respect of the provision of services and supply of goods to such entities;
- Law 10/04, of 12 November 2004 ("Petroleum Activities Law"), as amended by Law 5/19, of 18 April, which imposes on the Angolan Government the obligation to implement the appropriate measures to ensure, promote and encourage the engagement of companies held by Angolan citizens in petroleum-related activities;
- Decree-law 17/09, of 26 June 2009, which establishes the rules and procedures for the recruitment and training of personnel for the execution of petroleum operations, as regulated by Executive Decrees 45/10 and 46/10, of 10 May 2010; and,

- Presidential Decree 86/18, of 2 April 2018, which updated the rules and procedures of public tenders in the oil sector, revoking the previous Presidential Decree 48/06.

Private Investment

The Private Investment Law, approved by Law 10/2018, of 26 July, amended by Law 10/2021, of 22 April, establishes the following most significant provisions on private investment:

- The Law defines certain sectors as priority and determines that investments entailing certain activities in these sectors fall under the special regime, whereas investments in other non-priority sectors are covered by the prior declaration regime. The applicable regime, as well as the implementation geographic area have impacts on the tax benefits attributable to the investment business vehicle;
- A minimum investment amount is not required for access to tax benefits and incentives in the prior declaration and special regimes, in which the tax benefits and incentives are granted automatically;
- However, it was recently introduced the contractual regime allowing the negotiation of tax benefits and incentives for investments (i) in any sector of activity, for an amount equal to or greater than USD 10,000,000, and that create at least 50 direct job positions for Angolan nationals, and (ii) considered to be structuring (ie. with potential to induce growth and development) and that create at least 50 direct job positions. The submission of a Financial and Economic Feasibility Study or a Business Plan is now required under the contractual regime;
- The legislation allows the possibility of reinvestment for the purposes of obtaining new tax benefits and incentives upon the termination of those provided in the initial investment. This possibility may however only be used once.

This law is not applicable to projects approved before its entry into force, unless otherwise intended by the investor.

The private investment law is not applicable to Oil & Gas Companies / Operators, as these are specially regulated by the legislation applicable to the sector. It may however apply to entities providing services to the oil & gas industry.

Forms of contracts

The most common forms of petroleum contracts in Angola include:

Concession/Joint Venture

This is usually an arrangement between the National Concessionaire (ANPG - Agência Nacional de Petróleos, Gás e Biocombustíveis) and oil companies. Companies operating under this arrangement have a concession provided by ANPG to explore certain blocks.

Production Sharing Contracts

ANPG 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 LNG

Decree-Law 10/07, of 3 October 2007, which has been altered by the Presidential Legislative-Decree 4/12, of 10 May 2012 and later by Presidential Legislative-Decree No. 6/22 of July 23, sets out the legal, tax, custom and foreign exchange regime applicable to the Liquefied Natural Gas (LNG) Project. This legislation refers to the tax regime for shareholders of the LNG Project and the executing companies. It also refers to some applicable tax exemptions.

The main objective of Presidential Legislative-Decree No. 6/22 of July 23 is the inclusion of the purchase of non-associated gas in the legal statutes that establish the Angola LNG.

Natural Gas

Presidential Legislative Decree 7/18, of 18 May 2018, foresees the legal and fiscal regime applicable to the activities of prospecting, research, evaluation, development, production and sale of natural gas in Angola. One of the goals of this decree is to encourage natural gas production and the associated industries. The above-mentioned decree applies to oil companies that enter into an agreement with the national concessionaire and one of the advantages is the possibility of contracting longer periods than the ones contracted within the general regime for the following stages:

1. Research;
2. Production;
3. Commercial discovery;
4. Elaboration of the development and production general plan;
5. Production starts after the commercial discovery.

As for the tax regime, oil companies that carry out natural gas production activities are subject to the Law on Taxation of Petroleum Activities (*Lei das Actividades Petrolíferas*), except for the Petroleum Transaction Tax.

The applicable tax rates are as follows:

- 5% Petroleum Production Tax;
- 25% PIT, except in case of non-associated gas projects where the amount of proven reserves certificated by an independent entity is equal or below 2 TCF. In this last case the PIT rate corresponds to 15%.

ANPG's prior approval of the contracts

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

Through the publication of Presidential Decree 86/18, dated 2 April 2018, the Angolan Government wishes to streamline the process of assigning the status of Associate of the National Concessionaire and simplify the process of contracting services and acquisition of goods in the oil sector, increasing the limits for approval of contracts by the National Concessionaire depending on their value. This Decree also updates the rules and procedures of public tenders in the oil sector.

In the scope of the approval of contracts for services and acquisition of goods, it is provided that:

- Contracts up to USD 1 million (or equivalent in Kwanza) the contracting of services and the acquisition of goods does not depend on the authorisation of the National Concessionaire nor does it require any public tender. There is, however, a duty to inform the National Concessionaire.
- Contracts with a value greater than USD 1 Million and up to USD 5 Million (or equivalent in Kwanza), the operator must carry out a public tender, but the approval of the National Concessionaire is not necessary. The diploma clarifies that this regime applies to contracts with maximum duration of 5 years. However, there is a duty to inform the National Concessionaire.

- Contracts valued at more than USD 5 Million (or equivalent in Kwanza), the operator must carry out a public tender and formally involve the National Concessionaire in the procedure and must obtain the respective approval of the National Concessionaire.

Incentives available to firms within the petroleum industry

Angolan Oil Companies

Presidential Legislative Decree 3/12, of 16 March establishes incentives to the oil sector. The main incentives are provided in this law are:

- Angolan oil companies that are associated with the national concessionaire in production sharing agreements (PSA), benefit from the petroleum income tax reduction rate from 50% to 35% as defined by the article 64.^o of the Corporate Income Tax Code.
- Angolan oil companies that partner with the National Concessionaire under other types of oil contracts benefit from petroleum income tax reduction from 65.75% to 35% defined by the article 64.^o of the Corporate Income Tax Code
- The granting of incentives provided for in the preceding paragraphs does not affect the cumulative benefit of the incentives attributable under the general terms of article 43^o of the Law on Taxation of Petroleum Activities, Law No. 13/04 of 24th November.

Marginal fields

Presidential Legislative Decree 6/18, of 18 May, created a regime applicable to the discoveries in marginal fields. This decree establishes the incentives and procedure for adjusting contractual and fiscal terms applicable to Qualified Marginal Areas. Incentives for the development of marginal discoveries are governed by the principle of contractual tolerance, which seeks to adjust the contractual and fiscal terms of the marginal discoveries, to promote the investment of the Associates of the National Concessionaire and entities contracted to carry out petroleum operations.

Custom duties and VAT

Additionally, a list of equipment, machinery and products used in petroleum operations are exempt from customs duties and VAT on importation. This exemption applies to goods that are not available in Angola and are exclusively for use in petroleum operations.

Based on a request to the Ministry of Mineral Resources and Petroleum, other tax incentives may be available through ANPG.

Taxation regime

Direct taxes

Petroleum Income Tax (PIT)

PIT is payable on the actual profit computed in accordance with the rules established in Law 13/04. PIT is assessed and payable differently in case of production sharing agreements (PSA) and Concessions / Risk Services Agreements (RSA).

On production sharing agreements, PIT is payable per development area, on profit oil attributed to each oil company, less the oil shared with ANPG.

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

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

The profit oil is shared with ANPG as per the terms provided for in the production sharing agreement.

Cost oil quota will permit recovering costs incurred in exploration, development and production, as well as cost of administration and services (A&S).

Administration and Services costs, whether capitalized or not, are attributed at pro-rata to exploration, development and production costs.

Production and development costs, including their share of administration and services 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%.

In relation to concessions and risk services agreement, the taxable income is assessed by oil concession resulting from the difference between realized profits and gains, costs and losses attributable in the year considering the rules in Law 13/04.

For production share agreements, the rate for PIT is 50% and for other forms of association (including concessions and risk sharing agreements) PIT is at a rate of 65.75%.

The rate applicable to Angola Oil Companies that fall in the scope of Presidential Decree n° 3/12 of 16 March will benefit from a reduction of the Petroleum Income Tax rate from 50%/65.75% to 35%.

Petroleum Production Tax

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

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

- the exploration of small deposits,
- exploration of oil in waters with depth up to 750 metres and
- exploration of oil in areas of difficult access determined by the Government.

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

Petroleum Transaction Tax (PTT)

An oil transaction tax (PTT) is levied on the profit of oil companies operating in Angola under concession or RSA agreements. Taxable profit for PTT purposes is calculated in accordance with the general rules applicable to the PIT, for the referred agreements, as per Law 13/04, of 24 December. There are, however, special PTT rules which are summarized below.

Deductible expenses

- Production premium, which is based on the crude oil and liquid gas volume considered in the gross income; and
- An investment premium equivalent to a certain percentage of the capitalized investment per year.

Non-deductible expense

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

PTT is levied at a rate of 70%. Petroleum and other substances produced under PSA’s are not subject to this tax.

Procedures for the standardized methodology

Based on Production Sharing Agreements (PSA), the Profit Oil (PO) produced must be shared between the National Concessionaire (ANPG) and its associates (oil companies), through the mechanism for calculating Cost Oil (CO) and PO, agreed in the PSA.

The Joint Executive Decree n.º 123/21 of 13 May, approves the Addendum to the interinstitutional protocol regarding the Profit Oil, Work In Progress (WIP- Block 0) and abandonment funds. This decree foresees the procedure for the application of the new standardized methodology

Surface Charge

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

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

Training Contribution

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

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

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

- USD 100,000 – for oil companies that only have research licenses;
- USD 300,000 – for oil companies that are carrying out research activities;
- USD 0.15 per oil barrel – for oil companies that are in a production stage;
- USD 0.15 per oil barrel – for oil companies that carry out oil refining activities;
- 0.5% of the annual turnover – for companies that carry out storage, transportation, distribution and commercialization activities of crude oil;
- 0.5% of the values of contracts – for companies that render services to oil companies on a regular basis [Article 12 Decree Law 17/2009].

For non-resident entities or resident entities with most of the share capital owned by non-resident entities, 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. However, a substitution tax return can be submitted upon approval from the Angolan Tax Authorities. According to procedure rules of the General Tax Code, the declaration can not be replaced if the taxpayer has been previously notified of the beginning of a tax inspection or tax audits.
- Note that according to the recent changes imposed by the Minfin, when applicable, oil companies are required the substitution PIT return as early as the tax reference price for the fourth quarter is made available (usually in the month of April).

Penalty

- Late submission of returns: Between USD 50,000 and USD 500,000.
- Late payment of tax: 25% of the tax payable in the terms of Law nr. 21/20 of 9 July, plus 1% monthly interest.

Lack of submission of support documentation in annex to the PIT return: USD 100,000.

Oil exploration and production companies

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

Oil field service companies (OFS)

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

- a. CIT is levied at 25% on the profits derived from business activities carried out in Angola by resident or non-resident entities. Tax resident entities are taxed on their worldwide profits. Permanent Establishments (PE) of non-resident entities are liable to tax on the profits attributable to the PE, sales of goods or merchandise of the same or similar kind to that sold by the PE and any other business activity which is of the same or similar kind to those conducted by the PE. The profits are adjusted in accordance with the provisions of the CIT Code.
- a. There are two CIT regimes:
 - General: applies to taxpayers not included in the simplified regime and applies automatically to the public entities, financial institutions, companies subject to special regime of taxation, telecommunication operators, companies which are branches of foreign entities.
 - Simplified: applies to taxpayers subject to the CIT who are covered by the VAT non-subjection regime.
- a. Legal deadlines: By the last working day of May of each year (or April, depending on the tax regime), an annual CIT return (Model 1), attaching several documents including the year's financial statements must be filed in respect to the preceding fiscal (calendar) year, and any tax due should be settled immediately. Provisional CIT payments could be applicable for companies that are not subject to corporate withholding tax. The provisional payment is based on 2% of the turnover generated in the first six months of the calendar year and it is payable by the end of August of the same year.
- a. Special tax regimes apply to the oil & gas industry and to the mining industry.

Withholding tax

The withholding tax rate applicable to income arising from services provided is 6.5%.

For Angolan taxpayers, the withholding tax is an advance payment of the CIT due at the year-end. The deduction of the withholding tax has no deadline to be carried forward, however approval from the Tax Authorities is required. For non-resident companies, the withholding tax is considered a final tax in Angola.

The obligation to withhold the CIT lies with the company acquiring the services. The tax should be delivered by the last working day of the month following the one in which the tax was withheld.

Investment Income Tax (IIT)

The IIT is due on interest, dividends, royalties, and other income of a similar nature. In Angola, the IIT Code divides such income into two sections, as follows:

Section A

Section A includes:

- Interest on credit facilities;
- Interest on loans;
- Income derived from deferred payments.

The tax is due the moment the income becomes due or is presumed to be due.

A minimum annual interest rate of 6% is deemed on loan agreements and credit facilities, except if another rate is proven through a written and registered contract.

Section B

Section B includes (among others):

- Dividends;
- Repatriation of profits attributable to a Permanent Establishment;
- Interest, premiums on the amortization, reimbursement, and other forms of remuneration of: (i) bonds and securities or other financial instruments issued by any company, (ii) treasury bills and treasury bonds, and (iii) Central Bank Securities;
- Interest on shareholder loans (or other types of shareholder financing). A deemed minimum annual interest rate equal to the rate used by the commercial banks is imposed;
- Indemnities paid to entities for the suspension of their business activity;
- Capital gains on shares and other financial investments;
- Royalties.

Exemptions

The following income is exempt from IIT:

- Interest on deferred payments regarding commercial transactions;
- Interest from financial products approved by the Ministry of Finance that intend to encourage savings, capped to capital invested of Kz 500,000 for each person;
- Interest from housing savings accounts intended to encourage savings for permanent dwelling.

Dividends

Dividends and profits remittance by an Angolan entity are subject to IIT at a 10% tax rate. Profits/dividends distributed by entities with head office or place of effective management in Angola having its shares negotiated in a regulated market, to corporations with head office or effective management in Angola and subject to CIT, provided that a participation of at least 25% was held for more than one year. Other benefits may apply under the Tax Benefits Code.

The tax should be withheld by the paying entity and delivered to the Angolan Tax Authorities by the end of the month following the one of the deliberations (to distribute the dividends), the payment of dividends, if prior.

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

Interest

The IIT rate is generally 15%, except for the income identified below.

The tax rate is 10% for the following interest:

- Bond interest.
- Interest from shareholders' loans.

The tax rate is 5% for the following interest:

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

Royalties

The concept of royalties includes payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment or for information concerning industrial, commercial, or scientific experience.

Royalties are subject to a 10% IIT rate. The IIT on royalties should be withheld by the paying entity and should be delivered to the Tax Authorities by the end of the month following the one of payment.

Rental of industrial and commercial equipment may qualify as royalties.

Assessment and payment

On Section A investment income, the IIT is, as a general rule, paid and assessed by the receiving entity unless it is a non resident beneficiary in which case the tax must be withheld by the Angolan counterpart.

Generally, for Section B investment income, the IIT is withheld by the payer entity.

The filing and payment of any income subject to IIT should be made in the month following the tax event.

Entities should submit an IIT return by the end of January each year. The return should disclose the total investment income received, paid or made available as well as the tax assessed.

Capital gains tax (CGT)

Capital gains arising from the sale of securities are subject to IIT at a 10% rate, except if they arise from a commercial activity subject to CIT or Employment Income Tax (EIT). Other capital gains (other than the sale of participations) should be subject to CIT at rates ranging between 25% and 35% if derived by Angolan residents or tax PEs in Angola taxable under the general regime.

Capital Gains derived by non-resident entities are only subject to tax in Angola if the capital gains are attributed to a PE in Angola or if the buyer is an Angolan investor. Capital gains on the sale of participations will trigger IIT at a rate of 10% - the capital gain will be calculated based on the difference between the sale price and acquisition cost.

Thin Capitalisation and Transfer Pricing

Interest arising from shareholder loans should be deductible for tax purposes up to the limit that would result from the annual average interest rate established by the Angolan Central Bank.

According to the amendments to the CIT Code, by the Law no. 26/20, of 20 July the requirement to prepare and deliver a transfer pricing file has been extended to all entities subject to CIT (including OFS companies) with a total income during a fiscal year that exceeds 7 billion Kwanzas (Previously, these requirements were applicable only to the entities considered as large taxpayers). Oil & Gas exploration and production companies are considered as large taxpayers and are subject to this requirement.

Indirect taxes

Value Added Tax (VAT)

Introduction

VAT was introduced in Angola on 1 October 2019, with the Consumption Tax revoked.

A transitional period was applied until 31 December 2020, during which only companies registered with the tax office for large taxpayers were subject to the standard VAT regime.

On December 30, 2021, Law no. 32/21 that approves the General State Budget for 2022 fiscal year (GSB 2022) was published and brought significant changes to the VAT Code. This law became effective on 1 January 2022.

Currently, the soon to be published 2023 General State Budget (“GSB”) proposal includes some changes in terms of VAT. As such, the content presented below includes such changes.

Standard VAT Regime

Local entities with an annual turnover or an annual volume of import operations higher than AOA 350,000,000 are liable to the standard VAT regime.

Entities operating in the manufacturing industry who, in the previous financial year, had a volume of business or import operations greater than AOA 10,000,00 must, obligatorily, be included in the standard VAT regime.

Under this regime, taxpayers are liable to:

- Pay VAT in respect of its taxable transactions, and are granted the right to deduct VAT on the inputs;
- File a monthly VAT return up to the last working day of the month following the one in which the operations were carried out;
- Have proper accounting records according to Angolan PGC (Angolan GAAP).

When carrying out exempt operations, are liable to pay stamp tax at a 7% rate on the receipts.

The simplified VAT regime

The GSB 2023 maintains a simplified VAT regime, applicable to entities with a turnover or import operations higher than 10,000,000 and less than AOA 350,000,000, with reference to the last financial year. These entities:

- Shall assess the tax due on a monthly basis by applying a 7% rate on the turnover effectively generated by non-exempt transactions;
- Shall self-assess VAT at the rate of 7% on the amount effectively paid, when acquiring services from non-resident entities;
- May deduct 7% of the total VAT incurred;
- May request a refund of the credit in their favor accumulated for more than 12 months;
- When changing from the simplified to the standard VAT regime, the entity is allowed to deduct the VAT incurred on goods aimed at being sold that have been acquired in the 12 months preceding the change and upon authorization from the Angola Tax Authority;
- Entities under the simplified VAT regime that carry out exempt operations, are required to pay Stamp Duty on the receipt at rate of 7%;
- The 7% rate referred to in the previous paragraph is not applicable to air transport services for passengers in international traffic and to the rental of real estate, these operations being subject to the rate defined in the Stamp Duty Code.

Taxpayers under the simplified VAT regime may opt to join the standard VAT regime, if all the following requirements are fulfilled:

- Organized accounting according to Angolan PGC (Angolan GAAP);
- Absence of tax and customs debt;
- Registration duly updated in the system of the General Register of Taxpayers;
- Issuance of invoices/equivalent documents through certified billing software;
- Submission by electronic transmission of data regarding the VAT returns, as well as the elements of its accounts.

And, for those taxpayers who move from the simplified regime to the standard VAT taxation regime, the 2023 OGE establishes that they must pay the tax at the rate of 7% on receipts that they may obtain from invoices issued during the period in which they were included in that regime.

Non subjectation VAT Regime

The GSB 2023 maintains a non subjectation regime, applicable to the entities whose turnover or imports is equal or lower than AOA 10,000,000.

Taxable persons

A taxable person for VAT purposes is any person who, independently, carries out an economic activity or that carries out one single taxable transaction that falls within the scope of the personal or corporate income tax.

State, regional and local government authorities and other bodies governed by public law shall not be considered taxable persons in respect of the activities or transactions in which they engage as public authorities.

Taxable transactions

The following transactions are subject to VAT:

- supplies of goods and supplies of services for consideration; and
- importation of goods.

Some other transactions are deemed supplies of goods or supplies of services for consideration (e.g. gifts and non-return within one year of goods sent for consignment).

The transfer, for consideration or not, of a totality of assets or a part thereof that constitute an undertaking or a part of an undertaking capable of carrying on an independent economic activity is outside the scope of VAT.

The captivation regime

The captivation regime is a peculiarity of the VAT regime in Angola, where VAT is mentioned in the invoice, but the customer does not pay it to the supplier; the VAT is paid directly by the customer to the State.

The Captivation regime is applicable on the supplies to the following entities:

- The State (and any of its services, establishments and agencies, even if personalized, excluding public companies), Local Authorities and Oil Investing Companies – captivation of 100% of VAT.
- National Angolan Bank, Commercial Banks, Insurers and reinsurers, Licensed telecommunications operators – captivation of 50% of VAT.

The captivation regime does not apply to supplies of goods by supermarkets, services provided by commercial banks, supply water and energy consumption, hotel services and other related or similar activities, services purchased at automated teller machines (ATM), insurance claims resulting in reimbursement by insurers to policyholders.

Notwithstanding, these exceptions do not apply to the State, whenever the invoices are to be paid through the Sistema Integrado de Gestão Financeira do Estado

- 14% standard rate and rate applicable to the transmission of goods and provision of services carried out within the scope of the activity of exploration and practice of games of chance and social entertainment;
- 2% on imports and supplies of goods in the Province of Cabinda - services are always subject to 14%;
- 5% and 7% applicable to the products listed in Table Annex I of the GSB 2022 (mainly, foodstuff); and,
- 7% for the provision of hotel and restaurant services, provided that: the real estate and motorized vehicles used within these activities are registered in the name of the company; the taxpayer issues invoices through electronic means; and all tax returns are duly submitted.

Exempt supplies

The following supplies of goods and services are VAT exempt (without the right to deduct input VAT):

- Pharmaceutical products intended exclusively for therapeutic and prophylactic purposes.
- Provision of educational services by duly recognised establishments.
- Provision of health medical services performed by hospitals, clinics etc.
- Transport of sick or injured persons by appropriate authorised bodies in ambulances or vehicles.
- Medical equipment for the exercise of the activity of health establishments.
- Wheelchairs and similar vehicles, typewriters and printers for braille characters, and articles to be used by the blind.
- Books, including in digital form.
- Sale and lease of immovable property.
- Collective transport of passengers.
- Financial intermediation operations, including financial leasing, except for those where a specific and predetermined fee is charged for the service.
- Life insurance and reinsurance.
- Petroleum products.

Zero-rated supplies

The following supplies of goods and services are zero-rated (exempt with right to deduct input VAT):

- Exports;
- The provision of vessels used for navigation on the high seas and carrying passengers for reward or used for the purpose of commercial, industrial or fishing activities is VAT exempt;
- The supply, modification, repair, maintenance, chartering and hiring of the vessels and aircrafts used by shipping companies and airlines operating in international routes; and
- International transport of passengers.

The GSB 2023 maintains the VAT exemption on the imports of goods aimed at gifts for philanthropic purposes or to mitigate the effects of natural calamities, namely, droughts, floods, storms, cyclones, earthquakes, pandemics and others of identical nature, provided that the respective purpose is duly recognized by the General Tax Administration (“Administração Geral Tributária” or “AGT”).

VAT Deduction

Taxpayers may deduct VAT on goods and services acquired for the purpose of the following: (i) transactions liable to VAT (ii) transactions that would be liable to VAT if they were in Angola (iii) zero-rated.

Nonetheless, VAT related to the following expenses is not deductible:



- Expenses related to tourist vehicles, recreational crafts, helicopters, airplanes, motorcycles and mopeds;
- Accommodation and meals expenses;
- Tobacco expenses.
- VAT on expenses (i) and (ii) may be deductible if the supply or exploitation of such goods is the company's activity.

VAT Compliance

VAT returns and payment

VAT returns must be submitted until the last working day of the month following the month the transaction occurred and payment must be made within the same deadline.

VAT Refund

If a credit is computed, the relevant amount is carried forward to the following month.

If a credit is computed for more than 3 months and its amount is higher than 300,000 Kwanzas, a refund may be requested.

Refunds must be analyzed by the Tax Authorities up to the end of the 3rd month following the reimbursement request. After this deadline, if the credit is due, the taxable person can request the settlement of compensatory interest.

Once confirmed, the reimbursement is granted:

- Always granted in a tax certificate, under regulated terms.
- When the taxable person has any tax debt a compensation is made.

Legal regime of invoices and equivalent documents

Taxpayers are obliged to issue an invoice [Factura (Invoice) or a Factura/Recibo (Invoice/receipt)] for each supply of goods/service or advance payment received.

Taxpayers are also obliged to issue a credit note if there is a reduction or cancellation of the taxable amount of a transaction previously invoiced.

Financial Institutions may issue a Factura-Genérica (generic invoice) on a monthly basis, which comprise all services supplied during the relevant month.

Debit Notes are intended to support debits when there is no obligation to issue an invoice.

Deadline

Invoices must be issued by the fifth working day after the invoiced operation occurs (i.e. supply of services or sale of goods).

Content

Invoices and equivalent documents must be dated and numbered sequential and chronologically and be written in Portuguese. Invoices and equivalent documents must include the following information:

- Supplier and client information: Company Name, Address and Tax Identification Number ("NIF"); if it is a final customer, the information "Consumidor Final" is mandatory, unless it is requested to include the respective data;
- Clear description of goods sold or services supplies, and quantities/units sold;
- Unit price and total, in national currency;
- Applicable tax rates and amount of tax due (where applicable);
- The justification for the non-application of the VAT, with indication of the legal rule underlie that exemption;
- Date and place of when and where the goods/services were supplied;
- Date on which advance payments were made (if applicable); and,
- Identification of the computer system used to issue the invoice and its certification number.

Procedure for issuing of invoices

The Circular no. 002/DSIVA/AGT/2022 published by the General Tax Administration says that all taxpayers with a turnover greater than Kz 10,000,000.00 (ten million kwanzas), must issue invoices through computer programs certified under the terms of the applicable legislation.

Taxpayers with a turnover of less than kz 10,000,000.00 (ten million kwanzas), can issue invoices in typographically printed blocks or in taxpayer portal.

The certification is the responsibility of the software owner- house software or the taxpayer who developed the software internally and must have a head office or physical representative in Angola. billing software (for entities under the simplified VAT regime these obligations started only in January 2020). The remaining entities must use invoices with the numbering pre-printed by an authorised printer.

The certification is the responsibility of the software owner- house software or the taxpayer who developed the software internally and must have a head office or physical representative in Angola.

Communication of invoices

Taxpayers are obliged to submit to AGT a SAF-t file with information regarding invoices issued through the certified billing software.

SAF-t file must be submitted by the end of the month following the month the invoices were issued.

Self-billing invoices

Self-billing Legal Regime was approved by Presidential Decree nr. 194/20 of July 24th, 2020.

This regime entered into force on August 23rd, 2020 and will be in force until 31 December 2022.

The same is applicable to entities with tax residency in Angola which have organized accounting and who, in the exercise of economic activities, acquire goods and services from individual suppliers, who are not able to issue invoices.

The invoices/receipts issued must contain, in addition to the requirements foreseen on the Legal Regime of Invoices and Equivalent Documents, the mention "self-billing", as well as the information referred to the Self-Billing Legal Regime.

This regime has specific rules such as:

- The invoices/receipts issued shall not exceed 20% of the total cost of goods sold and materials consumed and the cost of supplies and services from third parties of the issuer.
- When the products acquired in the sectors provided are exclusively for the realization of the acquiring entity's main activity, the costs resulting from self-billing can be considered in 60%.
- In the acquisition of goods, the acquiring entities must withhold Corporate Income Tax at a rate of 2%.
- In the acquisition of services, the acquiring entities must withhold Personal Income Tax at a rate of 6,5%.

Penalties

- Non-submission or late submission of the VAT return: UCF 5 862;
- Non-payment or late payment of VAT: 25% of missing VAT;
- Non-submission or late submission of SAF-T (AO) file: Kz 300.000.

Custom Duties

Customs duties are levied on imports at *ad valorem* rates varying from 2% to 70%. Listed equipment may be imported temporarily if a guarantee is provided in favor to the Angola Tax Authorities.

The import of goods that are not produced in Angola is subject to customs duties at the rate of 20% plus customs fees (at rate of 0.5%) computed on the customs value, except goods covered by the Customs Regime Applicable to the Petroleum and Mining Sectors.

The export of nationalized food, medicine, medical equipment and biosafety goods are subject to Customs Duties at the rate of 70%, calculated on the customs value.

A special exemption regime applies for the oil industry for some listed equipment.

Excise duties

From 1 October 2019 onwards, excise duty entered into force in Angola, which rates varied between 2% and 50% and apply to the following goods:

- Sugar and alcoholic beverages.
- Tobacco and its derivatives.
- Fireworks.
- Jewelry and goldsmith articles.
- Aircraft and pleasure craft.
- Firearms.
- Art objects, collages, and antiques.
- Petroleum products.
- Vehicles.
- Plastic bags and straws.
- Tires, as specified in the table of Annex I of the Excise Duties Code.

From 19 August 2021, entered into force a New Excise Duty Code, approved under the Law No.16/21, of July 19, according to which:

Taxes

There was a reduction in what regards to the sugary and alcoholic beverages, which rates vary from 3% to 15% and an increase related to the vehicles rates, varying from 5% to 20%. The rates applicable to petroleum derivatives are, as a general rule, 2%, with the exception of gasoline and diesel with rates of up to 5%

Subjection

It is also considered as a taxable event the use of goods or raw materials outside the production process and which benefited from tax exemption.

Exemptions

The following goods are exempt from Excise Duty:

- Goods intended for education or health;
- Goods intended for consumption as provisions for any means of collective transport of passengers with international traffic;
- Products sold on board of collective transport of passengers for international traffic; and,
- Electric vehicles.

The taxpayer authorized to acquire or import raw material exempt from Excise Duty must keep a record of stocks of raw materials, products in progress, and finished products, in order to demonstrate the application of those products in their own production.

Taxable amount and Chargeability

The taxable amount is:

- For goods produced in the country, the transactional value;
- For imported goods, the customs value; and
- For petroleum products, the tax is levied on the cost of production.

The Excise Duty is due and becomes payable:

- In production, at the time of the transaction; and
- For petroleum products, the tax is chargeable at the time the goods are made available to purchasers.

Tax Stamp

The tax stamp is mandatory, according to the model approved by a specific Diploma, to manufactured beverages, tobacco and its substitutes, referred to in Annex I of the Law No.16/21.

The establishments that produce beverages, tobacco, and its manufactured substitutes and petroleum products, referred to in Annexes I and II of this Law, must be:

- Equipped with a counting and measuring system for electronic transmission of data to the General Tax Administration ("AGT") in an automatic manner of information related to production;
- The counting and measurement systems referred to above must be certified by AGT, under the terms to be regulated;
- This obligation will enter into force 6 months after the entry into force of this Law.

Penalties

The lack or delay in the electronic submission required implies the payment of a fine of Kz: 300,000.

Other Taxes

Employment Income Tax (EIT)

Resident and non-resident individuals earning income from work performed in Angola are subject to monthly taxation (EIT) at rates progressing from 0% to 25%. The 25% marginal rate applies on the excess of Kwanzas 10 000 000.

Taxable employment income for EIT comprises any amount paid in cash or in kind to an individual. The amount includes wages, salaries and dividends paid as remuneration to the partners of unincorporated businesses, bonuses, premiums, entertainment, travel allowances subsidies, rewards and directors fees irrespective of the source, place, currency and form.

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

- Mandatory Social Security benefits;
- Food allowance up to Kz 30.000 a month;
- Transport allowance up to Kz 30.000 a month;
- Employees' contributions paid to Social Security.

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

Individuals who only earn employment income do not file personal income tax returns. For calculation purposes, the rates apply to the gross (taxable) income less the social security contribution paid by the employee.

For self-employed individuals, companies must withhold tax at a rate of 6.5%. The tax withheld is considered as an advance payment. Self-employed individuals must submit an annual return by the end of March regarding the employment income earned in the preceding year.

For income not subject to withholding tax of self-employed individuals, carrying out industrial and commercial activities a rate of 25% applies.

Social Security Contributions

Registration

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

Contributions

Individuals are liable to social security contributions on their gross income at rates of 3% (8%, in case of retired employees) and 8% due by the employee and the employer, respectively. Payment of monthly social security contributions should be made by the 10th of the following month. Expatriates may be exempt from contributing to the Angolan social security system if they are covered by their home country scheme and proof is available.

Taxable income includes all cash or in-kind benefits, except for the following:

- Social benefits paid by employers;
- Holiday allowances; and
- Values of subscription / participation in complementary social protection schemes.

Property taxes (PT)

Property tax is levied on the real estate or on the income arising from the urban and rural property and land for construction, as well as on the transfer of real estate (as a gift or for consideration).

Leased

Rents paid by Angolan entities are subject to PT withholding at an effective 15% rate (corresponding to a nominal tax rate of 25% applied on a tax basis of 60% of the rental income).

The taxation of income from rented properties may not be lower than the tax resulting from taxing the ownership of the same immovable property.

Rental income is the total amount that the landlord receives from its tenants in the context of the transfer of the right to use the real estate asset and services associated with it.

The PT must be withheld by (i) the tenant when paying the rents, if the tenant is subject to accounting and bookkeeping obligations or (ii) by the landlord, for income not subject to withholding tax. The tax must be delivered until the end of the month following the one in which the rent was paid.

Not Leased

PT is levied on the patrimonial value, as follows:

- $PV \leq Kz 5\,000\,000$ - 0,1%
- PV From $Kz 5\,000\,001,00$ - $6\,000\,000,00$ Fixed amount of $Kz 5\,000,00$;
- $PV \geq 6\,000\,000,00$ - 0,5% of the excess of $Kz 5\,000\,000,00$

Owners of real estate that is not leased must submit the tax return in January of the following year and pay the tax in March.

Property Transfer

PT is levied at the rate of 2% for all acts that involve permanent or temporary transmission of real estate.

Land for construction

The PT is due on land for construction at the rate of 0.6%.

Stamp Tax (ST)

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

ST is due on receipts issued by companies, at a rate of 1%, which is payable by the end of the month following that in which the transaction occurs. Exemption of ST may apply on receipts for operations subject to VAT.

We also refer to our comments included in the “Standard VAT Regime”.

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

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

ST is applicable to financial operations, such as credit utilization (including but not limited to open credit accounts) and bond guarantees, interest and commission charged by financial institutions as well as foreign withdrawals, foreign public debt bonds, foreign notes and coins. As a rule, ST 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, ST is also applicable to written agreements, financial and operating leasing in tangible assets (except if subject and not exempt from VAT), cheques, lending, civil deposits, gambling, licenses, traders’ books, deeds, report (except if subject and not exempt from VAT), credit bonds, and transfer of business, among other acts.

Taxpayers are obliged to file an annual Stamp Tax return until the last day of the month of March each year.

Private Investment Law (PIL)

In order to be able to repatriate dividends and other proceeds, as well as to gain from tax benefits, foreign investors must register a private investment project with the Agency for Private Investment and Promotion of Exports (AIPEX), under the Private Investment Law (PIL), approved by Law 10/18, of 26 June, amended by Law 10/21, of 22 April and the Private Investment Law Regulation (PIL Regulation), approved by Presidential Decree 271/21, of 16 November. As referred above, this is not applicable to the Oil operators, but only to the companies providing services to the oil sector.

Investment regimes

The PIL provides for three investment regimes, each of them having different tax benefits and incentives, namely:

- **Special Regime** - applies to investments in specific activities (listed in the Regulation of the Private Investment Law) in priority sectors (e.g. agriculture, health, textiles, hotels, construction and public works), which benefits also depend on the location of the project;
- **Contractual Regime** - it could be applied to any investment in any sector of activity, provided that a minimum investment amount of USD 10M is executed and 50 direct jobs are created, or if the investment is considered highly strategic. In this case, it is allowed the negotiation of tax incentives and facilities and the conditions for the implementation of the investment project. The submission of a Financial and Economic Feasibility Study or a Business Plan is now required under the contractual regime.
- **Prior Declaration Regime** - applies to investment projects that do not fall under the previous regimes, that is, which amount is below the minimum required for the contractual regime, and which does not involve any of the activities covered by the special regime

The PIL does not provide for a minimum investment amount in order to enable the foreign investor to repatriate dividends, profits or capital gains abroad. This minimum amount is only established for investment to be eligible to the contractual regime in order to negotiate the tax incentives.

Investment operations

The investment project should entail the execution of an investment operation, which may consist of the incorporation or acquisition of companies, importation of funds or equipment for the development or expansion of a business through an already existing company held by the investor, supplementary capital contributions and shareholders’ loans, among others.

Operations considered as indirect investment (e.g. supplementary capital contributions) cannot exceed 50% of the total investment amount. Shareholders' loans cannot exceed 30% of the investment amount.

Means of implementation

The investment may be executed through (i) transfer of funds from abroad, (ii) application of national or foreign currency funds deposited in bank accounts domiciled in Angola and held by non-residents (which may be transferable abroad), (iii) application of funds in the context of reinvestment, and/or (iv) importation of machinery, equipment, accessories and other tangible fixed assets.

In the case of importation of machinery, equipment, accessories and other tangible fixed assets, the investment must be complemented by the transfer of funds from abroad to cover implementation costs.

Tax Audits

For the Oil & Gas entities, tax audits are conducted regularly on a yearly basis. After issuance of the MinFin audit reports, a fixation commission is scheduled to assess the taxable income and verify if the profit oil declared and the deductions (recoverable costs) are in line with the Petroleum Income Tax Law.

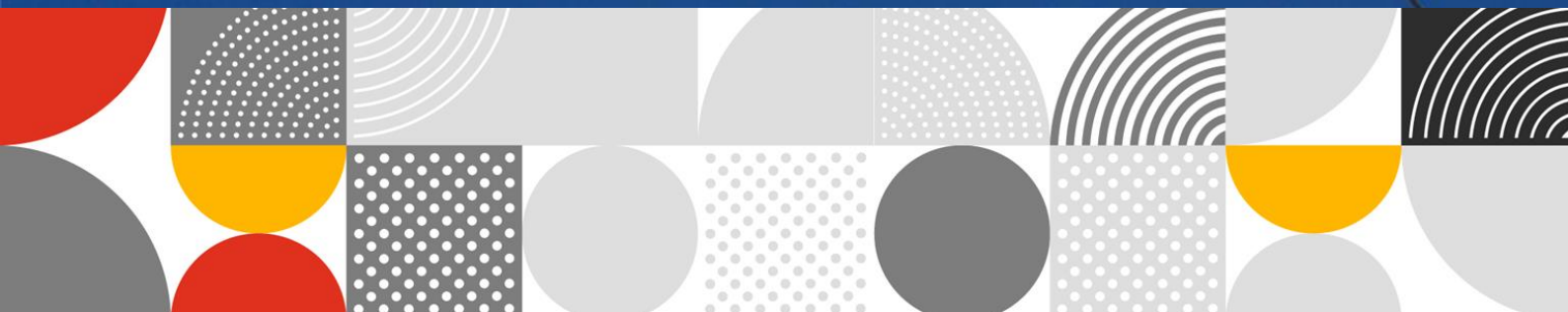
Upon this commission the taxpayer can appeal to the Revision Commission within 30 days from the date of reception of the notification from the Chief of the Tax Office.

After the Revision Commission, if the taxpayer considers that legal formalities have not been complied with, or errors in the interpretation of law have occurred in the process, the taxpayer may within 30 days, appeal to the court.

The service providers in the oil and gas sector are also subject to tax audits.



Power and Utilities Sector



Brief overview of the Power and Utilities development in Angola

For decades, Angola's national electricity grid had major supply gaps: There was no interconnection between the northern, central, and southern parts of the country that led to regional power shortages and unreliable service. These "grid islands" also contributed to Angola's relatively low electrification rate of approximately 43% in most cities and less than 10% in rural areas.

A major oil-exporting country and OPEC member, Angola is sub-Saharan Africa's third-largest economy. Increasing the access to electric power is a high priority for the Government of Angola, which has set targets of 9.9 gigawatts (GW) of installed generation capacity and a 60% electrification rate by 2025.

Angola needs modern and reliable transmission infrastructure that is critical to delivering electricity from power stations to those who need it. Power Africa is partnering with the African Development Bank (AfDB) and the Government of Angola to build critical transmission infrastructure in Angola.

In March 2020, the AfDB announced a half-billion-dollar loan to Angola's power sector under the first phase of its Energy Sector Efficiency and Expansion Program (ESEEP). ESEEP consists of three components: constructing a 343-kilometer 400-kilovolt (kV) transmission line to link Angola's Central and Southern grids, installing 1.2 million prepaid meters to improve revenue collection, and program management for project design and implementation.

To support the Government of Angola's goal of 60 percent electrification by 2025, Power Africa and the AfDB are working together to expand electricity infrastructure, facilitate new electricity connections for homes and businesses, and ultimately contribute to Angola's continued economic development.

In 2021, the total installed capacity for electrical production was 5.9 gigawatts, divided into 63% hydroelectric power and 37% thermal, in a market dominated by Prodel (Company Public Production of Angola), where there are 66 power stations, in that 63 are public, one corresponds to a public-private partnership and two are private.

According to the study presented at the international conference on renewable energy in Angola, organized by ALER in partnership with the Angolan Association of Renewable Energies (Asaer), the Government's objective is that by 2025 at least 7.5% of the electricity generated in the country comes from renewable energy sources, excluding large hydroelectric plants, with a total expected power of 800 megawatts.

The government is strongly engaged with renewable energies and with the goal of keeping the renewable energies as a support of the electric system of Angola, in specific through a strong investment in the hydroelectric potential of the country. The Development Plan for the Energy and Water Sector for the period of 2013-2017 foresees the installation of 5,000 MW mainly of hydroelectric energy. This investment not only enhances the competitiveness of the system but also represents the commitment with future generations.

The main goal of the present strategy is to diversify the investment in renewable energies through a growing role of the new renewable energies, including small hydropower plants. It is expected that by 2025 energy consumption may reach 39 TWh meaning that it is necessary to go further than 9 GW of installed energy capacity to meet the hydrological variability and also to guarantee the safety of energy supply.

Therefore, along with the large and medium-sized hydropower projects, Angola will have 74% of its installed power based on renewable energies, which would qualify Angola into the top 10 countries in the World - amongst SADC, OPEC and OECD countries. The high level of renewables will also allow Angola to benefit from one of the world's lowest power sector emission factors – 98 g CO₂/kWh.

Current and future major power projects in Angola

- **Laúca Hydroelectric Dam and transmission lines (supplies Luanda, Huambo, Huíla, Malange, and Kwanza Norte)**
 - Estimated installed capacity: 2070 MW
 - Estimated completion date: 2022 – currently operating at 95% the last generator is still under construction (completion December 2022).
 - Contractor: O
- **Soyo Combined Cycle (Phase 1) and high voltage power lines**
 - Estimated installed capacity: 750 MW
 - Completed in 2020
 - Contractor: China Machinery Engineering Corporation (CMEC)
- **Solar Power Plants**
 - Estimated installed capacity: 370 MW
 - Estimated completion date: 2022
 - Contactor: Sun Africa
- **Caculo Cabaça Hydroelectric**
 - Estimated installed capacity: 2171 MW
 - TBD - 6.2% of total execution, is expected in 2024.
 - US\$ 4.7 billion financed by a Chinese government loan and US\$ 1.4 billion by Germany for electromechanical equipment. Contractor: China Gezhouba Group Corporation (CGGC) / Niara Holding

GENERATION CAPACITY

Installed Capacity: 6,3 GW

- **Hydro: 64%**
- **Gas: 12%**
- **Other: 24%**

CONNECTIONS

Current Access Rate (3): 45%

- **Urban: 65%**
- **Rural: 6%**

To support the Government of Angola's goal of 60 percent electrification by 2025, Power Africa and the African Development Bank are working together with the Angolan Government to expand electricity infrastructure, facilitate new electricity connections for homes and businesses, and ultimately contribute to Angola's continued economic development.

Legal Framework

In order to enable sustainable development of the country as well as its self-sufficiency in terms of power, Angola has implemented a strategic plan for which the main goals are:

- growth of the generation capacity;
- extension of the transportation and distribution network;
- strengthening of the interconnections with adjacent countries;
- increase of the access of electricity;
- improvement of the quality of the services; and
- loss reduction.
- the right to change of electricity supplier without any cost and;
- the right to consult an independent entity in order to solve any claims related to the supply of electricity.

The national electricity network is ensured by the public electrical system (Sistema Eléctrico Público – SEP) which includes the national electricity transportation network, the power plants, distribution and trading networks

The main players of the electricity sector are:

- Ministry of Energy and Water (Ministério da Energia e Águas - MINEA) – responsible for the implementation of the electricity policy and for liaising with other ministerial departments and local government bodies.

- Electricity and Water Services Regulator Institute (Instituto Regulador dos Serviços de Electricidade e Águas - IRSEA) – responsible for regulating the activities of production, distribution, trading and use of electricity in the electric public sector.
- Angolan public entities:
 - National Network of Transportation of Electricity (Rede Nacional de Transporte de Electricidade - RNT) – responsible for managing the electric system, market operability and the transportation of electricity.
 - National Electricity Production Company (Empresa Nacional de Produção de Electricidade -PRODEL) – responsible for exploring power plants.
 - National Electricity Distribution Company (Empresa Nacional de Distribuição de Electricidade - ENDE) - responsible for trading and distributing electricity.

Considering the importance of attracting financial investment and private management for the development and maintenance of the infrastructure of the electricity sub-sector, the former General Electricity Law (Law 14-A /96 of 31 May) was reviewed and revoked in order to enable participation of the private sector in the electricity production and distribution activities. In this context, this replacing law allowed the production of electricity to be carried out under the public service concession regime and under the free competition system, which enables private entities to become electricity producers.

Executive Decree 122/19, of 24 May, updated the tariffs practiced in the electricity market, in order to make this sector more attractive and to allow for more flexibility in the prices.

The current General Electricity Law (Law 27/15 of 14 December 2015, which revoked Law 14-A/96 of 31 May) thus allowing activities related to the production, distribution and transportation of electricity are subject to public concession whereas the distribution and trading of electricity in insulated electronic systems are subject to licensing. Concessions are granted by the Angolan Government to public or private legal entities in the context of a tender and are designated based on the activity that will be carried out, i.e. (i) concession for the production of electricity, (ii) concession for the transportation of electricity or (iii) concession for the distribution of electricity. The duration of any concession depends on the activity that will be carried out but may not exceed 50 years.

Licenses are granted for the distribution and trading of electricity and their duration may not exceed 20 years. In the case of licenses for distribution of electricity in insulated systems, the minimum term corresponds to 10 years and 5 years in case of trade license.

The General Electricity Law also lists the rights of the consumer, which among others, are:

- the right to claim compensation in case the electricity supplier fails to supply electricity on a regular basis, except in the cases where the Government has established suspension of electricity supply;
- the right to change of electricity supplier without any cost and;
- the right to consult an independent entity in order to solve any claims related to the supply of electricity.

Presidential Decree No. 117/20 of 22 April 2020 approves the General Regulation on Environmental Impact Assessment and the Environmental Licensing Procedure. This decree establishes rules and procedures for the environmental impact assessment of public and private projects and the environmental licensing procedure for activities that are likely to cause significant environmental and social impact, as well as applicable fees and fines for noncompliance.

Licenses that authorise the operation of undertakings must include:

- a) Reference documents on the best methods and techniques applicable to the licensed activity, including all measures necessary to comply with the protection of the environment;
- b) Emission limits for polluting substances that may be emitted during the activity;
- c) Measures that guarantee the adequate protection of the soil and groundwater, the control of noise and the management of the waste;
- d) Emissions monitoring procedures, including applicable methodology, frequencies and measurement plans.

The Presidential Decree is divided as follows: General provisions (Chap. I); Environmental Impact Assessment (Chap. II); Environmental licensing (Chap. III); Inspection, Fines and Fees (Chap. IV); Final provisions (Chap. V). Annexes specify activities of different categories and requirements to be satisfied to perform such activity.

Undertakings of Category A – including the extraction and processing of ores, processing and production of

hydrocarbons – are subject not only to an Environmental Impact Assessment but also to an Environmental Pre-Feasibility and Scope Definition Study. They shall likewise be supervised by independent specialists with proven experience on the subject matter.

Regulatory Framework

Under the Private Investment Law, a private investor is obliged to employ Angolan workers, providing them with the necessary professional training and providing them with salary and social conditions compatible with their qualification. This includes the prohibition of any type of discrimination.

Additionally, under the terms of the legislation in force, admitting qualified foreign workers is admissible; however, the investor must comply with a rigorous training plan of training of national technicians, aiming at the progressive transition of these posts to Angolan workers. The plan for gradual replacement of the foreign workforce by the national shall be part of the Investment Project documentation at the time of registration.

Forms of Contracts

Considering the importance of attracting financial investment and private management for the development and maintenance of the infrastructure of the electricity sub-sector the former General Electricity Law (Law nr 14-A /96 of 31 May) was reviewed and revoked in order to enable participation of the private sector in the electricity production and distribution activities. In this context, this new law allowed the production of electricity to be carried out under the public service concession regime and under the free competition system, which enables private entities to become electricity producers.

According to the current General Electricity Law (Law 27/15 of 14 December 2015 – which revoked Law 14-A/96 of 31 May) the activities related to the production, distribution and transportation of electricity are subject to public concession whereas the distribution and trading of electricity in insulated electronic systems are subject to licensing. Concessions are granted by the Angolan Government to public or private legal entities in the context of a tender and are designated based on the activity that will be carried out.

Taxation regime and potential tax incentives

According to the Private Investment Law currently in force – Law 10/21, of 22 April -, the electricity sector is considered a priority, so investments in this sector may benefit from tax benefits and incentives which vary according to the project implementation area - provided that the specific activities to be performed are listed in the Regulation on the Private Investment Law.

For these purposes, a minimum investment amount is no longer required for access to tax benefits and incentives, unless the investors intend to negotiate tax incentives under the contractual regime.

If a foreign entity intends to be entitled with the right to repatriate profits and dividends and having the local business vehicle granted with tax benefits and incentives, the incorporation/registration of the company/branch should be followed by the application for approval of a private investment project. The new Law establishes a new simplified procedure for the approval of investment projects.

This current Law has also eliminated the 35% local partnership requirements previously established for the electricity sector.

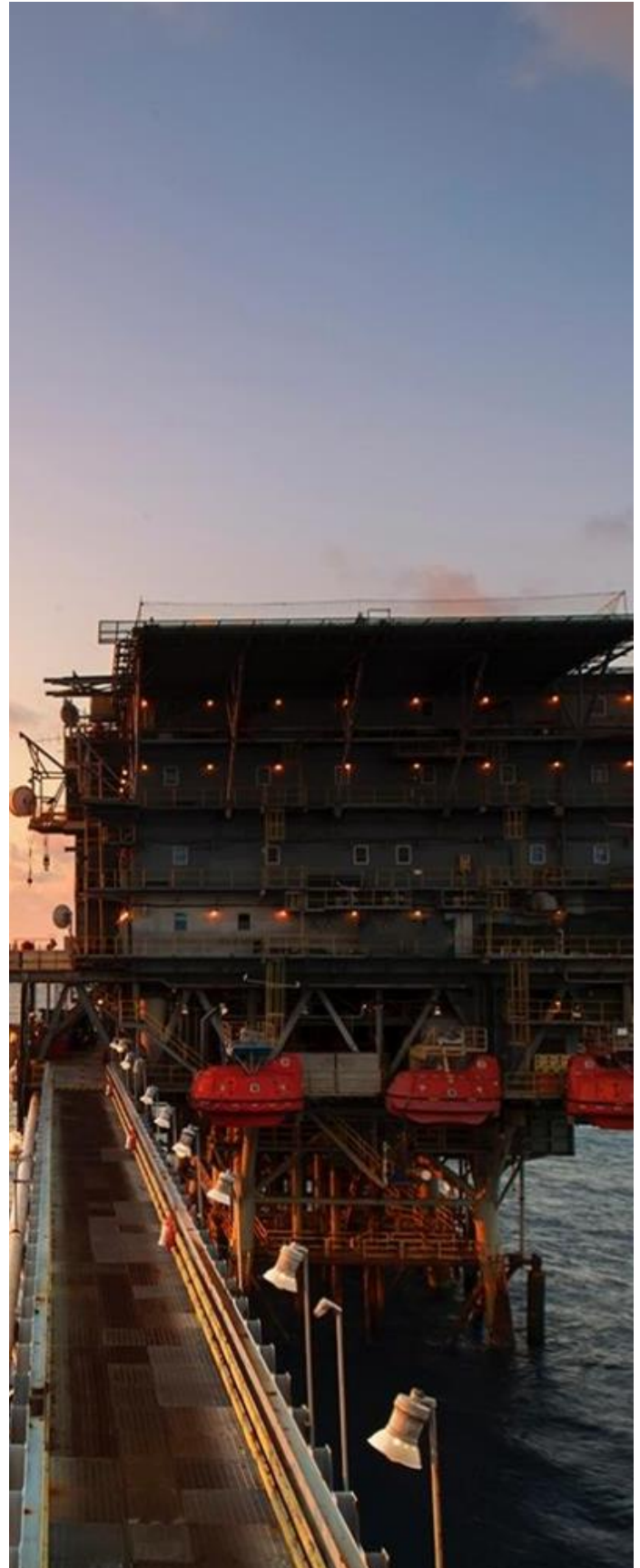
If the activity performed in the electricity sector is covered by the prior declaration regime, the company will be granted with the following tax benefits:

- 50% reduction of the Real Estate Income Tax rate on the acquisition of buildings for administrative and establishment purposes of the investment;
- 20% reduction of the Corporate Income Tax rate for a period of 2 years;
- 25% reduction of the Investment Income Tax due on profit and distribution of dividends for a period of 2 years;
- 50% reduction of the Stamp Tax for a period of 2 years.

If the activity performed is covered by the special regime, the tax benefits and incentives depend on the investment development zone, namely:

- Zone A: The province of Luanda and the municipalities of the provincial capitals of Benguela, Huíla and the municipality of Lobito;
- Zone B: The provinces of Bié, Bengo, Cuanza-Norte, Cuanza-Sul, Huambo, Namibe and other municipalities of the provinces of Benguela and Huíla;
- Zone C: The provinces of Cuando-Cubango, Cunene, Lunda-Norte, Lunda-Sul, Malange, Uíge Zaire;
- Zone D: Province of Cabinda.

The tax benefits listed in the following table are granted automatically and vary according to the Zone where the project is implemented.



In addition to the below referred tax incentives, the special purpose vehicle created for purposes of the investment in the electricity sector may benefit from an exemption of fees and charges for any service rendered by a public entity, including customs services for a period of 5 years.

Tax	Geographic zone	Tax Incentive
Real Estate Transfer Tax (RETT)	A	Acquisition of real estate for office purposes – Tax rate reduction by 50%
	B	Acquisition of real estate for office purposes – Tax rate reduction by 75%
	C	Acquisition of real estate for office purposes - Tax rate reduction by 85%
	D	The RETT rate corresponds to the half of the rate applicable to zone C
Property Tax (PT)	B	Ownership of real estate used for office purposes - Tax rate reduction by 50% for a period of 4 years
	C	Ownership of real estate used for office purposes - Tax rate reduction by 75% for a period of 8 years
	D	The property Tax rate corresponds to the half of the rate applicable to Zone C, for a period of 8 years
Corporate Income Tax (CIT)	A	Reduction of the final and provisory CIT by 20% for a period of 2 years
	B	Reduction of the final and provisory CIT by 60% for a period of 4 years
		Increase of the depreciation rates by 50% for a period of 4 years
	C	Reduction of the final and provisory CIT by 80% for a period of 4 years
		Increase of the depreciation rates by 50% for a period of 8 years
	D	The CIT corresponds to the half of the CIT rate applicable to Zone C for a period of 8 years
Increase of the depreciation rates by 50% for a period of 8 years		
Investment Income Tax (IIT)	A	Reduction of the rate applicable to profit and dividend payment by 25% for a period of 4 years
	B	Reduction of the rate applicable to profit and dividend payment by 60% for a period of 4 years
	C	Reduction of the rate applicable to profit and dividend payment by 80% for a period of 8 years
	D	The IIT rate corresponds to the half of the rate applicable to Zone C for a period of 8 years

The potential tax benefits to be negotiated under the contractual regime are established in the Tax Benefits Code, which is still to be approved and published.



ESG



ESG Framework

Although there are no local requirements for reporting ESG information, the adoption of ESG factors has been reinforced and consolidated, becoming unavoidable within the financial markets.

It is becoming increasingly necessary to provide and report ESG information by international investors and financiers, as well as by society in general. However, international groups with a presence in Angola adopt the reporting practices of their parent company, which is why there are some local sustainability reports.

For exporting companies, for example, in Europe, some requirements arising from the CSRD Directive may apply, given that: From financial years starting on or after January 1, 2028, the CSRD will also apply to non-EU undertakings (labeled “third country undertakings”) that generates a net turnover of more than €150,000,000 in the EU and have: (i) an EU branch office with a net turnover of at least €40,000,000 in the EU; or (ii) a large or listed EU subsidiary”.

E-SUMMIT on sustainability in Angola

- For a growing number of investors, in particular banks, the integration of environmental, social and governance (ESG) factors is becoming crucial in decision-making strategy, especially to assess the investment options and manage credit risk.
- The adoption of ESG factors has been strengthened and consolidated and has become inevitable within the financial markets, with a growing concern on this matter among all categories of markets agents (issuers, financial intermediaries, investors institutional and retail, auditors, market structures) and in the civil society.

The Impact Report describes the implementation results of ACP’s investment approach and the role of private equity as catalyst for the development of Angola

ACP (Angola Capital Partners) contribution to improve the protection environment and sustainability:

- A. Sustainable fishing along the angolan coast
- B. Waste management in Angola
- C. ACPs response to environmental protection and sustainability
- D. Developmental outcomes at grassroot level as a result of environmental protection and sustainability

Angola Government approved the Climate Changes National Strategy (2022-2035)

The Angolan government approved the National Strategy for Climate Change for 2035 (ENAC 2022-2035), which aims to ensure the adaptation of Angolan territory to CLIMATE CHANGE and contribute to the global effort to combat its causes.

COP27 – Angola defends strengthened fight against climate change, Angola’s Vice-President, Esperança da Costa, says

There is the urgent need for the creation of an early warning system and the operationalization of the African Humanitarian Agency to make it possible to identify multiple dangers related to climate change. The intention is to collect and share data to respond to the different problems related to climate change, including forced displacement.

President João Lourenço believes that the risks and threats associated with climate change require a more comprehensive international approach, which also includes a review and adaptation of continental peace and security mechanisms to make their instruments of intervention more efficient.

Angola recognizes that climate change has negatively impacted the achievement of different development plans, the politician said, stressing a national strategy has been approved for this purpose.

The strategy establishes a vision until 2030, with the aim to ensure the adaptation of Angolan territory and contribute to the global effort to combat its causes.

The Angola Country Climate and Development Report (CCDR) provides options for the country to adapt to a fast-warming and decarbonizing world and adopt measures for more diversified and climate-resilient development that will underpin sustainable and inclusive growth. Angola has significant renewable capital, including agricultural land, forests, water resources, and, above all, its people, who can facilitate this process. But climate change also threatens these renewable assets, and necessary investments in climate resilience will be critical to realise their potential.

Angola’s Climate Commitments and Institutional Readiness:

- The Angolan government has incorporated climate action and sustainability in its high-level planning and strategies for many years.
- Angola is a party to the Paris Agreement and in 2021 submitted an updated nationally determined contribution (NDC)

- The 2018–2022 National Development Plan (NDP) provides a framework for climate action.⁷
- In 2021, Angola approved an updated version of its 2018–2030 National Strategy for Climate Change (ENAC)

Strengthening Angola's Climate Policies and Institutions

Angola lacks an overarching national legal framework on climate change to guide implementation and progress tracking towards climate targets. The MCTA and other entities that are responsible for planning and implementing climate change plans require more support in terms of knowledge, governance, data, and financial resources. Increased inter-institutional coordination is needed to integrate climate priorities with national sustainable development strategies, poverty reduction plans, and public policies. It is also crucial to develop synergies between the central authorities and the provinces, to build capacity and provide support for joint implementation of plans and strategies. In order to improve Angola's legal, institutional, and fiscal architecture around climate action, this CCDD recommends prioritizing action in two key areas:

Priority Area 1: Create a strong legal and regulatory framework for climate action

Priority Area 2: Realign institutional roles and responsibilities to advance climate goals and improve coordination

Mainstreaming Climate-Related Disaster Risk Management

The government has recently committed to mainstream disaster risk reduction into every investment decision and development plan. Several policies and regulations to reduce climate-related disaster risks were developed after the civil war, including the institutional and governance framework for disaster risk management (DRM), established in 2003 under the Civil Protection Basis Law. It created two key bodies, the National Civil Protection Commission (CNPC) and the National Civil Protection and Fire Fighting Service (SNPCB). Since then, the government has enacted multiple strategies and plans related to climate related DRM, although challenges persist with institutional coordination, decentralization, mainstreaming, information management and priority-setting. For instance, only eight of 18 Provincial Civil Protection Commissions had developed provincial preparedness, contingency, and recovery plans as of this writing. Overall, there is a need to move from a system focused on disaster response to a more proactive risk management system. This CCDD recommends:

Priority Area 3: Strengthen disaster and climate-related risk management capacity in Angola

Public Financial Management:

- National budget processes, budget planning, public investment management, procurement practices, and intergovernmental fiscal relations have a critical role to play in meeting the challenges of climate change.
- A stronger PIM system would ensure that projects financed with public funds are appropriately selected, efficiently implemented, conscientiously monitored, and thoroughly evaluated.
- The PIM system in Angola lacks transparency, with limited infrastructure data disclosure.
- The Angolan government has made considerable efforts to enhance the quality of the overall PFM system, but challenges remain.

Priority Area 4: Integrate climate measures into sectoral plans, strategies, and policies, and territorial planning instruments

ESG and Governance (ethical behaviour, anti-corruption, risk disclosure and whistleblowing)

Angola has sought a path forward. Such efforts include tackling widespread corruption.

Since current President João Lourenço took office in late 2017, his administration has vigorously pursued one of his main promises of reform: the fight against systemic corruption.

To support its anti-corruption rhetoric, President Lourenço's administration overhauled obsolete anti-corruption and anti-money laundering laws to comply with international standards.

There are recent developments in Angola's anti-corruption legislation and domestic enforcement efforts.

The current political commitment and strong discourse to tackle corruption in the country in general and in the oil sector in particular, coming from the highest political level, represents a unique opportunity to tackle corruption in Angola and introduce credible reforms with a long-term impact.

This can be aided by the increased engagement from international institutions with a strong governance agenda and expertise to build effective anti-corruption frameworks.

Fiscal consideration towards Good ESG Practices

Law 8/22, of 14 April, approved the Tax Benefits Code. Regarding the environment, the new law establishes:

- Tax benefits for electric vehicles related to customs duties and tax on motorized vehicles;
- Tax benefits for the production and distribution of renewable energies related to Property Tax, Corporate Income Tax and Investment Income Tax.

Community engagement

Progress in implementation the SDGs in Angola:

- The main success factors related to the indicators, especially in the Education, Health, Gender Equality, Social Protection, Justice and Human Rights and Environment areas are related with the investments made in these areas, through assertive programs and policies and budget allocations.
- Regarding the Objectives that need more attention, stand out those related to economics and Employment, with the sustainability of Industry and Innovation, with access to clean and sustainable Energy and Water, with better Cities and Communities and with the consolidation and expansion of partnerships that sustain the successes already achieved.

Other benefits for ESG consideration

The 2030 Agenda, adopted in September 2015 by the United Nations General Assembly through Resolution A/RES/70/1, incorporates 17 Sustainable Development Goals (SDGs), successors to the Millennium Development Goals (MDGs), which cover diverse but interconnected areas. The SDGs integrate three dimensions of sustainability – social, economic and environmental. The Agenda emphasizes the orientation of leaving no one behind and the eradication of poverty, which is Goal 1. It advocates a new global partnership based on a spirit of solidarity, cooperation and mutual responsibility, putting people at the center of development. It is an action plan for People, Planet and Prosperity; and it also aims to strengthen universal Peace and Partnership at the global level.

The Republic of Angola has committed not only to the implementation of the SDGs, but also to the robust, voluntary, effective, participatory, transparent and integrated monitoring and review of the implementation of the 2030 Agenda.

SDG's

- Poverty eradication
- Zero hunger and sustainable agriculture
- Health and wellbeing
- Education and quality
- Gender equality
- Clean water and sanitation
- Clean and affordable energy
- Decent work and economic growth
- Industry, innovation, and infrastructure
- Reducing inequalities
- Sustainable cities and communities
- Responsible consumption and production
- Action against global climate change
- Life on water
- Terrestrial life
- Peace, justice, and effective institutions
- Partnerships and of implementation

Why are the SDGs important for businesses?

The alignment of companies with the SDGs allows not only to identify and manage potential risks for the business, but also to drive innovation and provide new opportunities. Likewise, the SDGs can prove to be a strong talent attraction tool, considering the relevance that new generations attribute to sustainability-related topics. Identifying which SDGs can have a greater impact on the activity and, consequently, setting targets to support their achievement will contribute to companies building trust with their stakeholders.

An integrated adoption of these goals brings a unique perspective to a company's sustainability activities, allowing it to re-evaluate its business strategy from a financial and non-financial perspective. To date, there are still many companies that have not embraced this commitment to the SDGs, despite many already having environmental, social and governance (ESG) policies often referred to in their publicly available reports.

Angola has a National Platform on Sustainable Development Goals that aims to accelerate, prioritize, disseminate and mobilize funding for the Sustainable Development Goals, as well as monitor their implementation in Angola.



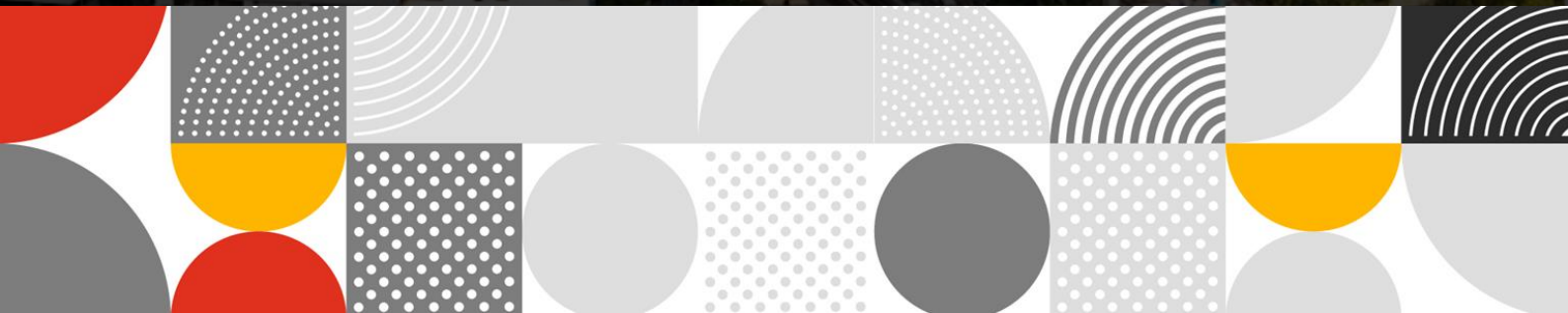
Cameroon

Contact

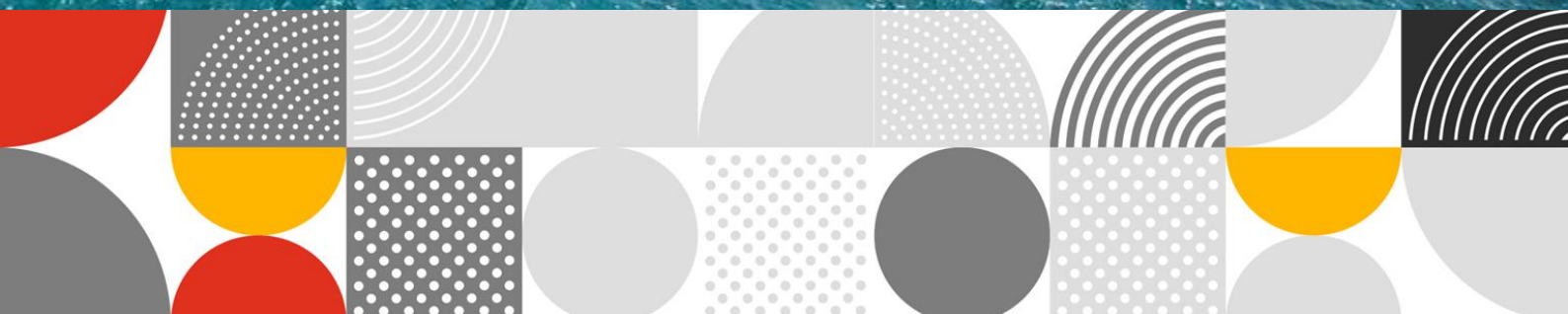


Bernard Noutsawa

bernard.noutsawa@pwc.com



Oil and Gas Sector



Brief history on Oil and Gas development in Cameroon

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

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

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

Following a period of decline, an increase in proven reserves was expected. This was due to increased development and intensification of drilling activities under the signature of new Petroleum Contracts and the ceding of the Bakassi Peninsula to the Republic of Cameroon.

According to the National Hydrocarbons Company (NHC), the recent increase is the result of the commissioning and operation of the Bojongo field and the increase in production of three new oil fields namely Padouk, Inter-Inoua Barombi and Barombi Nord-Est.

In March 2005, Cameroon adhered to the Extractive Industries Transparency Initiative (EITI) which is a global standard to promote the open and accountable management of oil, gas and mineral resources, and was declared compliant on 17 October 2013 after the first validation process. SNH is a member of the National Committee in charge of following-up the implementation of EITI principles in Cameroon. An EITI Committee also exists within the company.

In January 2018, the National Hydrocarbons Corporation (NHC) launched a Licensing Round for eight blocks in the hydrocarbons rich Rio del

Rey Basin (RDR) and in the highly prospective Douala/Kribi-Campo (DKC) Basin which covers a total area of 19,000 km². International Oil & Gas Companies were invited to submit bid(s) for one or more blocks.

Reservoir estimates

The proven reserves of crude oil in Cameroon are estimated at 200 million barrels. According to the information made public by the National Hydrocarbons Corporation (NHC), on the activities of 2022, the national mining domain under contract did not change in 2022. As of December 31, it had an occupancy rate of 37.36%, or 11,894.64 km², for a total area of 31,839.30 km². He understands:

- 03 Exclusive Research Authorizations (AER), for an area of 7,836.88 km² (24.61% of total area);
- 21 Concessions and/or Exclusive Exploitation Authorizations (AEE), covering 4,057.76 km² (12.74% of the total area).

As of December 31, 2020, the free national mining domain has 10 free blocks. These are Bakassi, Bolongo Exploration, Ndiar River and Thali in the Rio Del Rey basin; Etinde Exploration, Elombo, Ntem, Tilapia, Bomono and Kombe-Nsepe, in the Douala/Kribi-Campo Basin. The free mining domain covers a total area of 19,426.46 km², or 61.01% of the total area.

Two blocks are under negotiation: Logbaba Exploration, in the Douala/Kribi-Campo basin, and Ngosso, in the Rio Del Rey basin. They cover an area of 517.90 km², or 1.63% of the total area.

In 2020, crude oil production amounted to 26.556 million barrels (MB), up 2.16% compared to 2019.

The combined State and SNH share of the production of liquid hydrocarbons amounts to 16.154 MB, down 1.03%.

Gas production stood at 83,280.33 million cubic feet, of which a marketable share of 75,243.08 million cubic feet (+6.19%).

The State and SNH share of gas production is 20,518.70 billion cubic feet, up 7.27%.

The increases in production recorded are the result of the diversion of wells from the LUG rig drilling campaign in the Rio Del Rey basin by the RDR and Moabi associations, as well as the improvement of the rehabilitation activities of the facilities

Key figures from 1 January to 31 October 2022:

- Oil production: 20.828 million barrels
- Volume of crude oil marketed on behalf of the State: 12.662 million barrels
- Gas production: 70,703.36 million cubic feet, or 2,002.09 million m³
- Quantity of natural gas sold to the Kribi Thermal Power Plant: 9,651.705 million cubic feet of gas, i.e. 273.30 million m³
- Quantity of domestic gas (LPG) delivered to Tradex to supply the local market: 21,988.776 metric tonnes (MT)
- Quantity of liquefied natural gas (LNG) sold internationally: 52,889,120 million British Thermal Units (BTU), i.e. 2,287,887 m³

Revenue generated for the State:

1. 614.277 billion FCFA (+91.03%) for “SNH royalty” included in the State budget
2. 9.317 billion FCFA of corporate tax (IS)
3. 3.426 billion FCFA for various taxes and duties

On another level, the Chad/Cameroon Pipeline generated for the State, revenue of 34.04 billion FCFA under the right of transit (+26.5%).

Political Changes in the Country

Since September 2016, Cameroon, a country previously known for its stability, is facing violence. The country is carrying out military operations against secessionist insurgency in two Anglophone regions, attacks by the Islamic militant group, Boko Haram, in the Far North.

The first regional elections were held in December 2020. The ruling party, the Democratic Rally of the Cameroonian People (RDPC), won nine out of ten regions. These elections mark the beginning of the decentralization process provided for in the 1996 Constitution. The new regional councilors will work with the Ministry of Decentralization and Local Development with a view to gradually transferring the necessary power and funds to the regions.

Economic Changes in the Country

Due to the secessionist insurgency Cameroon has been facing since September 2016 and the attacks by the Islamic militant group, Boko Haram, the Far North, North West and South West Regions have been declared economic disaster areas

Economic disaster zone, is a circumscribed territorial space in which economic activity is structurally and durably affected by insecurity or disasters of all kinds like floods, famine, drought, etc.

According to IMF, Cameroon's economy has proved resilient. Economic growth in 2020 reached 0.5 percent, higher than expected, driven mainly by the resilience of the secondary sector. Growth hit a record low of -2.2 percent year on year in Q2-2020, before starting to gradually recover and reach 3.2 percent in Q2-2021. Growth is expected to reach 3.5 percent in 2021, supported by a domestic recovery and the general global economic recovery. Inflation remains moderate. The economic outlook remains positive but with wide uncertainties. Assuming the Covid19 pandemic gradually retreats, the recovery in 2021, supported by the non-oil sector, is projected to continue, with growth rates reaching 4.5 percent in 2022 and 4.8 percent from 2023 onwards.

Fiscal regime

Institutional overview and regulatory framework

1. The National Hydrocarbons Corporation of Cameroon (SNH)

SNH is a public company with financial autonomy. It was created on 12th March 1980 and has its head office in Yaoundé. SNH has the mission to manage State interests in the oil and gas sector. As such:

- SNH promotes, develops and monitors oil and gas activities throughout the national territory. Within this framework, the company works in association with international oil companies, ensuring notably compliance with all regulatory texts as well as control of production costs. In addition, SNH is a full oil operator, after putting on production of the Mvia field, which the company has been operating since 2009.
- SNH sells the share of national crude oil production accruing to the State on the international market, through contracts, as well as its own share as an investor. It also carries out trading activities on behalf of SNH partners, at their request. The selling prices of Cameroonian crude oil grades are set in relation to Dated Brent, which is the reference crude oil of the London market. Depending on market conditions, the prices feature discounts or premiums, which reflect the difference in quality compared to Brent, the cost of transport to target markets, the cyclical demand for this type of crude oil, etc.

Income derived from sales is transferred to the Public Treasury after deducting production costs. The transfers alone (excluding taxes and dividends) amounted to almost 4,300 billion CFAF for the 2009-2018 decade.

2. Hydrocarbon Price Stabilisation Fund (CSPH)

- The main task of the Hydrocarbon Price Stabilization Fund (CSPH) is to regulate the price of hydrocarbons throughout the national territory through partial or total coverage of price increases for said products to the extent of its financial availability.
- In the alternative, CSPH participates in all operations aimed at mastering the national energy policy. This, by taking a stake in the fields of exploration, production, refining and distribution of hydrocarbons.
- With the liberalization of the downstream petroleum sector since 1998, it ensures the regular supply of hydrocarbons throughout the national territory by regulating stocks and regulating prices. It also provides the arbitration necessary to maintain healthy competition between operators in the sector. It also takes care of consumer protection, through two mechanisms: stabilization and equalization.

3. Ministry of Water Resources and Energy

Amongst other missions, the Ministry of Water Resources and Energy is responsible for:

- Monitoring and control of storage, transport, distribution, import and export of oil and gas products;
- Control of regulatory stocks of oil and gas products;
- Quality control of oil and gas products;
- Monitoring the activities of the National Commission for Petroleum Products;
- Pricing of petroleum products, in conjunction with the Ministries and bodies concerned;
- Monitoring the evolution of supply and demand for oil and gas products.

Regulatory Framework

Industry sectors – Upstream and Downstream

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

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

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

Business Licence

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

Section C12 of the Code exempts all new companies from business license tax for a year. All new companies must obtain an Attestation of Exoneration from the competent authorities to benefit from the exemption. It therefore appears that the business license is payable each year from the second year of existence of new registered entities.

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

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

- 0.159% on the turnover of large companies, for a minimum contribution of XAF 5 million and a maximum contribution of XAF 2.5 billion.
- 0.283% on the turnover of medium-sized companies, for a minimum contribution of XAF 141,500 and a maximum contribution of XAF 4,500,000;
- 0.494% on the turnover of small-sized companies, for a minimum contribution of XAF 50,000 and a maximum contribution of XAF 140,000.

Capital investment regulations

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

Forms of contracts

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

Conventions of Establishment and Contracts of Association

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

Concession Contracts

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

The concession contract is entered prior to the granting of a Hydrocarbons Exploration Permit. It sets forth the rights and obligations of the state and holder during the period of validity of the title granted to the latter.

Production Sharing Contracts

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

Under this contract, the hydrocarbons produced shall be shared between the state and the holder in accordance with the terms of the Contract. The holder receives a share of production as

reimbursement of its costs (cost oil) and compensation in kind on the remainder of the total hydrocarbons production (profit oil) according to the provisions of the Contract.

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

Risk service contract

The risk service contract is a petroleum contract attached to an exclusive exploration authorization and to an exclusive exploitation authorization whereby the holder is responsible for financing petroleum operations and receives remuneration in cash. A contract for the provision of services which does not confer the exercise of exclusive rights for hydrocarbon exploration and exploitation shall not be a risk service contract.

Local content in the oil and gas industry

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

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

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

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

Fiscal and Taxation regime

A new Petroleum Code was published 25th April 2019. That New Code shall apply to the Petroleum contracts

concluded from the date of its promulgation (i.e. 24th April 2019).

The Petroleum contracts concluded between the State and Petroleum companies prior to the date of promulgation of the New Code shall remain valid for the period for which they were concluded or granted.

Fiscal and taxation structure as per the old Petroleum Code and current oil contracts

Direct taxes

Petroleum/Oil taxation

There are two main regimes of petroleum taxation in Cameroon:

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

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

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

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

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

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

The main differences between the two types of contracts are:

- PSCs are not subject to royalties based on the production, but concession contracts are.

- There could be “excess profit tax” calculated according to the provisions of the concession contract.
- In the case of PSC, a part of the production (Cost Oil) is allowable to the oil company to cover petroleum costs and the “Profit Oil” is shared between the State and the Oil Company according to a ratio agreed upon in the PSC.

The tax regime provided by the petroleum code, and applicable to oil companies which have concluded either a concession contract or a PSC is the following:

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

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

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

Royalties

Proportional mining royalty applicable to conventions of establishment

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

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

Proportional royalty applicable to concession contracts

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

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

Additional Petroleum Duty

There is an additional petroleum duty due on exceptional income realised by the Holder of a concession contract. The amount of additional petroleum duty is a percentage of a basis determined by reference to an R factor.

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

Signature and Production Bonuses

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

Flat fees

This is paid when the petroleum permit is granted or renewed. For the granting and renewal of the Prospection Authorisation, the amount of fixed duty is currently fixed at XAF 6 million.

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

For Exploitation Authorisation, the flat fee is as follows:

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

Annual Surface Rental fee

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

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

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

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

Gas taxation

There is no specific regime for gas taxation in Cameroon.

Liquefied natural gas (LNG) regime

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

Withholding taxes

The withholding tax regime as applicable to petroleum companies is as follows:

- Holders of petroleum contracts and their subcontractors shall be exempted from the

Special Income Tax (15%), in the research and development phase with respect to remuneration for assistance, rental of equipment and material, and all other services rendered to them in connection with oil operations by foreign service providers, provided that the foreign service providers:

1. Do not have a permanent establishment in Cameroon.
2. Provide the said services at cost price.

The conditions for applying the above exemption, shall be subject to annual checks by the tax administration's services.

However, holders of petroleum contracts and their subcontractors in the research and development phase may opt for the abated rate of the Special Income Tax of 3%.

Failure to meet the conditions mentioned above and opting for the abated rate of the Special Income Tax of 3%, the rate of 15% shall apply.

- For remunerations of services on exploitation operations, application of the SIT at the normal rate of 15%/
- 16.5% applicable to interest on loans other than those granted by non-resident lenders for fund pertaining to development investments.
- 5.5% applicable to services provided by local vendors who are listed as members of a liberal profession except where exempt;
- 2.2% or 5.5% applicable to goods and materials supplied by local vendors depending on their tax regime if the customer is authorized to deduct income tax and VAT at source;
- 15% applicable to rents paid for the leasing of premises to entities not attached to a specialized tax centre.

Capital gain tax (CGT)

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

The net overall capital gains arising from income from bonds, income from debts, deposits, surety-bonds and current accounts, profits realised from the direct or indirect transfer of shares, reimbursement of sums put at the disposal of the company by a manager or a

partner as an advance or a loan, as well as from the transfer of rights relating to natural resources shall be subject to 16.5% WHT (which is an advance payment of CIT).

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

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

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

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

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

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

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

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

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

Property Tax

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

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

Double Tax Treaties

Cameroon has concluded Double Tax Treaties with the following:

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

Profit repatriation issues

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

Transfer Pricing and Thin Capitalisation regulations

For the assessment of the company tax payable by companies which are controlled by, or which control an undertaking established outside Cameroon, the profits indirectly transferred to the latter by increasing or reducing the purchase or

selling price, or by any other means, shall be incorporated in the results of such enterprises. The profits indirectly transferred shall be assessed by comparison with those that would have been realized in the absence of dependency or control.

Dependency or control relationships shall be deemed to exist between two enterprises:

- a. where one holds directly or by proxy 25% of the share capital of the other or actually exercises decision-making powers in the other; or
- b. where both are placed, under the conditions defined in point (a) above, under the control of the same enterprise or person.

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

Taxpayers with an annual turnover of XAF 1 billion (i.e., USD 1.6 million) shall provide the tax auditors with a TP documentation at the beginning of tax audits.

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

Companies that are directly or indirectly dependent on or control other companies located outside Cameroon may request the tax authorities to conclude a prior agreement on the method of determining transfer prices for a period not exceeding 4 (four) financial years.

The conditions for implementing this agreement are yet to be made public

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

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

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

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

Indirect taxes

Value-added tax (VAT)

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

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

VAT returns of a given fiscal year should be submitted on the 15th of March of the following year (i.e. the VAT return of FY 2021 should be submitted on 15th March 2022 at the latest). Monthly returns are required to be filed on the 15th of the following month at the latest.

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

Consumption tax

There is no such tax in Cameroon.

Registration Duty

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

The formation of a company and subsequent capital increases in Cameroon are not subject to registration duty. Public contracts or orders paid from the budget of the state, regional, and local authorities; public institutions, public corporations, and semi-public companies; or through external financing shall be subject to registration duty at the rate of 3% for amounts above XAF 50 million.

As of 1 January 2022, public orders for fuels and lubricants, regardless of the purchase or payment method, shall be exempted from registration duty and stamp duty.

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

- The transfer of shares and bonds of commercial or civil companies with registered offices outside of the Economic and Monetary Community of Central Africa (CEMAC) zone when said instruments are utilised or when the transfer produces consequences in a CEMAC country.
- The transfer (even indirect) within Cameroon or abroad of shares and bonds of companies with registered offices in Cameroon. Holders of Petroleum contracts shall be liable under conditions of general application for fees related to transfer tax (i.e. registration duty) except for **registration fees related to loans, sureties and contracts directly related to Petroleum Operations.**

The rate is 5% for the following transactions:

- any agreement having the effect of allowing an entity to exercise an activity carried out by a previous holder even when the said agreement concluded with the latter or his successors in title is not accompanied by a transfer of customers.
- massive disposals of corporate securities when they do not entail a transfer of goodwill.

Custom duties

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

At the Exploration/Research phase

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

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

At the Exploitation phase

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

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

Equipment not relating to oil operations shall be subject to the Customs regimes of general application. Holders may export the share of hydrocarbons to which they are entitled free of all export taxes and duties. The importation of goods and merchandises from other countries is subject to customs duties, except where exemptions or the suspended customs regimes are applicable. Customs duties are levied on the customs value of most imported goods at rates ranging from 5% to 30%.

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

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

The above customs benefits apply to the contractor and their subcontractors. The Ministry in charge of finance provides a list of products and materials for which this benefit applies. However, the list although in existence, is unsigned, therefore the concern is that it does not have the force of law. Customs generally adhere to the list. Practically, companies will apply for a certificate of exemption for each category of operation. This process can take 1 to 2 months and therefore timing must be carefully planned. Moreover, the certificate of exemption applies to the PSC contractor and to immediate tier 1 subcontractors.

However, tier 2, i.e. sub subcontractors are unable to benefit albeit that the wording of the PSC does allow all tier contractors to benefit.

Other custom duties

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

OHADA Levy

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

Data processing fee

The rate of this tax is 10.45% applicable to the Cost + Insurance + Freight values, capped at XAF 15000 (i.e. USD 24.19) per customs declaration.

SGS Inspection fees

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

Registration duties

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

Stamp duty

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

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

The social contribution is divided into three parts:

- Contribution for family allowance: 7%;
- Contribution for Industrial accident with low risk: 1.75%, medium risk: 2.5, high risk: 5%.
- Contribution for old age pension: 4.2%.

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

Other taxes

Personal Income Tax (PIT)

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

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

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

The benefits in kind are assessed as follows based on taxable income:

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

Deductible Charges:

- Professional Charges: 30% of taxable income;
- Social Contributions: 4.2% of remuneration subject to social contribution, with a maximum base of 750,000 per month;
- Family Expenses: 500,000 FCFA per year.

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

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

National Social Insurance Fund (NSIF)

Employers and employee must contribute on a monthly basis to Cameroon's National Social Insurance Fund at 11.2% and 4.2%, respectively. The basis of contribution is capped at XAF 750,000 per month (i.e. XAF 9,000,000 per year).

Employers in Cameroon must also contribute 1.75%, 2.5%, or 5% of total salaries to the National Social Insurance Fund for Industrial Accidents when they are respectively classified in groups A, B or C according to the classification per type of activity. The calculation basis in this category is the gross salary, including the benefits in kind assessed for their actual amount.



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

Other Taxes/Contribution on payroll	To be borne by the Employer	To be borne by the Employee
CRTV Royalty	Depend on the amount of gross salary, this royalty does not surpass XAF 13,000 per month	N/A
Local Development Tax	Depend on the basic salary subject to a maximum amount of XAF 30,000 per year	N/A
Housing fund tax	The basis of this tax is the taxable salary. The tax rate is 1%	The basis of the tax is the gross salary, the benefit in kind being considered for their actual amount. The tax rate is 1.5%
National Employment (NEF) contribution	N/A	The basis of the tax is the gross salary, the benefits in kind being considered for their actual amount. The tax rate is 1%

Other statutory contribution

No other statutory contributions are applicable in Cameroon.

Taxation of Oil Field Services (OFS)

Services from OFS based abroad shall be taxed as follows:

- Remunerations of services on research and development operations : shall be exempt from the withholding tax if the services are provided at cost price and where the service provider does not have a permanent establishment in Cameroon. Oil companies that do not comply with the two conditions above and who have not opted for the reduced rate of 3% conditions shall remain liable to the SIT at the rate of 15%;
- For remunerations of services on exploitation operations: application of the SIT at the normal rate of 15%.

Local Permanent establishments of OFS have the choice between the tax regime of common application (i.e. corporate income tax of 33% (for entities with an annual turnover above XAF 3 billion) or 27.5% (for entities with an annual turnover equal to or less than XAF 3 billion) on the net taxable income, or a withholding tax regime of 15% on gross revenue). OFS incorporated locally are subject to the tax regime of general application.

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

Obligation to declare the Ultimate Beneficial Owner (UBO)

- a. Legal persons as well as administrators of legal entities under Cameroonian or foreign law established in Cameroon, whether or not they are subject to corporate tax or personal income tax, must identify their UBOs and keep an updated register to this effect;
- b. the UBO shall be obliged to provide the persons referred to in point (a) with all the information necessary for his identification.

The persons referred to above or, where applicable, their legal representatives, shall be required to declare to the taxation administration the information relating to their UBO, under pain of fine:

- within 30 (thirty) days from the date of their registration.
- no later than 15 March of each year, together with their Statistical and Tax Return.

The information contained in the register of UBOs and the supporting documents relating to an UBO shall be kept for a minimum period of 5 (five) years from the end of the year in which the UBO ceased to be a beneficial owner, or from the end of the year in which the legal entity or the duties of the administrators of the legal entities ceased.

The conditions for implementing this obligation are yet to be made public.

Incentives in the oil and gas industry

Capital allowances

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

Investment tax credits

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

Tax exemption

- Exemption from withholding tax is provided under certain conditions, on remunerations paid overseas for services rendered by entities located abroad.
- Exemption from withholding tax is provided on dividends and interests from loans granted by non-resident lenders for funds pertaining to development investments.
- Exemption is also provided from VAT applicable to the provision of goods and services of any nature (including studies), which are directly related to the performance of Petroleum Operations.
- Registration duties: deeds directly linked to the execution of oil operations shall be exempt from registration duties.

Exemption from customs duties:

- At the Exploration/Research phase, full exemption is available to equipment and accessories listed and deemed to be re-exported after operations;
- At the Production phase, for equipment and accessories imported and which are to be re-exported without having undergone any change other than the normal depreciation due to use, a reduced rate of 5% is applicable for the first 5 years from the grant of a production authorisation or its renewal.
- Holders may export the share of hydrocarbons to which they are entitled free of all export taxes and duties.

Export processing zone

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

Group relief

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

Compliance Requirements

Annual declarations

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

Subject to specific stipulation in the oil contract, CIT returns of a given fiscal year should be submitted on the 15th March of the following year (i.e. the CIT return of FY 2021 should be submitted on March 15th 2022 at the latest). The 2018 Finance Law states that the annual tax return shall be accompanied by Transfer Pricing documentation, for entities falling under the jurisdiction of the Large Taxpayers' Unit (LTU).

Quarterly returns

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

supporting document of the amount of taxes payable.

Payment of income tax

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

Payment of withholding tax

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

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

Penalty

Late submission of returns

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

Interest on late payment

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

Fines

- The filing after an official notice, of a return showing nil tax or a credit shall give rise to a fixed fine of CFA francs 1 million (i.e. USD 1,612);
- Failure, after an official warning, to file within the legal deadline, the statement of shareholdings in other companies where they exceed 25 % of

their share capital (for companies under the Jurisdiction of the Large Taxpayers Unit only), declarations of remunerations paid to third parties vendors in excess of XAF 250 000 (i.e. USD 403): fine of F.CFA 1 million (i.e. USD 1,612) per month.

- Failure to file or forward the statistical and tax return (i.e. the annual tax return) within the deadlines shall give rise to a non-discountable fixed fine described in detail below:
 1. Companies falling under the Large Tax Unit: F.CFA 5 five million (i.e. 8,065);
 2. Companies falling under Medium-sized Enterprise Taxation Centres and Specialised Taxation Centres: CFAF 1 million (i.e. USD 1,612);
 3. Companies falling under the Divisional Taxation Centres: CFAF 250 000 (i.e. USD 403).

Tax audit

As a rule, there should not be more than one audit undertaken in a company within the same fiscal year. There are 2 categories of audits:

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

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

Audit and other reporting requirement Audit

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

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

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

“Excess profit tax” is determined as follows:

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

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

Fiscal and taxation structure as per the New Petroleum Code

Almost all the taxes and exemptions provided by the old Petroleum Code have been maintained in the New Petroleum Code. The main tax modifications brought by the new Petroleum Code are as follows:

The rate of Corporate Income tax applicable to revenue derived from exploration and exploitation operations shall be 35%.

Where exceptional circumstances so warrant, appropriate incentives may be provided to revive exploration and exploitation activities and support hydrocarbon production throughout the national mining sector, notably to:

- Encourage the onshore exploration of inaccessible mining property, or offshore exploration at depths of more than 200 metres, or difficult and high-risk exploration themes, or
- Encourage the implementation of tertiary recovery programmes to increase the productivity of deposit; or
- In case of a significant drop in investments in the upstream petroleum sector.

The measures mentioned above shall consist notably in readjusting the fiscal or economic terms of the contracts concluded between the State and the petroleum

companies to speed up the recovery of the investments and improve their profitability. The aforementioned special circumstances shall be examined by the State prior to granting the incentives.

Petroleum companies with the required technical and financial capacity and having firm investment projects can benefit from the incentives, following an application submitted to the duly mandated public body. The application shall be admissible only when all the contractual obligations towards the State have been fulfilled and where the activities are in accordance with the provisions of the laws and regulations in force;

Incentives shall consider the work programmes submitted by the applicant, the risks taken, the size of the hydrocarbon discoveries expected from the exploration work, and their production increase potential, for appraisal and tertiary recovery programmes submitted.

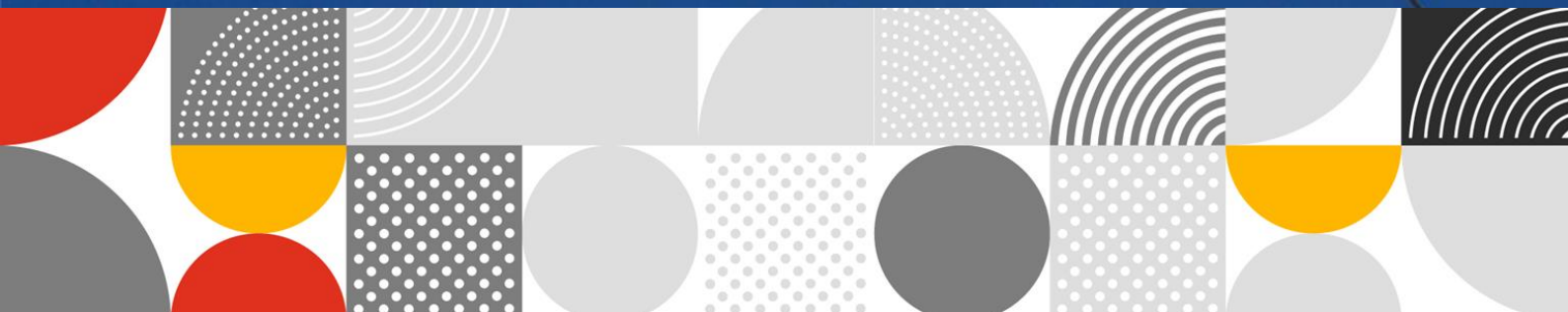
The implementation incentives may not be intended to reduce the oil revenue of the State to a threshold below 51% of the total oil revenue obtained from the activities of the holder in the mining property of the State.

The incentives that the State may grant shall include one or more of the following for petroleum contracts entered into from the date of promulgation of the New Petroleum Code:

- Waiver from paying the signature bonus;
- Exemption from payment of corporate tax for a maximum period of 5 years for liquid hydrocarbons and 7 years for gaseous hydrocarbons, in view of the amount of investments to be carried out and the duration of the production plateau attached to the investment programme submitted;
- Adjustment of the economic parameters of the petroleum contract, with notably a possible reduction of State participation in exploitation, the modification of the “profit oil” and/or “cost oil” for production sharing contracts, and the reduction of the rate of royalty proportional to production for concession contracts;
- Possibility to recover from production, in any given exploitation area, the seismic acquisition and dry exploration expenses incurred in any other contractual area where the applicant conducts petroleum operations
- Tax consolidation of exploration expenses.



Power and Utilities Sector



Brief overview of Power and Utilities development in Cameroon

In 1974, the Cameroon National Electricity Corporation (SONEL) was created and its articles of association adopted provided that SONEL was a mixed-economy public company with an industrial and commercial nature for the generation, transmission, distribution and use of electrical energy in Cameroon. In July 2001, SONEL was subject to privatisation and was taken over by AES-Sirocco Limited, a subsidiary of AES Corporation that held 51% of the capital; State of Cameroon 44% and Personnel 5%. SONEL became AES-SONEL.

In 2006, a company with public capital, Electricity Development Corporation (EDC), was created to manage public assets in the electricity sector on behalf of the State. EDC also has, among other missions, to carry out or participate in collaboration with other stakeholders in the realization of activities in the electricity sector.

In 2014, the Government of Cameroon signed an agreement which granted ACTIS 56% of the shares of AES-SONEL and its subsidiaries KPDC and DPDC. AES SONEL became Eneo Cameroon S.A. (Eneo).

Eneo is a partially State-owned company with 51% of the share capital held by Actis, 5% by Eneo employees and 44% by the State of Cameroon. The information made public in the official website of Eneo state that: Eneo has an installed generation capacity of 968MW and its generation facilities fleet consists of 39 generation power plants, including 13 grid power plants and 26 remote thermal power plants. 74 % of Eneo generation is from hydro; the transmission network comprises 24 substations and includes 1944.29 kilometers of High-Voltage lines, 15081.48 kilometers of Medium-Voltage lines and 15209.25 kilometers of Low-Voltage lines; and the distribution network comprises 11 450 km lines of 5.5 to 33 KV and 11 158 km lines of 220 to 380 KV.

As the country's historical main electricity company in Cameroon, Eneo was the only company with a monopoly on the production, transmission and sale of electricity in Cameroon. With the creation of the National Company for Electricity Transportation (SONATREL) in 2015, the Cameroonian authorities confirmed the opening of the electricity market, that will certainly lead to the intervention of new competitors in the sector in order to make the electricity system more efficient and improve the quality of the public service of electricity.

The electricity shortages that have disrupted household life and slowed the country's economic growth since

2001 have eased with the construction and commissioning of several diesel thermal power plants and a heavy fuel oil thermal power plant. However, the delay in the implementation of new power plant projects identified in the Long-Term Electricity Sector Development Plan (PDSE 2030) has increased the imbalance between energy supply and demand. In addition, there is the obsolescence, saturation and low availability of electricity generation, transmission and distribution equipment, which leads to frequent and most often prolonged interruptions in the supply of electricity in towns and villages.

The electricity demand of public sector (low and medium voltage customers), which is growing at an average rate of 6% per year, is estimated at 4,700 GWh (or around 842 MW) in 2015; then at 7,600 GWh (or 1370 MW) in 2025. Industrial demand, which is very strongly influenced by the energy needs of the aluminium industry, currently stands at around 1,315 GWh (or 150 MW). The implementation of the Bauxite-Aluminium development plan that the Government is considering with its partners through the Greenfield project and the prospects for the development of the industrial zone of the Kribi deep seaport will generate additional energy needs of over 13,000 GWh (1500 MW) from 2016 to 2025.

However, Cameroon has a rich hydroelectric potential and natural gas reserves. Several projects for hydroelectric power plants and natural gas-fired power generation have been identified and are planned for the medium and long term; some are already underway. In addition, several sites with potential for energy export at the sub-regional (Chad, CAR,) and regional (Nigeria) levels have been identified.

The Cameroonian government is currently considering the construction of the Tower of Electricity (Tourel), building that will house the services of three public companies in the electricity sector: Electricity Sector Regulatory Agency (ARSEL), the Rural Electrification Agency (AER) and the Electricity Development Corporation (EDC).

Legal Framework

The activities realized in the electricity sector shall be placed under one of the following legal regimes: the concession, the license, the authorization, the declaration and the free scheme.

The concession is an agreement exclusively signed between the State and an operator allowing the latter to use clearly defined State land for the purpose of generating, transmitting and distributing electricity based on specifications.

The **license** is the contract or administrative title granted by a competent authority to a qualified operator who has been selected to carry out independent production activities selling extra high, high and medium voltage electricity as well as import and export activities totally or partially intended for distributors or bulk users.

The following activities shall fall under the authorization regime:

- Private production installations of more than 1 MW;
- Setting up and operating electricity distribution installations with a view to directly or indirectly supplying power of a capacity less than or equal to 100 KW;
- Installation of private electricity lines along or across a highway or running horizontally at distances of less than 10 m from an existing electric, telephone or telegraph line situated on public property.

Where the capacity of the installations of self-generation of electricity is more than 100 KW and less than 1 MW, the owner of such installations shall be bound to make a declaration of Electricity Sector Regulatory Agency (ARSEL) before operating the said installations.

Under the free scheme, installation of private electricity lines shall be done without restriction where the facilities are entirely located on private highway, and the wires shall not act run along or go across 10 meters from an existing electric, telephone or telegraph line situated on public property.

Regulatory Framework

The Electricity Sector Regulatory Agency (ARSEL), which is an administrative public establishment, is the key regulator of the power and utilities sector in Cameroon.

ARSEL's mission is to ensure the regulation, control and monitoring of the activities of operators in the electricity sector.

The National Company for Electricity Transportation (SONATREL), created in 2015, is in charge of the management of the electricity transportation network in Cameroon. SONATREL is a company with public capital and placed under the technical supervision of the Ministry of Water and Energy and under the financial supervision of the Ministry of Finance.

The main operators are ENEO, KPDC and DPDC.

The key regulatory framework of the power and utilities sector, including regulations relating to incentives, is the following:

- Law No. 2011/022 of 14 December 2011 governing the electricity sector in Cameroon;
- Decree No. 2012/2806 / PM of 24 September 2012 relating to the implementation of Law No. 2011/022 of 14 December 2011 governing the electricity sector in Cameroon;
- Decree No 2001/021/PM of 29 January 2001 setting the rates, modalities of calculation, of recovery and allocation of the royalty on the activities of the electricity sector;
- Order No. 061/ CAB/MINEE of 30 January 2001 fixing the composition and processing fees for the application of concession, license, authorisation and declaration in view of the performance of production, transport, distribution, importation, exportation and sale of electric energy;
- Order No. 00000193/A/MINEE of 28 April 2014 setting the composition of the files for the application for concession, license, authorization and declaration as well as the fees relating thereto;
- Order No. 080/CAB/PM of 09 September 2013 setting the amount and modalities of collection of the annual fee instituted for the benefit of the bodies in charge of incentives management;
- Law No. 2013/004 of 18th April 2013 to lay down private investment incentives in the Republic of Cameroon;
- Law No. 2017/015 of 12 July 2017 amending and completing certain provisions of Law No. 2013/004 of 18th April 2013 to lay down private investment incentives in the Republic of Cameroon;
- Order No. 00000366/MINFI/SG/DGI/DGD of 19 November 2013 laying down the modalities of the implementation of tax and customs incentives provided by Law N°2013/004 of 18th April 2013 to lay down private investment incentives in the Republic of Cameroon;
- Order No. 00000331/MINFI/SG/DGI/DGD of 17 July 2014 amending and completing certain provisions of the Order No. 00000366/MINFI/SG/DGI/DGD of 19 November 2013 laying down the modalities of the implementation of tax and customs incentives

provided by Law N°2013/004 of 18th April 2013 to lay down private investment incentives in the Republic of Cameroon.

Fiscal Regime and taxation regime

Except the peculiarities below, the Power and utilities sector is subject to tax and customs regime of general application.

As a rule, materials and equipment used in harnessing solar and wind energy shall be exempted from VAT.

Subject to comply with the relevant conditions, operators of the power and utilities sector may benefit from the tax and customs incentives listed below provided by the tax regime of private investment incentive in Cameroon.

Tax and customs incentives of general application

During the installation/construction phase:

- Exemption from registration duties on lease of buildings for professional use as part of the investment program;
- Exemption from transfer duties on the acquisition of real estate, lands and buildings necessary for the realisation of the investment program;
- Exemption from registration duties of contracts for the supply of equipment and the construction of the buildings and installations necessary for the implementation of their investment program;
- Exemption from registration duties on concession contracts;
- Exemption from registration duties on deeds of creation and increase of capital;
- Exemption from VAT on services related to the setting up of the project and coming from abroad, and the VAT payable on the importation of equipment and materials related to the investment program;
- Exemption from the business licence during the installation phase;
- Exemption from customs duties and taxes on all equipment and materials related to the investment program;
- Immediate removal of equipment and materials related to the investment program during the clearance operations.

During the operation phase:

Internal taxation (incentives on transactions realised in Cameroon);

- 75% reduction of CIT or tax on industrial and commercial profits for a period of five (5) years;
- 50% reduction of CIT or tax on industrial and commercial profits from the sixth to the tenth year;
- Exemption from registration duties relating to loans, advances in current accounts and cautions for a period of ten (10) years;
- Free registration without payment of graduated stamp duties on deeds relating to increase, reduction, reimbursement and liquidation of share capital for a period of ten (10) years;
- 50% reduction of registration duties on deeds of transfer of rights on ownership or possession of real estate and leases for a period of five (5) years;
- 50% reduction of tax on income from stocks and shares (TISS or distribution tax) on the distribution of revenue for a period of five (5) years;
- 25% reduction of tax on income from stocks and shares (TISS or distribution tax) on the distribution of revenue from the sixth to the tenth year;
- Carry forward of losses up to the fifth fiscal year following their occurrence for a period of ten (10) years.

Customs duties (goods entering in Cameroon)

A 5% reduced rate of customs duties shall apply at the importation of equipment, tools, spare parts, intermediary products, furniture and consumables not similar with those manufactured locally, except for duties, taxes and other non-fiscal charges having the character of a service fee.

Specific tax and customs incentives

Specific incentives related to the realisation of certain activities

Law no. 2017/015 of 12 July 2017 amending and completing certain provisions of Law no. 2013/004 of 18th April 2013 to lay down private investment incentives in the Republic of Cameroon provides that any investor can benefit from a tax credit subject to meet one of the criteria below:

- Hire at least five (05) young graduates from the higher education per year;
- Fight against pollution;
- Develop sports, cultural and social activities;
- Develop public interest activities in rural areas.

Specific incentives related to the achievement of certain specific objectives

In addition to all the tax and customs incentives cited above, enterprises that realize investments in the priority sectors such as water and energy sector shall benefit from specific tax and customs incentives below:

During the installation phase which shall not exceed five (05) years;

- Exemption from VAT on interests on local or external loans relating to the investment program;
- Exemption from property tax (real estate tax) on estates built or not, which are part of the site dedicated to the transformation unit and of any real estate extension by destination;
- Direct removal at the request of the investor, of equipment and materials destined to the realisation of the investment program;

- Special temporary admission of industrial equipment and materials likely to be re-exported and specific to priority objectives.

For the realisation of exportation operations which shall not exceed five (05) years:

- Exemption from exit duty on products locally manufactured;
- Benefit from the regime of inward processing provided by the Customs Code.

The incentives listed above are not exhaustive since there exist a legal possibility of the government to grant additional incentives after negotiations with the appropriate State bodies.

It shall be noted that enterprises approved to the regime of the private investment incentive (approved investor) shall be bound to pay an annual fee to the accounting officer of the body in charge of incentives management each year on the 31st of March at the latest, from the installation phase. The amount of annual fee to be paid by approved investors shall be based on the forecast investments as follows:

Forecast investment amount (in million XAF)	Amount of the annual fee (XAF)
Below 500	200 000
From 500 to 1000	300 000
From 1000 to 5000	500 000
From 5000 to 10 000	1 000 000
From 10 000 to 50 000	2 000 000
Above 50 000	3 000 000

Any late payment shall trigger 100% penalties for late payment, after a formal notice duly notified.





ESG



ESG Framework

For the second phase of the implementation of its Development Vision for the 2035 deadline, Cameroon has recorded the main lines of its action in a reference framework called National Development Strategy (SND 30) for the decade 2020-2030.

In this context, and more specifically on issues related to the environment, the Cameroonian authorities plan to strengthen actions relating to the sustainable management of natural resources (soil, flora, fauna, water); and take adequate measures to adapt to and mitigate the effects of climate change.

Moreover, to deal with the perceptible consequences of climate change, in particular the floods and landslides of which certain towns and countryside are victims, the government undertakes to ensure that the concerns linked to climate change are taken into account in the sectoral strategies and policies, both in formulation and in implementation; build the capacity of institutions responsible for climate monitoring; operationalize the system for monitoring, preventing and responding to the effects of climate change; develop and implement a national waste management strategy while promoting corporate social responsibility (CSR).

Regarding Regulations, it should be noted that Cameroon has ratified more than forty (40) conventions on the environment, fifty (50) on social security and governance.

As a member of the United Nations since September 20, 1960, Cameroon is one of the 193 countries that have approved the 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals (SDGs)

Thus, to achieve these strategic objectives, Cameroon plans, among other things, to:

- strengthen climate change adaptation and mitigation measures and environmental management to ensure sustainable and inclusive economic growth and social development.
- revise its decarbonization targets upwards by committing to reduce its CO₂ emissions by 35% by 2030. Cameroon's Nationally Determined Contribution (NDCC) increased from 32% to 35% during the COP 26 (the Conference of the Parties on climate change) which was held from October 31 to November 13, 2021 in Scotland.
- strengthen control of waste management by industrial companies regarding the polluting nature of certain industries.

Biding Regulations

The Framework Law on the Environment and Law No. 98/015 of July 14, 1998 relating to establishments classified as dangerous, unhealthy or inconvenient

Law No. 96/12 of August 5, 1996, on the framework law on environmental management establishes the polluter-pays principle.

According to the polluter-pays principle, the costs resulting from the measures implemented by the government for the prevention, reduction, control of pollution and the rehabilitation of polluted sites must be borne by the polluter.

This, as well as Law No. 98/015 of 14 July 1998 relating to establishments classified as dangerous, unhealthy, unstable, or inconvenient, provides for an annual pollution tax to be paid by establishments which present or may present either dangers to health, security, public health, agriculture, nature, and the environment in general, or inconveniences for the convenience of the neighborhood.

It should be noted that, although the methods for calculating the annual pollution tax have not yet been published, these methods could be specified by the finance laws for the coming years.

The decree implementing the OHADA Accounting System and the Statistical and Tax Declaration (Note 35).

The Statistical and Tax Declaration which is mandatory for all companies operating in Cameroon contains a mandatory Note for entities with a workforce of more than 250 employees.

This note 35 includes social, environmental, and sustainable development information, the provision of which is mandatory.

It should be noted that, although the penalties for non-disclosure of its social, environmental, and sustainable development policy in note 35 are not yet in force, the finance laws for future years could provide for these penalties.

In addition, this note 35 must also be completed by companies which, although they have fewer than 250 employees, have a policy on the integration of sustainable development criteria.

Thus, this note 35 will help these companies to:

- measure and understand their ESG impact.
- set targets to achieve carbon neutrality (Net Zero).

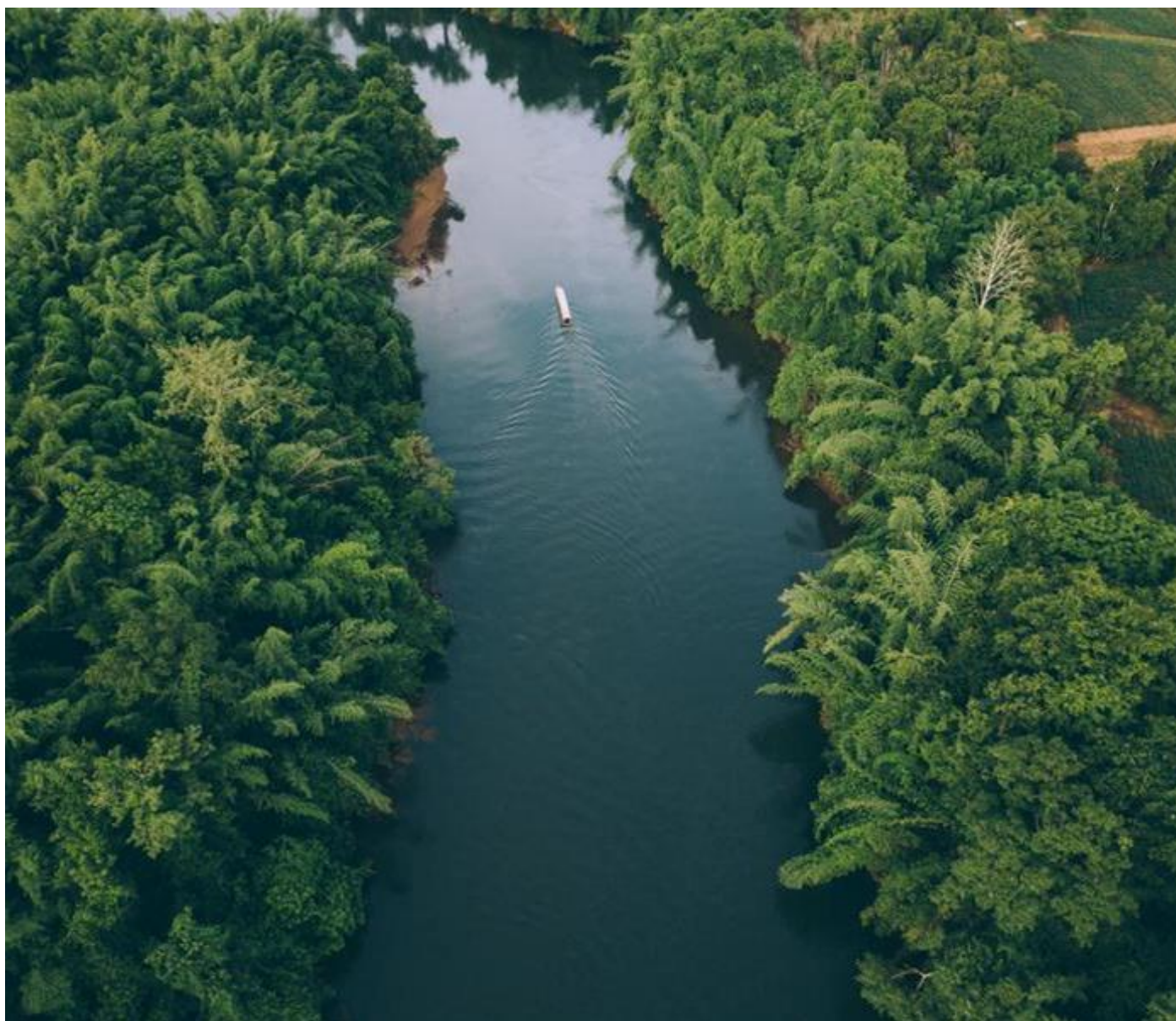
- present their level of ESG compliance with a view to obtaining financing from international and local financial institutions or financial services players who now consider ESG as an essential element of their investment decisions.
- identify risks or opportunities that are not yet visible in the financial statements that the company would face (based on an analysis of the interactions of companies with their stakeholders).
- and achieve other key ESG-related strategic objectives.

Incentives

The Private Investment Incentives Act 2013

New and existing companies benefit from an income tax credit for operations carried out in Cameroon when they acquire and install on the site investments in equipment and specialized equipment for the purification and treatment of industrial waste, solid, liquid or gaseous intended to prevent the discharge into nature of effluents, gases or other substances harmful to health.

The benefit of this tax reduction by companies that engage in the reduction of pollution, waste management, protection of biodiversity is subject to compliance with certain conditions.





Chad

Contact



Magloire Tchande

Magloire.tchande@pwc.com



Noussaina N'diekhor

noussaina.ndiekhor@pwc.com

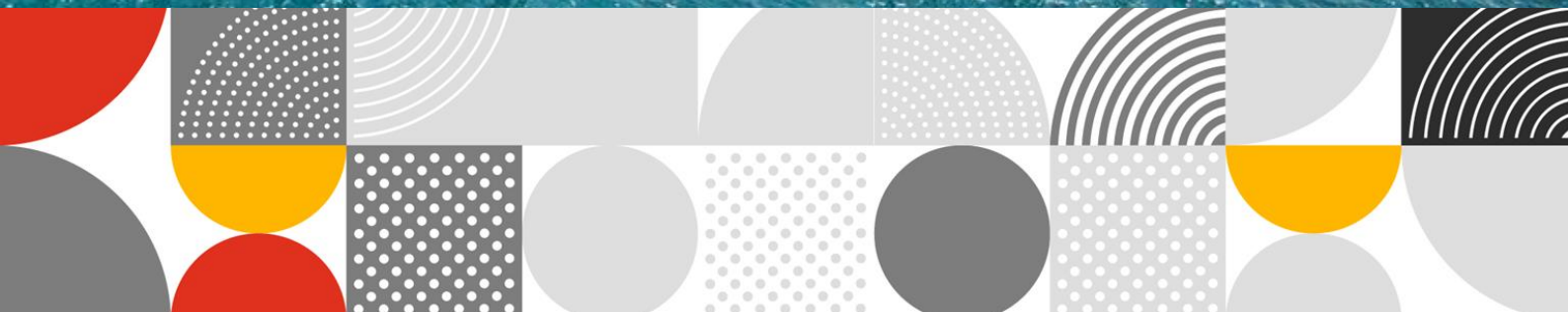


Abdallah Ngarbaye

abdallah.ngarbaye@pwc.com



Oil and Gas Sector



Brief overview of the Oil & Gas development in Chad

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

Chad experienced its first unsuccessful research in the North of Chad by a French Company, however, in 1969 Chad recorded its first successful research in the South of Chad by the American CONOCO. The poor quality of petroleum and the geographical isolation discouraged any commercial exploitation for thirty years.

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

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

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

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

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

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

in the form of syndicated loans.

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

The Chad-Cameroon oil project aims to develop 300 wells in the Komé, Miandoum and Bolobo oil fields in the Doba basin in the south of the Republic of Chad. After this long process, Chad saw its crude flow for the first time on October 10, 2003. In February 2005, Chad joined the Association of African petroleum and went further to create the Chadian hydrocarbons company (SHT) in July 2006. In 2011, the Republic of Chad started with the refining of the oil Djermaya Refinery.

According to the 2012 BP Statistical Energy Survey, Chad's commercial oil reserves were estimated at 1.5 billion barrels at the end of 2011. Despite the financial crises, Chad's upstream oil sector continues to attract many oil companies.

The consortiums currently exploiting oil in Chad are; Exxon, Glencore replaced by Perenco, CNPC and OPIC Africa.

In a press release dated 15 June 2022, Perenco indicated that it had completed the acquisition of Glencore's Chadian Mangara crude oil business through PetroChad Mangara (PCM). With this transaction, Perenco now owns all of Glencore's oil exploration, drilling and extraction assets in Chad. PCM is the operator of the Mangara, Badila and Krim oil fields in the Doba basin. With the acquisition, the new operator says that "operations will resume now with an expected return to the previous production level of 16,000 b/d in the short term"

An asset purchase transaction has been concluded in 2021 between Savannah Energy, a British oil company, and Exxon Mobil Corporation. It took effect in 2022.

Furthermore, in a press release dated December 9, 2022, Savannah Energy PLC stated that it had completed the acquisition of all of ExxonMobil's oil assets in Chad, including the interests in the Chad/Cameroon pipeline. In the listing document published on the same day, Savannah wrote that the Chadian Ministry of Hydrocarbons and Energy had reportedly given its tacit consent to the acquisition. Following the announcement made by Savannah Energy, the Republic of Chad contests this claim and considers that the transaction was carried out :

- despite the express objections of the Chadian government, in violation of the Doba Consortium (Esso, Petronas, Société des Hydrocarbures du Tchad SA ("SHT")) hydrocarbon exploration, exploitation and transportation agreements of 1988 and 2004".

- While Esso's transfer of its assets to Savannah blatantly violates SHT's information and pre-emption rights under the Doba Consortium Association Agreement binding on Esso.

In view of the above, it intends to initiate all useful procedures in order to have the irregularities of this operation judged.

The key institutions involved in the upstream oil sector are the Ministry of Energy and Petroleum, the National Assembly and the National Hydrocarbons Company (named SHT). The current applicable petroleum contracts are the concession contract and the production sharing contract.

Political Updates

As a reminder, the talks in Doha began on 13 March 2022 with 52 politico-military groups and the transitional government of Chad under mediation by the Qatari government. An agreement was reached on 8 August 2022 in Doha, after five long months of negotiations, between the transitional authorities and some 40 rebel groups. But one of the main armed factions, the Front pour l'alternance et la concorde au Tchad (FACT), responsible for the attack that caused the death of Marshal Idriss Déby Itno, had refused to participate, denouncing "a dialogue biased in advance".

The various signatories of the agreement are expected to meet on 20 August in the Chadian capital, N'Djamena, to take part in the inclusive national dialogue that should lead to a return to constitutional order after the military takeover in April 2021. Given the Sovereign nature of the dialogue and the binding nature of its recommendations and resolutions, the plenary took several decisions, including the extension of the duration of the military transition by 24 months and the possibility for the actors of this transition, in particular General Mahamat Idriss Déby, to stand as a candidate in the next elections, the reorganisation and enlargement of the National Transitional.

Council to include the various strata of society, increasing the number of national councillors from 93 to 187. The forum ended on 8 October, with the decision to extend the transition by a further 24 months. On 20 October, around fifty people died, mainly in N'Djamena, when the forces of order opened fire on demonstrators. They were responding to the call of the opposition against the extension of two years in power of General Mahamat Idriss Déby Itno, who was proclaimed head of state on 20 April 2021 following the announcement of the death of his father, President Idriss Déby Itno, who was killed at the front.

Following a mass trial behind closed doors, the courts

handed down sentences of two to three years in prison for 262 of the protesters arrested during the deadly rallies last October.

Economic Updates

Internationally, soaring gas prices support oil demand in 2022. The surge in gas prices, accentuated by the war in Ukraine, is boosting the use of oil for power generation. The price of a barrel of Brent crude oil has risen by an average of 42.6% to \$100.76/bbl (i.e. the monthly average price of Brent crude oil of \$80.9/bbl in December 2022). The Brent oil price in euros is £74.54. The consensus of economists surveyed by Bloomberg on 30 September is also down with a median Brent price in 2022 of \$101.7/bbl (over the year 2022 Brent is \$102.5/bbl).

The exchange rate change in 2022 is: 1 EUR = 1.05 USD -0.0101(-1.0%). Change from 6 January 2022 to 6 January 2023. For the USD/FCFA exchange rate, the highest value is 1 USD = 675.9448 XAF - October 2022. Lowest value: 1 USD = 611.5293 XAF - December 2022.

The Chadian oil and gas market is expected to grow at a compound annual growth rate (CAGR) of more than 0.54% over the forecast period from 2020 to 2025. Factors such as increased investment and rising gas production in the country are expected to boost demand in Chad. However, problems such as political instability and terrorism in the country are hampering growth in the oil and gas sector.

The growth forecasts for 2022 are however favourable (+ 3.3%), with oil activity expected to recover to a level close to that of 2020 (around 6.7 Mt). However, due to poor harvests in 2021 and the consequences of the war in Ukraine on international prices, inflationary pressures are significant and inflation should rise to 4.1% in 2022 before remaining around 3% in the medium term, according to the IMF. It also reveals that the Covid-19 pandemic and recent floods have intensified food insecurity in the country. The prolonged political transition has increased social tensions, and the security situation remains volatile, the financial institution said 11/11/2022 - Chad: Creditors reach agreement in principle on external debt restructuring.

According to the Bretton Woods institution, Chad's economic health is improving and GDP is expected to rise to 2.5% in 2022 and 3.5% in 2023, notably thanks to a recovery in oil and non-oil production. Higher oil prices should also improve the current account balance this year, positively impacting GDP with a surplus of 2.8%.

Declining oil production is expected to slow and constrain growth in the Chadian oil and gas market. Low proven oil reserves are also expected to be an impediment to growth in the sector

Fiscal regime and Tax Regime

The public administration bodies involved in the collection of taxes and customs duties are :

- General Inspection of Finance;
- General Directorate of Tax;
- General Directorate of Customs Services and Indirect Taxes
- General Directorate of Stamps and Registration.

The State General Inspection was dissolved by Decree N°0014/PT/2022 of 20 October 2022

General Tax regime

The 2022 Finance Act introduced various general tax measures, including the following taxes and measures :

Personal income tax exemption for interests on bonds and on debt securities issued by the State, local collectivities and public institutions:

Interests on bonds or on debt securities issued by the State, local collectivities and public establishments are exempt from personal income tax.

Minimum flat-rate tax: abolition of payment thresholds

The XAF 1,000,000 payment threshold (applicable to companies subject to the simplified tax regime) and XAF 2,000,000 payment threshold (applicable to companies subject to the normal real tax regime) are abolished.

Business tax: exemption for new businesses

Companies subject to the real taxation regime are exempt from the business tax during their first year, under certain conditions.

Tax on transfers of funds

The legislator has set up a tax applicable on all transfers of funds carried out by any means or technical recorded support, except for bank transfers and transfers for tax payments. This tax also applies to cash withdrawals following transfers of funds made with financial institutions or mobile phone companies.

The tax is charged at the rate of 0.2% on the transferred or withdrawn amount. This rate will be increased to 5% as from 1 April 2022 for all cash withdrawals made on stored communication credit (stock side).

Declarative requirement: setting up of the remote declaration

Taxpayers under the jurisdiction of the Direction for Large Businesses are authorised to file their declarations under electronic form. Any late filing of electronic declarations is subject to a penalty of 5% of the amounts due, without prejudice to other penalties.

Delimitation of spot audits' scope

The legislator has outlined, in the context of the 2022 Finance Act, that:

- spot audits cannot give rise to expenses' reintegration to the tax result for the purpose of calculating corporate income tax;
- spot audits cannot give rise to a claim for the dividends tax stated under Article 66 of the General Tax Code with respect to profits which are regarded as distributed.

Exclusive competence of the Head Direction of Tax Services and of the Head Direction of Property Services with respect to tax adjustments

Tax adjustments fall within the exclusive competence of the Head Direction of Tax Services' and the Head Direction of Property Services' liabilities, each in its own right.

Institution of a tax amnesty

Taxpayers who spontaneously regularise the taxes, duties and fees that were due before 1 January 2022 are exempted from penalties, fines and interests for late payment as well as from tax reminders.

Issuance of the Tax Identification Number

The issuance of the Tax Identification Number is not subject to the prior payment of any tax, duty or fee.

Introduction of a certificate of no tax liability

The legislator has introduced a certificate of no tax liability issued by the tax assessment services and, where applicable, the Treasury services, upon written request from the taxpayer. The certificate is valid for three (3) months, except for taxpayers benefitting from a payment suspension or moratorium, for whom the certificate is only valid for one (1) month.

Establishment of a system of tax reductions

Taxpayers who invest (through creation or extension) at least XAF 250,000,000 in the industry, in tourism, in mining research and exploitation, in agriculture, livestock, fishing, livestock, in hotels, education, energy, water, information and communication technologies, sports or transport, may benefit from tax reductions during the installation and exploitation phase, upon authorization from the Minister of Finances.

The authorization is granted within two (2) months from the application submission date. In the absence of response within this timeline, the authorization is considered granted so long as the legal conditions in this respect are met.

Introduction of incentives for investments in the inland regions

Taxpayers who invest more than XAF 100,000,000 in the inland regions benefit, within the limit of these investments, from tax reductions as well as from an increase in the deductibility cap for donations and gifts. These tax incentives may be cumulated with tax exemptions granted as part of youth recruitment.

Setting up of Licensed Management Centers (CGA)

The legislator has decided to set up Licensed Management Centers (CGA) whose purpose is to provide their members with management assistance and guidance for fulfilling their obligations.

Any individual or legal person with an annual turnover not exceeding XAF 150,000,000 may join a CGA. CGA membership fees and annual contributions are freely set by promoters within the limit of the ceilings set by the law. CGA members, as well as promoters with at least 100 active members, enjoy certain tax incentives.

Setting up of a cap for penalties, interests and other tax or financial sanctions

The amount of penalties, interests and other tax or financial sanctions resulting from tax or customs audits is capped at the amount of the duties due, without prejudice of the moderations provided for by the regulations in force.

Establishment of the right of appeal for customs matters

Any person directly affected by a decision or omission from the customs administration has a right of appeal.

The right of appeal shall be exercised in accordance with Decision N°35/19-UEAC-010A-CM-34 of 18 December 2019 laying down the procedures for the exercise of the right of appeal and for the establishment and operation of independent customs dispute settlement boards.

Details on the determination of the customs value

If it is not possible to apply Articles 30 to 36 of the Customs Code, the customs value may be determined by reasonable means consistent with the principles and general provisions of Article VII of the GATT 1994 and of the Agreement on Implementation, as well as on the basis of data available in Chad.

Obligation of exporters of gold from Chadian origin

All exporters of gold from Chadian origin must:

- provide proof of registration with the tax authorities
- submit an export declaration
- pay the customs duties within 120 days of the gold leaving the national territory, based on the minimum market value.

Duties applicable to gold of Chadian origin

All exports for processing of gold from Chadian origin, as well as the resale of processed products in Chad, are taxed, for import custom duties purposes, based on the surplus value.

All definitive exports of gold from Chadian origin are taxed at the rate of 0.5% and subject to the 2% statistical royalty on the export value.

Details on customs duties' payment modalities

The payment of customs duties is done:

- in cash or by electronic means when the sums do not reach XAF 250,000
- by certified cheque, bank transfer or electronic payment when the sums reach or exceed XAF 250,000

It is forbidden to proceed to split payments for the same declaration.

Any payment order for customs duties must include the mentions required by law, and the related receipt must be issued in the name of the taxpayer.

Rates of WHT on rents paid to individuals:

Previously, land revenues were subject to the rate of 15% for residents and 20% for non-residents. Since January 1, 2019, rents paid to individuals are subject to proportional rates of 20% both for residents and non-residents beneficiaries (new section 119 of the CGI).

Conditions of the 4% withholding tax

The finance law for the 2021 fiscal year sets the conditions to benefit from the suspension of the withholding tax of 4% on purchases and wholesale sales (Article 7 of the 2021 financial law).

Reduction of business licence rate

The 2021 finance law has reduced the rate of business licence from 0,5% to 0,35% (article 9 of the 2021 finance law).

Reinforcement of the declarative obligations of companies

The 2021 Finance Act requires commercial companies to file a copy of the minutes of the shareholders' meeting approving the financial statements for the year at the same time as their annual tax return, i.e. by April 30 at the latest. This deadline is reduced to June 30 for companies whose accounts have not been approved by April 30 (article 13).

Expansion of the taxpayer base

In order to consolidate the file of active taxpayers and broaden the tax base, Article 12 of the 2021 Finance Act excludes from this list taxpayers who are not up to date with their reporting obligations.

Requirement of a report during tax audits

The 2021 finance law introduces the use of a report within the framework of tax audits in order to record all the stages of the contradictory procedure between the auditor and the taxpayer in order to avoid any procedural incident.

Oil & gas tax regime

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

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

In 2022, there are no specific measures concerning companies operating in the oil and gas sector.

Tax levies and exemptions applicable to PSC

Under PSC, Oil operations are subject to certain taxes, fees and charges. However, some exemptions are also applicable to PSCs.

Applicable taxes

As for the previous fiscal year, there is no update relating to taxes applicable to PSC.

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

- Corporate income tax on net profits earned within the Chadian territory at a rate between 35% and 75%;
- Signing bonus;
- Exclusive attribution bonus for the authorisation of exploitation;
- Production royalty (imposed at a rate of 14.25% to 16.5% on the total production of crude oil and from 5% to 10% on the total production of natural gas).
- Superficiary royalty;
- Exceptional tax on the capital gain from sale of assets;
- Stamp fees;
- Registration fees;

Regulatory Framework

The key institutions involved in the upstream petroleum sector include:

- the transitional government (through the Minister of Energy and Petroleum);
- the national transition council;
- the national hydrocarbons company named "Société des Hydrocarbures du Tchad" (SHT);
- the Extractive Industries Transparency Initiative Committee.

In the downstream petroleum sector, the regulation agency is named "Autorité de Régulation du Secteur Pétrolier Aval du Tchad" (ARSAT).

Types of contracts

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

Local Content Regulations

- Law No.006/PR/2007 dated 20 April 2007 on hydrocarbons, as amended and supplemented by ordinance No. 001/PR/2010 dated 30 September 2010 approving a template of production sharing contract regulating the activities of exploration and production of liquid or gaseous hydrocarbons in the Republic of Chad;
- Decree No.796/PR/PM/MPE/2010 dated 30 September 2010 implementing the Petroleum Law (together with the Petroleum law, the Petroleum Legislation);
- Decree No. 307/PR/2017 of 11 April 2017 relating to the statutes of the Chadian Hydrocarbons Company.
- Ordinance No. 001/PR/2017 of 11 April 2017 amending Law No. 27/PR/2006 of 23 August 2006 establishing the Chadian Hydrocarbons Company;

It is worth noting that a draft of law amending the petroleum code is in process and shall be presented to the National Assembly for adoption.

Incentives available within the petroleum industry

There is no update relating to incentives available within the petroleum industry.

Under the PSC and concession agreement, Oil operations are exempted from the following taxes:

- minimum tax;
- apprenticeship tax;
- business licence;
- corporate income tax;
- tax on profit distributed;
- taxes of any kind on interest and other interests of sums borrowed by the Contractor for the purposes of the oil operations;

- registration fees resulting from the setting-up of the companies and the capital increases;
- property tax on the property of companies and all other property taxes except those payable on residential buildings;
- all export taxes and duties in respect of its petroleum activities; and
- taxes on sales, value added tax and any assimilated tax on supplies of goods and services.

Taxation regime

Direct Taxation

Corporation Income Tax ("CIT")

- Before 2015 fiscal year:
The rate of CIT varies from 40% to 75%, depending on the conditions to be defined in the oil contract (article 74.2 of Law N°006/PR/2007 relating to hydrocarbons).
- Since 2015 fiscal year:
The rate of CIT according to common law was reduced from 40% to 35%.

Thus, it is obvious that the rate of CIT to be applied to oil companies shall be imposed at the rate of 35% to 75%, depending on the conditions defined in the oil contracts.

There are no incentives or different regimes for unconventional oil & gas.

Kindly note that there is no change in the CIT regime in Chad in 2021.

Capital Gains Tax (CGT)

Capital gains realised by resident companies are not subject to any tax.

Capital gains realised by non-resident companies are subject to Withholding Tax (WHT) at a rate of 25% if these companies do not have their tax residence in the CEMAC area. This WHT shall be filed and paid not later than the 15th of the month which follows the month of the payment of these gains to these companies.

Previously, capital gains realised by oil companies are not subject to WHT. This is usually stated in the contract. However, since 1 January 2019 capital gains realised by oil companies are subject to WHT.

Withholding tax (WHT)

Since January 1, 2018, all payments made to non-residents are subject to the WHT at the common rate of 25% including payments made by oil companies.

From January 1, 2020, all payments made to CEMAC-residents are subject to the WHT at 7.5% including the payments made by oil companies.

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

Thin capitalisation and Transfer Pricing

The 2018 Finance Act introduced the transfer pricing documentary obligation. The section 1000 of the General Tax Code, as amended by the 2018 Financial Act, specified the documents to be provided to the tax authorities by companies that are dependents, related or that have control of companies located outside/inside Chad and that perform intra-group financial transactions.

The documents to be provided include general information on the group of associated companies and specific information on the company located in Chad.

General information about the associated group of companies to be provided are, among others:

- the general description of the legal and operational structures of the group of associated companies;
- the identification and geographic location of associated companies engaged in intragroup transactions during a fiscal year.

Specific information concerning the company established in Chad are:

- a description of transactions with other associates' companies during that fiscal year, including the nature of the transactions and their amounts;
- the identification and geographical location of the group companies involved in the transactions;
- the presentation of the main competitive pricing method used, and any change happened during this year.

The 2019 Finance Act increased the penalties applicable for non-compliance with the transfer pricing documentary requirement.

Since 1 January 2019, a penalty of 5% on the amount of intragroup transactions with a minimum of XAF50 million is applicable in case of non-compliance with the transfer pricing documentary requirement.

Double Tax Treaties (DTT)

The double tax treaties signed by Chad and applicable to the oil & gas sector are:

- the CEMAC treaty, the economic and monetary community of the states of central Africa treaty.
- The Central African Economic and Monetary Community (CEMAC) is made up of six States: Gabon, Cameroon, the Central African Republic, Chad, the Republic of the Congo and Equatorial Guinea.
- the treaty signed with the Republic of Algeria.
- the treaty signed with Turkey.
- the treaty signed with Libya.
- the treaty signed with Emirats Arabes Unis (not yet enforceable).

Indirect Taxes

Value Added Tax (VAT)

The VAT regime applicable to oil & gas companies has not been amended.

The VAT rates are:

- 18% applicable to all taxable transactions;
- 9% applicable to the local products: sugar, oil, soap, products and products by food and beverage local industries, except alcohol; and
- 0% applicable to exports and related international transportation.

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

From 1 January 2019, VAT exemption certificates will no longer be automatically renewable. The application shall be filed with the Technical Committee in charge of examination of tax and customs exemptions. The Minister in charge of Finances and Budget will appoint the members of the committee.

Furthermore, since 1 January 2019, the invoices issued and received from providers of services or vendors shall clearly contain the following mentions:

- Tax number identification of both client and vendor;
- Quantity of goods sold, or services provided (unity, volume, hourly rate etc.);
- Description of services or goods (nature and characteristics);
- Unit price;

- Date of issuance or date of issuance of invoice;
- Number of invoices;
- Rate and Amount of VAT;
- Total of amount excluding taxes;
- Total amount including taxes.

In the absence of the one of the above, VAT in relation to the invoice shall not be deductible. VAT shall be filed and paid no later than the 15th of the month which follows the month of the realisations of taxable transactions.

From January 2020, input VAT supported by taxpayers who are not mentioned on the list of active taxpayers provided by the General Directorate of Tax Services is not deductible.

Withholding tax on VAT

Introduced by the 2017 Finance Law and modified by the 2017 Amending Finance Law, the withholding

VAT was effective from September 1st, (decree N°114/PR/MFB/DGM/DGSI/2019).

The 2020 Finance Law definitively fixed the regime of withholding VAT. Public companies, public and para-public establishments and private companies shall withhold VAT when paying suppliers of goods and services which are not listed in the list provided by the Tax Administration.

The withheld VAT shall be declared and paid to the Public Treasury no later than the 15th of the month following that of payment; the Public Treasury shall issue a receipt to testify the payment.

The taxable event and the due date for withholding tax on supplies of goods is the invoice.

For supplies of services, a taxable event is the execution of services and the due date for the payment of the invoice.

Taxpayers entitled to withhold VAT shall attach to their VAT tax return the list of companies subject to withholding VAT, their tax identification member (TIN) and the withheld amounts.

Public and private companies and public and Para public establishments that are authorised to withhold VAT are exempted from the said withholding tax on invoices for services rendered among themselves.

Any compensation between the amounts VAT withheld and tax due by the collector is not allowed.

The list may be reviewed.

To this day, only 84 Public and private companies and public and Para public establishments are entitled to withhold VAT.

Sales Tax

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

Customs and Excise Duties

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

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

However, since 1 January 2020, taxpayers which benefit from customs and excise duties exemptions provided by the General Tax Code and Custom Code are required to apply for the renewal of their customs and excise duties exemptions.

The application shall be filed near the Technical Committee in charge of the review of the tax and customs exemptions.

Oil & gas agreements containing tax exemptions which are not compliant with the new tax legislation shall be compliant latest by December 2019.

Other Taxes

Social Security contributions

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

Employment tax

Taxes payable by the employee but withheld by the employer.

From 1 January 2018, the calculation of the personal income tax (PIT) is made by applying the progressive scale below to the taxable income, after the integration of the benefits in kind, taxable allowances and premiums allocated to the employee.

Annual Salary (XAF)	Rate
From 0 to 800,000	0%
800,001 to 2,500,000	10%
2,500,001 to 7,500,000	20%
Above 7,500,000	30%

For the calculation of the monthly PIT, the amount of the annual tax obtained will be divided by twelve (12).

From 1 January 2019, the following charges will not be deductible from the taxable income:

- Free arrears of XAF 600 000 per year reputed paid to ascendants, descendants and collaterals;
- Alimony paid by virtue of the decision of the court.

Furthermore, from 1 January 2019, transportation allowance will be exempted from Personal income tax if the following criteria are met:

- Transportation allowance shall benefit to all employees;
- Transportation allowance shall not exceed 30% of the base salary.

The rates of capping of benefits in kind have also been changed as follows:

- Housing: 20% (former rate 15%);
- Vehicle: 10% (former rate 8%);
- Water: 4% (former rate 2%);
- Gas: 2% (former rate 1%);
- Food: 15% with a maximum of XAF 75 000 per month (former rate 25% with a maximum of 50 000 for teenager with less than 15 years).

Other taxes paid by the employee:

- Social security (named Caisse Nationale de Prévoyance Sociale (CNPS) in French) at a rate of 3.5%, paid by the employee;
- National food security fund (ONASA in French) at a fixed rate of XAF 40 paid by the employee.

Taxes paid by employer:

- Fixed Tax at the rate of 7.5% of the gross salary of each employee;
- Apprenticeship Tax at the rate of 1.20% of gross salary of each employee;
- Social security contributions at the rate of 16.5% of gross salary up to XAF 500 000.

However, depending on their oil contracts, oil & gas companies and their subcontracting companies are generally exempted from Fixed and Apprenticeship taxes. The exemption from fixed and apprenticeship taxes shall be renewed from 1 January 2019 at the termination of the oil & gas agreement which granted these exemptions.

Oil & gas companies shall apply for the renewal of fixed and apprenticeship taxes. Oil & gas agreements containing tax exemptions which are not compliant with the new tax legislation must be compliant latest in December 2019.

Taxation of Oil Field Services (OFS) companies

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

Property Tax

There are taxes on built properties and taxes on unbuilt properties. The properties are buildings or outbuildings, facilities, installations, cultivated or uncultivated lands, etc.

There are no differential regimes applicable to property rich companies.

Deemed Profit Taxation

There is a profit tax at the rate of 20% on the profit realised by the branches of foreign oil companies.

Compliance requirements

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

Until 2017, taxpayers could subscribe to revised tax returns without a time limit.

From 1 January 2018, any taxpayer who has made errors or omissions in its spontaneous declarations (monthly declarations, DSF, DADS) can subscribe to a corrigendum within 2 months from the date of filing of the initial declaration.

Tax audits

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

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

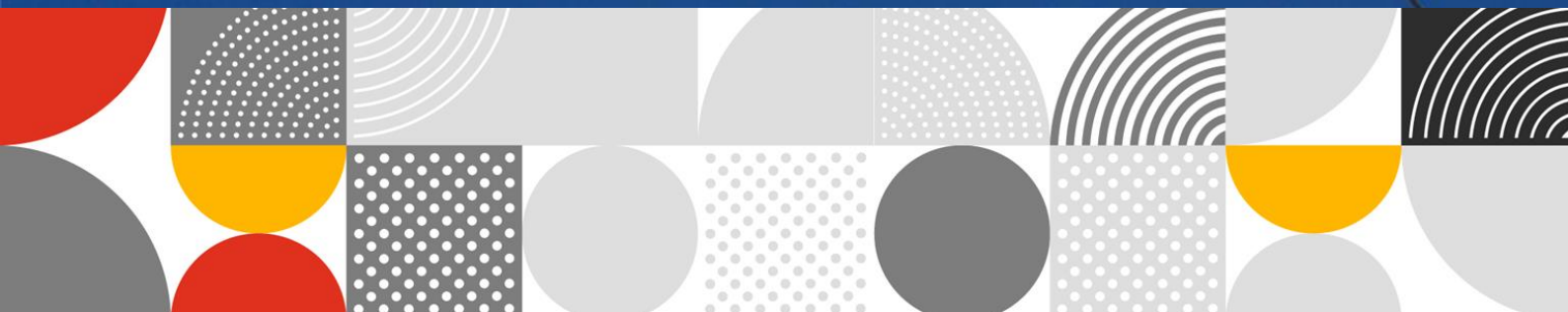
The duration of each tax audit shall not exceed three (3) months, but in practice the procedure may go beyond this period, depending on how both companies and the tax authorities conduct the audits.

Since 1 January 2019, taxpayers may apply to the tax administration to perform a tax audit if they notice that there are some errors, inadequacies or insufficiencies in their accounting. The form of the tax audit shall be defined by the tax administration.

Also, Since 1 January 2019, the tax administration may issue a partial notice assessment in case it performs a tax audit on more than one fiscal year



Power and Utilities Sector



Brief overview of Power and Utilities development in Chad

The energy sector is not fully exploited. Consumption of conventional energy (electricity and petroleum products) accounts for only 10% of national consumption. The exorbitant cost and scarcity of electricity is one of the major obstacles to Chad's economic development. Over 80% of the production and consumption of electricity occurs in the capital, N'Djamena.

Chad's ability to achieve increased energy access and poverty reduction is constrained by significant challenges in the power sector. It currently has about 125 MW of installed generation capacity to serve a population of 14.5 million people. As a result, Chad's government is working to expand its electricity supply and encourage investment in the energy sector to stimulate the economy.

Due to the deficit in the supply of electricity, but also a low rate of electrification and especially the high cost of the kilowatt-hour due to the high dependence on fossil fuels, the lack of interconnection with neighbouring countries and weak integration of renewable energy in electricity generation, the Chadian government decided to adopt an energy policy letter for the period 2018-2030. Within the framework of the implementation of the energy policy for 2018-2030, several drafts of laws and regulations have been proposed for adoption during a recent conference held 17, 18 and 19, August 2018.

Chad is endowed with the tenth-largest oil reserves in Africa, as well as wind and solar resource potential. Most of its existing capacity comes from diesel and HFO (heavy fuel oil) generators. Chad has one distribution and retail utility company: Société National d'Electricité (SNE).

There are two major projects of construction of solar power plants, which started in 2020: Gaoui solar power and Djermya solar power.

Legal framework

- Law No. 014/PR/1999 of June 15, 1999 on the production, transport and distribution of electric power;
- Law No. 036/PR/2019 of August 26, 2019 on the electric power sector in Chad (which amend the provisions one);
- Decree N°1666/PR/PM/MPE/2017 establishing the terms and conditions for the production, transmission and distribution of electrical energy.

- Decree N°1839/PR/MPME/2019 relating to the organisation and functioning of the Agency for the development of rural and the control of energy (ADERM);
- Decree No. 1840/PR/MPME/2019 establishing the terms and conditions for the supply and access of third parties to electricity networks;
- Decree N°1841/PR/MPME/2019 relating to the conditions and modalities of delivery of electricity production licence;
- Decree N°1842/PR/MPME/2019 relating to the organisation and functioning of the Regulatory Authority of the energy Sector (ARSE);
- Decree N°1843/PR/MPME/2019 establishing the conditions for the transmission of electricity from renewable energies and for the sale of surpluses to distribution licence owners.

Fiscal regime and taxation regime

The power and electricity tax regime applicable in Chad are the standard tax regime.

Regulatory Framework

The key institutions involved in the power and electricity sector include:

- the National Assembly;
- the Ministry of Energy and Petroleum;
- the body of electric power sector (Organe de Régulation du Secteur de l'Énergie Électrique) created in December 2018;
- the national utility (Société Nationale d'Electricité);
- the national agency for the development of renewable energy (l'Agence de Développement des Énergies Renouvelables (ADER-Tchad))

Local Content Regulation

The law regulating the generation, transport and distribution of electricity dates to 1999. It enables the state to delegate the management of these services to one or several independent legal entities under Chadian public or private law.

This law also provides for a regulatory authority responsible for overseeing the application of the regulation, proposing the rates to the government for approval, approving the multi-year investment program, and approving the award of government contracts in the sub-sector. The creation of this authority has so far not occurred. The Chadian government decided to adopt an energy policy letter for the period 2018-2030.

Several laws relating to the Energy Policy Letter have been proposed for adoption during a conference on 17, 18 and 19 August 2018. These laws however are yet to be adopted.

Forms of contracts

The production, transmission and distribution of electric energy in Chad is the exclusive domain of the State. The State can delegate the management of electrical energy in the form of a delegation contract. The delegation contract includes:

- the concession contract;
- the affrimage;
- the Régie Interested;
- the management contract; and
- any contract which has the effect of entrusting all or part of the execution of the public service mission to a public or a private legal person.

Incentives in the Industry

- Temporary exemption (5 years): Any new incorporated company exercising in the sector of renewable energies may be exempted from the following taxes:
 - Business licence, minimum income tax, fixed tax, apprenticeship tax;
 - Reduction of 50% of the taxable base of corporate income tax (at the rate of 35%);
 - Reduction of 50% of registration fees.
- VAT exemption:
 - The acquisition of equipment and materials for the production and the promotion of renewable energy and the provision of services related to the production and the promotion of renewable energy are exempt from VAT;
 - The interests on loans for the financing of renewable energies are exempt from VAT;
 - Electricity produced by SNE and any independent producers are exempt from VAT.
- Customs duties: Materials and equipment for renewable energies are exempt from customs duties





Côte D'Ivoire

Contact

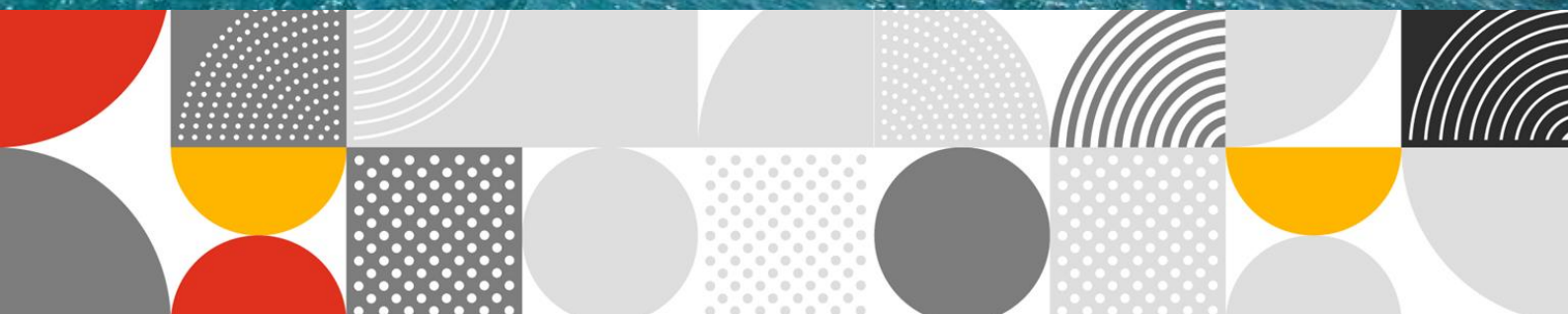


Jean Claude Gnamien

jean-claude.gnamien@pwc.com



Oil and Gas Sector



Brief overview of the Oil & Gas developments in Côte d'Ivoire

Côte d'Ivoire lies on an area between tectonic plates called the West African Transform Margin (WATM), which has yielded significant oil discoveries for its eastern neighbour, Ghana. Authorities hope that a similar discovery could be made in Ivorian waters.

Currently, the players in the country's oil & gas industry are relatively small and peak production is around 90,000 bpd. But the authorities have launched an ambitious exploration program to reach 200,000 bpd rapidly.

By 2015-year end, Côte d'Ivoire had identified 61 blocs in its basin and 29 are already attributed, 4 are currently in production, and two are under evaluation and the rest are being explored. At the end of 2017, five new PSCs were signed with partners BP and Kosmos Energy. Tullow Oil has also signed for 6 blocs and French Bouygues (SECI) has signed for 2 blocs around the same period.

In 2019 and in early 2021, changes were made to the Special Tax Regime (STR) applicable to foreign oilfield services companies (OFS). The revised special tax regime includes 2 tax rates (6% for exploration and 2.17% for exploitation for the taxation of OFS under this regime. The STR covers deemed dividend tax and payroll taxes.

In September 2021, Eni announced a major oil discovery in bloc CI-101 offshore Ivory Coast (Baleine-1x), which is preliminarily estimated at between 1.5 and 2.0 billion barrels of oil and between 1.8 and 2.4 trillion cubic feet of associated gas.

This discovery is boasted to be a game changer for Ivory Coast, which could help the country reach and even top its peak production (90,000 bpd), when production starts. Production fell during the past years to around 35,000 bpd.

Eni is expected to produce 15,000 bpd in 2023, then reach a plateau of around 110,000 bpd between 2025 and 2026.

In July 2022, the long-awaited Local Content Law for the oil and gas industry was enforced in Ivory Coast, which includes provisions for the priority hiring of nationals for positions in the oil and gas industry and the priority for local oilfield services companies for subcontracting agreements in the oil and gas industry.

The Law refers to several practical Orders to be issued for its full enforcement, which are yet to be adopted by the Government of Ivory Coast

Political Updates

The political landscape has been calm in Ivory Coast after the localized troubles during the October 2020 Presidential Election.

Legislative and local (mayor) elections are scheduled for the last quarter of 2023.

Economic Updates

The Treasury has been closely enforcing the Central Bank's rules pertaining to the repatriation of the proceeds of exports and to the control/restriction on payments made to overseas partners. Some transactions have been slowed down because of these rules, including some oil & gas operations.

Fiscal and Taxation regime

The fiscal and taxation system of oil & gas activities are based on the provisions of the Petroleum Code enforced on 29 August 1996, the General Tax Code and petroleum contracts.

The taxation regime of the industry is mostly based on production sharing contract as it is the most common form of contract for the petroleum operations:

- Royalty and bonus payment;
- Production sharing with limited cost recovery;
- Derogatory rules for the calculation of the corporate income tax;
- Payment in cash or in kind of corporate income tax;
- Several tax and customs exemptions applicable to oil & gas companies and their subcontractors;
- Payroll taxes and social contributions are payable under the general tax rules.

Regulatory Framework

The key regulators in the oil & gas industry include:

The Ministry of Petrol, Energy and Renewable Energies: The ministry defines the general policies of the Oil & gas sector;

Direction of the Hydrocarbons: This regulation is saddled with regulating and supervising oil & gas operations carried out under the various contracts.

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

Sub-Direction of Petroleum Operations of the Tax administration (DGI): deals with taxation issues relating to the Petroleum activities.

Forms of contracts

According to the provisions of the Petroleum Code, the Oil & gas exploration and exploitation activities are carried out through Petroleum Contracts, which might be Concession Contracts or Production Sharing Contracts and Services Contracts.

However, the available petroleum contracts are Production Sharing Contracts (PSC) signed by a group of oil & gas companies including the National Oil company (PETROCI). The provisions of the PSC cover exploration and exploitation periods as well, and applicable taxes during these phases.

Once a commercial discovery is made, the exclusive authorization for exploitation is issued, covering 25 years. This can be extended (upon 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 (at least 12 months before the end of the second period) for a period to be defined by the Government and the oil & gas companies. The PSC is the most common form of petroleum contracts in Côte d'Ivoire.

Production Sharing Contract ("PSC")

The Côte d'Ivoire Government is the holder of the bloc (one or many fields), and appoints a contractor, comprising mainly a group of oil companies, to conduct petroleum operations in the area. Each oil company has a participating interest in the bloc and the operations are technically conducted by an operator, which is generally the oil company with the bigger participating interest.

PETROCI (the National Petroleum Company of Côte d'Ivoire) is always part of the Contractor. PETROCI is granted a 10% participating interest for free. The initial 10% participating interest of PETROCI may be increased up to 20%. The subscription of the additional participating interest is made upon payment.

The companies forming the contractor 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.

The 1996 Petroleum Code provides that a monthly royalty is determined based on the production of the oil companies signing concession contracts, but no Concession Contract has been signed so far. The Petroleum Code provides that oil companies including the Contractors may be required to pay signature and production bonuses.

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

For a PSC signed in 2015 (for example), the applicable rates are:

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 USD 200.

Local Content Regulation

Local content regulations include the National Petroleum Company (PETROCI) being a stakeholder in all exploration and production contracts.

A local content law has been adopted in Ivory Coast under n°2022- 408 dated June 13th, 2022, which includes several requirements for local content in the oil and gas industry.

➤ Employment of nationals

According to the local content law (Art 4), all entities involved in oil and gas operations in Ivory Coast, including oil and gas companies and their subcontractors, must give priority of employment to nationals, when they have the required qualifications. The entities involved in oil and gas operations must develop training programs for their local personnel. An Order from the Government (Decree) yet to be issued will list positions that will have to be filled with nationals and the mandatory ratios of nationals in the personnel of the entities involved in oil and gas operations in Ivory Coast.

➤ Services to local oil and gas companies

Article 5 of the Local Content Law provides that oil companies must use local companies as primary options for opportunities for subcontracting activities when they have the capabilities and have competitive offers.

Article 6 provides for a classification of oilfield services activities into 3 categories:

- Category A: activities available only to local companies.
- Category B: activities where local companies have priority but can be executed by non-resident companies in joint venture with local companies.
- Category C: activities which can be executed by either local or non-resident companies.

An Order from the Government (Decree) will be issued to provide the classification of the oilfield services activities, but as of now, such Decree is yet to be issued.

➤ Regulatory approval

According to article 7 of the law, subcontractor's activities are subject to an administrative authorization (licence), which is issued for 3 years.

The conditions and process for the issuance of such administrative authorization will be included in an Order (Decree) yet to be issued.

Once the Decree is issued, existing subcontractors will have a 6 month deadline to request their regulatory approval.

Incentives within the Industry

The incentives within the Industry include the following:

- Special rules for the computation of the Corporate Income Tax;
- Exemption from other profits and dividend tax that is due on top of corporate income tax;
- All other direct local or national taxes relating to petroleum activities and assets used for petroleum activities are exempted;
- Value added tax and tax on banking activities for the acquisition of goods and services relating to the petroleum activities; VAT exemption is processed through an annual VAT exemption certificate;

- Exemption from tax on interest on loans provided by non-resident entities for investment development;
- Exemption from customs duties on the import of equipment and goods used for the petroleum operations. The exemption is granted to a list of equipment and chemicals that are approved by the government; administrative fees for import of 2.5% are still applicable.

The Petroleum contracts generally provide that, except the corporate income tax is paid in kind or in cash, the oil companies benefit from a general tax exemption, which is entitled to cover all the due taxes, contributions, levies, and duties applicable to the petroleum operations.

The tax administration is however restricting the general exemption clause in the PSC, to the single taxes listed as exempt in the petroleum contracts.

Most of the tax exemptions are extended to the vendors and subcontractors of the oil companies by the petroleum contracts.

The oil companies with petroleum contracts do not qualify for the general tax incentives provided by the Investment Code.

Taxation regime

Direct Taxation

The applicable tax regime to oil & gas operations in Côte d'Ivoire is a mix between the tax provisions included in the contract signed with the government (PSC), the tax provisions of the 2016 Petroleum Code and the general provisions of the Tax Code for the items not specially dealt with by the Contract and the Petroleum Code.

Any oil company categorised as a contractor benefits from the tax features in the PSC.

The most important feature in the last PSC is that the Corporate Income is included in the production share received by the government. In practice, the oil companies calculate the due corporate income tax according to the general tax rules in the General Tax Code, with the specificities 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 PSCs include payment of the Corporate income tax.

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

- The taxable revenue of oil & gas companies includes the following:
 - Revenue directly derived from the sale of its share in the produced oil & gas;
 - Any revenue deriving from the Petroleum Operations, including the sale of deriving minerals, treatment, and transportation stocking services provided to third parties through infrastructures dedicated to the petroleum activities;
 - Capital gain deriving from the transfer of assets, including PSC interest (farm out – farm in), unless the payment is made in kind;
 - Any exchange gains.
- The expenses deductible from the basis of the CIT 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, purchases, interest on loans etc.);
 - However, the expenses paid to related entities of oil companies are deductible provided they are based on arm's length principles;
 - Prior years' losses;
 - Capital allowances;
 - Provisions allowed by the Tax Code and the PSC.

Withholding tax

Services

Withholding tax is levied at the rate of 20% on remuneration (consulting fees, management fees, services, remuneration, lease equipment, royalties etc.) paid by a Côte d'Ivoire resident to a foreign service supplier without a permanent establishment in Côte d'Ivoire.

The applicable double tax treaties will generally avoid the withholding tax unless the service qualifies as a royalty or management fee (DTT with the UK).

Dividends

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

Royalties

The general withholding tax on royalties is 20%. The rate is generally reduced for countries with double taxation treaties to 10%.

Interest

The general interest withholding tax rate is 18%.

The applicable withholding tax rate may be reduced to 15% where the recipient is a resident of a country that has concluded a double tax treaty with Côte d'Ivoire. Côte d'Ivoire has signed 11 bilateral double tax treaties and a multilateral tax treaty with French-speaking West Africa countries.

The Hydrocarbons Code does not apply any withholding taxes on companies carrying out exploration and exploitation activities through a local permanent establishment.

Thin capitalisation and Transfer Pricing

Thin capitalisation rules have been adopted in Côte d'Ivoire in 2018 regarding the deduction of interest on related parties' loans. Equity to debt ratio for interest deduction is 1:1.

An arm's-length approach to transfer pricing applies. All companies that have transactions with related parties outside Côte d'Ivoire must file, together with its annual financial statements (by end of May or end of June) a special TP form which discusses the pricing of the related parties' transaction. Failure to file such form results in the disallowance of the expenses paid to related parties abroad.

We have experienced that Petroleum contracts can include more favourable rules about the conditions for the deduction of interest on related parties' loans.

Double Tax Treaties (DTT)

Côte d'Ivoire has concluded 11 bilateral DTTs. Since 2015, 3 DTTs have entered into force:

- The DTT with Morocco in June 2015;
- The DTT with Tunisia in June 2015; and
- The DTT with Portugal in November 2016.

Indirect Tax

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 that have signed PSC with the Government, provided the supply relates to petroleum operations.

Petroleum exploration and exploitation operations are exempt from VAT, so that the oil companies do not have to file VAT tax returns unless they have other activities. The VAT exemption is processed through VAT exemption certificates.

The exemption applies to the 100% sub-contractors of oil companies as well.

Customs and Excise Duties

Customs duties in Côte d'Ivoire are levied only on imports. Rates vary for different items, typically from 0%, 5%, 10%, 20% to 35%, and are assessed with reference to the prevailing Harmonised Customs Tariff applicable in the UEMOA Zone.

Oil companies are entitled to import equipment into Côte d'Ivoire, to be re-exported under the suspension customs regime.

Goods and materials consumed for petroleum operations are exempted from customs duties upon import. The exemption procedure involves that the Direction of Hydrocarbons (DGH) confirms that the imports relate to petroleum operations.

Other Taxes

The following taxes are applicable to the contractor where they are not expressly exempted by the PSC or the Petroleum Code.

Capital Gains tax (CGT)

Capital gains realised by residents are taxable together with the corporate income tax. There is no special tax on capital gains.

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

As per the Petroleum Code, the transfer of petroleum rights (participating interest in PSC) is subject to the prior approval of the Government of Ivory Coast.

Such authorization is subject to the payment of a specific draft duty, which depends on the amount of the transaction's consideration, as per the below table

Transaction amounts in Euros	Applicable duty in Euros
Less than Eur 765,245	106,714
Between Eur 765,245 and 1,524,490	152,449
Between Eur 1,524,491 and 2,286,725	228,674
Between Eur 2,286,726 and 3,048,980	304,898
More than Eur 3,048,980	381,123

Payroll-related taxes

Personal income tax is withheld at source by the employer according to a progressive scale (up to 60%) on the discounted revenue of the employees, which considers their family status for reduction.

Employers' contributions to payroll taxes is exempted by most of the PSCs. Employers' contribution is 2.8% for locals and 12% for expatriates

Social security contributions

The social contributions are due by the oil companies based on the wages paid to their employees. Social contributions include family allowance contributions, work injury contributions and pension contributions.

There are two rates for the STR taxes, as below outlined, applicable on the taxable revenue of OFS companies:

- 6% for services during exploration;
- 2.17% for services during exploitation.

Particulars	Employer	Employee	Total	Monthly Wages (XOF)
Family allowance	5.75%	-	5.75%	75,000
Work injury	2% to 5%	-	2% to 5%	75,000
Pension	7.7%	6.3%	14%	3,375,000*

*Change as of January 2023

Land taxes, registration fees and stamp duties are exempted as per the Petroleum Code and the PSCs.

Taxation of Oil Field Services (OFS) companies

OFS companies are not subject to the same taxation regime as exploration and production (E&P) companies. OFS can choose between the common tax regime and the Simplified Tax Regime (STR). Regardless of the tax regime they choose, OFS still benefit from the tax exemptions that are included in the PSC and are specifically extended to them.

The STR is a deemed profit regime that covers the following taxes:

- Tax on Dividend;
- Payroll taxes.

The 2019 FY Financial Law has confirmed that CIT and Insurance tax are exempted under the STR.

OFS under the STR are not subject to accounting requirements in Côte d'Ivoire.

Deemed Profit Taxation

Revenue of OFS from services only (sales and mobilisation demobilisation revenue are excluded) is used as the basis of the taxes above listed

Compliance requirements

Annual corporate income tax (CIT) return:

The corporate income tax return and the annual financial statements must be filed in the 3 months following the end of the tax year (31st December).

Depending on the content of the PSC, the due CIT will not be paid, and the Government will issue payment certificates based on the share of oil production it will receive.

Monthly returns

In Côte d'Ivoire, withholding tax on remuneration paid to employees, or remuneration paid to non-resident service suppliers are withheld at source by the employer or by the beneficiary of the services when paying remuneration, and declared on a monthly basis under a unique tax return form.

This form must be filed within 10 days following the end of the month of the remuneration payment.

Annual declaration of wages and salaries (Etat 301 + DISA)

Oil companies are required to file an annual declaration of salaries on Etat 301 form. The form requires details of the beneficiaries (local or expatriate), as well as the gross payment, the tax withheld, the net payment, and the period to which the payment relates. Employers paying wages and salaries must file the declaration before May 30 (for companies not subject to statutory audit) or June 30 (for audited companies), of each year.

DISA is filed with the social security body by 30 March each year.

Annual declaration of fees (Etat 302)

Oil companies are required to file an annual declaration of remuneration paid on Etat 302. The form requires details about the beneficiaries, their address as well as the gross payment received.

The Form must be filed before May 30 or June 30.

Annual Transfer Pricing filing

Oil companies, such as other taxpayers which have transactions with their related parties, must file an annual form, which discloses the amounts paid to or received from their related parties during the tax year.

The Form must be filed before May 30 or June 30.

Statute of limitation

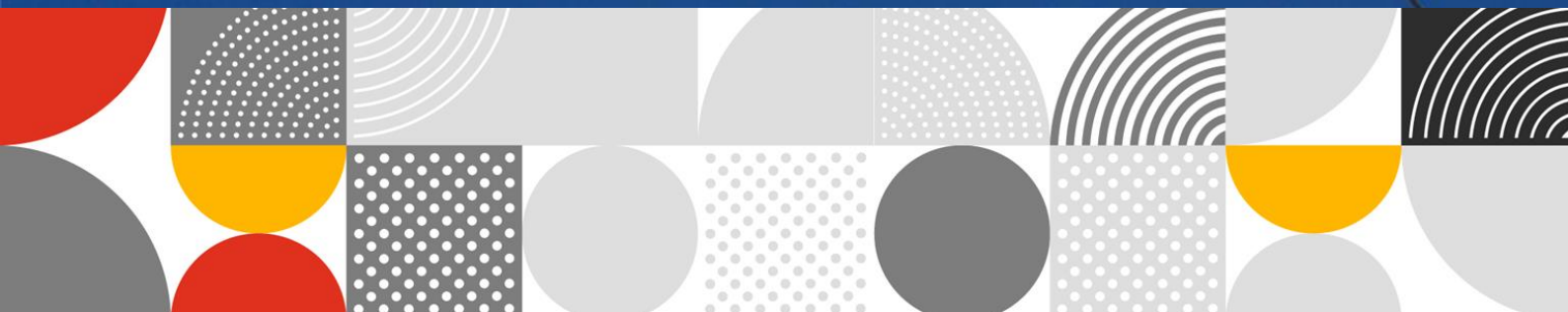
In Côte d'Ivoire, the statute of limitation expires at the end of the third financial year following that for which tax is due.

Tax audits

Tax audits are carried out by tax authorities following an audit program. A tax audit frequency may vary depending on the business activities. In this framework, many companies operating in resale activities are subject to a tax audit every 3 years.



Power and Utilities Sector



Brief overview of the Power and Utility developments in Côte d'Ivoire

The steady economic growth in Côte d'Ivoire for the past years had brought deficiencies in the energy supplies, propelled by increase in household consumption and industrial activity. The growth in demand is about 10% yearly. However, the net electricity production has only grown annually by 2%.

In a bid to catch up on demand and optimise regional opportunities, Côte d'Ivoire has allocated in 2017 USD 4 billion for investments in the energy sector for the next 6 years.

The Government is encouraging the private sector to ramp up electricity production in line with its ambition to increase capacity to 4,000 MW by 2020, up from around 1,600 MW in 2013.

Since most power plants are fueled by gas, the Government is encouraging investment in LNG projects, which first is led by French Total SA.

There has been a big push on solar power generation in the Northern part of the country with 6 projects totaling 200 MW to start production in 2020 and 2021.

Agreements for an important Biomass project have been signed with French EDF.

Economic Updates

The Côte d'Ivoirian government is working to increase hydroelectric facilities' contribution to energy mix up to 60%, including the construction of 6 new plants expected to be completed in 2017 and 2018. The government has new plans for alternative renewable sources such as solar, wind and biomass. Since most power plants in the country are fired by gas, the government is encouraging investment in LNG projects, which was first led by French Total SA.

Legal Framework

According to the provisions of the Electricity Code enforced by Law n°2014-132 dated 24 March, 2014, the power generation activities are only possible in Côte d'Ivoire by private operators through a convention signed with the Government.

The Convention is annexed with specifications that apply to the construction, exploitation and maintenance of the power generation facilities.

In most of the cases, CI-ENERGIES will have participating interest in the local power generation company.

The Conventions are typically based on Build-Own Operate-and-Transfer (BOOT) models for periods of up to 35 years, with possible extension.

Fiscal regime

The main regulatory framework for the taxation of the Power and Utility sector in Côte d'Ivoire is the Côte d'Ivoire General Tax Code, since the Electricity Code does not include special tax regimes.

The Investment Code also plays a significant part in the taxation of the Power and Utility sector because the sector falls in the range of the Investment Code.

Regulatory Framework

The key regulators in the power and utility sector include:

- Ministry of Petroleum and Energy
- ANARE: Regulator of the Power and Utility sector.
- CI-ENERGIES: a public company in charge of applying Government policies in the Power and Utility sector;
- The Sub-Direction of Energy activities of the Tax administration (DGI): deals with taxation issues related to the Power and Utility sector.

Forms of contracts

According to the provisions of the Law no 2014-132 dated March 24th, 2014 related to Electricity Code, power generation activities are only possible in Côte d'Ivoire by private operators through a convention signed with the Government.

The Convention comes with additional specifications that apply to the construction, exploitation and maintenance of the power generation facilities. In most of the cases, CI-ENERGIES will be having participating interest in the local power generation company.

The Conventions are typically based on Build-Own Operate-Transfer (BOOT) model for periods of up to 35 years, with possible extensions.

Local Content Regulation

There are no mandatory requirements for local content in either procurements or employment in the Power and Utility sector. However, in practice, the Government recommends using local vendors as much as the service is available locally.

Taxation regime

While the Electricity Code provides that the utility companies with a concession agreement can be granted a special tax regime, in practice, the utility companies only benefit from the tax incentives provided in the investment code, as the Government is now reluctant to provide incentives to the Energy sector outside the investment code.

The Energy and Utility sector is not eligible to other tax incentives, as it falls within the Investment Code incentives.

For the application of the Investment Code, Power and Utility projects will fall into Category 2 investments, which can benefit from the following:

- During Investment Phase: exemption from Customs duties on imported equipment for the project and suspension of VAT on the acquisition of equipment and services for the project;
- After the completion of the Investment Phase: CIT credit ranging from 25% (Zone A), 35% (Zone B) to 50% (Zone C). The different zones refer to the location where the investments are realized. Zone A refers to the economic capital city (Abidjan), Zone B to other important cities and Zone C to smaller cities.

Direct Taxation

The applicable tax regime to power and utility sector is the same tax regime as the general tax regime applicable in Côte d'Ivoire. In the past, the Côte d'Ivoire had included some special tax regimes in the contracts signed for the power generation contracts (concession agreements).

Since the adoption of the new Electricity Code, government has become reluctant to include special tax regimes in the concession agreements for power generation. The latest projects are therefore subject to the general tax regime and they can benefit from the general tax incentives provided in the Investment Code.

These are the most important features of the Investment Code:

During the investment period:

Utility companies with a concession agreement, after being granted the benefit from the Investment Code, enjoy:

- a 50% reduction of customs duties on equipment and materials included on the filed list, together with the first spare parts, when the investment is less than XOF 1 billion;

- a 60% reduction of customs duties on equipment and materials included on the filed list, together with the first spare parts, when the investment is more than XOF 1 billion;
- Exemption from VAT on purchase of equipment, material and first batch of spare parts

After the completion of the investment program (Operational period):

The utility company will enjoy the following;

- exemption from CIT for a limited period (5 years);
- exemption from business licence tax for a limited period (5 years);
- permanent exemption from real estate tax;
- permanent real estate tax exemption on employees' accommodation
- permanent reduction from 50% to 90% of the payroll tax due on employee's wages (excluding apprenticeship tax and continuous vocational training) depending on the company location and the level of investment.

Corporate Income Tax and business licence tax exemptions are reduced to 50% for the 4th year and 25% for the last year of the exemption period.

Social security contributions

The social contributions are due by the power and utility companies based on the wages paid to their employees. Social contributions include family allowance contributions, work injury contribution and pension contributions.

Land taxes are permanently exempted according to the Investment Code,

Registration fees and stamp duties are applicable to the utility companies with a concession agreement.

Incentives in the power and utility industry

While the Electricity Code provides that the utility companies with a concession agreement can be granted a special tax regime, in practice, the utility companies only benefit from the tax incentives provided in the Investment Code



Egypt

Contact



Mohammed Yagmour

Mohammed.yagmour@pwc.com

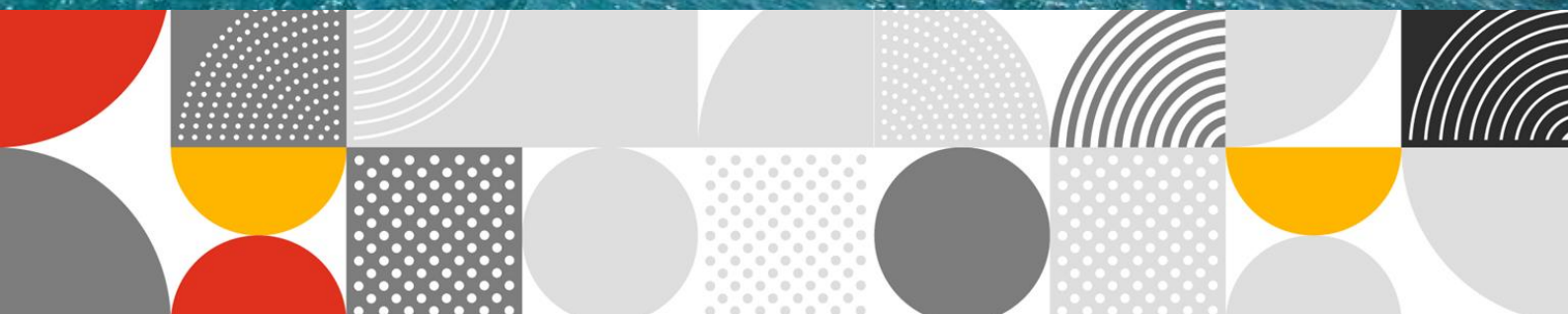


Karim Emam

Karim.emam@pwc.com



Oil and Gas Sector



Brief overview of the Oil & Gas development in Egypt

Between 1963 and 1976, Egypt applied the “Tax & Royalty Agreements”. Based on this type of agreement, royalty and taxes were paid as a percentage of the oil explored. However, starting 1976 until present, “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 to recover the costs incurred by him during the exploration and development phase. The other part of such oil is called “Profit Oil” and is divided between the foreign investor and the Egyptian General Petroleum Corporation (EGPC).

Based on such an agreement, EGPC pays the taxes and the royalty on behalf of the foreign investor.

Political Updates

The Egyptian president Abdel Fattah el-Sisi and his government intend to stabilize the political situation and enhance the economic growth of the Egyptian market through the COVID-19 pandemic. In doing so, the Egyptian president and his government have been engaged recently in various initiatives to promote political stability within the country and enhance the financial performance of it.

One of the initiatives was the latest visit of the Egyptian president to Berlin on the 19th of November 2019, to attend the G20 Initiative Compact with Africa which tackled the Egyptian government’s willingness to extend Egyptian cooperation with Germany in respect to matters related to security issues.

It is also worth highlighting that the Egyptian government is currently building a new city from scratch that is planned to be the new administrative and financial capital of Egypt. Therefore, it is expected that the Egyptian parliament, the presidential palace, the governmental ministries, the CBE, the main airport as well as the foreign embassies will be shifted to the new capital of Egypt.

Economic Updates

The COVID-19 pandemic that invaded the world and started in Egypt in March 2020, has caused interruptions in the overall macroeconomic stability of the country, as the economic activities started to slow down according to the social distancing measures and the temporary suspension of air traffic.

This in turn led the Egyptian government to take precautionary measures, whereby it allocated an emergency response package worth LE100 billion (1.7% of GDP) to increase health expenditure, scale-up social protection, and provide financial relief for individuals and businesses.

Key measures included a one-off monetary grant to irregular workers and the expansion of existing cash transfer programs. Forbearance measures were introduced as well, in the form of delayed tax filing and loan repayments, in addition to subsidised credit for targeted sectors. The Central Bank of Egypt minimised policy rates by a cumulative 350 basis-points since March 2020 to ease liquidity.

Inflation has been declining since the end of 2019 and has remained rather contained, registering an average of 5.7% in the fiscal year 2020 (from an average 19.6% in the previous 3 years), reflecting the low demand and the general decline of global commodity prices, including oil.

In addition to the above-mentioned measures, also in response to the COVID-19 pandemic, the Egyptian Government issued new laws tackling the amendments that were introduced for real estate tax, social insurance and pensions’ law, personal income tax and financial penalties; as means to maintain tax fairness and proper tax regulations within the country.

These new laws were enacted to stipulate the governing rules for applying some of the COVID-19 Egyptian tax measures, granted by the Egyptian Government as means to facilitate the taxpayers’ obligations/ procedures during this unprecedented situation.

Its provisions are only applicable to individuals, companies and entities, which operate in the economic, production and service sectors that have been identified by the Egyptian Cabinet as negatively impacted by the COVID-19 aftermath.

Recently, and based on the recent activity taking place across the globe, the Egyptian pound currency devalued coupled with an increase in inflation, which the Egyptian government has been trying to control via taking certain actions to stabilize the economy and to limit inflation. These include setting more stringent rules on importation and restricting the importation of goods / services to the necessary commodities only.

Fiscal regime

In Egypt, there are no special laws/acts governing petroleum activities or special articles for oil & gas in the Egyptian Income Tax Law. However, each single

concession agreement is signed based on a special law that is issued for such agreement after obtaining parliamentary approval. This law overrides the domestic law when calculating taxable profits.

The petroleum operations in Egypt are classified as the upstream, midstream and the downstream operations. Please note that the concession agreement law only governs the upstream business, while the midstream and downstream are taxed normally.

Regulatory Framework

The Upstream industry

The upstream sector includes the exploration and the production of crude oil and natural gas and is sometimes known as the exploration and production (“E&P”) sector.

The upstream industry pays different types of bonuses such as the “Signature and production bonuses” that are payable to the government for each of the respective Petroleum Concession Agreements.

The Downstream Industry

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

The Midstream Industry

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

The key regulators in the oil & gas industry include:

- The Egyptian Ministry of Petroleum is the governmental authority responsible for the regulation and development of the oil & gas sector in Egypt and it acts mainly through the following entities:
 - The Egyptian general petroleum company (“EGPC”): is an Egyptian state-owned oil company that operates under the guidance of the Egyptian Ministry of petroleum. The EGPC is fully responsible and actively involved in all sectors of the Egyptian petroleum industry (upstream, midstream and downstream activities). As a controller of the industry, any foreign investor should enter into a joint venture with the EGPC in order to invest in the oil & gas sector.

- The Egyptian Natural Gas Holding Company (“EGAS”): is an Egyptian state-owned company that has been originally established to focus on the natural gas activities. EGAS is responsible and involved in a wide range of activities including upstream, midstream and downstream activities of natural gas in Egypt.
- Ganope El-Wadi Petroleum Holding Company (“Ganope”): is an Egyptian state-owned company, responsible for all oil exploration and exploitation activities taking place in the southern region of Egypt.
- In addition to EGPC, EGAS and Ganope, there are foreign as well as Egyptian private sector companies operating in the Egyptian petroleum sector. Such companies operate in Egypt by concluding concession agreements with the relevant governmental entity (i.e. EGPC, EGAS and Ganope) in order to grant them the exploration and exploitation rights for certain concession areas within the periods agreed on in the concession agreements.

As for the taxation of the oil & gas activities, the Egyptian tax authority (“ETA”) is the party responsible for the taxation issues.

Forms of contracts

The most common type of petroleum contracts in Egypt is the concession agreement (under the production sharing agreement system that is currently used in Egypt). Concession agreements are concluded in Egypt between the relevant governmental entity (i.e. EGPC, EGAS and Ganope) and the interested investor (whether Egyptian or foreign) in order to grant the latter with the rights of exploration and exploitation of oil & gas resources in Egypt.

The relevant government entity (i.e. EGPC, EGAS or Ganope) leads the negotiation with the interested investors about the terms and conditions of the concession agreement; and once a mutual consent is reached by the parties, the draft concession agreement should be submitted to the parliament for approval. Following the approval of the parliament, a law would be specifically issued to apply such approved concession agreement.

Such law provides the relevant governmental entity (EGPC, EGAS or Ganope) with the right to conclude such concession agreement with the interested investor. In Egypt, the concession agreements generally follow a standard format with few differences which depend on the terms and conditions agreed upon between the parties of each agreement.

It is worth noting that the Egyptian government is working on the details of a new type of oil & gas contracts that is expected to attract more foreign investments into the Egyptian oil & gas sector. Based on our knowledge, this new type of oil & gas contracts would allow the investors to control their share of production rather than selling it to the Egyptian government at pre-set prices.

Local Content rules

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

Taxation regime

Direct Taxation

Corporate Income Tax

The corporate income tax rate applicable on the Upstream activities is 40.55%, and as previously mentioned, taxes applicable on the Upstream activities shall be borne by EGPC.

EGPC is the final bearer of the tax burden; and as per most of the concession agreements, the corporate tax due is paid by EGPC after grossing up the taxable base. However, it is worth mentioning that, the exploration entities should be the parties calculating the corporate income tax due based on EGPC's assessable income and should have their calculations reviewed and confirmed by EGPC.

Furthermore, EGPC should pay directly the tax due to the ETA and this is the case for all the active concession agreements. Having said that, the tax returns prepared by the exploration entities should in such a context be reviewed, approved and signed by EGPC.

On the other hand, the midstream and the downstream activities are taxed normally and so the profits realized from such activities would be subject to corporate income tax at the rate of 22.5%.

Royalty

The Egyptian government is entitled to receive a royalty payment, and this is to be paid to it by EGPC.

Withholding tax

The upstream activities are exempt from WHT on payments made against the exploration and production activities.

For the midstream as well as the downstream activities, there is a local WHT (prepaid tax) on payments made from a local entity to other local entities for transactions exceeding EGP 300. This tax is considered as a prepayment of the corporate income tax. Below are the local WHT rates:

- Contracting and supplying 1%
- All types of services 3%
- Commissions 5%

On the other hand, payments made by a resident company to a non-resident one against such services should be subject to WHT at the rate of 20%. For royalty and interests paid by a resident to a non-resident, withholding tax of 20% should also be applied.

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

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

Please note that the Ministerial decree no. 711 of 2009 required that Egyptian entities making the payments should initially apply 20% WHT on payments against royalties and interest, regardless of potential treaty relief / reduction. Afterwards, the offshore recipient is required to apply for a refund of the difference (between the 20% domestic rate and WHT rate mentioned in the relevant DTT). The submission of such a refund claim (along with other supporting documents) should be within six months from the date of receiving the income.

However, certain amendments were made to the executive regulations of the Egyptian income tax law and the interpretation to such amendments is that the “pay and refund” procedure mentioned above should no longer be applicable. Yet, in practice the ETA still expects such a procedure to be followed by the taxpayer and so the Egyptian entities should still withhold the 20% tax upon making the payment.

Dividends Tax

For midstream and downstream activities, dividend distributions made by Egyptian companies whose shares are unlisted on the Egyptian Stock Exchange (“EGX”) are subject to a flat rate of 10% WHT, while dividends made by Egyptian companies whose shares are listed on the EGX are subject to a 5% WHT rate.

It is worth mentioning that dividends distributed to non-residents could be reduced/eliminated under the relevant DTT.

Profits of foreign companies operating in Egypt through a permanent establishment (“PE”) branch should be deemed to have been distributed as dividends if the profits were not repatriated within 60 days following the PE’s fiscal year end. In this case, the dividends for the foreign company is subject to 10% WHT. Shareholders receiving dividends in the form of shares (stock dividends) should not be subject to dividend withholding tax.

This tax does not apply to the upstream business.

Double Tax Treaties (DTT)

Egypt has entered into DTTs with over 55 countries in order to avoid double taxation of income and to prevent tax evasion and tax avoidance.

The Egypt- Saudi Arabia DTT was signed in April 2016 after being ratified by the Saudi Arabian Council of Ministers. The provisions of the DTT entered into effect on 1 January 2018 after being enforced starting 1 July 2017.

It is worth highlighting that Egypt signed a new DTT with Cyprus on 8 October 2018. The new DTT was enforced on 31 July 2020, and was effective on 1 January 2021, replacing the Egypt-Cyprus DTT which was signed back in 1993.

In addition, Egypt’s new DTT with Bahrain, was signed in April 2016, took effect starting 1 January 2019. This new DTT replaced the old one that was signed in September 1997.

More recently, Egypt has signed a new DTT with the United Arab Emirates (UAE) on the 14th of November 2019, which came into force on 1 January 2022, hence abolishing the old DTT between Egypt and the UAE which is no longer in force.

It is also important to mention that Egypt signed the OECD Multilateral Instrument (“MLI”), under the Base Erosion and Profit Shifting Project (“BEPS”) on 7 June 2017. Such agreement requires the implementation of the minimum standards action points of the BEPS Project (i.e. four actions only for the time being) in order to cope with the dramatic changes being introduced to the tax environment globally.

Please note that on 30 September 2020, Egypt has deposited its instrument of ratification and accordingly, as the MLI became effective, Egypt opted to apply the principal purpose test (PPT) to its covered tax agreements.

Participation exemption

The participation exemption rule should apply on the dividend income received by an Egyptian resident company from a resident or a non-resident Egyptian entity; whereby only 10% of such dividend income received should be subject to the 22.5% CIT in Egypt, if the following conditions are met:

- The Egyptian resident company holds at least 25% of the share capital or the voting rights of the company distributing the dividends; and
- The Egyptian resident company holds or commits to hold the shares for at least two years.

It is important to note that this is not relevant to the upstream business.

Capital gains tax

Sale of listed securities:

Capital gains realized from the sale of listed Egyptian securities by resident shareholders are subject to a 10% CGT. Earlier, the application of this tax has been put on hold until the end of 2021. Accordingly, it is effective again starting 1 January 2022.

Whereas, for the non-resident shareholders, the capital gains realized from selling their listed securities will be permanently exempt from CGT in Egypt.

Please note that the upstream activities are not subject to capital gains tax.

Sale of unlisted securities:

Capital gains realized from the sale of unlisted Egyptian securities on the EGX by both resident and non-resident shareholders, are subject to CGT in Egypt at the rate of 22.5%.

It is important to note that the upstream activities are not subject to capital gains tax.

Concession Agreements

In Egypt, most of the concession agreements provide protection against the taxes applicable to capital gains, and dividends. The above taxes applicable to capital gains and dividends should not apply if that is the case.

Transfer Pricing (TP) Regulations

Transfer Pricing ("TP") rules were issued in Egypt as part of a tax law enacted in 2005. The law contains an anti-avoidance article as well as an article in the executive regulations that provides guidance on the methods to be used in establishing the arm's length price.

The TP regulations follow the arm's-length principle, specifying that any transactions between related parties should be at arm's length (i.e. the market value or the price upon which two or more independent enterprises deal and it is determined according to market forces and transaction conditions). Since the issuance of the 2005 law, corporate tax returns have had a disclosure requirement for related party transactions and transfer pricing.

According to the Law a related party is defined as any person related to a taxpayer by a relation affecting the determination of the taxable base, including:

- The husband, wife, ascendants, and descendants;
- Associations of capital, and the person possessing, directly or indirectly, at least (50%) of the number or value of shares or voting rights in them.
- Partnerships, joint partners, and silent partners therein;
- Any two or more companies in which a third person possesses at least (50%) of the number or value of the shares or voting rights in each of them.

Following issuance of the Unified Tax Procedures Law No. 206 of 2020 ("The Law") on the 19th of October 2020, the Ministerial Decree No. 286 has been published in the Official Gazette on the 3rd of June 2021 to issue the Executive Regulation ("The Regulations") of the law.

The Executive Regulation has provided explanatory guidelines to the application of the Unified Tax Procedures Law articles.

Article (1) of the Regulation revises the definition of a 'related person' to include each person related to the taxpayer in a way that affects the tax base in a direct or an indirect manner, whether through management, control or ownership.

In general, two persons are considered related for transfer pricing purposes, in case the relationship between them enables each or both to act according to the directives, requests, suggestions or the will of one another or that of a third party.

The definition of related parties under the Regulation provides a more comprehensive framework and brings more clarification as to the definition of related parties for transfer pricing purposes, more in particular, in cases pertaining to factual control.

In 2010, the ETA issued the first part of the TP guidelines, which followed the Organization of Economic Cooperation and Development ("OECD")'s TP guidelines. The first part of the Egyptian transfer pricing guidelines ("ETPG"), provided guidance on the following points: the arm's-length principle, the method of establishing comparability, the choice of the most appropriate transfer pricing method(s), and the documentation requirements.

The Egyptian Minister of Finance has issued a Ministerial Decree published in the official Gazette on 22 May 2018, amending some provisions of the executive regulations of the income tax law that relate to the Egyptian TP regulations, whereby the application of the hierarchy of the TP methods was abolished. As per the updated transfer pricing guidelines, the acceptable methods are listed as follows:

- Comparable Uncontrolled Price Method;
- Cost plus Method;
- Resale Price Method;
- Profit Split Method; and
- Transactional Net Margin Method.

Such amendments were a prelude to the Final Egyptian TP guidelines which were released on the 23rd of October 2018. The headline changes presented in the updated ETPG are the three-tiered approach to Transfer Pricing documentation and the introduction of the advance pricing agreement ("APA") program.

In addition, the updated ETPG allows taxpayers to use other methods if none of the listed methods can be applied on the considered transactions.

However, the ETA expects the taxpayers to first maintain and prepare sufficient documentation to explain the reason why those methods cannot be reliably applied on the transaction. Moreover, the updated ETPG includes a statement the ETA considers the “Global Formulary apportionment” as the least reliable method to be used in determining the arm’s length price of the controlled transaction. And in any case, the comparability analysis should be performed to select the appropriate transfer pricing method.

The Three- tiered approach to TP documentation:

The updated ETPG introduced the three-tiered approach to TP documentation and it includes the mandatory filing of, namely: the master file, local file and the country by country (“CbC”) reporting. The ETA confirms that the new documentation requirements shall be implemented for fiscal years ending the 31 December 2018, and it shall be applied on the consolidated reporting periods (for financial statement purposes) and not the taxable years or the financial reporting periods of subsidiary entities.

The CbC reporting facilitates the reporting process for multinational enterprises (“MNEs”). The CbC report provides a template for MNEs to report annually and for each jurisdiction the necessary information relating to the MNE’s global allocation of income, taxes paid, and other indicators regarding the economic activity in order to assess the overall related party transactions taking place between affiliated enterprises within the same group.

The threshold for the CbC reporting is set out in the ETPG as follows:

- Egyptian parent groups with a foreign subsidiary(s) with an annual consolidated group revenue of equal or exceeding Egyptian Pound (“EGP”) 3 billion (€145 million) will be required to prepare and file a report with the ETA.
- Egyptian subsidiaries of foreign parent groups will be subject to the OECD's threshold of €750 million and required to file a report with the jurisdiction in which the ultimate parent entity is resident.
- The ETPG confirms that the taxpayers are required to prepare and submit their TP documentation on an annual basis.

Documentation filing deadlines:

- The master file should be submitted by the same filing deadline as for the Local File filing if the parent entity is resident in Egypt. If the Parent Entity is

resident outside Egypt: the Master File submission deadline in Egypt should be in accordance with the Master File submission deadline in the Parent Entity’s jurisdiction of residence. Even in cases where the jurisdiction of residence of the Parent Entity does not require the submission of the Master File, but requires preparation and maintenance only, the Egyptian subsidiary must submit the Master File by the Local File submission deadline.

- The entity by entity local files must be submitted to the ETA within two months following the date of filing the tax return.
- The CbC report should generally be submitted one year following the close of the relevant financial year that it covers. The first CbC report should be prepared for the group’s financial year ending December 2018. Moreover, the CbCR notification forms should be submitted before the end of the fiscal year to which the report relates.

Unified Tax Procedure Law:

The Government has recently issued the Unified Tax Procedure Law, whereby it is introducing a threshold for the related party transactions, and detailing penalties in relation to the failure of submitting the three-tiers of the transfer pricing documentation.

- The new law has introduced a threshold for taxpayers who engage in commercial or financial related party transactions of EGP 8 million or more, whereby, taxpayers who reach or exceed such threshold should prepare and submit the three-tiered TP documentation requirements.
- Taxpayers who fail to disclose their related party transactions (in the relevant section of the CIT return) will be subject to a penalty of 1% imposed on the total value of related party transactions in the respective year.
- Additionally, taxpayers who fail to submit the Local file will be subject to a penalty of 3% of the total value of related party transactions, 3% for failure to submit the Master file and 2% for the failure of submitting the CbCR and CbCR notification forms. This will be applicable from FY 2020 onwards and is capped at 3% of the total related party transactions.
- A penalty of EGP 3K up to EGP 50K should be applicable if the taxpayer didn’t comply with the TP three-tiered filing requirements for a period not exceeding 60 days from the tax return due date.
- A penalty of EGP 50K up to EGP 2M should be applicable if the taxpayer didn’t comply with the TP

three-tiered filing requirements for a period exceeding 60 days from the tax return due date.

Advance Pricing Agreement:

The APA system provides Egyptian taxpayers with the benefit of agreeing in advance with the ETA on the methods to be followed by the taxpayer to determine arm's length arrangements acceptable for tax purposes when it comes to related party transactions.

Such an APA program should deliver benefits to the taxpayers such as the certainty on TP methods, tax outcomes, increased transparency and reduced risks of audit and penalties.

The APA program was introduced for the first time in Egypt in 2018 and accordingly, the ETA decided to adopt the unilateral APA(s) at this stage and to introduce the bilateral and multilateral APA(s) in the future. In addition, the option to apply for the APA is open to all the taxpayers subject to the provisions of the law including the Permanent establishments.

The Guidance on the APA program is contained within a new part two of the EGTP, which describes the mechanisms, procedures and implementation of the program in Egypt. The process of applying the unilateral APA and receiving a reply from the ETA may take approximately 6 months and this may vary according to the case at hand.

The stages of APA administration and application process include:

- A written request for a pre-filing meeting by the taxpayer at least 6 months before an APA is proposed to take effect, including an information package containing information prescribed by the ETA.
- Notification of consensus from the ETA following the meeting followed by submission of an APA application form and accompanying documentation by the taxpayer.
- Review of the APA application and the documentation package by the ETA.
- Evaluation and negotiation of the APA terms followed by APA acceptance and signing (or declining the application).
- Annual filing of an APA compliance report by the taxpayer within 60 days of the tax return filing.

It is worth noting that the ETA gives a priority to complex transactions/ industries opting for the APA (example, oil and gas and digital industries), when the

transaction in question involves an associated enterprise located in a low-tax rate jurisdiction or tax havens, Controlled transactions have been audited in the past and in Unique and innovative application of transfer pricing methodologies.

Indirect Taxes

Value Added Tax (VAT)

The Egyptian Parliament had discussed and approved the Value Added Tax (VAT) law which took effect on 8 September 2016, replacing the prior General Sales Tax (GST) law no. (11) for the year of 1991, as well as any legal provisions contradicting the new law.

Companies are required to register for VAT purposes if they generate revenue in excess of EGP 500k from non-exempted activities in addition to the exempted activities "if any" or in case of providing goods or services subject to schedule tax, regardless of the revenue generated from sales/production.

The general VAT rate was 13% applicable up to June 2017, increasing to 14% afterwards. This rate should be applied to all goods and services except for some goods and services listed in the exemption schedule attached in the VAT law as of natural gas, butane gas, production, transfer or sale or distribution of electricity, etc. Also, some goods and services are subject to the schedule tax/ excise tax, which is applied at different rates (i.e., 5%, 10%, etc.) depending on the nature of the goods or service under consideration.

For machinery and equipment (excluding buses and passenger cars), these are subject to a reduced rate of 5% in case such machinery and equipment are used for the purpose of the operation. It is worth mentioning that, as per the new VAT amendments stated in law no.3 for the year 2022, there is a possibility to suspend the payment of the VAT due on machinery and equipment whether imported or acquired from the local market as of industrial purposes, for a period covering one year starting from the date of their custom release or acquiring from the local market, and such period may be extended by a maximum of additional one year.

In addition, in case of the usage of such machinery and equipment in the industrial production during the prescribed period, it shall be exempt from VAT. In the meantime, in case the prescribed period ended without using the machinery and equipment in industrial production, the VAT and the additional tax (i.e 1.5% of the VAT due for each month) would be due from the date of purchase/custom release till the payment date. Accordingly, it is prohibited to use such machinery and equipment in any other purpose rather than the one it is

exempt for, (this is for five years following the exemption inception date), before notifying the ETA and paying the relevant VAT due.

As per the VAT law, the deadline for submitting the VAT return used to be two months from the end of the tax period. However, the Unified Tax Law which was enacted on 19th of October 2020 states a new deadline for the monthly VAT returns, which is a period of one month from the end of the tax period.

If the non-residents and non-registrants persons deal with resident persons in Egypt, the resident person must ensure that a fiscal representative has been assigned, otherwise the resident will be liable to pay the tax due – without prejudice to his right to go back to the non-resident person.

Additionally, services rendered by non-Egyptian residents are subject to VAT in Egypt under the reverse charge mechanism whereas the VAT is reported as output and input VAT with no cash provided that the Egyptian entity's activity is subject to VAT in Egypt. i.e. the importer of the service is considered as the renderer and the receiver of the service. In such cases, the recipient of the service is required to calculate the applicable VAT and / or relevant schedule tax (if the offshore service provider does not appoint a local representative or agent on his behalf) according to the type of service, and remit any applicable VAT to the ETA.

It is worth highlighting that the new VAT amendments also introduced simplified vendor registration system which allows every non-resident and unregistered person who does not practice an activity through a permanent establishment in Egypt and sells goods or provides taxable services to a person who is not registered inside the country, is obliged to apply for registration under the simplified vendor registration system as will be specified by the executive regulations.

It is worth mentioning that the ETA has started to implement the electronic invoicing ("e-invoicing") system starting from November 2020. Accordingly, Egyptian companies that have been listed in the issued decrees declared by the ETA should be issuing their invoices electronically, in addition, there is no eligibility to recover input VAT except if the issuance of invoices is in electronic forms starting from first of July 2022.

Oil & Gas Companies are exempt from VAT as long as covered under the concession agreement between the Egyptian government represented by EGPC and oil & gas companies (relevant to exploration and development), however; there is a list that has been amended and agreed with the ETA that includes several items and services that are out of scope of such exemption.

Custom Duties

The upstream activities

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

The midstream and downstream activities

They are subject to customs duties and import tariffs on the imported materials and assets, and the rate depends on the nature / type of what is being imported (based on the tariff code).

Other Taxes

Social Security contributions

Egyptian resident employees are liable to Social Insurance from the age of 18 years. Expatriate employees working in Egypt are not allowed to subscribe to the Egyptian social insurance scheme, except in the following cases:

- A reciprocal treaty between Egypt and the expatriate's country allows them to join Egypt's social security program.
- The expatriate's employment contract covers a period exceeding one calendar year.

The Social Insurance Law covers both Egyptian employees and foreign employees whose countries have treaties with Egypt for reciprocal Social Insurance treatments. The countries with reciprocal treaties with Egypt are Greece, Cyprus, Morocco, Libya, Sudan, Jordan, Syria, Iraq, Lebanon, Somalia and Palestine.

Social Insurance Rates:

Egyptian monthly social security contributions are based on two components: basic salary and variable salary.

The Social Insurance Authority has updated the current Social Insurance for the minimum salary to be EGP 1400 (instead of EGP 1200) & the maximum ceiling to be EGP 9400 instead of (EGP 8100). These minimum and maximum limits are increased by 15% on 1 January of each year for a period of seven years, starting from 1 January 2021 until 2027.

Therefore, in 2022, the employee share will be $(9400 \times 11\%) = \text{EGP } 1034$, and the employer share will be $(9400 \times 18.75\%) = \text{EGP } 1,762.5$, if the employee's salary is equal to or more than EGP 9,400.

Furthermore, managers/board of directors whose names are included in the commercial register of the company will be socially insured as employers and would be subject to social insurance at a flat rate of 21% of the total maximum wage (i.e. EGP 9,400).

The Egyptian Cabinet may defer or allow the eligible taxpayers to settle all or part of their social insurance contribution on installments (including the employee's and the entity's shares and without calculating any additional amounts), for a period that shall not exceed 3 months (renewable for a similar 3-months period).

Payroll contributions

Individuals are taxed on salaries earned from work performed in Egypt, regardless of where the payment is made as well as on salaries earned from an Egyptian entity, regardless of where the service is performed. In general, this tax is withheld at source from payments to Egyptians and foreign nationals working in Egypt.

Payments include salaries, overtime, bonuses, fringe benefits, allowances and all other payments and

benefits. Where, an annual tax is imposed on the total net income of the resident individuals for income earned in Egypt as well as the income earned outside Egypt for resident individuals whose center of commercial, industrial or professional activities is in Egypt. Also, tax is imposed on the income of non-resident individuals for their income earned in Egypt.

The Egyptian Government introduced several amendments on personal income tax; applied on salaries and the like (starting from the 1st of July 2020) and on income derived from commercial/ industrial/ non-commercial activities and real estate wealth (starting from the tax period that ends after the date of this law's entry into force).

Below is a summary of the key personal income tax law amendments, as provided by the new law:

- The annual personal exemption is increased from EGP 7K to EGP 9K.
- The abolishment of the tax deduction system.
- The following payroll tax rates should be applicable:

Tax Rate	Annual Taxable Income					
	Up to EGP 600K	EGP 600K-700K	EGP 700K-800K	EGP 800K-900K	EGP 900K-1M	More than EGP 1M
0%	Up to EGP 15K					
2.5%	EGP 15K-30K	Up to EGP 30K				
10%	EGP 30K-45K	EGP 30K-45K	Up to EGP 45K			
15%	EGP 45K-60K	EGP 45K-60K	EGP 45K-60K	Up to EGP 60K		
20%	EGP 60K-200K	EGP 60K-200K	EGP 60K-200K	EGP 60K-200K	Up to EGP 200K	
22.5%	EGP 200K-400K	EGP 200K-400K	EGP 200K-400K	EGP 200K-400K	EGP 200K-400K	Up to EGP 400K
25%	More than EGP 400K	More than EGP 400K	More than EGP 400K	More than EGP 400K	More than EGP 400K	More than EGP 400K

Property taxes

The upstream activities are exempt from paying property taxes as per the concession agreement. In general, Real estate tax is applied to all real estates all over the country (including new urban communities and free zones). The implementation of the real estate law started to take place on the first of July 2013.

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

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

The annual assessment is applicable for a five-year term and then reassessment procedures will be initiated from one year to three years before the end of each term. However, based on recent amendments, the application of the annual rental value assessed for the last five years (i.e. from 2013 to 2018) will be extended for three more years until 2021.

Reassessment procedures will be initiated from one year to three years before the end of each term. Rental value assessments set by the committees will be communicated to each taxpayer via a written notification “assessment notification” and will be published in the Official Gazette. The taxpayer can appeal on the rental value assessment within sixty days following the date of the publication date. The real estate tax is assessed in January of each year and is collected in two equal installments at the end of June and December of the same year. Nevertheless, the taxpayer has the option to pay the whole tax amount on the date of the first installment (i.e. at the end of June).

The tax due must be paid at the relevant real estate tax directorates in each governorate and their respective tax inspectorate affiliate offices.

Factors affecting the taxable amount:

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

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

- $\text{Rental value} = (\text{Market value} \times 60\% \times 3\%)$.
- $\text{Taxable amount} = (\text{Rental Value} \times 68\%)$.

A new article was recently introduced to real estate tax law, allowing by means of a decision from the Egyptian Cabinet, real estate tax exemption for the real estate actually exploited in the production and services activities stated by the Egyptian Cabinet; provided that the decision includes the below, for each production or service activity:

- The percentage of exemption; and
- Its duration.

Stamp taxes

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

Stamp taxes apply as follows:

- Land registration/ property transfers/ transfer of deeds (including lease agreements);
- Banking Transactions;
- Insurance Premiums; and
- Payments by Governmental Bodies.

There are two distinct types of tax:

1. Nominal Stamp Tax - which is imposed on certain documents, regardless of their value at an approximate amount of EGP 1 on each page of copy of the contract (i.e. each of the counterparts to the contract should bear 1 EGP per page of each copy of the contract); and

2. Proportional Stamp Tax, which is imposed at prescribed rates on the values of certain financial transactions.

Stamp Tax on Banking Transactions:

- The stamp tax on banks' loans is applicable on the Egyptian banks and the branches of foreign banks in Egypt with the exception of non-resident banks. The stamp tax is at the rate of 0.4% annually imposed on the highest debit balance and is applied on the beginning balance of each quarter during the year, in addition to the amount of utilisation from the credit facilities balance granted by banks during each quarter. It is notable that such stamp tax is due within 7 days following the end of each quarter during the year and borne equally by both the bank and the customer.

Stamp Tax on Sale / Purchase of Securities:

- The stamp tax is applied on the total proceeds realised from buying or selling any kind of securities regardless of whether they are Egyptian or foreign, listed or non-listed and without deducting any costs (i.e. value of the transaction).

Non-resident investors should be paying stamp tax at the rate of 0.125% of the total proceeds realised from the sale of the Egyptian shares (less than 33% shareholding percentage) without deducting any costs. On the other hand, resident investors were subject to 0.05% on the total proceeds realised without deducting any costs as well (for shareholding percentages less than 33%). However, starting January 2022, this stamp tax imposed on residents is abolished and accordingly, resident investors should not be subject to the 0.05% stamp tax upon the sale/ purchase of shares (of shareholding less than 33%). Such tax should be paid by each of the seller and buyer (if applicable).

However, in case the sale of shares transaction involves the sale of at least 33% of the company's shares or more, then the stamp tax rate imposed should be 0.3% applicable on each of the seller and the buyer. This rate should apply on the total amount of shares transferred by the same person in the same company within a period of two years from the date of the first transaction, and upon reaching the above mentioned threshold (i.e. 33%) within this period, as it would be viewed as an acquisition transaction undertaken as a single deal. This tax is imposed on both resident and non-resident shareholders.

The MCDR or any other entity responsible for the settlement of the mentioned transactions will be

responsible for withholding the tax due and remitting it to tax authority as per the procedures and timelines identified by the ministry of finance.

This type of stamp tax is non-deductible for corporate income tax purposes.

Other types of Stamp Tax:

Payments made by governmental entities are subject to a 2.4% stamp tax (with certain exemptions), and it should be borne by the recipient, by means of withholding. There are other types of stamp taxes, which are imposed at nominal rates and others that are imposed at proportional rates, depending on the nature of the transaction that has been undertaken and /or the document being exercised.

Deemed Profit Tax

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

Incentives in the oil & gas industry

Upstream activities:

As for the upstream petroleum activities, the capitalised exploration expenditures are deductible for income tax purposes. Based on the provisions of the concession agreements and pending the approval of the EGPC, the capitalised exploration expenses are amortised over a period defined in the concession agreement.

In addition to that, the income tax losses may be carried forward for 5 years, for corporate income tax purposes. However, it is worth noting here that the income tax losses incurred on one project can only be offset against the gains realised by the same project. In other words, tax losses incurred on one project cannot be offset against the gains realised from another project, even if the two projects are owned by the same investor.

Tax Losses (for all Activities):

Income tax losses may be carried forward for 5 years.

Compliance Requirements

Tax returns and payments

For the upstream activities, the foreign investor provides EGPC with a draft tax return for review and approval within 30 days before the due date for submitting the return to the tax authority (i.e. it must be submitted to EGPC).

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

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

Note that currently, the filing of the income tax returns should be made electronically on the ETA's website. Whereby, the taxpayers are required to register on the ETA's website and should prepare and submit their annual income tax returns on the ETA's website.

Electronic- filing ("e-filing") of the corporate income tax returns:

The ETA has decided to apply the e-filing of income tax returns on a mandatory basis. Taxpayers are accordingly required to register on the ETA's website. Then, they shall prepare and submit their annual income tax returns on the ETA's website.

Upon submission of the tax returns, taxpayers are required to pay the tax due through one of the specific

methods dictated by the ETA. This mainly involves that the payment will be made either through a bank transfer or using a smart card.

Penalty

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

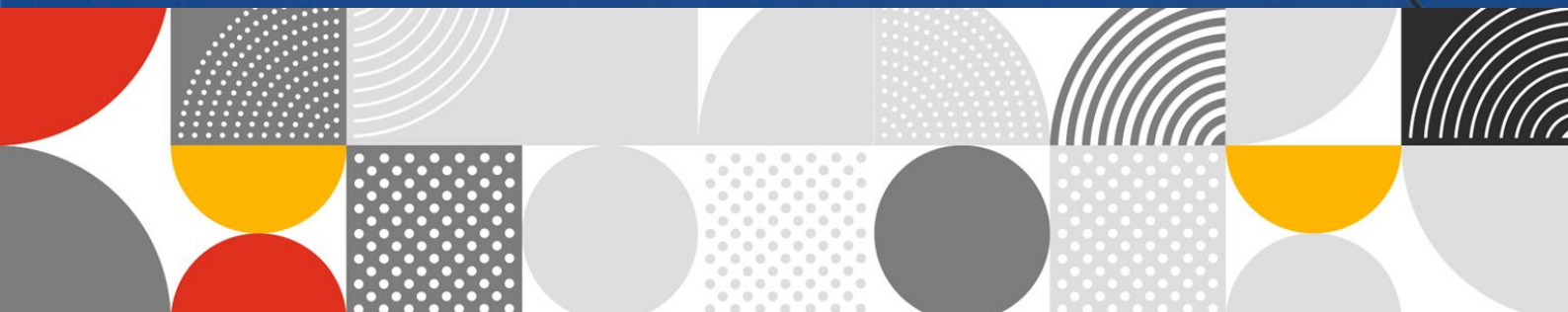
For the midstream and the downstream activities, certain penalties should apply as well as a delay fine in case of failure to submit the tax return and pay the tax based on the Egyptian income tax law.

Tax Audit

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



Power and Utilities Sector



Brief overview of Power and Utilities development in Egypt

The Egyptian Ministry of Electricity and Energy has announced the feed-in tariffs ("FITs") for electricity generated by solar and wind sources as part of the government's efforts to increase the country's energy capacity in the face of serious power shortages and recent power outages.

Tariff rates for large-scale projects will be calculated in U.S. dollars because they will likely be developed with foreign financing. Moreover, the tariffs will be paid in domestic currency according to the exchange rate at the time of payment.

The Ministry of Electricity and Energy has set the ambitious goal of renewable energy supplying 20% of the national electricity by 2022. The government is also preparing a law that would allow for state-owned lands to be made available for renewable energy projects in exchange for 2% of the energy produced. The Egyptian government's renewable energy deployment is viewed by the Egyptian government as an equitable and cost-effective means of addressing a range of critical social and ecological issues while at the same time boosting job creation and the national economy.

In order to achieve the above-mentioned target, the Egyptian electricity transmission company ("EETC") is offering the private developers the opportunity to participate in an international competitive bidding to develop private wind and solar power projects on the basis of a build, own, operate ("BOO") scheme. The private renewable power projects will be developed in successive phases in areas around Egypt such as the Gulf of Suez area, East and West of the River Nile, Upper Egypt as Komombo, Menya and BenBan near Aswan etc.

In fact, Egypt is the only nation in the Middle East to date that has allocated land specifically for development of renewables, with about 7,650 square kilometers which can host about 87 GW (54.3 GW PV and 32.7 GW) wind projects. This is an indication of strong government support that Egypt hopes will inspire market confidence for expanding its strong natural resource potential

Speaking of the renewables energy sector, it is worth mentioning that in 2022 Egypt has witnessed its first issuance of \$130 million in the first private green project bond issuance in Egypt and the southern and eastern Mediterranean.

Fiscal Regime

It is noticeable that the taxation regime covering the power and utilities sector is similar to the standard regime. In other words, the net profits of the companies carrying on projects of such type are subject to the corporate income tax of 22.5%.

Tax Audit

Similarly, the tax audit for the power and utilities sector is not different to the other sectors. And it is to be applied as mentioned above in the tax audit section.

Legal Framework

The engineering, procurement and construction ("EPC") contracts are the most common form of contracts used to undertake construction works by the private sector on large-scale and complex infrastructure projects. Under an EPC contract, a contractor is obliged to deliver a complete facility to a developer who only needs to turn a key to start operating the facility.

Hence, the EPC contracts are sometimes called turnkey construction contracts. In addition to delivering a complete facility, the contractor must deliver that facility for a guaranteed price by a guaranteed date and it must perform to the specified level. Failure to comply with any requirements will usually result in the contractor incurring monetary liabilities.

Also note there are no specific local content regulations for the power and utilities sector in Egypt.

Regulatory Framework

The key regulators in the power and utilities sector

The Ministry of Electricity and Energy (MOEE) is the key party who sets policies that identify electrical capacity needs in conjunction with the Electric Utility and Consumer Protection Regulatory Agency ("Egypt ERA"), which is the regulator responsible for the issuance of licenses, approvals and general regulation of electricity generation, transmission and distribution. Egypt ERA reports to, and follows the policy objectives of MOEE pursuant to the Electricity Law.

The main publicly owned company operating in the electricity sector is the Egyptian Electricity Holding Company (EEHC). Egypt's six generation companies and nine distributors are owned by the Egyptian Electricity Holding Company (EEHC). EEHC owns all government-owned power generation and distribution

companies. Until recently, EEHC used to own the Egyptian Electricity Transmission Company (EETC), which has a monopoly over the construction, operation and maintenance of transmission facilities and the power grid. Under the new Electricity Law, EETC was separated from EEHC in order to separate electricity generation and distribution (handled by EEHC) from transmission, which is now exclusively handled by EETC.

Forms of contracts

Engineering, procurement and construction (“EPC”) contracts are the most common form of contracts used to undertake construction works by the private sector on large-scale and complex infrastructure projects. Under an EPC contract, a contractor is obliged to deliver a complete facility to a developer who needs only to turn a key to start operating the facility.

Hence, EPC contracts are sometimes called turnkey construction contracts. In addition to delivering a complete facility, the contractor must deliver that facility for a guaranteed price by a guaranteed date and it must perform to the specified level. Failure to comply with any requirements will usually result in the contractor incurring monetary liabilities.

Local content regulations

There are no specific local content regulations for the power and utilities sector in Egypt.

Incentives in the industry

According to the Egyptian investment law no 72 of 2017, the projects which depend on or produce the new and renewable energy, as well as the electricity generation and distribution projects are guaranteed some investment incentives, if such projects are established under this law.

The purpose behind such incentives is aiming to attract foreign investors into the Egyptian market. It provided tax and customs exemptions for companies established under its umbrella and offered land, necessary for projects, at attractive prices and simplified incorporation procedures.

The investment incentives include both general and special incentives and explained as follows:

General incentives:

- The Articles of association of the above-mentioned companies established under this law are exempted from the stamp tax and authentication and publishing fees for 5 years from the date of registration in the commercial register. The land contracts of the project are also exempted from the registration fees.
- The unified customs rate on imported tools, equipment, and machinery necessary for the establishment of the business is 2%. This unified customs tax rate shall also apply to all the machinery, equipment, and devices imported by the companies and establishments operating in the public utility projects which are required for the set up or completion of such companies such incentive was later updated to cover the expansion of an already existing business/project.
- The VAT suspension is applied to the VAT due on machinery and equipment imported from abroad or purchased from the local market for factories and production units (for industrial production use) for a period of one year from the date of their release or purchase from the local market, and this period can be extended by a request from the company and approval from the Egyptian Tax Authority (ETA) for extra periods by a maximum of one extra year (the maximum of the total suspension periods will be 2 years from the purchase/release date).

Special incentives:

The law guarantees a 30% discount off the investment costs, for the projects which depend on or produce the new and renewable energy, as well as the electricity generation and distribution noting that such discount will be for a period not exceeding 7 years from the date of initiating the activity. In addition, such discount value shall not exceed 80% of the paid-up capital of the project at the date of initiating the activity. Such incentive was extended to be applicable till 2026.

However, in order to enjoy the special incentives provided above, the Investment Projects are required to meet the following conditions:

- 1) A new company or establishment shall be incorporated to conduct the Investment Project.
- 2) The company or establishment shall be incorporated within 3 years maximum from the date that the Implementing Regulations of this Law enter into force.

- 3) The company or establishment shall keep regular accounting books. In the event the company or establishment operates in more than one zone, it may benefit from the percentage prescribed for each zone if it keeps separate accounting books for each zone.
- 4) None of the shareholders, partners, or owners of the establishment have presented, contributed, or used any of the material assets of a company or establishment that existed on the date the provisions of this Law entered into force in the setting up, incorporation, or conducting of the Investment Project which enjoys the incentive, or have liquidated this company or established within the term set forth in Paragraph (2) of this Article for the purpose of setting up a new Investment Project that enjoys the special incentives referred to. Violation of this term shall nullify the incentive mentioned and the company or establishment shall be liable to pay all the due taxes.

Additional incentives that may be granted by virtue of board of ministers resolution:

- Permit opening special customs windows for the importations and exportations of the project.
- The government bears all or part of the utilities cost for the project land, after operating the project.
- The government bears some of the employees' "transformative training" costs.
- Returning half of the land price with regards to industrial projects that have started its activity within 2 years from the date of receiving the land.
- Providing free lands for some strategic projects.

The law has also provided several guarantees such as:

- All the resolutions related to the investment project must be justified and notified to the investors.

- The investment funds cannot be seized except by virtue of a final judgement/ruling.
- The permits issued for the project and lands granted cannot be abolished except after notifying the investor of the violation and granting him a grace period to rectify the causes of the breach.
- The investor has the right to establish, own, expand and dispose of his investment project, fund the project from abroad and transfer its profits.
- In case of liquidation, the competent authorities must notify the liquidator and GAFI of any due liabilities within no later than 120 days from the date the liquidator applies in this regard, otherwise the liquidated company shall be released.
- The companies can import its necessities from raw materials and equipment without a need to be registered in the importers register, moreover it can export its products without a need to be registered in the exporters register.
- The investment project can increase the foreign workforce permitted quota to 20% of the total work force in case there are no qualified nationals to fit in the position, moreover, some strategic projects may be exempted from such quota.

As a separate note and based on the latest amendments made to the customs law, a change has been made to the rules and the fees / customs to be paid when it comes to the temporary importation of machinery or equipment related to renewable energy projects. Based on such amendments, the rate to be paid upon such importation is reduced to 10% of the value of customs duties that is paid in case of final importation (instead of 20%) and that should be paid for 10 years instead of 5 years. This has also been made to encourage such types of projects in Egypt.





ESG



ESG Updates in Egypt

In light of COP27 which was held in Egypt, the country has set comprehensive development plans and implemented numerous projects in line with the economic and environmental priorities of the State. Egypt's 'Vision 2030' also prioritises and highlights the importance of incorporating ESG aspects across all sectors.

The newly issued ESG development plan revolves around many pillars as follows:

- **Committing to net-zero cities:** it aims to reduce carbon emissions by 70 million tons by the year 2030, representing around 33% of the country's emission levels. Accordingly, the strategic vision for urban development in Egypt is currently focusing on developing smart cities, with the New Administrative Capital (NAC) taking the lead. The development of NAC integrates smart infrastructure and, subsequently, operational measures to ensure environmental considerations are met across the project's lifecycle. Among other initiatives to achieve such goals.
- **Sustainable environmental design:** measures have been put in place to create a governmental Green Star Hotel program (GSH), managed by the Egyptian Hotel Association under the support of the Egyptian Ministry of Tourism. The purpose of the programme is to encourage sustainable tourism by certifying hotels that adhere to high levels of environmental performance. To date, 22 hotels in Egypt are GSH-certified, with an additional 64 properties attempting to obtain the credentials.
- **Refurbishment and regeneration:** In Egypt, a change of mindset amongst the public and private real estate developers who have launched initiatives to reclaim and restore heritage buildings. For example, old properties are either brought back to their original function or repurposed entirely to match current societal needs. Renovating Downtown Cairo and its buildings has been the government's priority. As ministries and embassies relocate to the New Administrative Capital, their now vacant, previously occupied old buildings, are set to be regenerated and repurposed in line with the government's new masterplan and vision for Downtown Cairo. Paving the way for Downtown's restoration is the Sovereign Wealth Fund's dedicated Real Estate and Tourism investment vehicle which comes with the mandate to reclaim and maximise the potential use of the neighbourhood.
- **Solving for social factors:** Moving forward, developers of office and commercial complexes are expected to face greater demands from tenants that are determined and focused on meeting the social responsibility they have towards their employees. Globally, certifications such as Fitwel and WELL are being used more widely to guide the development of buildings that emphasise people's health and safety.
- **Solving for good governance: Regulatory guidelines and sectoral environmental sustainability standards are being created and implemented. Key mandates include:**
 - Providing proper housing for Egyptian citizens and completely eradicating slums for their lack of electricity, safety, clean water, and sewage. Relocate slum residents to new developments with a higher quality of life and safety.
 - Reduction of migration from the countryside to the cities to minimise the effects of urban sprawl
 - Improve labour conditions.
 - Expanding the production of clean energy through renewable resources.
 - Following Egyptian design code to ease and accommodate differently abled individuals.

Moreover, investors are increasingly considering ESG and non-financial KPIs as part of their analysis and decision-making process to identify material risks and growth opportunities within the real estate market.

Accordingly, starting in 2023, EGX-listed firms will be required to file mandatory annual ESG reports. The companies would have to disclose their performance in key environmental, social and governance metrics along with their financial statements. Their ESG performance will be based on 21 KPIs from operational environmental footprint to diversity, anti-discrimination, and health and safety.



Equatorial Guinea

Contact



Laurent Pommera

laurent.pommer@ga.pwc.com



Sinforiano Ngomi Elomba

sinforiano.ngomi.elomba@cm.pwc.com



Nanda Nzambi

nanda.nzambi@ga.pwc.com



Jose Mbara

jose.nbara.richard@ga.pwc.com

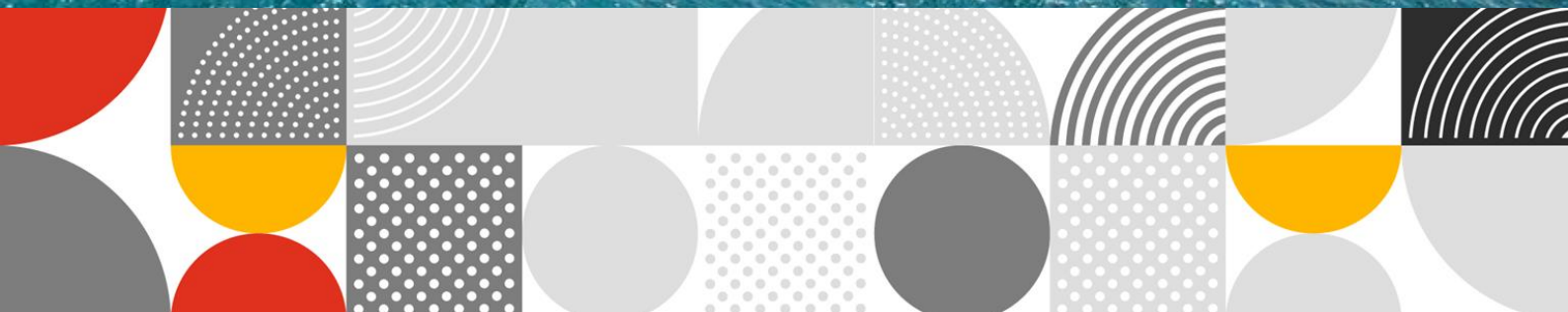


Zenika Sanogho

zenika.sanogho@ga.pwc.com



Oil and Gas Sector



Brief history on Oil & Gas development in Equatorial Guinea

Licensed blocks in Equatorial Guinea (EG) were first designated by the Spanish administration and offered for international tender in 1965 with awards going to groups operated by Mobil and Spanish Gulf Oil (Spangoc) but the exploration effort led to no commercial success. After independence in 1968, petroleum activity was much reduced and further significant exploration did not occur until after the 1979 change of Government.

Hispanoil and the new Government formed a joint venture company, GEPSA, which discovered the Alba gas condensate accumulation in 1983. GEPSA deemed Alba to be non-commercial and their licences lapsed. During the 1980's, Total and Elf operated groups that explored onshore and offshore Rio Muni where extensive seismic surveys were undertaken, and four wells drilled without success.

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

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

In late 1999, Triton made a significant discovery with the first well on its licences, Ceiba-1, which tested oil at 12,400 bpd and led to the first production in the Rio Muni basin in November 2000. As a result of the Ceiba discovery, an aggressive exploration program was undertaken by Triton during 2000 - 2001 that continued after the acquisition of Triton by Amerada Hess in 2001.

During 2000, Ocean Energy relinquished Block A and operatorship of Block D was taken over by CMS (now Marathon). In 2004, Marathon drilled the Corona-1 discovery well in Block D which extended the Alba Field into Block D. Triton Energy was awarded Rio Muni Blocks F & G in 1997, covering areas previously licenced to Elf and acquired seismic through 1997 and 1998.

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

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

During 2002, new exploration licences were awarded to the Fruitex Group covering Block M in the western offshore Rio Muni and to a Petronas operated group for Block N covering Corisco Bay. Fruitex acquired 2D and 3D in Block M and in late 2003 Petronas drilled the N-1 well (with non-commercial oil) and the N-2 well in 2005. In 2003, Devon Energy was awarded Block P in the Rio Muni Basin and in 2004 Noble Energy were awarded Block O and PetroSA Block Q, both in the Douala Basin, offshore Bioko Island. In 2004, Devon Energy drilled the unsuccessful P-1 well, but in October 2005, the P-2 well was announced as an oil discovery and was successfully appraised. In 2008, GEPetrol became operator of Block P when they purchased the Devon Equatorial Guinea assets.

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

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

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

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

In 2007, ExxonMobil drilled the Langosta-1 gas condensate discovery in Block C and in May 2009, Repsol Exploration Guinea SA became the operator of Block C, following the withdrawal of ExxonMobil and SK Corporation from the licence. Block C was subsequently relinquished in 2012. In January 2009, Ophir Energy announced that the R-2 and R-3 exploration wells in Block R were gas discoveries and in October 2011, the Block R PSC was amended to include unlicensed acreage north-west of the original contract area. In return for the expansion of the

acreage, Ophir has committed to accelerate exploration activity in the enlarged area through the drilling of 2 further commitment wells. These wells will form part of a proposed 3-4 well drilling program which is planned to commence in 1H 2012.

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

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

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

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

In July – September 2012, Ophir Energy announced that the R-4 (Tonel-1), the R-5 (Fortuna East-1) and R-6 (Fortuna West-1) wells were all gas discoveries, bringing the estimated proved and probable reserves for Block R to 2.9 TCF. In June 2012, a new PSC was awarded to Marathon Oil and GEPetrol over Block A-12, offshore Bioko Island.

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

Significant new developments

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

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

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

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

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

Economic Updates

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

The fall in oil prices has immediate and lasting consequences for Equatorial Guinea's budget, especially as it is accompanied by a decline in production, which only reached an estimated 155 000 barrels of oil equivalent per day in 2015, and amounted to a fall of 5% in volume per year over the last 10 years. This also affects the structure of the balance of payments, due to lower export earnings. The fall in government revenues has a direct impact on the rest of the economy, given the importance of public procurement in stimulating non-petroleum sectors. It should be noted that the capital expenditure reflected in the Finance Act 2015 (XAF 1 951 billion) corresponds to 85% of the forecast revenue. The 2016 Finance Act, against a background of recession, indicates that the authorities have chosen to maintain a high level of investment while maintaining a strategic balance.

Fiscal regime

The taxation of petroleum exploration and production is covered by the general tax provisions in Decree Law n^o. 4/2004. Additionally, Equatorial Guinea is a member of the Central African Economic and Monetary Community (CEMAC) (formerly UDEAC) and a signatory to certain regional agreements concerning tax and trade. There has been no major new laws or regulations (since the tax law of 2004) but there is stronger enforcement of the regulations related to National Content and stronger positions adopted in the frame of Tax Audits regarding the scope of application of the WHT.

Regulatory Framework

The key regulators in the oil & gas industry:

All aspects of oil & gas exploration in Equatorial Guinea are regulated by the: Decree Law No. 8/2006 of November 2006 (Hydrocarbons Law) and the New Petroleum Regulation of the Republic of Equatorial No. 2/2020, dated June 15, 2020 published in June 2020 and revoking the previous one (MP 4/2013 dated June 2013).

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

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

Forms of Contracts

Official templates of contracts are provided on the official website of the former Ministry of Mines Industry and Hydrocarbons (now "MMH").

The Model Petroleum Sharing Contract included the following provisions:

- Initial exploration period: normally for four to five years divided into two sub periods which is extendible twice on a yearly basis.
- Relinquishment: 40% is relinquished after the initial exploration period, with a further 25% of the remaining area at the end of each renewal period. Voluntary relinquishment at the end of each contract year is permitted.
- Exploration commitment: This is negotiable, but usually involves purchase and interpretation of all existing data relating to the contract area and seismic acquisition and/or exploration drilling in the initial exploration period and a well in each of the annual extensions.
- Royalty: Minimum rate of 13%, which will escalate according to average daily production.
- Cost recovery: Costs may be recovered from a negotiated share of production net of royalty with unrecovered costs carried forward.
- Production sharing: This is from profit oil according to a stepped scale related to cumulative production.
- Bonus payments: on contract signature, bonus payment is on notification of a commercial discovery and on production targets.

- State participation: This is a minimum of 20% carried working interest during exploration phase.
- Income tax: This currently at the rate of 35%.

Local Content Regulation

There are specific local content regulations in Equatorial Guinea and is applied to O&G, E&P and OFS. These rules concern the training of personnel and promotion of the local workforce. Expatriate quota is 10% up to 30% for the oil & gas industry (subject to Government approval).

Taxation regime

Direct Tax

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

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

Corporate Income Tax ("CIT")

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

- Payment of the Minimum Income Tax ("MIT") corresponding to the 3% of the previous year turnover.
- Payment of the remaining quota of CIT at a 35% rate in case of profits when filing the CIT return.

The penalty for late filing is XAF 200,000 per month.

The following will be treated as deductible expenses:

- Overhead of any type;
- Staff expenses and labor;
- Expenses related to the premises, material and furniture;

- Miscellaneous and especial expenses;
- Insurance premiums;
- Gifts, donations and subsidies;

As a general rule, the following conditions must be met before a deductible expense is claimed:

- The expense must be done in the company's interest;
- The expense must represent a diminution of the net assets;
- The expense must be related to the fiscal year during which it was done;
- The expense must be justified.

The Tax Code also provides special deductibility conditions for some expenses.

Minimum Income Tax (MIT)

- The amount cannot be lower than XAF 800,000 (even if company does not have revenues).
- MIT is to be deducted from the CIT to be paid.
- Penalty for lack of payment is equal to 50% of the amount that should have been paid.

Capital Gains Tax

Capital gains realised by resident companies is to be determined on a case by case basis, but as a principle, subject to standard regime (i.e. 35% CIT rate). Capital gains realised by non-resident companies is to be determined on a case by case basis, but as a principle, subject to standard regime (i.e. 25% WHT rate).

Please note that in accordance with Regulation N°7/19-UEAC-01 AO-CM-33 dated April 8, 2019 revising Act N°05/66-UDEAC-49 of December 13, 1966 relating to the convention on the avoidance of double taxation on personal income tax, dividends paid by a company resident in the CEMAC zone to an individual or legal entity of a member state are taxed as follows:

- 5% of the gross amount of dividends if the person holds at least 25% of the capital of the company paying the dividends;
- 10% in all other cases.

Withholding tax

This withholding tax is applicable to:
Gross incomes related to the sale of goods and services;

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

This withholding tax equals to:

- 6.25% on the payments done to a resident entity;
- Reduction of withholding tax rate from 20% to 15% for non-resident legal entities;
- The rate of 20% remains unchanged for natural persons

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

Thin capitalisation and Transfer Pricing (TP)

TP rules are not developed in Equatorial Guinea. The law only provides general guidelines under which incomes and profits transferred directly or indirectly whether through surcharge or a decrease in the purchase or sale prices, or through other means by companies that are under the dependence and control of companies located outside of Equatorial Guinea. The guidelines provide that such income or profit will be re-incorporated into the P&L of the company in Equatorial Guinea. Reintegration is to be performed by comparison with similar companies and their normal operations in Equatorial Guinea. There are no additional details, but we understand that this will be subject to discussion during tax audits. However, we are not aware of any audits reassessing transfer pricing aspects as of date.

No thin cap rules applicable in Equatorial Guinea.

Double Tax Treaties (DTT)

There are no DTTs

Indirect Tax

Value Added Tax (VAT)

Not applicable in the oil & gas sector in EG.

Customs and Excise Duties

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

Revision of special taxes

- Tax on consumption of alcoholic and non-alcoholic beverages;
- Tax on consumption of cigarette;
- Tax on automobiles, boats and motor vehicles.

Creation of new taxes

- Tax on the use of plastic bags: 25 XAF per unit;
- Tax on telecom services: 10% (excluding Value-Added Tax);
- Tourist Tax;
- New taxes for services rendered by the Ministry of Labour.

Other Taxes

Personal Income Tax (PIT)

The incomes concerned are:

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

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

- Taxable base of the PIT on Salaries and Wages

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

- Base salary;
- Bonuses, indemnities and allowances;
- Expenses refunding;
- Benefits in kind.
- Calculation, declaration and payment of the PIT on Salaries and Wages

The calculation is done in various stages. The following amounts must be deducted from the taxable salary:

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

After this, the PIT rate is applied to the taxable salary according to an annual progressive tax scale that ranges from 0 - 35%. PIT is withheld monthly by the employer and then paid to the Public Treasury within the first fifteen days of the month following the payment of the salaries.

In practice, the employer must declare the PIT on Salaries and Wages within the first fifteen days of the month following the month of payment of the salaries and then must pay said tax within the fifteen days following the date when the tax liquidation is remitted to the taxpayer. Penalties for the lack of payment or late payment of the PIT are equal to 25% of the amount due plus 10% per month late.

Social contributions

▪ Social security contributions (INSESO)

In practice, the contributions to INSESO include:

- An employer's part, equals to 21.5% of the base salary plus fixed and periodic elements;
- An employee's part equals to 4.5% of the gross salary.

The employer withholds the employee's part and declares it with his own INSESO part within the first fifteen days of the month following the month of payment of the salary. The penalties for the lack of payment or late payment to INSESO are equal to 20% of the amount due.

▪ Work Protection Fund ("WPF")

Both employers and employees must pay their contributions to the WPF. This contribution includes:

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

This contribution is withheld monthly by the employer who declares it to the Ministry of Labour and Social Security within the first fifteen days of the month following the month of payment of the salary. The penalties for the lack of payment or late payment of the WPF are equal to 20% of the amount due.

Taxation of Oil Field Services (OFS) companies

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

Property Tax

"Urban Property Tax" applicable to "Ownership, possession, equitable ownership and real or potential income from urban properties (Urban property means any land with or without buildings and the buildings built thereon, whenever located in urban areas). No different regimes apply to property rich companies. A fixed contribution of 100 francs CFA for each hectare or fraction thereof of the surface area on the property. It will be due per completed six months and paid in the second and fourth quarter of the respective year

Deemed Profit Taxation

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

Compliance requirements

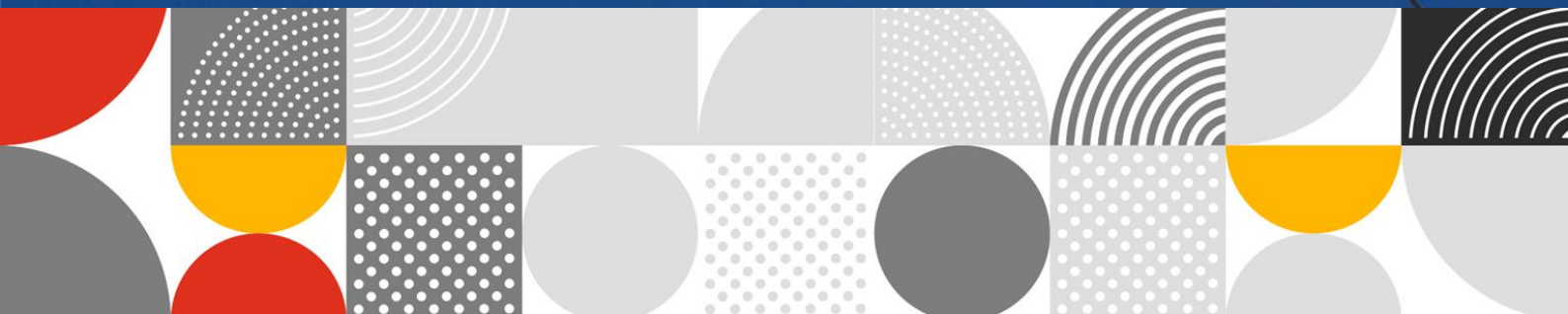
CIT returns should be submitted by April 30th. No deadline for payments are provided by the Tax Code but in practice it should be paid 15 days following the issuance of a liquidation statement by the Ministry of Finance & Budget.

Tax audits

The Secretary of State for the Republic in Charge of Audits, a specific administrative organ, is assisted by various foreign audit firms and companies. In practice, audit fieldworks last a week per fiscal year before a Preliminary Audit Report (to be responded to), a Final Audit Report (idem) is issued and negotiation meetings are organised to sign a Final Agreement, as the case may be. Tax inspections are made by public servants from the Ministry of Finance and Budgets.



Power and Utilities Sector



Brief overview of the Power and Utilities sector in Equatorial Guinea

The entire power sector of Equatorial Guinea is owned and operated by State-owned company named Sociedad de Electricidad de Guinea Ecuatorial SA (SEGESA), although the Government has suggested that privatization is possible in the future.

Prior to the oil boom, miniscule generating capacity of 5 MW was provided by the 1 MW Riaba hydro scheme on Bioko and a 4 MW oil-fired plant in Rio Muni.

A 10.4 MW gas-fired plant was completed at Punta Europa in 1999 next to the AMPCO plant. It is supplied with about 14m cubic feet of gas a day from the Zafiro Field and was expanded in phases to give current generating capacity of 148 MW.

The 120 MW Djibloho hydro plant has also recently been completed with \$257m in funding from the Chinese government. The loan covered the entire cost of the turnkey contract awarded to Sino Hydro for dam construction and other construction and engineering work on the scheme.

In addition, 1,366 km of transmission lines and several substations have been constructed to improve power supplies to urban centres in Rio Muni, taking total project costs up to \$647m. The venture's generating capacity could be increased at a later date, while the 200MW Sendje hydro scheme was completed in 2015, thereby creating scope for exports to Cameroon and Gabon.

The electrification program has supplied power to many urban inhabitants but more investment in distribution is required in rural areas. Bioko and Rio Muni have separate power grids with no prospect of connecting them because of the distance involved.

Oil & gas producers have their own independent power plants to supply their own needs. The country has about 2.6 GW of untapped, economically feasible hydro potential that could be developed to supply neighbouring states, if sufficient regional transmission capacity can be developed and long-term power purchase agreements concluded between the various state-owned power companies involved.

Economic updates

Oil has been the major source of high economic growth. Overall, the economic development has been uneven. The government is trying to improve the investment and business climate.

Fiscal and taxation regime

There is no specific fiscal and taxation regime for the power and utilities sector in Equatorial Guinea.

Regulatory framework

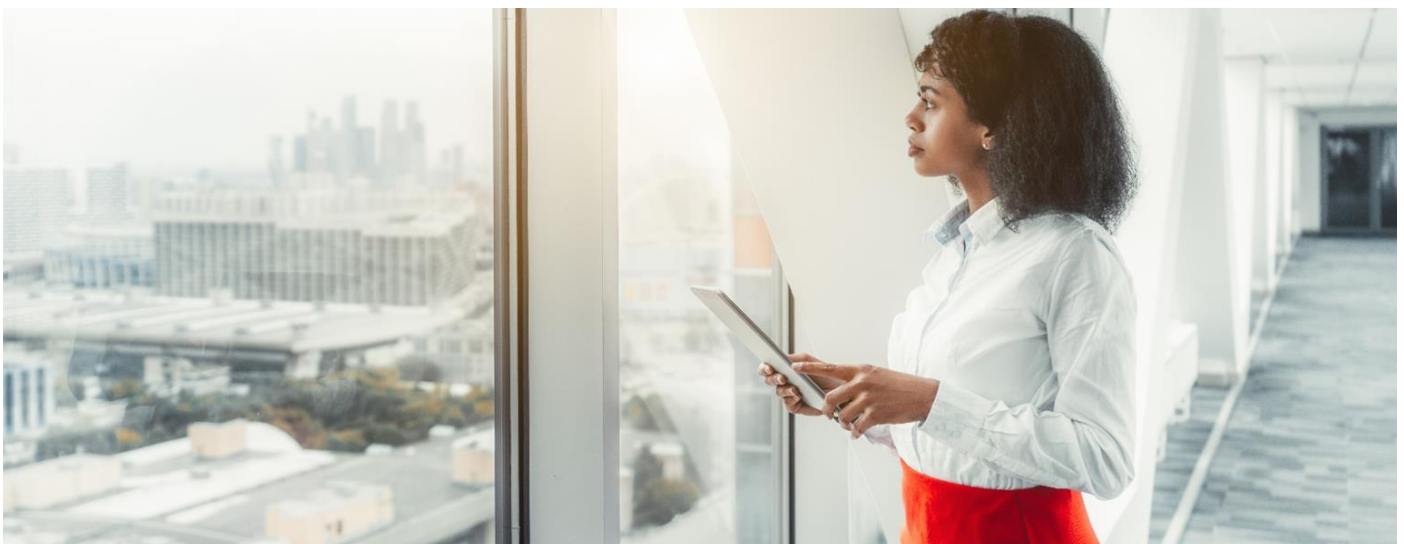
There are no specific regulations in this sector.

Forms of contracts

There is nothing in place as the industry is owned by the State.

Local Content regulations

There are no specific regulations in place as the industry is owned by the State





Gabon

Contact



Christophe Adrien Relongoue

christophe.relongoue@pwc.com

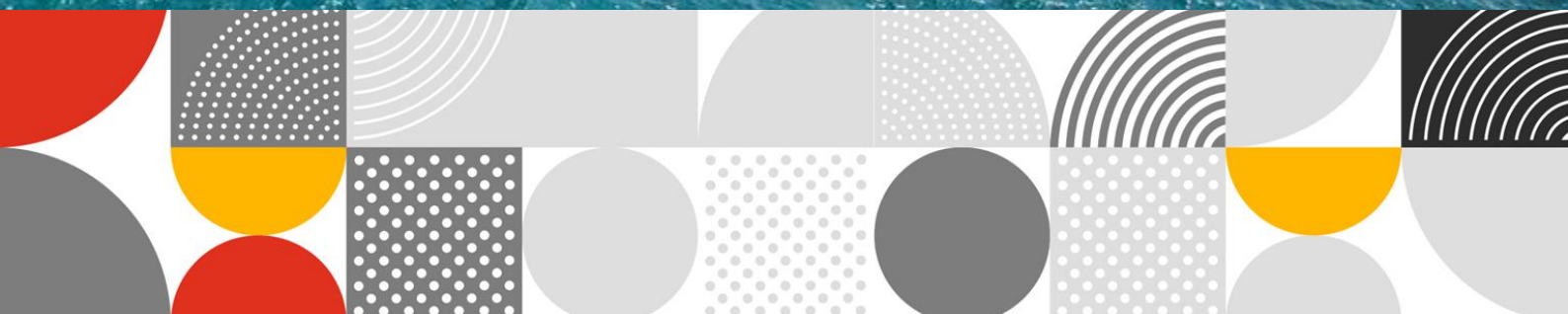


Inès VAZ

ines.vaz@ga.pwc.com



Oil and Gas Sector



Brief overview of the Oil & Gas industry in Gabon

Gabon is a Central African country situated along the Atlantic Coast.

Since mid-2014, the fall in the price of a barrel of crude oil at the global level has put the oil sector in Gabon in difficulty, which has decreased its revenue by 60%. The Hydrocarbon Code of 2014 faced criticism because players in the oil sector say it is a disincentive for investments in the oil sector. This situation led the Gabonese Authorities to adopt a new Hydrocarbons Code (Law N° 002/2019 dated 16 July, 2019) regulating the hydrocarbons sector in the Gabonese Republic. Still the largest contributor to the national budget, the oil sector is particularly affected by the health crisis. Gabon's oil production has been declining for several years and hopes are now pinned on deep offshore exploration, which could boost production. Recent discoveries in the gas sector could also offer new opportunities for the development of the sector.

Economic Updates

Oil production decreased by 7.4% compared to the third Quarter of 2022, due to difficulties in some fields and scheduled shutdowns for equipment maintenance.

In addition, the operator, Sino Gabon, ceased operations in August 2022. Compared to the same period in 2021, activity only fell by 1.1%. By contrast, over the whole year, production improved by 3.3% compared to the previous year. The good orientation of prices since the end of 2020 has made it possible to make investments that have boosted production.

Regarding the natural gas production decreased by 1.6% compared to the third quarter of 2022 due to difficulties at the main operator. Year-on-year, however, natural gas production decreased by only 0.9%. Compared to 2021, production increased by 7.4%.

Political Updates

The significant deficiencies in the production and distribution of water and electricity have led the Government to adopt a new development strategy for the energy sector based on a vast program of infrastructures rehabilitation and construction, with a view to mitigating the deficit between supply and demand of water and electricity.

As an example, Asonha Energie, a project company owned by the Gabonese Strategic Investment Fund (FGIS) and MERIDIAM have signed a turnkey contract for the development of the Kinguélé Aval hydroelectric dam, with a capacity of 35 Megawatts.

The contract provides for a 30-year concession period and will require four years of work at a cost of XAF 86 billion.

Legal Framework

Regarding the oil and gas sector, investments are governed by the Hydrocarbon Code which notably presents the permits to be provided by the Gabonese State for the performance of the activity in Gabon (such as the exclusive exploration license and the exclusive development and production license).

Besides, each company or group of companies concludes a contract with the Gabonese State for the performance of its activities. The said contracts provide a notable obligation to comply with environmental measures (prior impact studies, the rehabilitation of sites, etc.).

Regarding the hydroelectric sector, it is governed by Law n°024/2016 of December 29th, 2016, determining the legal regime for the production, transport and distribution of electrical energy and drinking water in the Gabonese Republic, as amended by Ordinance n°007/PR/2021 of February 19th, 2021, amending Article 8 of Law n°024/2016 of December 29th, 2016.

The abovementioned law specifies that the activities of production, transport, marketing, import and export of electrical energy and drinking water fall under the sole control of the Gabonese State.

As such, the State may delegate the management of the above activities to legal entities by means of a management delegation, notably through a concession, leasing, public-private partnership or management.

Fiscal and Taxation Regime

The common fiscal law is provided by the Gabonese Tax Code. However, the Hydrocarbons Code provides for specific regimes regarding some taxes, duties, and contributions to be paid by oil companies in the upstream sector. Besides, the oil contracts may also provide for a particular tax regime.

The specific tax regime applicable to oil subcontractors (Simplified Tax Regime) has been abrogated in 2021 by the Amended Finance Law for 2021.

As such, since January 1st, 2022, the common law tax regime applies to oil subcontractors.

Regulatory Framework

The main regulators of the oil and gas sector are the ministry in charge of hydrocarbons and the head of the hydrocarbon Directorate. In addition, there are advisory bodies, which are the joint Technical Commission for Petroleum Prices (TCPP), the National Petroleum Product Price Commission (NCP) and the Petroleum Revenue Monitoring Commission (PRMC).

As indicated above, the common fiscal law is provided by the Gabonese Tax Code. The Hydrocarbon Code provides some specific rules.

Besides, the oil contracts may also provide for a particular tax regime. The said contracts provide special arrangements applicable to the sector (for example, A derogatory tax regime notably for CIT, VAT, Withholding taxes and customs duties in the oil sector or an exemption of CIT and customs duties on imported equipment in the mining sector).

In the electricity and water sectors, the State may delegate management by means of different types of contracts, such as concession, leasing, public-private partnership, or management.

The renewable energy sector has some specificities, such as a reduced rate of 5% for VAT on the acquisition of materials and equipment used for the production and promotion of renewable energy.

Petroleum Contracts in the Oil & Gas Industry

The Gabonese Hydrocarbons Code provides for different types of petroleum contracts which are:

- **Technical evaluation contract**

This contract is concluded between the State and a contractor with a view to carrying out, at its expense and exclusive risk, on behalf of the State, all preliminary recognition prospecting, work notably in using geological and geophysical methods.

- **Service contract**

The service contract concluded between the state and a service provider by which the latter undertakes to carry out, on the name and on behalf of the State, upstream activities and receives, as compensation, a fixed or determinable amount, payable in cash or in kind.

- **Exploration and production sharing contract**

This contract is concluded between the State and a contractor through which the latter undertakes to carry out into a delimited area, at its expense and risk, on behalf of the State,

the activities of research for the purpose of discovering hydrocarbons, development and production entitling of the contractor, in return for the service rendered and the financial and technical risks assumed, at a remuneration represented by the allocation of part of hydrocarbons produced.

- **Operation and production sharing contract**

This contract is usually concluded between the State and a contractor by which the latter undertakes to carry out, at its own expense and risk on behalf of the State, development and production activities entitling the contractor, in return for the service rendered and to the financial and technical risks assumed, to remuneration represented by the allocation of part of the hydrocarbons produced.

- **Exploitation agreement**

This is usually between the State and a contractor, intended exclusively for the exploitation of marginal discoveries, mature fields and marginal fields.

Local Content Regulations in the industry

Provisions relating to local content are provided into the Law No. 002/2019 regulating the hydrocarbon sector in the Gabonese Republic. Based on its provisions, legal or physical persons carrying out a hydrocarbon activity into the Gabonese territory are required to adhere to and implement all the rules related to local content, notably :

- Raising the level of the expertise of Gabonese staff ;
- Incentive to the consumption and use of local goods and services;
- Training of Gabonese nationals to hydrocarbon industry jobs;
- Promotion of community projects;
- Transfer of technology and skills to Gabonese nationals and indigenous businesses.

According to Article 11 of the Decree No. 162 / PR / MTE dated 7 March 2016 on the patterns of foreign workers in the Gabonese Republic, the number of foreign workers subject to an employment permit must not exceed 10% of the company's total workforce. There are, however, derogations which may be granted by the Minister of Labour, in the context of a contribution of foreign personnel for a specific work and of a limited period.

Incentives in the industry

The Hydrocarbons Code provides the following incentives:

- The transfers made between Gabonese subsidiaries of one contractor or between entities that are members of one contractor are exempted from registration duties and all taxes (Article 200 par. 1 of Hydrocarbons Code) ;
- Transfers made by parent companies to their Gabonese subsidiaries are exempted from registration duties and all other taxes (Article 200 par. 2 of Hydrocarbons Code) ;
- Transfer of interests and share capital made by a contractor for the benefit of third parties, during the first exploration phase are exempted from the duties and taxes provided by legislation in force (Article 201 par. 2 of Hydrocarbons Code) ;
- Hydrocarbon activities carried out by contractors are subject to VAT at 0% rate (Article 202 par. 1 of Hydrocarbons Code) ;
- Goods and services of all kinds acquired from foreign suppliers and intended for the activities of Hydrocarbons, are imported free of VAT (Article 202 par. 2 of Hydrocarbons Code) ; and
- Contractors and their parent companies are exempted from tax on income from movable capital assets (Article 203 of Hydrocarbons Code).

Compliance Framework within the Energy Sector

Investors interested in operating in the energy sector or those already operating in the sector must comply with the legal and regulatory framework applicable to the sector, based on the laws and regulations in force but also on the provisions of the contracts.

Protectionist Policies (Fiscal or Regulatory)

We are not aware of protectionist policies put in place specifically to encourage local participation within the sector.

Please note, however, that a specific tax regime for groups of companies promoting local participation applies to all sectors of activity, provided that the head of the group is a company under Gabonese law located in the national territory.

The above mentioned regime provides notably for tax benefits in terms of corporate income tax, income tax on movable capital, value added tax, registration fees, business license contributions and filing obligations.

Besides, the Gabonese State obliges companies operating in the hydrocarbon sector in Gabon to participate in the economic growth of the country, the social promotion of Gabonese people and the development of the hydrocarbon industry.

They are required to adopt and implement all the rules, measures, directives, and instructions defined by the State as part of a global policy of local content. This policy aims to increase the share of value added produced and/or consumed in Gabon by the oil and gas industry, notably by:

- Raising the level of expertise of Gabonese nationals and the competitiveness of local companies called upon to carry out work or services or to supply goods for the implementation of oil operations ;
- incentive to the consumption and use of local goods and services;
- training of Gabonese nationals in the hydrocarbon industry ;
- promotion of community projects ;
- promotion of structuring projects with a high social impact ;
- promotion of research and development projects in the hydrocarbon industry ;
- the transfer of technology and skills to Gabonese nationals and indigenous companies.

Besides, the State defines and implements a policy of employment and training of national human resources in the sector, which is reflected in particular by :

- priority given to national labor of the same level of qualification and competence for the jobs available ;
- the hiring of specialized foreign labor (a 10% cap on the hiring of expatriate employees), on an exceptional basis, and on the exclusive and express condition of a shortage of national labor in the same field ; this hiring being accompanied by the implementation of a training program for Gabonese nationals with a view to acquiring the same expertise ;
- the progressive replacement of foreign employee staff by national employee staff with the same skills.

Relevant Direct Taxes

The relevant direct taxes in the energy sector are :

General taxation :

- Corporate Income Tax (CIT) at a common rate of 30% (35% for companies operating in the oil, gas, and mining sectors) ;
- VAT ;
- Registration duties ;
- Dividends or income from movable capital.

Specific duties provided by the Hydrocarbons Code:

Bonuses, superficiary royalty, proportional mining royalty, participation funds, the State's share of production sharing, the provision for diversified investments, the provision for investments in hydrocarbons, the recovery of oil costs, the participation of the State and the national operator, the oil tax, the tax on the extraction of career materials, the proportional mining royalty applicable to mining titles, etc.

International Tax Considerations and Local Transfer Pricing Regulations

There are no specific rules applicable to companies operating in the energy sector, which are then subject to the common law rules.

On transfer pricing, all sectors must comply with the provisions of local transfer pricing guidelines, such as the General Tax Code and Instruction No.

0001/MEPPD/SG/DGI/DLC relating to documentary and reporting obligations in respect of transfer pricing. Specifically, entities shall file the transfer pricing documentation (Masterfile and local file) by April 30th following the considered year.

It should be noted that the above-mentioned guidelines are based on the OECD transfer pricing rules.

The Thin Capitalization Rules

Pursuant to the provisions of the Gabonese Tax Code, interest on sums left or made available to a company by an affiliated company, directly or indirectly, is deductible within the limit of that calculated according to the rate of advance from the Bank of Central African States, "BEAC", plus two points.

However, for thinly capitalized companies, only a part of this interest may be deducted.

The undertaking shall be deemed to be thinly capitalized if the amount of interest paid by it to all related undertakings exceeds, simultaneously in respect of the same financial year, the following three limits :

- 1) the product corresponding to the amount of the said interest multiplied by the ratio existing between one and a half times the amount of equity capital, assessed at the choice of the undertaking at the beginning or at the end of the financial year, and the average amount of the sums left or made available by all the affiliated undertakings ;
- 1) the amount of interest paid to that undertaking by affiliated undertakings ;
- 1) 25% of the current result before tax previously increased by the said interest, the depreciation considered for the determination of this same result and the share of leasing rentals taken into account for the determination of the transfer price of the asset at the end of the contract.

The thin capitalization rules apply to all sectors of activity not only to the energy sector.

Relevant Indirect Taxes

There are no specific indirect taxes applicable to companies operating in the energy sector which are thus subject to common law rules.

The main indirect taxes are :

- VAT : the standard rate of 18% applicable to all taxable transactions excluding transactions subject to the reduced rate of 10% or the zero rate. The reduced rate of 10% applicable to production and sales transactions related to the cement and the zero rate 0% applicable to exports, international transport, fuel supply transactions and maintenance and repair transactions carried out on aircraft and ships used for international traffic.
- Social Solidarity Contribution (SSC) : The rate of the SSC is 1% applied on the same basis as VAT.
- A 9,5% withholding tax is applied to payments made to local services providers which are not subject to VAT, under certain conditions.
- A 20% withholding tax is applied to payments made to a foreign service providers under certain conditions.

Personal Income Tax Regime and other Social Security Contributions

There is no specific personal income tax regime and social security contributions applicable to the energy sector. The said sector is subject to the standard tax and social security regime, PIT and Complementary tax on wages and salaries as other sectors.

- The PIT is determined according to a progressive rate (from 0% to 35%) scale established in accordance with the taxpayer's family charges (with a maximum of 6 dependent children) and according to income brackets. The situation of the taxpayer is considered as of January 1st of the year of payment of the wages being subject to taxation or at the end of the same year in the event of a wedding or increase in the number of dependents.
- The Complementary tax on wages : the portion of the salary not exceeding or equal to XAF 150,000 is exempted from the said tax. This tax has the same taxable basis as the personal income tax and its rate is 5%.

There are two social organisms in Gabon relating to social security :

- The National Social Security Fund (CNSS), which is related to the management of the social security regime in Gabon (family and maternity benefits, occupational diseases, pensions retreats, invalidity, etc.) is based on the whole remuneration received, i.e. compensation, gratifications, bonuses and all other cash benefits, and benefits in kind evaluated according to the GTC rules and after deduction of reimbursement of professional expenses and allowances paid. The employee's contribution rate is 2.5% of the salary and the employer's contribution rate is 16%. The basis of the social security contributions calculation is limited to an annual ceiling of XAF 18,000,000 (XAF 1,500,000 per month).
- The National Sickness Insurance and Social Guarantee Administration (CNAMGS) is based on the whole remuneration subject to Personal Income Tax received by the employee. The basis of the social security contributions calculation is limited to a ceiling of XAF 2,500,000 of the monthly remuneration. The employee's contribution rate is 2% of the salary and the employer's contribution rate is 4,1%.

The other social contributions due by the Gabonese employers are :

- National Housing Funds, which is one of the payroll taxes due by the employer. Its rate is 2%. The taxable basis is made up of salary including miscellaneous taxable allowances and monetary awards constituting the taxable basis of social security contributions and contributions for retirement pensions limited to the ceiling set by the CNSS i.e. XAF 1,500,000.
- Contribution on Vocational Training (CVT), which has been introduced by the Finance Act 2017. The CVT is due by employers and corresponds to 0.5% of the remunerations paid to employees of Gabonese companies.

Investment Incentives

Regarding the Hydrocarbons sector incentives, are as follows :

- The transfers made between Gabonese subsidiaries of one contractor or between entities that are members of one contractor are exempted from registration duties and all taxes (Article 200 par. 1 of Hydrocarbons Code) ;
- Transfers made by parent companies to their Gabonese subsidiaries are exempted from registration duties and all other taxes (Article 200 par. 2 of Hydrocarbons Code) ;
- Transfer of interests and share capital made by a contractor for the benefit of third parties, during the first exploration phase are exempted from the duties and taxes provided by legislation in force (Article 201 par. 2 of Hydrocarbons Code) ;
- Hydrocarbon activities carried out by contractors are subject to VAT at 0% rate (Article 202 Paragraph 1 of Hydrocarbons Code) ;
- Goods and services of all kinds acquired from foreign suppliers and intended for the activities of Hydrocarbons, are imported free of VAT (Article 202 par. 2 of Hydrocarbons Code) ; and
- Contractors and their parent companies are exempted from tax on income from movable capital assets (Article 203 of the Hydrocarbons Code).

Relevant AfCTA Considerations

There is no AfCTA considerations relevant to the energy industry in Gabon.

OECD Framework

The OECD recommendations are applicable notably in the context of transfer pricing, environmental protection and energy transition.

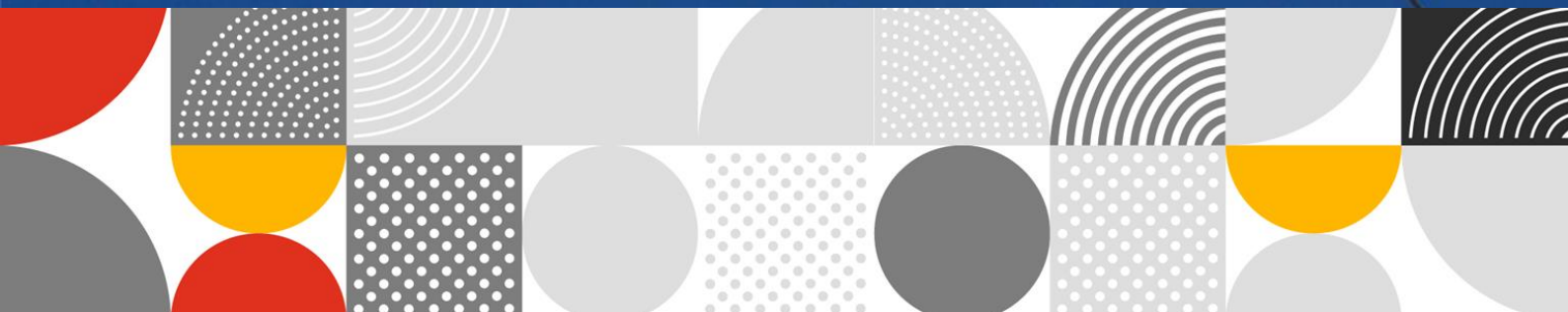
Energy Transition

Gabon has adopted the Climate Change Order n°019/2021 of September 13th, 2021, on climate change which institutes a Climate Issues Management Organisation. This is a technical and operational organisation that oversees the implementation of the provisions contained in the said ordinance together with the Minister in charge of environment in order for Gabon to respect its commitments in favor of biodiversity protection. The abovementioned Order provides that all companies that generate carbon in Gabon must register with this organisation in order to be informed of the method to be used to limit carbon emission.

Moreover, the said companies must obtain the authorization of this organisation before emitting carbon and transferring Gabonese carbon credits abroad. This organisation will also oversee the development of a national greenhouse gas (GHG) emissions plan to ensure that Gabon meets its international commitments under the Paris Agreement, including its nationally determined contribution.



Power and Utilities Sector



Brief overview of the Power and Utilities Sector in Gabon

Based on sector data from the General Directorate of the Economy and Fiscal Policy of the Ministry of the Economy and Relaunch, the water and electricity sector is highlighted by an increase in terms of production in the first quarter of 2022. As a result, electricity production, after three months of activity in 2022, has increased by 2.3% to 627.3 Gigawatt hours (GWh). This increase is the result of the rise in the production of the Société d'eau et d'énergie du Gabon (SEEG) (+2.7%), while purchases from the Société de Patrimoine rose slightly by 0.5% year-on-year.

In the second quarter of 2022, the Ministry of the Economy, through its Sector Outlook, indicated that growth was mixed from March to June 2022. Indeed, the production index reveals that it fell by 0.8% between the first and second quarters of 2022 due to traditionally lower household consumption during this period. However, year-on-year, the electricity production index increased by 1.9% compared to the same period in 2021, in line with the recovery in activity following the lifting of government measures to combat Covid-19.

In the third quarter, the electricity production index rose slightly by 0.2% compared with the second quarter, due to the efforts made by SEEG in a context of difficult diesel supply. However, year-on-year, the electricity production index contracted by 1.9% compared to the same period in 2021 for the same reasons.

Electricity production increased slightly by 0.3% between the last two quarters of 2022, again due to the efforts made by SEEG in a context of supply difficulties and the rising cost of diesel. Year-on-year, the electricity production index improved by 0.6% compared to 2021.

Legal Framework

As mentioned above, there is a single company (SEEG) which distributes power and water to companies, individuals, and administration in the country. However, there are also companies which sell power to SEEG.

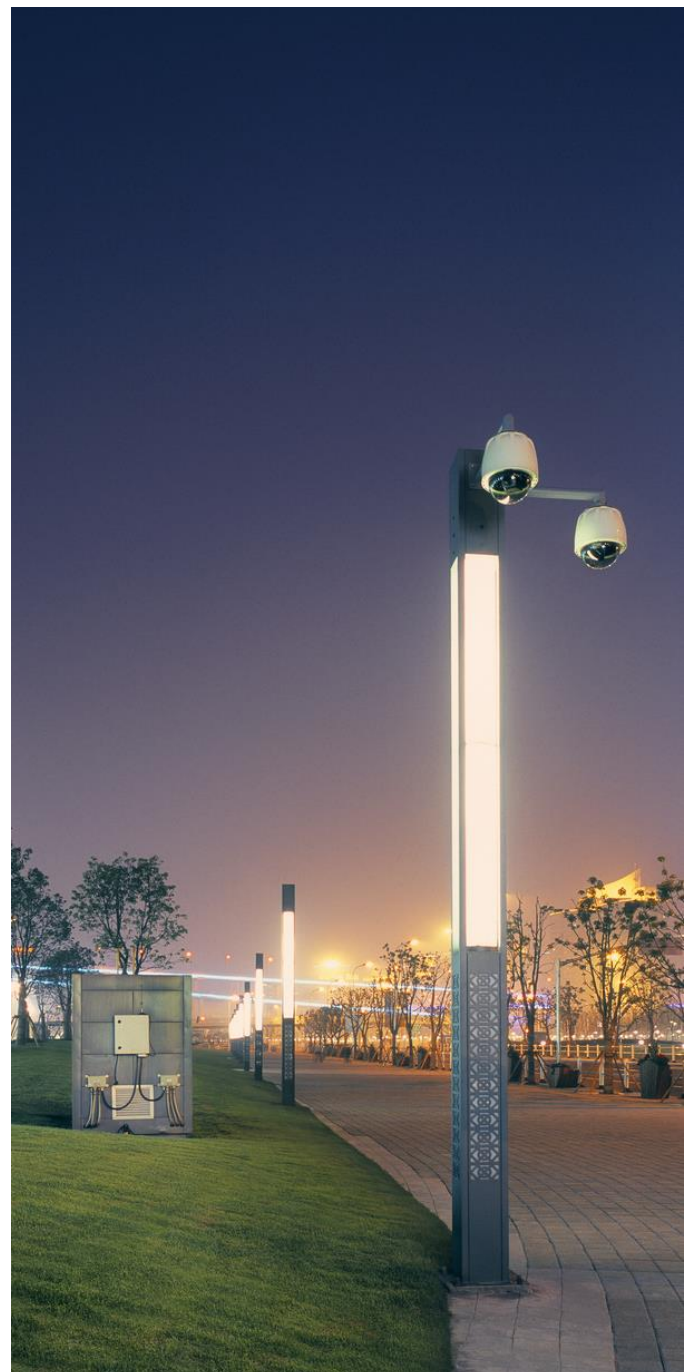
Regulatory Framework

The public electric energy service is under the authority of the following institutions: the Ministry of Energy and Hydraulic Resources, the Regulatory Agency of Water and Electric Power (CNEE) which ensures, in the name and on behalf of the State, the execution of the public service linked to the management of the water networks and public lighting, and the National Council for

Water and Electricity (L'Agence de Régulation du Secteur de l'Eau Potable et de l'Energie électrique, ARSEE) which ensures the regulation of the water and power sectors in the Gabonese Republic.

Tax Regime

The general provisions of the Gabonese Tax Code apply to the Power and Utilities sector. However, there are some specificities, such as a reduced VAT rate of 5% on the acquisition of materials and equipment used for the production and promotion of renewable energy.





ESG



Relevant ESG Framework

There are a certain number of laws in Gabon promoting the adoption of the ESG standards, notably in the energy sector. We have, among others, the law n°007/2014 of August 1st, 2014, on the protection of the environment in the Gabonese Republic, the law n°002/14 on the orientation of sustainable development in the Gabonese Republic, and the Order n°019/2021 of September 13th, 2021, on climate change in Gabon.

This legal arsenal includes provisions aimed at limiting greenhouse gas emissions and promoting the energy transition. It should be noted that the Government is taking more and more initiatives to promote the practice of the ESG standards in the business in general.

To date, there are no new regulations adopted by the Gabonese Government on ESG.





Ghana

Contact



George Kwatia

george.kwatia@pwc.com

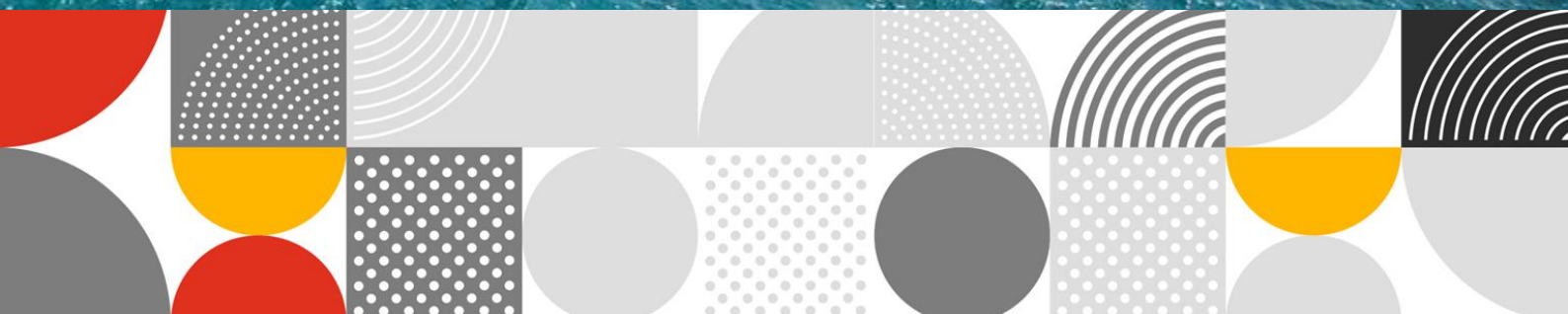


Ayesha Bedwei

ayesha.bedwei@pwc.com



Oil and Gas Sector



Brief overview of the Oil & Gas industry development in Ghana

Ghana continues to remain an active player in the African Oil and Gas industry in spite of recent economic challenges. The country's first major oil and gas find was made in the Jubilee field in 2007 with commercial production commencing three years later. Further discoveries and pragmatic actions taken by the Government and other key industry stakeholders have since helped to increase operations, ensuring a successful oil and gas regime. The most recent significant discovery, as announced in July 2021 by Eni, was made at the Eban-1X well in Block 4 of the Cape Three Points (CTP), offshore Ghana. This is the second well drilled in the CTP Block 4 following the Akoma Discovery in May 2019.

There are three (3) major oil producing fields in Ghana: Jubilee, Tweneboa, Enyenra, Ntomme (TEN) and the Sankofa Gye-Nyame (SGN) field. Tullow Oil operates both the Jubilee and TEN fields while SGN is operated by Eni.

In 2021, the leading oil producing field in Ghana was the Jubilee field, generating over 27.3 million barrels of oil. The Sankofa Gye Nyame (SGN) followed, also producing about 15.7 million barrels of oil while the Tweneboa, Enyenra, Ntomme (TEN) field's output was about 11.9 million barrels. The first half of 2022 saw a production of over 25.8 million barrels of oil representing about a 1.9 million barrel reduction compared to the same period from prior year. This also represents the third subsequent reduction in year-on-year crude oil production volumes since the inception of the commercial production of oil in Ghana. In essence, average crude oil production capacity has been falling marginally over time. This fall, according to a report by the country's Public Interest and Accountability Committee (PIAC), has been attributed to technical challenges such as poor well performance.

Nevertheless, oil production earnings within the first half of 2022 stood at a total of over US\$731.94 million. This was mainly as a result of price surges on the international market earlier within the year. The second half of 2022 also ended with Ghana earning over US\$696.81 million from oil lifting, corporate tax, and other sources. Generally, the total revenue comprised royalties and surface rentals as well as tax payments from oil production and exploration companies.

Political Updates and Economic updates

Following Ghana's successful general elections in December 2020 which saw the re-election of the incumbent President Nana Akufo-Addo for another term, a new Minister of Energy was appointed in 2021.

However, there has not been any more policy change since this development and none is expected in the near future.

Economically, 2022 was seen as one of the toughest years in the history of Ghana, with the Government attributing the hardship to the effects of the Russia-Ukraine war and the COVID-19 pandemic. Due to the country's unsustainable debt level, major international credit rating agencies such as Fitch, S&P Global downgraded Ghana's credit ratings. Reasons cited for these downgrades included Ghana's inability to access the Eurobond markets as well as high interest costs incurred on domestic debt. Additionally, the Cedi, which is Ghana's official currency, was tagged as the world's worst performing currency to the US Dollar (and other major international currencies), depreciating by about 45.1%, the highest recorded at the time among 148 currencies tracked by Bloomberg.

These events took place amidst rising inflation within the economy and this resulted in the Bank of Ghana hiking the policy rate in a bid to control inflation. In January 2022, the monetary policy rate stood at 14.5%. However, subsequent increments by the Monetary Policy Committee (MPC) of the Bank of Ghana (BoG) saw the rate jump to 24.5% and 27% in October and November 2022 respectively. These increments came amidst negotiations with the International Monetary Fund (IMF) for an economic program. Consequently, the Government announced a Domestic Debt Exchange Programme (DDEP) in order to meet the debt sustainability criteria set by the IMF. The Government cited the DDEP as a major requirement in order to access a \$3 billion credit facility from the IMF.

The last quarter of 2022 saw the Government announce a 'Gold for Oil' policy which was implemented in January 2023. As indicated in the name, it's a form of barter trade which involves Ghana using gold to pay for its oil purchases on the international market as a way of preserving the country's foreign exchange reserves and consequently help stabilise the prices of petroleum products and the country's Cedi against the US Dollars.

The Government in its 2023 Budget Statement proposed a number of fiscal changes as a response to the country's economic challenges. Among these changes is the introduction of Growth and Sustainability Levy (GSL) which will be an extension to the existing National Fiscal Stabilisation Levy (which only covered specific entities) to cover all entities including the players in the oil and gas or the energy sector.

The GSL, when enacted, will levy a new tax at a rate of one percent of gross production for companies in the mining and upstream oil and gas sector. For other entities, the tax will apply on the accounting profit before tax at rates ranging from two and half percent to five percent. Other fiscal and monetary proposals included an upward revision of existing tax rates (such as VAT, PAYE, concessionary rates for entities), general plan to review existing tax exemptions, strict rules on accounting for taxes through the electronic means, import substitution measures and others

Regulatory framework

The following are the major regulatory bodies in the petroleum sector:

- **Ghana National Petroleum Corporation:** established by the Ghana National Petroleum Corporation Law, 1983 (P.N.D.C.L 64) as the National Oil Company of the upstream oil & gas industry in Ghana. The law also sets out the functional, administration and corporate governance aspects of the GNPC.
- **Energy Commission:** The Energy Commission Act, 1997 (Act 541) established the Energy Commission (EC) with functions relating to the regulation, management, development and utilisation of energy resources in Ghana. The EC regulates Ghana's electricity, natural gas and renewable energy industries, and advises the Government of Ghana on energy matters. It grants licences to companies that also trade in liquefied natural gas (LNG).
- **Ministry of Energy:** the ministry is responsible for the formulation, implementation, monitoring and evaluation of energy sector policies.
- **National Petroleum Authority:** The National Petroleum Authority (NPA) was set up under the National Petroleum Authority Act, 2005 (Act 691). The NPA regulates, oversees and monitors the petroleum downstream industry including Oil Marketing Companies (OMCs) to ensure efficiency, growth and stakeholder satisfaction. The NPA also monitors and regulates petroleum prices by ensuring that prices are determined in accordance with the prescribed pricing formula. It grants licences to service providers and oil marketing companies, as well as protecting consumer interests and maintaining the highest standards of petroleum products offered to them.
- **Petroleum Commission:** The Petroleum Commission (PC) set up under Petroleum Commission Act, 2011 (Act 821) is mandated to promote, regulate and manage the efficient conduct of upstream oil & gas operations and all allied activities. It also ensures the efficient utilisation of petroleum resources on a sustainable basis. Implementation of local content regulations fall under the PC. All upstream petroleum companies who intend to operate in Ghana are required to register with the PC and be issued with a permit before commencement of operations.

Fiscal/Taxation regime

The following tax legislations are applicable:

- **Petroleum Income Tax Law 1987 (P.N.D.C.L. 188) (PITL):** which provides for the taxation of income of Contractors (with Petroleum Agreements signed before 2015) carrying out upstream petroleum operations with appropriate stability clauses before the coming into force of the Income Tax Act in 2016;
- **Income Tax Act 2015 (Act 896) (ITA) as amended:** The ITA provides for the taxation of income of Contractors and Subcontractors (with Petroleum Agreements signed in 2015 and thereafter). The ITA also provides for transactions outside the scope of the Petroleum Agreements in instances where there is a fiscal stability clause in their Petroleum Agreements.
- **The Petroleum Revenue Management Act, 2011 (Act 815) as amended:** which was amended in 2015 is expected to help Ghana to efficiently manage revenue from crude oil and empower Government to set aside and to invest proceeds from crude oil;
- **Revenue Administration Act, 2016 (Act 915):** which provides for the administration and collection of revenue by the Ghana Revenue Authority and for related matters;
- **National Health Insurance Act, 2012 (Act 852):** the levy works in association with the Value Added Tax Act, 2013 (Act 870)
- **Ghana Education Trust Fund Act, 2000 (Act 581):** the levy works in association with the Value Added Tax Act, 2013 (Act 870);
- **COVID-19 Health Recovery Levy Act, 2021 (Act 1068):** the levy works in association with the Value Added Tax Act, 2013 (Act 870);
- **Petroleum Agreements (PA):** these are agreements entered under the Petroleum (Exploration and Production) Law (PEPL) between the Republic of Ghana, GNPC and Contractors in the upstream operations. PAs have provisions which govern some aspects of the taxation of Contractors as well as the Subcontractors; and
- Double Taxation Agreements (DTA) in force with the Republic of Ghana.

In addition, the following non-tax legislations are applicable the petroleum sector:

- **Ghana National Petroleum Corporation Law, 1983 (P.N.D.C.L 64) (GNPCL):** this established the GNPC as the National Oil Company of the upstream oil and gas industry in Ghana. The law also sets out the functions, administration and corporate governance aspects of the GNPC;
- **Petroleum (Exploration and Production) Act, 2016 (Act 919):** to provide the framework for the management of oil and gas exploration, development and production in Ghana;
- **Petroleum Commission Act, 2011 (Act 821):** which established the Petroleum Commission with the object to regulate and manage the utilisation of petroleum resources and to coordinate the policies in relation to them;
- Petroleum (Local Content and Local Participation) Regulations, 2013 (L.I. 2204); and
- Ghana Investment Promotion Centre Act, 2013 (Act 865) (“GIPC Act”)

Forms of contracts

In Ghana, petroleum contracts are based on a model PA which is modified to reflect the terms agreed between the Government of Ghana (the State), the GNPC and the Contractor.

Once signed, the PA must be ratified by the Parliament of Ghana and will usually specify the area that has been applied for and awarded, the exploration period, the related work program and cost, tax regime and sanctions in case of default amongst other regulations

Special arrangements

There are no special arrangements outside the terms agreed in the respective PAs. The ITA contains provisions to tax arrangements (such as farm in arrangements) that result in the transfer of petroleum interests.

Compliance requirements

The compliance requirements in the petroleum sector are covered in the tax and non-tax legislations outlined above. Outside these legislations, there are no other special compliance requirements unless there are new directives from any of the regulatory bodies.

Local content regulations

In February 2022, the Petroleum (Local Content and Local Participation) (Amendment) Regulations, 2021 (L.I 2435) amended the Petroleum (Local Content and Local Participation) Regulations, 2013 (L.I 2204). This is the first amendment to the initial regulations passed in July 2013.

This law seeks to, among other things, maximise value addition, employment creation, and the retention of the petroleum industry in Ghana through local funding, the use of local talent, goods, and services. The Local Content Committee established by the Board of the Petroleum Commission, is required to oversee the implementation of L.I. 2204. This local content regulation currently applies only to upstream petroleum operations. Players in the upstream petroleum sector (Contractors, Subcontractors, licensees, the GNPC and allied entities) are required to incorporate and carry out their business operation through a Joint Venture (JV). The parties to the JV should consist of an indigenous Ghanaian company. The indigenous Ghanaian company's equity by way of participation in the JV, should not be less than 10%. In the case of an indigenous Ghanaian company seeking to enter into a petroleum agreement or petroleum licence as a Contractor, the equity participation should not be less than 5%.

Direct Taxes

The operation of petroleum activities is a priority activity in Ghana. Contractors in this jurisdiction are required to pay 35% on their chargeable income as corporate income tax, unless otherwise prescribed. For the purpose of determining the tax liability, each separate petroleum operation is treated as an independent business. In general, expenses that are wholly, necessarily and exclusively incurred in petroleum activities are allowed as tax deductible. These expenses include the following:

- annual rental charges and royalties;
- capital allowances granted with respect to the petroleum operation;
- contributions to and other expenses incurred in respect of a decommissioning fund for the petroleum operation in accordance with the rules established for that fund;
- expenses incurred by that person in the course of closure of the petroleum operation, where funds in the relevant decommissioning fund are not yet available or are inadequate; and
- any other amount incurred directly by that person in the course of the petroleum operation

The following expenditure are generally not allowed for tax purposes;

- Research and development expenditure;
- Expenditure wholly, exclusively and necessarily incurred in the acquisition or improvement of a valuable asset used in the operation but is income of a recipient which does not have a source in Ghana;
- Expenditure that contravenes the arm's length rules;
- Bonus payment made in respect of the grant of the petroleum right;
- Expenditure incurred as a consequence of a breach of a PA;
- Personal, domestic or excluded expenditure;
- Financial cost up to a calculated limit; and
- Depreciation.

The tax regime is guided primarily by the PA, ITA and depending on application of a stability clause, PITL. There are also various tax rulings affecting specific oil blocks.

The ITA and various PAs provide for the petroleum income tax rate of 35%.

Withholding taxes

Under the ITA, the withholding tax rate for payments from Contractors to Subcontractors is 7.5% for resident entities and 15% for non-resident entities (this is subject to any stability clause contained in the relevant PA). Taxes withheld from payments to suppliers are to be remitted to the Ghana Revenue Authority (GRA) (together with the filing of withholding tax returns) on or before the 15th day of the following month.

Transfer Pricing (TP)

Transactions between related parties are to be conducted based on the arm's-length principle. Where transfers are not conducted based on this principle, the Commissioner-General of the GRA is empowered to adjust these transfers between related parties.

Effective November 2020, new TP Regulations were passed repealing the predecessor Regulations (i.e., L.I. 2188). The compliance requirements under the new Regulations include the following

- Preparation and filing of annual TP returns within four months after the financial year end (extension of up to two months available);

- Preparation and filing of Master and Local Files (TP documentation) within four months from the end of the financial year; and
- Preparation and filing of a Country-by-country report within 12 months from the end of the financial year, if the Group's consolidated revenue exceeds GHS 2.9 billion (~US\$ 263m as at 2 March 2023).

Thin capitalisation

Unless otherwise provided by a PA, Contractors in the petroleum industry are also subject to the thin capitalisation rule. The applicable limit set is a debt:equity ratio of 3:1. Any excess is disallowed for tax purposes.

Indirect taxes

VAT / National Health Insurance Levy (NHIL) / Ghana Trust Fund Levy (GETFL) / COVID-19 Health Recovery Levy (CHRL): In general, taxable supplies are subject to standard VAT at 15% (12.5% in 2022), NHIL at 2.5%, GETFL at 2.5% and CHRL at 1%. Whilst NHIL, GETFL and CHRL are charged on the amount before taxes, VAT is chargeable on the NHIL, GETFL and CHRL inclusive amounts. However, the VAT Act classifies the supply of crude oil and specified hydrocarbon products such as natural petroleum gas, liquefied petroleum gas and diesel as exempt supply so not subject to VAT and its associated levies.

Currently, most PAs provide VAT concessions to Contractors and this is operationalised through the use of VAT Relief Purchase Orders (VRPOs) in lieu of payment of the VAT (the allied taxes). However, in recent years, the GRA has sought to end the VRPO regime which implies that petroleum Contractors will now have to pay the VAT and its associated levies and subsequently apply for a refund of net VAT paid.

Customs: PAs usually provide for exemption from import duties and taxes (save for minor administrative charges or port processing fees which in practice can range from 2.5% - 3% on consignment of goods) on equipment imported for petroleum operations.

Personal Income taxes and Social Security contributions

Resident individuals (i.e. Ghana citizens or non-residents who are present in Ghana for at least 183 days) are taxed at a graduated scale of 0-30%. During the recent 2023 Budget Statement and Economic Policy read by Parliament in November 2022, the Government proposed to re-introduce an additional income tax band at a marginal tax rate of 35%.

This has however not been passed yet. Non-residents are generally taxed at a flat tax rate of 25%. PAs generally provide for exceptions to taxation if the foreign national employees are only present in Ghana for a short period (the period of time is dependent on each PA, but it is typically 30 days).

In the determination of an employee's taxable income, benefits-in-kind are also included. Deductions are generally given for contributions to Ghana's social security/pension for expatriate employees and resident employees of Contractors and Subcontractors.

The National Pensions Act, 2008 (Act 766) requires employers to make mandatory contributions to Ghana's pensions scheme. Under the scheme, the employer is required to contribute 13% of the employee's salary towards the employee's mandatory pension while the employees also contribute 5.5% of their salary to the scheme. Out of the total contribution of 18.5% of the employees' salary, 13.5% (up to a salary limit) is remitted to the first-tier mandatory pensions scheme (administered by the Social Security and National Insurance Trust) whereas the remaining 5% is remitted to the second-tier mandatory occupational pensions scheme. Payments to the mandatory schemes on behalf of each worker are to be made within fourteen days from the end of each month.

Some PAs provide for some exemption to expatriates of the Contractor or Subcontractors from contributing to Ghana's pensions scheme.

Other taxes and payments

Royalties: A Contractor is typically subject to royalty at rates ranging from 4% to 12% of the gross production of petroleum. The applicable rate is based on the provisions of the PA of the Contractor.

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.

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

The rental charge is usually based on the area of space being occupied, rate per square kilometre occupied and phase of operation.

Investment Incentives

Depending on the relevant PA, some incentives or deviations from the general tax law would apply. Beyond specific taxes provided for under the PA, Contractors and Subcontractors may be exempted from certain taxes including social security contributions, Value Added Tax, and other minor imposts.

Africa Continental Free Trade Area (AfCFTA) considerations

Ghana was one of the first countries to ratify the AfCFTA agreement in 2018 and is also the home of the AfCFTA secretariat. With the overall objective of eliminating or reducing tariff and non-tariff barriers among the member states by providing a single market for goods and services, Ghana is looking forward to the exciting opportunities that it will present.

Whilst the AfCFTA appears exciting, there is a general concern on whether it will actually be fully operational given the excessive border bureaucracies and "local industry protection" policies by the member states.

Ghana's energy sector is a highly regulated sector with strict local content requirements to be fulfilled by the players in the sector. Given this, the Government of Ghana as well as those of the other member states will have to outline and implement policies in order to realise the benefits of AfCFTA.

OECD - Pillar 1 and Pillar 2

The OECD/G20 Inclusive Framework on BEPS issued a two-pillar solution to address international tax challenges through the fair relocation of profits of some Multinational Enterprises (MNEs) under taxable rights of revenue sourced jurisdictions and to also introduce a global minimum corporate tax.

The framework requires that the jurisdictions that will adopt the framework introduce domestic legislations to support its implementation; Ghana is not a member of the Inclusive Framework.

Pillar 1 proposes a formulaic share of certain MNEs' (with global turnover above EUR 20 bn) residual profits be taxed in the jurisdiction where revenue is sourced, whereas Pillar 2 seeks to ensure that MNEs (with revenue in excess of EUR 750 m) pay a minimum global tax of at least 15% to discourage profit shifting.

The focus of these two pillars may mean that entities in the energy sector may not be significantly impacted. Pillar 1 has express exclusion for the MNE's engaged in "extractive" activities which according to the Blueprint paper issued in 2020 includes oil & gas and energy companies. Perhaps the reason to exclude the extractive sector players is that they require substantial physical infrastructure in the countries of operations and their products are priced at the global level which leaves little room for profit and tax diversion.

Energy Transition

The Renewable Energy Act, 2011 (Act 832) was enacted to provide an enabling environment for the development of renewable resources of Ghana. It does this by providing a regulatory licensing regime and placing an obligation on utilities and bulk customers to procure a certain percentage of their electricity requirements from renewable resources.

As part of the response to climate change, Act 832 was amended in 2020 to place an obligation on fossil fuel-based wholesale electricity suppliers, fossil fuel producers and any other companies that contributes to greenhouse gas emission to invest in a non-utility scale renewable energy to offset the greenhouse gas emission and mitigate the impact of climate change.

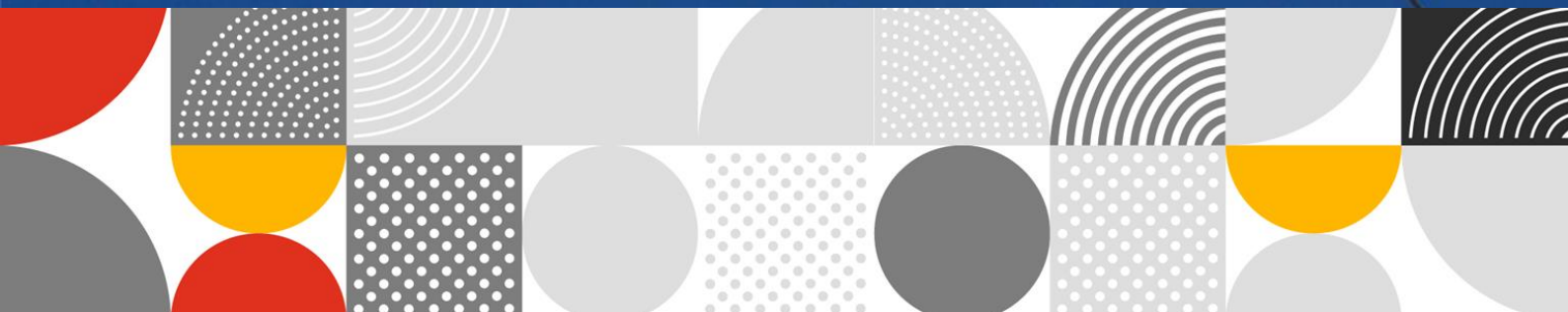
The Ministry of Energy maintains that Ghana is focused on the integration of renewable energy into the national energy mix to ensure a cleaner environment and help mitigate climate change. The Ministry developed a renewable energy master plan with the overriding objective of increasing the proportion of renewable energy in the national energy generation mix from 42.5 MW in 2015 to 1363.63 MW and to reduce the dependence on biomass as main fuel for thermal energy applications. According to the Ministry, several projects have been undertaken in line with the master plan including Bui Power hybrid project and Lawra-Kaleo solar Project which have added 50 MW and 6.5 MW of solar energy respectively to the national grid.

In the latter part of 2022, the President of the Republic, speaking at the "Sustainable Energy for All" event hosted by Bloomberg Philanthropies, reiterated the country's resolution in increasing its renewable energy share in the electricity generation mix while also looking into other clean energy sources and hydrogen gas to meet the nation's energy demands.

At this conference, he also addressed the audience on "Just Energy Transition," noting that Ghana has recently created a National Energy Transition Framework to serve as a roadmap for the energy transition. The President also indicated that wide-ranging stakeholder engagements were conducted to guarantee that important energy transition challenges in the nation were brought to light and addressed.



Power and Utilities Sector



Brief overview of Power and Utilities development in Ghana

The generation of power in Ghana has seen various phases; beginning with generators powered by diesel, introduction of stand-alone electricity supply systems to the generation of hydro-powered electricity as well as a thermal energy production phase which involves the use of gas and/or crude oil. Ghana continues to see a thriving power production sector, one that is made of both governmental and private players. In an industry that had traditionally been dominated by participants from the public sector, reforms in the power sector in the 1980s gradually removed obstacles and created a competitive environment for the involvement of independent power producers.

Power supply in Ghana is mainly from hydroelectricity, thermal generation fueled by crude oil, natural gas, diesel and solar. Ghana also currently exports power to Togo, Benin and Burkina Faso. The Government continues to work on grid expansions and other projects such as the building of transmission lines which would see further exports to surrounding countries within the sub-region.

The power sector in Ghana is mainly dominated by Government agencies (as regulators) and Independent Power Producers (IPP) which are involved in power generation, transmission and distribution.

The Volta River Authority, although a state entity, is also engaged in generation of electricity and controls distribution in the northern sector of the country through the Northern Electricity Development Company. The distribution of power to the southern sector is currently controlled by the Electricity Company of Ghana (ECG).

In 2020, the President in a bid to lessen the economic impact of COVID-19 on the population, announced over 50% reduction in electricity tariffs for the majority of consumers. Electricity bills for the poor or “lifeline consumers” as they were called, were also to be absorbed fully by the government.

Fast forward to 2022 through 2021, the nation has seen the Public Utilities Regulatory Commission (PURC) continue to hike electricity and water tariffs as a cost of living adjustment following the looming economic crisis and high inflationary environment presented by the uncertain economic climate. A case in point would be the recent announcement of new upward tariff adjustments for the first quarter of 2023 following a 27.15% electricity and a 21.55% water tariff increase in September 2022.

The Ghana Grid Company (GRIDCO) manages the national transmission network and serves as an intermediary between the IPP and distributor.

In addition, there are a few bulk power distributors who supply power mainly to manufacturing and other industrial hubs.

Legal Framework

A licence must first be obtained by any person who intends to engage in a business or a commercial activity for the transmission, wholesale supply, distribution or sale of electricity or natural gas. Similarly, a licence is required in order to engage in commercial activity in the renewable energy industry.

The following legislations apply:

- Energy Commission Act, 1997 (Act 541) which provides for the regulation, management, development and utilisation of energy resources in Ghana; provides for the granting of licences for the transmission, wholesale supply, distribution and sale of electricity and natural gas and related matters.
- The Public Utilities and Regulatory Commission Act 1997 (Act 538) (the PURC Act) (as amended) which establishes the Public Utilities Regulatory Commission (the PURC).
- The Volta River Development Act 1961 (Act 46) which establishes the Volta River Authority (VRA).
- Bui Power Authority Act 2007 (Act 740) which establishes the Bui Power Authority with the mandate to see to the development of hydroelectric power project on the Black Volta River at Bui, any other potential hydroelectric power sites on the Black Volta River and related matters.
- Renewable Energy Act 2011 (Act 832) intended to provide for the development, management, utilisation, sustainability and adequate supply of renewable energy for generation of heat and power and for related matters.
- Energy Commission (Local Content and Local Participation) (Electricity Supply Industry) Regulations, 2017 (L.I. 2354) which aims at ensuring maximum participation of local businesses in all facets of the power industry.

Tax regime

The general tax regime applies to participants in the energy sector excluding IPP's which operate under specific tax concessions as agreed with the Government of Ghana and ratified by Parliament of Ghana. The tax concessions will affect general withholding taxes on payments to suppliers/vendors, interest payments on credit/finance facilities and VAT impact on the IPP.



ESG



ESG

The growing environmental, social, and governance (ESG) dialogue is clearly driving a change in the strategic decision-making, implementation of the new directions, and reporting of progress and outcomes for entities and the players in Ghana's energy sector are not left out.

In Ghana, ESG is relatively a new and an evolving topic and as such, there is no legislative framework that requires and enforces ESG reporting. Whilst the regulators in the sector have not issued a clear reporting requirement on ESG, we expect the players in the energy sector to incorporate ESG considerations in their strategy formulation and implementations given that most of these players are MNEs headquartered in countries where the regulators have already incorporated elements of ESG into mandatory reporting regimes.

As part of the recent development in the ESG space, the Ghana Stock Exchange (GSE), in June 2022 hinted that it would introduce ESG reporting guidelines for listed companies by the end of the year. Fast forward in November 2022, the GSE launched the guidelines with a commitment to lead the ESG reporting drive by incorporating ESG in its own reporting. The GSE also indicated plans to incorporate ESG guidelines into the listing rules which are undergoing a revision. With this development, some players in the industry that are listed (or expected to list) on the GSE will be required to comply with the reporting requirements.





Kenya

Contact



Steve Okello

steve.x.okello@pwc.com



Osborne Wanyoike

Osborne.wanyoike@pwc.com



Edna Gitachu

edna.gitachu@pwc.com

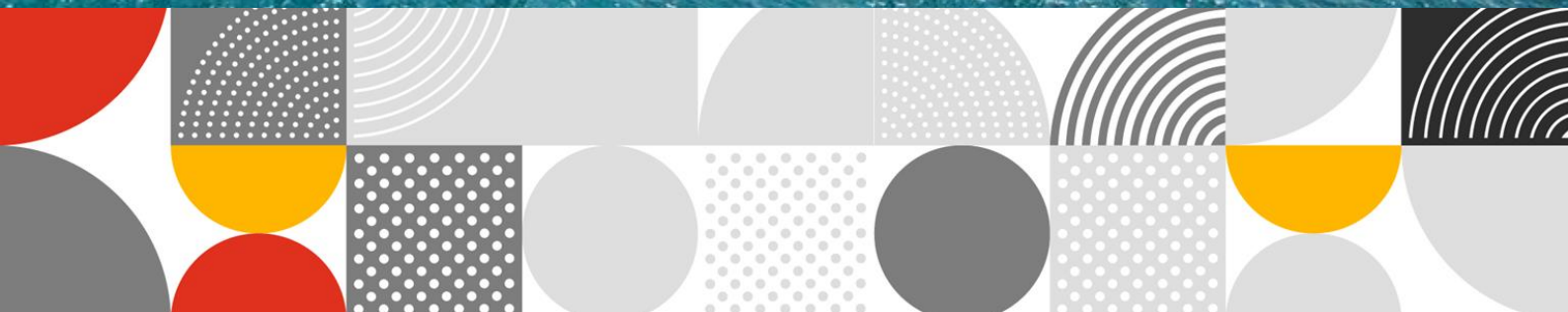


George Muthee

george.muthee@pwc.com



Oil and Gas Sector



Brief overview of the Oil & Gas industry in Kenya

The petroleum sector in Kenya is organised into three sectors. These are the upstream, midstream and downstream sectors. The upstream sector involves exploration, development and production of crude oil and natural gas. In the midstream sector, the main activities include storage, refining and transformation of crude oil into consumable petroleum products. While in the downstream sector, the major activities include supply and distribution of refined petroleum products.

Upstream Petroleum

Kenya has four (4) petroleum exploration basins and these are Lamu Basin, Anza Basin, Mandera Basin and Tertiary Rift Basin. Oil & gas exploration in the country began in 1956 and the breakthrough came in March 2012 with the discovery of Ngamia 1 Well, in Lokichar Basin in Turkana County. To date, over 86 wells have been drilled with a majority within the Tertiary Rift. An estimate of over 4 billion barrels of crude oil reserves have been encountered in the Lokichar sub-basin by Tullow Oil Plc and its partners, with recovery oil estimated to be slightly over 500 million barrels on a 2C (best case scenario) resource

From 2017 Tullow Oil Plc and its partners undertook an Early Oil Pilot Scheme (EOPS) aimed at informing the dynamics to do with market and infrastructure. To date over 340,000 barrels have been exported under the scheme. The scheme ended in 2022.

Midstream Petroleum

Petroleum is one of the prime movers of the country's social and economic development. Petroleum products are predominantly used in transport, commercial and industrial sectors. Kenya imports all its petroleum products requirements. The Ministry of Energy and Petroleum coordinates this activity with oil marketing companies through a process known as the Open Tender System where the lowest bidder is granted rights to import on behalf of other marketing companies.

Petroleum supply chain in Kenya is supported by the following critical infrastructure:

(i) Petroleum Receipt and back-loading jetties:

- **Kipevu Oil Jetty (KOT):** This is located at Kipevu area, Mombasa County and handles large petroleum vessels. Product is then transferred to the government owned Kipevu Oil Storage Facility (KOSF).
- **Shimanzi Oil Terminal (SOT):** This is used for importation of petroleum by small vessels.

- **Mbaraki:** This is a privately owned facility.
- **Africa Gas & Oil Limited (AGOL):** This is a dedicated LPG facility built under concessionary terms from the Kenya Ports Authority. It is connected to a common user manifold. The only storage depot connected to it is the AGOL mainland facility.
- **Kisumu Oil Jetty:** This is located on the shores of Lake Victoria and is used for the exportation of petroleum products to the countries bordering the lake and into the Eastern DRC and South Sudan.

(ii) **Petroleum storage tanks:** Kenya's total storage capacity is over 1,500,000,000 litres spread out across the country. Over 700,000,000 litres of this is operated by the Kenya Pipeline Company as primary and intermediate storage.

(iii) **Petroleum pipelines:** The pipeline system consists of trunk lines and distribution lines from Mombasa running through Nairobi to the Western Kenya towns of Nakuru, Eldoret and Kisumu totaling to about 1,804 km.

(iv) **Retail networks:** Kenya has over 2,762 retail stations. The stations are classified as Tier 1, 2, 3 and 4 depending on land area, services offered and storage capacity.

Downstream Petroleum

Distribution and Marketing of petroleum products is done by oil marketing companies. The National Oil Corporation of Kenya (NOCK) is the state body that is engaged in this area. It is also involved in the upstream activities.

Significant developments

Tullow Oil Plc and its Joint Venture partners, Africa Oil Corp and Total confirmed that they are on the lookout for a strategic partner for the development of the oil project in Kenya. In the meantime, they are working together with the country's Energy and Petroleum Regulatory Commission Authority (EPRA) and the Ministry of Energy and Petroleum to finalise the Field Development Plan (FDP). Kenya's General Elections took place in August 2022 and there is a new government in place. It is anticipated that this change will impact approvals as the new government settles in.

Political background

As a Republic, the sovereign power belongs to the people of Kenya and is exercised in accordance with the Constitution (2010).

Sovereign power is delegated to the following State organs namely:

- i. Parliament and the legislative assemblies in the county governments;
- ii. the national executive and the executive structures in the county governments; and
- iii. the Judiciary and independent tribunals.

Sovereign power of the people is exercised at the national level and county level.

The President is head of State and Government. Kenya has a five (5) year election cycle with the next elections scheduled in 2022.

Regulatory framework

The Petroleum Act, 2019 Background

The Petroleum Act No. 2 of 2019 was enacted in March 2019 to consolidate into one statute, the laws relating to petroleum operations. Previously, the upstream petroleum industry was regulated by the Petroleum (Exploration and Production) Act, 1984, while midstream and downstream operations were regulated by the Energy Act, 2006 – now repealed by the Energy Act No. 1 of 2019.

The Petroleum Act 2019 and the Energy Act 2019 bring Kenya's legislative framework on the energy sector in line with current industry standards and practices. The Petroleum Act 2019 provides a framework for contracting, exploration, development and production of petroleum as well as enhancing transparency and accountability in the petroleum sector. The Act also addresses important issues such as revenue sharing, local content and licensing of petroleum operations.

Regulatory Authority

The Energy and Petroleum Regulatory Authority (EPRA) was established as the successor to the Energy Regulatory Commission (ERC) under the Energy Act 2019 with an expanded mandate of *inter alia* regulation, monitoring and supervision of upstream, midstream and downstream petroleum operations. The role of EPRA in the petroleum sector includes the review of government's policy on petroleum, formulation, review and enforcement of rules, regulations and codes for the petroleum sector, licensing petroleum operations, issuing of construction permits, developing standards for bulk petroleum transportation and petroleum costs and price monitoring.

The Petroleum Act 2019 also established the National Upstream Petroleum Advisory Committee whose principal role is to advise the Cabinet Secretary for Petroleum and Mining on various matters such as upstream petroleum operations and negotiation, entering into, suspension, revocation, termination or recall of petroleum agreements.

Transparency and accountability

The Petroleum Act 2019 mandates the Cabinet Secretary for Petroleum and Mining to develop a framework for reporting, transparency and accountability in the upstream petroleum sector, which includes the publication of all petroleum agreements, records, annual accounts and reports of revenues, fees, taxes, royalties and other charges, as well as, any other relevant data and information that support payments made by the contractor and payments received by the national government, county governments and local communities. This is aimed at increasing transparency and accountability in entering into petroleum contracts as well as enhancing the right of access to information that is provided under the Constitution of Kenya, 2010.

Revenue sharing between the National Government, County Government and local community

The Petroleum Act 2019 makes provisions for sharing of revenue from upstream petroleum operations between the National Government, County Government and local communities, a hitherto divisive issue. The apportionment of revenue under the Petroleum Act 2019 is as follows:

- i. 75% to the National Government;
- ii. 20% to the County Government; and
- iii. 5% to the local community, payable to a trust fund managed by a board of trustees established by the County Government in consultation with the local community. The Petroleum Act defines a local community as the people living in a sub-county within which a petroleum resource under the Act is situated and who is affected by the exploitation of that petroleum resource.

The Petroleum Act 2019 allows Parliament to review these percentages after ten years from its commencement.

Petroleum rights and licensing

Upstream petroleum: A person wishing to undertake upstream petroleum operations or construction is required to execute a petroleum agreement under the Petroleum Act 2019

or obtain a non-exclusive exploration permit from EPRA in respect of a block for the purpose of obtaining geological, geophysical and geochemical information.

Midstream and downstream petroleum: A person wishing to undertake midstream and downstream petroleum operations or construction may make an application for a licence, permit or certificate to the EPRA. EPRA may, within thirty days of receiving the application:

- i. grant a licence, permit or certificate accordingly, either without conditions or subject to such conditions as the licensing authority may deem fit and shall be accompanied by the prescribed fee; or
- ii. reject an application for grant of such licence, permit or certificate.

The Petroleum Act 2019 has savings clauses which preserve all contractual rights, privileges, liabilities and obligations existing pursuant to the repealed Petroleum (Exploration and Production) Act 1984.

Model Production Sharing Contract

The Schedule to the Petroleum Act 2019 provides a Model Production Sharing Contract (Model PSC) to be used when entering into a petroleum agreement. The Model PSC has detailed clauses on exploration obligations, cost recovery, production sharing and taxation, contributions to a Training Fund and dispute resolution mechanisms such as UNCITRAL arbitration

Local content requirements

The Petroleum Act 2019 has local content provisions which require a person undertaking petroleum operations to:

- i. comply with local content requirements in all operations;
- ii. give priority to services provided and goods manufactured in Kenya provided the goods meet the specifications of the petroleum industry;
- iii. ensure that priority is given for the employment or engagement of qualified and skilled Kenyans at all levels of the value chain; and
- iv. Submit local content plans to EPRA before commencing any petroleum operations and each year thereafter.

Recent developments to the regulatory framework

In order to operationalise the Petroleum Act 2019, EPRA continues to draft regulations in a bid to accommodate the substantive changes introduced by the Act and regulate various aspects of the midstream and downstream petroleum activities. Companies in the oil & gas industry are subject to the same tax regime as other companies in other industries. A set of draft Petroleum Regulations are currently undergoing the legislative approval processes for the same to be gazetted in the near future.

The Cabinet Secretary for Energy and Petroleum recently published the Petroleum (Importation) Regulations, 2023 and the Petroleum (Pricing) Regulations, 2022. We set out below a high-level summary of the published regulations:

i) Petroleum (Importation) Regulations, 2023

The Petroleum (Importation) Regulations (Legal Notice No. 2) of 2023 were published vide Kenya Gazette Vol. CXXV No. 26 of 3 February 2023. These regulations intend to:

- (a) Provide a criteria for allocating capacity at common-user petroleum import facilities thereby promoting equity, open access and non-discrimination;
- (b) Make it a compulsory requirement to import petroleum products through the open tender system for efficient planning and to enable the country enjoy economies of scale;
- (c) Recognise and regularise the role of the supply coordinator committee which shall be responsible for liaising with the ministry responsible for petroleum, the pipeline operator, operators of common user petroleum facilities and other relevant government agencies for the efficient implementation of open tendering system agreements
- (d) Recognise and incorporate transport and storage agreements between oil marketing companies and the pipeline operator; and
- (e) Consolidate and harmonise various regulations covering the importation of petroleum products.

ii) Petroleum (Pricing) Regulations, 2022

The Petroleum (Pricing) Regulations (Legal Notice No. 192) of 2022 were published vide Kenya Gazette Vol. CXXIV No. 226 of 28 October 2022 to replace the Energy (Petroleum Price) Regulations 2010 governed by the repealed Energy Act 2006

Under these regulations, EPRA is permitted to regulate both the maximum wholesale price and maximum retail price as well as set up a framework for review of price determination under emergency situations as may be declared by the Cabinet Secretary in charge of Petroleum.

Under the regulations, EPRA will compute and publish wholesale and retail prices of petroleum products to take into account changes in law impacting the costs of the products at any time between the monthly publication periods on the 14th day of every calendar month.

The pricing regulations provide for a transparent petroleum price setting methodology that increases the level of transparency in computation of petroleum products. This provides for a clearer understanding to the private sector on how the regulated petroleum prices are built up.

Fiscal regime

The regulatory framework for the taxation of petroleum operations is regulated by the Income Tax Act (ITA), Value Added Tax Act, 2013 (VAT Act), Stamp Duty Act, East African Community Customs Management Act, 2004 (EACCMA) and the Excise Duty Act, 2015 (EDA).

Generally, companies in the oil & gas industry are subject to the same tax regime as other companies in other industries.

Significant Developments in the fiscal regime

Forms of contracts

Product sharing contracts apply.

Local content regulations

Local content regulations yet to be published (also see above under “Local content requirements”).

Taxation regime

Direct Taxes

Corporate income Tax

A company resident in Kenya is subject to Corporate Income Tax (“CIT”) on its worldwide income at the rate of 30%. A non-resident company is taxed on income derived or accrued from Kenya at the CIT rate of 37.5%.

The repealed model PSC was a ‘taxes paid’ PSC in that the Government’s share of crude oil included the taxes of the petroleum company (except for taxes on disposal of interest in a petroleum agreement and any tax the petroleum company is liable to deduct from payment to suppliers). The current model PSC based on the 2019 Petroleum Act is not a ‘taxes paid’ PSC and thus a petroleum company is responsible for all its taxes. Consequently, the portion of the petroleum profit which the Government is entitled to should be paid exclusive of taxes. Additionally, a petroleum company is responsible for accounting for taxes on capital gains arising from a transfer of a participating interest in a contract

Allowed deductions

i. Exploration expenditure

A petroleum company is allowed a deduction for exploration expenditure in the year of income in which the said expenditure is incurred. On this, the rate of tax depreciation applicable to machinery used to undertake exploration operations is 50% in the first year of use and 25% per year in the subsequent years on a straight line basis.

i. Development expenditure

Where development expenditure has been incurred, such expenditure is deductible in the year of income in which the petroleum company incurred the expenditure and in following years until the expenditure has been fully deducted. The allowed deduction for each year of income is 20% of the total amount of the development expenditure. Development expenditure incurred before the commencement of commercial production is assumed to have been incurred at the time of commencement of commercial production and therefore deductible on that basis.

i. Decommissioning expenditure

In addition to the exploration and development expenditures covered above, a petroleum company is allowed a deduction for the amount it incurs or transfers to an escrow account during a year of income as required under an approved decommissioning plan to finance expenditure expected to be incurred in the abandonment and decommissioning of petroleum operations.

Other fees

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

Ring-fencing

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

Tax losses

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

Thin capitalisation

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

Transfer pricing (TP)

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

Withholding tax on deemed interest

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

Withholding tax

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

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

*Natural Resource Income means:

- (a) an amount including a premium or such other like amount paid as consideration for the right to take minerals or a living or non-living resource from land or sea;
- (b) an amount calculated in whole or in part by reference to the quantity or value of minerals or a living or non-living resource taken from land or sea.

Subcontractors

Subcontractors who are non-resident and do not have a permanent establishment in Kenya are subject to withholding tax at the rate of 10% on the gross amount of the service fee. The withholding tax paid in this regard is a final tax.

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

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

Disposals

Direct disposals (farm out transactions)

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

Indirect disposals (share sale transactions)

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

Other Capital Gains requirements

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

Notification to the KRA

A petroleum company is required to notify the Kenya Revenue Authority (KRA) Commissioner in writing immediately if there is a change of 10% or more in the underlying ownership of the contractor.

Double tax treaties

Kenya has DTTs with Canada, Denmark, France, Germany, India, Iran, Norway, Qatar, Sweden, UK, United Arab Emirates, Zambia, South Korea, Seychelles, and South Africa.

Indirect Taxes

Value-added tax (VAT)

- VAT is due and payable on a taxable supply made by a registered person in Kenya, the importation of taxable goods and the supply of imported taxable services. The standard VAT rate is 16% unless a supply is specified within the law to be subject to a reduced rate of 8%, or zero rated (0%), or VAT exempt.
- Certain petroleum products are subject to VAT at the rate of 8% e.g., petroleum oils, illuminating kerosene and Liquefied Petroleum Gas (LPG) including propane etc.

- Taxable goods for direct and exclusive use in oil and exploration (excluding motor vehicles) whether imported or locally purchased by a company granted a prospecting or exploration licence are exempt from VAT. However, this exemption is subject to recommendation by the Ministry of Energy and Petroleum.
- The Finance Act 2022 introduced an amendment to the VAT act with effect from 1 July 2022 such that oil marketing companies will be able to claim input tax on the basis of certain documentation, i.e., in the case of a participant in the Open Tender System for the importation of petroleum products that have been cleared through a non-bonded facility, a custom entry showing the name and Personal Identification Number (PIN) of the winner of the tender and the name of the other oil marketing company participating in the tender.

Custom duties

There exists an exemption from import duty on machinery and inputs (excluding motor vehicles) imported by a licensed company for direct and exclusive use in oil, gas or geothermal exploration, development and distribution. However, this exemption is upon recommendation by the Ministry of Energy and Petroleum.

Import declaration fee

An import declaration fee at the rate of 3.5% of the declared customs value (Cost, Insurance and Freight) is payable on importation of goods into Kenya.

Railway development levy

Railway Development levy is payable on importation at the rate of 2% of the declared customs value (Cost, Insurance and Freight).

Excise duty

Excise duty is payable on petroleum products sold or imported into Kenya.

Stamp duty

Farm-out

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

Share sales and other transactions

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

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

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

Other Taxes

Taxation of Oil Field Service Companies (OFS)

OFS companies are not subject to the same taxation regime as exploration and production companies. Taxation of OFS companies depends on their residency status. Locally incorporated company suffers 5% WHT and pays CIT at 30% on taxable profit while a branch or PE in Kenya suffers 5% WHT & pays CIT at 37.5% on taxable profit. The WHT is creditable against CIT at the end of the year. A non-resident company that does not have a Permanent Establishment in Kenya suffers 10% WHT on gross service fee while management/ training/ professional fees attract WHT at 10%. For non-residents, WHT is final tax.

Employment income tax

Resident individuals, including expatriates, are taxed on their worldwide income based on the resident tax rates, while non-residents pay tax on Kenyan-sourced income only. The resident minimum tax rate is 10% and the maximum rate is 30%. Employees are required to file annual returns. Employers have the responsibility to withhold and pay the tax due from employees' entire remuneration on a monthly basis.

Social security contributions

Employees (including expatriates) and employers are all required to contribute to the National Social Security Fund ("NSSF").

A recent ruling by the Court of Appeal allowed NSSF to increase social security deductions to a maximum of KES 1,080 per month from KES 200. These deductions are effective from February 2023. However, we understand that a pensioners' lobby group has already appealed the ruling at the Supreme Court. The Supreme court has not granted any stay orders on the Court of Appeal ruling.

National Health Insurance Fund (NHIF)

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

National Industrial Training Authority (NITA)

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

These provisions apply to employees across all sectors in Kenya.

Capital gains tax

Transfer of property is subject to capital gains tax at the rate of 15% of the net gain. This tax is the final tax.

Compliance Requirements

Tax returns and payments

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

Penalties

Late submission of returns: for employment income, it is the higher of 25% of tax due or KES 10,000; for VAT, Penalty KES 10,000 per month or 5% of tax due (whichever is higher); and in all other cases, the higher of 5% of tax not paid or KES 20,000.

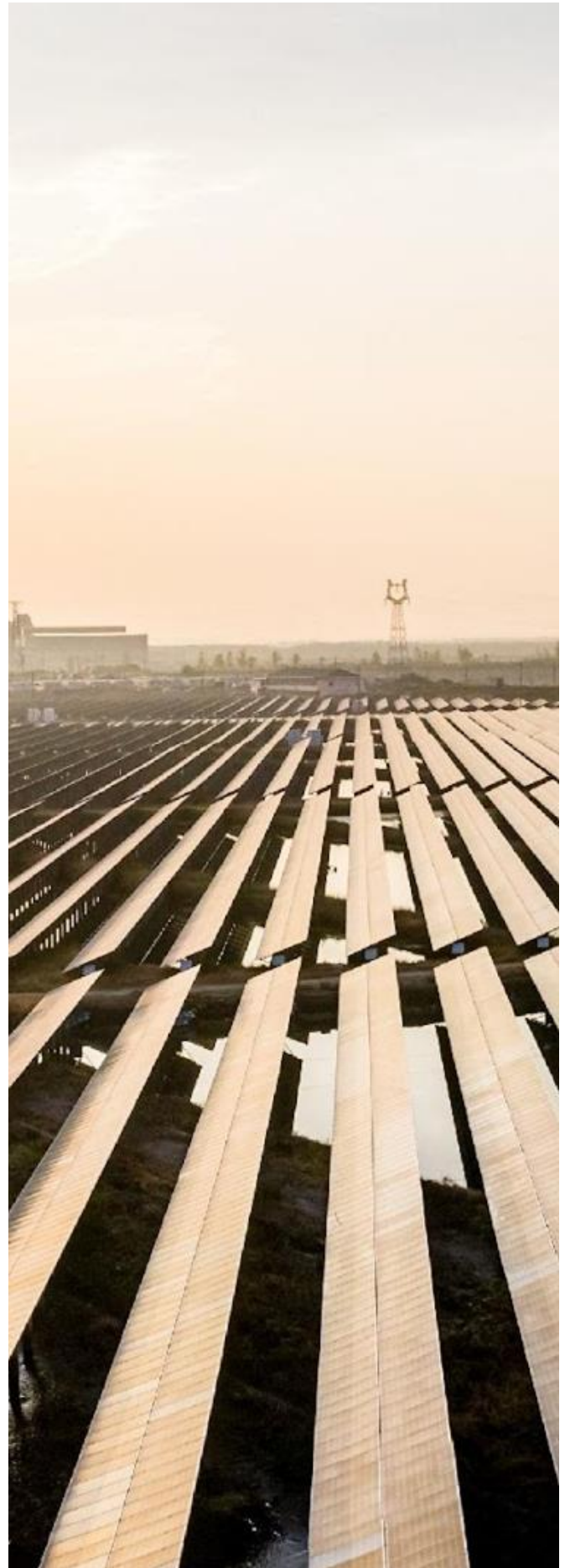
Interest

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

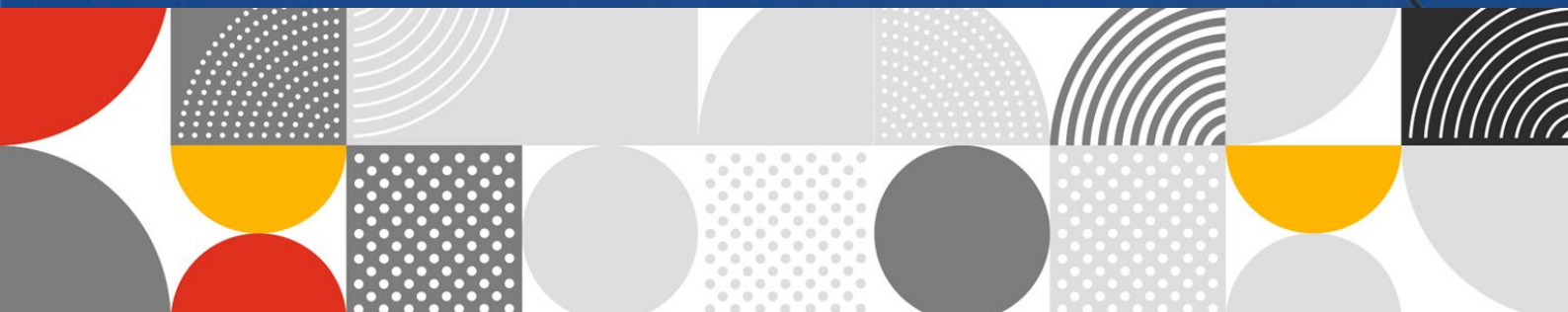
Tax audits

There is no prescribed audit process, as an audit can be triggered by various factors as determined by the KRA. Generally, tax audits should be carried out every two to four years. The audit or inspection will commence with a request from the KRA for the taxpayer to make available any such records or information as may be required. The statutory time limitation for audits in Kenya is five years.

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



Power and Utilities Sector



Brief overview of Power and Utilities development in Kenya

The power sector has four distinct sub sectors which are generation, transmission, distribution, and geothermal resource development.

Generation

The function of generation of electricity is executed by Kenya Electricity Generating Company (KenGen) and independent power producers. There have been developments in the financial year 2022 in terms of integrating 207 MW of renewable generation capacity. This additional generation comprises

- 86.88 MW geothermal capacity from Olkaria I unit 6;
- 40 MW from Selenkei solar plant;
- 40 MW Cedate solar plant;
- 40 MW Malindi solar plant; and
- 0.5 MW from Kianthumbi hydro power plant.

These developments showcase the country's commitment to embrace low cost renewable energy technologies in her efforts to ensure availability of affordable and reliable energy. Currently, the total installed capacity in the country is 3,074 MW against peak demand of 2,057 MW.

The generation mix is as shown in the table below.

Source	Installed Capacity (MW)	Capacity %
Geothermal	837.58	27.24
Hydro	949.13	30.87
Thermal	646.32	21.02
Wind	435.50	14.7
Solar	170.00	5.53
Biomass	2.00	0.07
Off-grid	33.81	1.10
Total	3,074.34	100

Source: Energy and Petroleum Regulatory Authority

The country continues to move away from reliance on hydro power as its main source of power due to the unpredictable rain patterns that normally result in power shortfalls. During such periods, the government has had to rely on power from existing thermal power plants to meet demand.

On the other hand, there has been increased focus on investments in other renewable energy sources, most notably geothermal power (on project size rather than number of projects) which is considered a highly reliable and efficient base load power source. Geothermal power total installed capacity has increased from 12% in 2012 to 27.2% in 2022 and is expected to be the main contributor to base load as Kenya seeks to achieve the Vision 2030 strategy.

The adoption of renewable energy technologies has seen reduction in the use of thermal power plants to average 11.3% for 2019. This has had a positive impact on the electricity tariffs as dependence on expensive generation sources is minimized.

According to the Power Generation and Transmission Master Plan, 2016, the country's electricity peak demand is expected to quadruple to 6,500MW by 2035. According to Vision 2030, the country's economic blueprint, the following projects are the key drivers of demand for electricity:

- Lamu Port-South Sudan-Ethiopia Corridor (LAPSSET);
- Electrified railway lines;
- Konza Techno City; and
- Special Economic Zones.

Transmission

The Kenya Transmission Company (Ketraco), which is 100% owned by the Government of Kenya, is responsible for the development of the national transmission grid network. To facilitate a regional power pool, Ketraco is in the process of implementing regional interconnection lines with neighbouring countries such as Uganda, Ethiopia and Tanzania.

Distribution

Currently, Kenya Power and Lighting Company (KPLC) is the sole off-taker of electricity in Kenya. KPLC sells the electricity to the final consumers.

The country is aiming at achieving universal access to electricity by 2022 through the development of transmission and distribution infrastructure.

Geothermal resource development

Geothermal resource development is undertaken by Geothermal Development Company, a company that is 100% owned by the Government of Kenya.

Legal Framework

The legal framework governing the power and utilities sector in Kenya, entails both policies and Acts of Parliament.

National Energy Policy, 2018

The energy sector in Kenya was previously guided by Sessional Paper No. 4 of 2004. This was a policy document that stipulated the liberalisation reforms implemented in the energy sector in the mid-1990s. Its vision was to promote equitable access to quality energy services at least cost while protecting the environment. The paper therefore laid down the policy framework upon which cost effective, affordable and adequate quality energy services would be made available to the domestic economy on a sustainable basis.

The unveiling of the national development blueprint, Kenya Vision 2030, in 2008, the promulgation of the Constitution of Kenya in 2010 and the Government's Big Four Agenda made it necessary to review the energy sector policy. As a result, the National Energy Policy was published in 2018. It aims to ensure affordable, competitive, sustainable and reliable supply of energy at the least cost in order to achieve the national and county development needs, while protecting and conserving the environment for intergenerational benefits. The Cabinet Secretary is tasked with publishing an annual report on the implementation of the national policy. Currently, the energy sector in Kenya is unbundled and generation by independent power producers is permitted by law and regulated.

Energy Act, 2019

The Energy Act, 2019 (the "Act") came into effect on 28 March 2019. The enactment served to overhaul the old and outdated energy legislative framework of the Energy Act, 2006, Geothermal Resources Act, 1982 and Kenya Nuclear Electricity Board Order No. 131 of 2012, considering the contemporaneous advancements made in the energy sector.

The Act consolidates all the laws relating to the energy sector as well as set out the functions of the County and National Government in respect of promotion of renewable energy, exploration, recovery and commercial utilisation of geothermal energy as well as regulation of production, supply and utilisation of electricity and other energy forms.

The Act provides for the participation of private investors in the distribution of power to consumers in the country. In addition, the Act established key institutions including the Energy and Petroleum Regulatory Authority (EPRA), Rural Electrification and Renewable Energy Corporation (REREC), Nuclear Power and Energy Agency (NPEA) and the Energy Tribunal.

Under the Act, county governments are required to develop subnational energy policies. The county energy policies are crucial to effective energy governance in Kenya since counties have a big impact on the investment climate for clean and alternative energy within and beyond the counties.

In 2020, EPRA further developed the Draft Energy (Solar Photovoltaic Systems) Regulations, 2019 which are a revision of the Energy (Solar Photovoltaic Systems) Regulations, 2012. The goal of the regulations is to streamline the manufacture, importation, distribution, design, installation, testing, commissioning, maintenance and repair of solar photovoltaic systems and components in Kenya. This will be done through among others, licensing of players in the solar photovoltaic value chain and enforcement of approved standards for the solar photovoltaic industry. EPRA has been engaging stakeholders on these regulations which are aimed at regulating the growing uptake in of solar photovoltaic systems in Kenya and these regulations are not yet in force.

EPRA has also recently published the Draft Energy (Net-Metering) Regulations, 2022 for public review. If passed, the regulations will give way to the enforcement of net metering in Kenya, as introduced by the Act. Net metering allows a person who generates electricity to sell excess capacity back to the grid with the intention of offsetting the cost of the electricity they consume from the national grid.

Regulatory Framework

The Regulatory framework governing the Power Sector involves various actors including:

Energy and Petroleum Regulatory Authority (EPRA)

EPRA was established under the Energy Act, 2019. Key among its various objectives and functions under the law, is to regulate -

- generation, importation, exportation, transmission, distribution, supply and use of electrical energy apart from licensing of nuclear facilities;
- importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products apart from crude oil;
- production, conversion, distribution, supply, marketing and use of renewable energy; and
- exploration, extraction, production, processing, transportation, storage exportation, importation and sale of coal bed methane gas and other energy forms.

EPRA replaced the Energy Regulatory Commission which previously discharged the same mandate.

Energy and Petroleum Tribunal

The Act also established the Energy and Petroleum Tribunal to resolve energy and petroleum disputes. The Tribunal also hears and determines appeals from decisions of EPRA or any energy licensing authority. This body is set up as an independent body free of the state influence under the law.

Rural Electrification and Renewable Energy Corporation (REREC)

Established under the Act, REREC is mandated with overseeing rural electrification in Kenya. REREC is also charged with promotion of renewable energy in Kenya. In so doing, it is tasked with developing a renewable energy master plan, undertaking feasibility studies and maintaining data with a view to availing the same to developers of renewable energy resources.

Nuclear Power and Energy Agency (Agency)

In a bid to diversify its energy sources portfolio, the country is taking measures towards exploiting nuclear energy for electrical utility. Accordingly, the Energy Act provides for an agency which shall be the nuclear energy program implementing organisation and which is tasked with promoting the development of nuclear electricity generation in Kenya. In line with this goal, the Agency is mandated to carry out research, development and dissemination activities in the energy and nuclear power sector. The Agency is also tasked with proposing policies and legislation necessary for the successful implementation of a nuclear power program.

Other actors in the Regulatory space include:

- Ministry of Energy: Responsible for creating an enabling environment for efficient operation through formulating and articulating energy policies.
- The National Treasury: Charged with the responsibility of formulating financial, fiscal and economic policies.
- Kenya Revenue Authority: Charged with the responsibility of revenue collection in line with the various tax legislations.

Forms of contracts

An entity seeking to generate electricity and sell to KPLC is required to enter into a Power Purchase Agreement (PPA). The parties to a PPA are KPLC and the Power Producer. However, EPRA must approve PPAs before they are signed by the parties.

Fiscal regime

The fiscal regime for the taxation of the Power Sector is regulated by the Income Tax Act ("ITA"), VAT Act 2013, Stamp duty Act, East African Community Customs Management Act ("EACCMA") and the Excise duty Act 2015.

Significant Developments in the Fiscal Regime

Definition of the term manufacture in the ITA expanded to cover offgrid power producers

Following amendments introduced by Finance Act, 2022, the term manufacture is now defined to include the making, including packaging, of goods from raw or semi-finished goods, or the generation of electrical energy, or the transformation and distribution of electricity, but does not include design, storage, transport, administration or any other ancillary activity.

Previously, only generation of electrical energy for supply to the national grid qualified as manufacturing. Currently, off grid independent power producers qualify as manufacturers and therefore qualify for investment deductions.

Incentives in the Power Sector

Income Tax Act (ITA)

The ITA exempts withholding tax on interest payments on loans from foreign lenders provided loan proceeds were used for investing in the energy or water sectors, or in roads, ports, railways or aerodromes. In line with the Statutory Instruments Act, unless a regulation is passed, the aforementioned WHT exemption on interest will expire on 28 May 2025.

In addition, the ITA exempts withholding tax on payments made to a non-resident for services rendered under a Power Purchase Agreement. In line with the Statutory Instruments Act, unless a regulation is passed, the aforementioned WHT exemption on payments made to a non-resident will expire on 20 August 2025.

Value Added Tax (VAT)

Taxable goods for direct and exclusive use in geothermal prospecting or exploration (excluding motor vehicles) whether imported or locally purchased by a company granted a prospecting or exploration licence are exempt from VAT. However, this exemption is subject to recommendation by the Ministry of Energy and Petroleum.

The VAT Act also exempts from VAT, specialised equipment for the development and generation of solar and wind energy, including photovoltaic modules, direct current charge controllers, direct current inverters and deep cycle batteries that use or store power subject to recommendation by the Ministry of Energy and Petroleum.

East African Community Customs Management Act (EACCMA)

The EACCMA exempts from import duty, specialised equipment for generation of solar and wind energy, Photovoltaic (PV) Modules, Direct Current Charge Controllers, Direct Current Inverters and Solar including accessories and deep cycle batteries which use and /or store solar power.

It also exempts from import duty machinery and inputs (excluding motor vehicles) imported by a licensed company for direct and exclusive use in geothermal exploration, development and distribution. However, this exemption is upon recommendation by the Ministry of Energy and Petroleum.

Import declaration fee

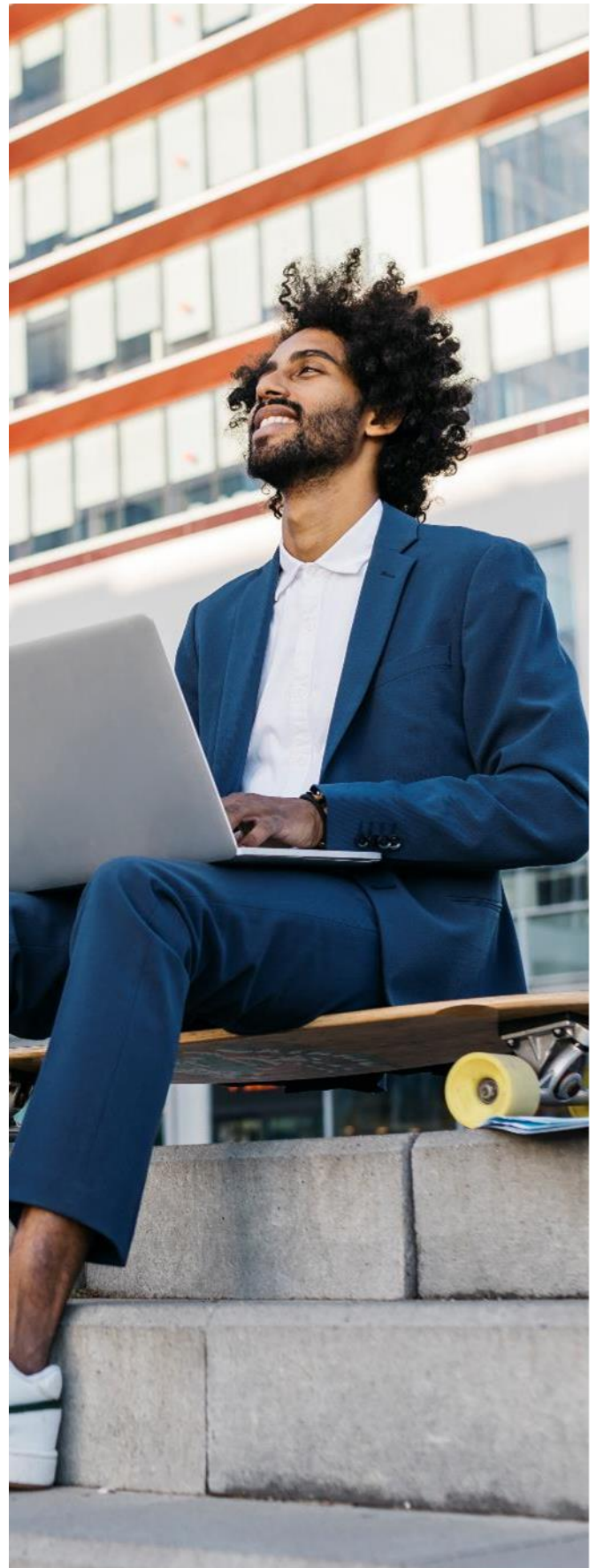
An import declaration fee at the rate of 3.5% of the declared customs value (Cost, Insurance and Freight) is payable on importation of goods into Kenya.

Railway development levy

Railway Development levy is payable on importation at the rate of 2% of the declared customs value (Cost, Insurance and Freight).

Stamp duty Act

The Stamp Duty Act exempts instruments executed on transactions involving loans from foreign sources received by investors in the infrastructure development sector from stamp duty.





ESG



ESG

Development in the local ESG reporting framework

In Kenya, the Government working hand in hand with the private sector, has made strides to encourage ESG Reporting. In October 2021, the Central Bank of Kenya (“CBK”) published the Guidance on Climate-Related Risk Management (the “CBK Guidance”) for the banking sector. The CBK Guidance aims to enable banks to incorporate the impacts of climate change into their financial risk models and develop related disclosures. Under the CBK Guidance, Banks are required to disclose climate-related information benchmarked to the Task Force on Climate-Related Financial Disclosures (“TCFD”).

The Nairobi Securities Exchange (“NSE”) has also developed an ESG Disclosure Guidance Manual (“ESG Disclosure Manual”) aimed at providing guidance to listed companies in Kenya on Sustainability reporting. The guidelines are aligned to principles of Global Reporting Initiative (GRI) standards. The Disclosure Manual provides for certain mandatory ESG disclosures by listed companies in Kenya which include environmental and social risk management, tax, human rights and emissions. For listed companies, the mandatory ESG disclosures are in addition to the corporate governance disclosures required under The Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015 by the Capital Markets Authority (“CMA”).

Actions or government pledges post-COP27 summit

Kenya has a target to fully move to renewable energy by the year 2030 (currently at 90%) and a target towards 100% Clean Cooking by 2028. Kenya is also looking to increase the national tree cover from the current 12.13% to 30% in the next 10 years.

ESG and Governance

Kenya has various laws and policies bearing on ethical behaviour and corporate governance including Anti-Corruption and Economic Crimes Act, Bribery Act, The Companies Act, the CMA Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015 and the Code of Corporate Governance for State Corporations 2015.

Fiscal consideration towards Good ESG Practices

Kenya is in the process of developing a National Green Fiscal Incentives Policy Framework (“Green Incentives Framework”) which seeks to guide Kenya’s economy onto a desired low-carbon climate-resilient green development pathway through a variety of fiscal and economic mechanisms. The Draft Green Incentives Framework which was released in December 2022 for stakeholder comment considers green fiscal mechanisms that may be implemented to correct environmental externalities, support national climate change goals, and promote clean energy investments. Over the years, Kenya has also introduced certain tax incentives to promote environmental sustainability including:

- Exempting interest income accruing from listed bonds, notes or other similar securities for infrastructure, projects and assets under the Green Bonds Standards and Guidelines.
- Corporate tax is at the reduced rate of 15%, in respect of a company operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority, for the first ten years from the year of commencement of its operations.





Liberia

Contact

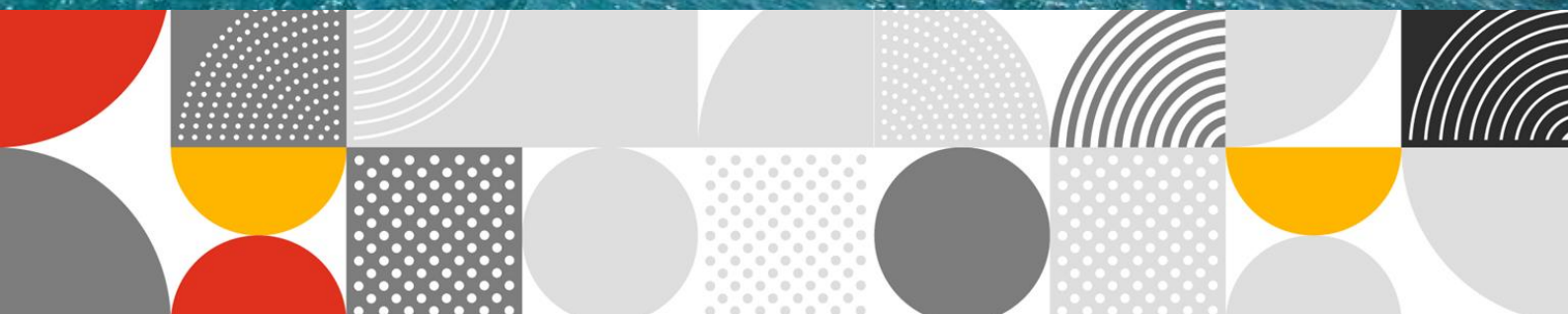


Amos Adjei

amos.adjei@pwc.com



Oil and Gas Sector



Brief overview of the Oil & Gas industry in Liberia

Liberia has not discovered oil in commercial quantities yet. The authority has declared that Liberia is still in the exploration stage. However, there are potential discoveries made by African Petroleum (AP) which needs further evaluation.

Government participation in the sector is through the National Oil Company of Liberia (NOCAL).

On 1 August 2019, the company signed a multiyear well data management agreement with Core Laboratories Sales BV. The venture will see the management of value addition and re-organisation of oil well data collected by oil companies that have operated in Liberia since 1970. The project is called the “Regional Reservoir and Seal Study of Liberia”. With this project, NOCAL is hopeful to receive revenue from valuable data that companies are expected to pay for. This deal shows that investors are beginning to show interest in the sector again. The government is excited and willing to work with investors in the sector.

The Liberia Petroleum Regulatory Authority announced the launch of its next offshore licensing round, which commenced on the 10th of April 2020 and ran up to February 28, 2021. The Liberia License Round 2020 was the fourth in the sequel of bid rounds conducted for offshore blocks since 2001. This round was conducted by the Government of Liberia through the Liberia Petroleum Regulatory Authority (LPRA) for blocks within the Harper Basin. The round was conducted under the objective of attracting investment to Liberia for the continuation of exploration activities in one of the country's priciest regions

Economic Updates

The country faces unstable economic conditions, courtesy of persistent exchange rate fluctuations and inflationary pressures. The economy risks a potential downward growth due to rapid decline in the price of the country's primary commodity export on the global market; and global challenges, including poor roads and limited energy supply.

Regulatory framework

On 16 October 2019 President George Weah signed the amended Petroleum Act of 2019 into law. The new Act allows for the executive allocation of oil blocks to the National Oil Company of Liberia (NOCAL). It also provides for an increase in the block size from 772 sqm to a maximum of about 1351 sqm.

The Act further stipulates that petroleum agreements may only be granted in two forms, the principal one being the Executive Allocation to NOCAL, and International Open Competitive Bidding. In addition, each petroleum agreement is now required to provide for a 5% equity stake for companies owned by individuals of Liberian citizenship.

The key regulators in the industry include:

1. Liberia Petroleum Refining Company (LPRC);
2. Liberia Petroleum Regulatory Authority;
3. National Oil Company of Liberia (NOCAL);
4. Liberia Revenue Authority (LRA);
5. Environmental Protection Agency (EPA);
6. Liberia Chamber of Commerce (LCC);
7. National Investment Commission (NIC); and
8. Liberia Extractive Industry and Transparency Initiative (LEITI)

Fiscal and taxation regime

In addition to an update provided last year, Currently, the regulatory framework for the taxation of petroleum operations is administered by the Liberia Revenue Authority in collaboration with the Ministry of Lands, Mines and Energy which oversees and regulates non-tax compliance and other compliance requirements.

Generally, taxes are levied on the taxable income of a legal person engaged in a petroleum project at a rate of 30% percent. Corporate tax rate and basis for determining taxable income may be prescribed in a petroleum agreement.

Withholding taxes

For withholding tax purpose, payments made by Mining, Petroleum and Renewable Resource Project to a resident and non-resident, the withholding rates stated below apply to the following withholding obligations;

- a. Interest, 5 percent.
- b. Dividend, 5 percent.
- c. Payment for service, 6 percent.

Forms of contract

The most common forms of petroleum contracts in Liberia include:

Reconnaissance, Seismic and Technical Evaluation / Exploration Contract

This contract grants licensee rights to carry out hydrocarbon reconnaissance work at own risk and expense, and within the defined perimeter and to an unlimited depth, without exclusion, any operation for the reconnaissance and exploration of hydrocarbons in Liberia.

A permit with respect to reconnaissance and seismic data collection does not give the holder any right to conclude a petroleum contract except where such privilege is expressly granted.

Hydrocarbon Exploration and Development Agreement

This permit is usually granted by NOCAL to a petroleum company to carry out both exploration as well as production and development activities in a commercially exploitable hydrocarbon reserve within a defined area and may also include a Petroleum Sharing Contract ("PSC").

A petroleum contract which provides for the reimbursement of petroleum costs and remuneration to a licence holder to be paid in cash is called a "services and risk contract".

The exploration phase under this contract is usually a 7-10-year period divided into three phases while the development period is usually 25 years. A PSC for gaseous hydrocarbons may differ from that of liquid hydrocarbons.

Joint Venture Agreements

A licence holder may enter into an incorporated or unincorporated joint venture (JV) agreement with other petroleum companies in connection with an exploration or development agreement.

Petroleum project's income, expenses, credits, profit and /or loss is attributed to the JV partners in accordance with their interests for the purpose of determining taxable income, loss, credits and tax liability for each partner.

Government Equity participation

Generally, the Government of Liberia is, through NOCAL, entitled to participate in ownership of PSC. Generally, NOCAL is entitled to receive, free of charge, equity interest in applicable PSC of up to 20% of the authorised, issued and outstanding capital shares existing at any time.

To an extent, NOCAL elects to exercise its participation right in the applicable PSC, NOCAL holds the shares in trust for the Government of Liberia, the Ministry of Finance and the National Investment Commission.

However, NOCAL may also expressly waive its equity participation interest in applicable PSC.

Incentives in the Oil & gas

Generally, incentives are given under an agreement signed with the Government of Liberia. Petroleum operators are granted the right to import into Liberia and export out of Liberia including on behalf of their contracts and subcontractors, all goods necessary in the petroleum operations are free of all taxes and duties.

A list of equipment, machinery and products used in petroleum operations which are exempt from customs duties on importation may be included in the applicable Petroleum Sharing Contract (PSC) as determined by the National Investment Commission.

In addition, all expenses which are wholly, exclusively and necessarily incurred in connection with the operations of a petroleum project except for capital expenditure (which enjoy capital allowance) are allowable for tax purposes.

Local content regulations

There are no specific local content regulations in Liberia. However, it is required that Liberian citizens have a 5% equity stake in Petroleum Agreements.

In addition to the above, The New Petroleum (Exploration and Production) Reform Law of Liberia 2014, require contractors and its subcontractors to give preference to goods and services provided or supplied by Liberia citizens or business entities controlled by Liberia citizens, where conditions of price, quality, delivery time, service and terms of payment are equivalent to those from non-Liberian sources.

Transfer Pricing

Transactions between related parties are subject to the provisions of the Transfer Pricing Regulations (REGULATIONS NO. II.211-1-11-01-16) of Liberia.

The TP Regulations generally follow the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. The Regulations require persons who engage in transactions with related

persons to set the price of these transactions at arm's length, to maintain sufficient and adequate information and analysis to verify that their transactions are in accordance with the TP Regulations and to file TP returns for each tax year.

Thin capitalization

Under section 203(d) of the Liberia Revenue Code taxpayer is permitted a deduction for interest on business indebtedness, limited to the interest attributable to a tax year and accrued or paid (consistent with the taxpayer's method of accounting) during that tax year. The deduction for interest payable to any person other than a resident bank is limited to the amount of interest received plus 50 percent of taxable income other than interest income.

Non-deductible portions of the interest expense can be carried forward and subjected to the rules above in subsequent tax periods. There are no limitations on the carrying forward of interest expense.

Social Security contributions and personal income taxes

▪ Social Security Contribution (SSC)

Generally, employers are required to pay a mandatory SSC on behalf of all their employees. The SSC is 10% of the total salary of each employee. Out of the total percentage, the employer and employee contribute 6% and 4% respectively. SSC is required to be paid to the National Social Security and Welfare Corporation by the end of the month in which the pay relates to. Expatriates are not exempted from contributing to the SSC scheme of Liberia.

▪ Personal Income Tax

In addition to SSC, employers are required to withhold tax on salaries and wages paid to employees. The rate of tax applicable on the salaries and wages of employees depends on the tax residency status of each individual employee. Resident employees are taxed using a graduated tax scale of up to 25%. Non-resident employees are taxed at a flat rate of 15%. All earnings from employment including non-cash benefits are included in determining taxable income from employment. Non-cash benefits are quantified at market values.

Other taxes (property taxes, stamp taxes)

Real Property Tax ("RPT") is an annual tax levied on real property in Liberia. The tax is levied on either improved or unimproved land.

Thus, if an entity operating in Liberia acquires any improved or unimproved land, then they will be required to pay Real Property Tax. On the other hand, if they do not acquire any improved or unimproved land, then there will be no RPT compliance obligation for that entity.

Ideally, nominal charges in a form of stamp duties apply when notarising formal documents.

Energy Transition (Renewable energy etc.)

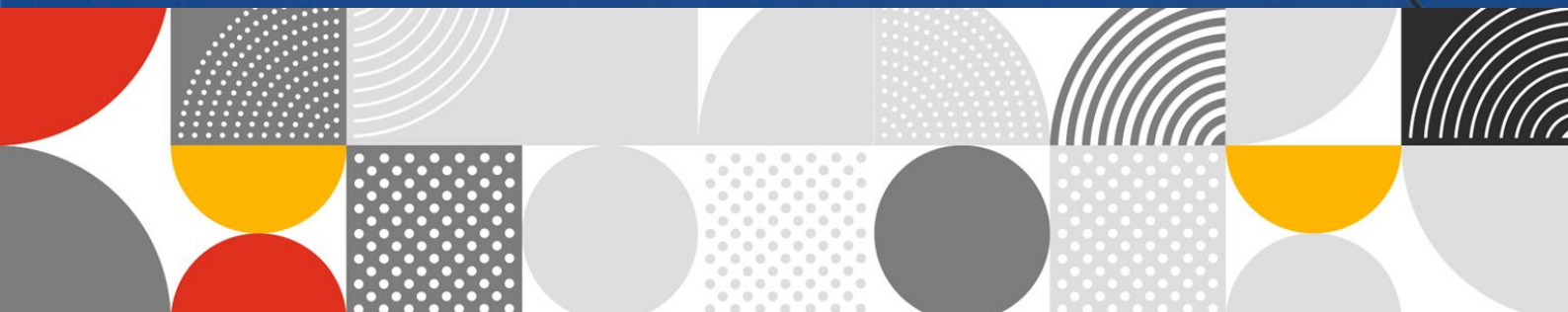
The Government of Liberia is committed to tackling climate change challenges through several national policies and strategic interventions. An overview of some key national policies related to development priorities and climate change mitigation and adaptation are outlined below:

National Policy and Response Strategy on Climate Change (2018): This national policy is a vehicle developed to support climate change adaptation, disaster risk management and mitigation capacity in Liberia. It focuses on the implementation of Liberia's commitment to achieving the SDGs, especially Goals 13, 14 and 15, which focus on combating climate change and fostering sustainability.

Environment Protection and Management Law (2003): This Law forms the legal framework for sustainable development, management and protection of the environment and natural resources by the Environment Protection Agency in partnership with relevant ministries, autonomous agencies, and organisations, as well as in a close and responsive relationship with the people of Liberia. It addresses a wide range of environmental issues, including environmental impact assessment, guidelines and standards, international obligations, education, and awareness.



Power and Utilities Sector



Brief overview of Power and Utilities development in Liberia

The Ministry of Mines and Energy in Liberia is established by the legislature to administer all activities related to mineral, water and energy resource exploration, coordination, and development in the Republic of Liberia. The Department of Energy (“DoE”) is the arm of the Ministry which is charged with the responsibility to govern and oversee the management of the Nation’s Energy resources.

DoE also coordinates stakeholders' actions in the energy sector of the Republic of Liberia.

Liberia Electricity Regulatory Commission is a newly created regulatory agency that is responsible for licensing, issuing regulations to implement the electricity law, monitor and enforce technical, performance and security regulations and standards.

Over the years, Regulatory functions of the energy sector were relegated to the Ministry of Lands, Mines and Energy (“MLME”), Ministry of Commerce and Industry (“MoCI”), Liberia Electricity Corporation (“LEC”), Rural and Renewable Energy Agency (“RREA”), Liberia Petroleum Refining Company (LPRC), National Oil Company of Liberia (“NOCAL”), and the Environmental Protection Agency (“EPA”). State-owned operators including the LEC and micro-utilities have been self-regulating. The result has been high electricity cost and inadequate services, which are major constraints to Liberia’s economic growth and poverty reduction.

To address the situation, the National Energy Policy (“NEP”) of Liberia was approved in 2009. It provides among others, liberalisation of the sector

and separation of policy, regulation, and operation.

The National Energy Policy led to the enactment of the 2015 Electricity Law of Liberia (“ELL”) on October 26, 2015. The ELL provides the legal basis for the establishment of the Liberia Electricity Regulatory Commission (“LERC”) as the National Regulator.

On 4 October 2019, the forty-fourth legislature of the Republic of Liberia approved an act to amend chapter 15 of the Penal Law by adding thereto a new section 15.88 which provides penalties for power theft.

In March of 2020, the Minister of Finance Development Planning signed the adoption of a new framework of contracts for all purchase and sale of electricity for cross-border trade.

Regulatory Frameworks

The key regulators of the Power and Utilities sector are:

1. Liberia Electricity Corporation;
2. Liberia Electricity Regulatory Commission; and
3. Ministry of Lands and Mines and Energy.

Fiscal regime

Power and utilities sectors do not have any special taxation regime. Players in the industry are taxed just like any ordinary entity operating in Liberia. Currently, the income tax rate applicable is the higher of the regular tax (25% of taxable income) or the minimum tax (2% of gross income). Some utilities such as electricity and provision of water for a fee attract 10% GST.





Libya

Contact

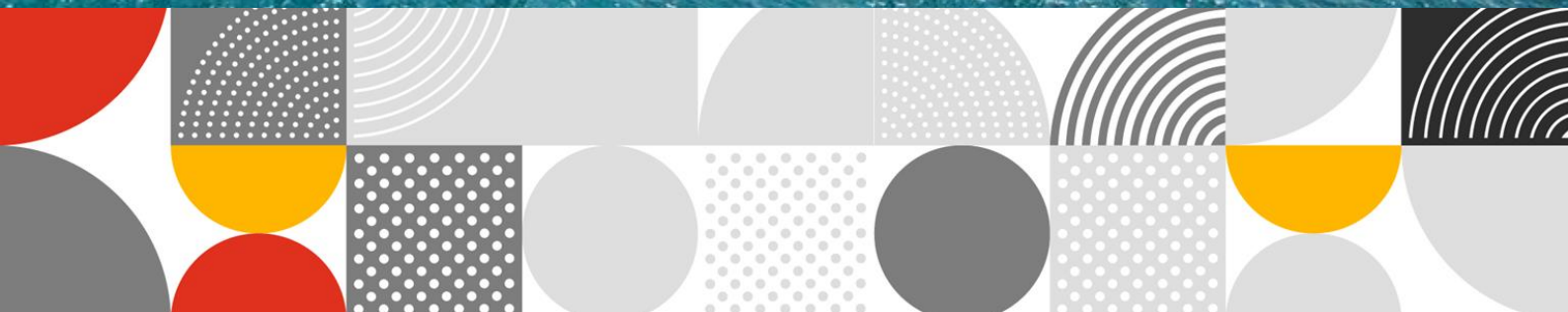


Husam Elnaili

husam.elnaili@pwc.com



Oil and Gas Sector



Brief overview of the Oil and Gas Industry in Libya

Libya is located in North Africa and situated on the Mediterranean coast spanning 1.77 million square kilometres. The population is over 6 million, with 97% being Arab and Berber and 3% being Sunni Muslim. In 2011, the civil war overthrew the previous regime who had been in power for 42 years. However, Libya struggled to transition into a more democratic state despite having two rival administrations since July 2014 and the security situation in the country. This has significantly hindered activity in the oil & gas sector.

The existing Petroleum Law, Law 25, was issued in 1955. In 1959, the first commercial discoveries were made in the Sirte Basin at the Amal and Zelten fields and by 1961 the first exports commenced. The first offshore discovery was made in 1976 at ENI's Bouri Field. Libya joined OPEC in 1962 and by the late 1960s Libya was producing more oil than Saudi Arabia, approximately three million barrels of oil per day.

The original Concession Agreements (CAs) granted all production rights to the International Oil Companies (IOCs) and the state received income by way of taxes and royalties. In 1973, the Participation Agreements were forced on to the IOCs entitling the Libyan National Oil Corporation (LNOC) to 51% production interest in the agreements.

The 1970s also saw a change in the type of agreements being negotiated with Exploration and Production Sharing Agreements (EPSAs) replacing CAs.

A lack of investment and inability to use the latest technology in the oil sector during the 1970s and 1980s coupled with diplomatic issues which forced the American IOCs to withdraw in 1986, sanctions enforced by UN and US in 1992 and 1996 respectively, seriously hit the oil production. UN sanctions began being lifted in 1999 and US sanctions in 2005. However, by the time the conflict commenced in 2011, oil production was 1.8 million barrels of oil per day, a little over half of that were produced at the end of the 1960s.

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

Significant new developments

Libya has managed to increase its oil output to more than 1 million barrels a day during 2016 after what appears to be successful developments to reopen pipelines feeding the export terminals of Zueitina,

Zawiya, Ras Lanuf, Es Sider and Mellitah. Mustafa Sanalla. Chairman of the NOC, also was hopeful that oil production will increase as the security situation improves in the country.

Reservoir estimates

According to the OPEC, Libya had total proven oil reserves of 48.4 billion barrels as of January 2014 – the largest in Africa and in the top 10 globally. Approximately 80% of those reserves are situated in the Sirte Basin. Libyan crude is sweet (low Sulphur content) and generally light (high API gravity).

The Oil & gas Journal estimated in January 2012 that Libya's proven natural gas reserves were 52.8 trillion cubic feet. New discoveries were expected to increase Libyan proven reserves in the short term prior to the events of 2011.

Fiscal Regime

Institutional oversight and regulatory framework

LNOC audits the IOC operators of EPSAs for cost recovery purposes. The non-operating IOCs of EPSAs are required to register Libyan branches (to be the contracting party to the EPSA) which are not cost recoverable and are not audited by LNOC.

The Dewan (auditors of government contracts) performs cost recovery audit of the IOCs of the 2 remaining CA. The non-operating IOCs of CA have Libyan branches which are cost recoverable and are audited by the Dewan. The Tax Department audits the IOCs for undeclared salaries and wages and to ensure the contracts with their main service providers have been appropriately registered.

Forms of Contract

Exploration and Production Sharing Agreements (EPSAs)

Since the 1970s, EPSAs have been offered to the IOCs. EPSAs are signed with LNOC. The exploration phase has a minimum work commitment, normally for a period of 5 years and the IOCs take sole risks. 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 takes 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 Agreement

LNOC has signed several Joint Venture Operating Agreements (JVOAs) with foreign investors for the operation of terminals.

Government participation

Since 2005 new exploration acreage has been released based on 4 open bid rounds where pre-approved IOCs have been allowed to submit bids. The bids have been based on two factors:

- Firstly, on the lower share in any discovery and
- If there were a tie, the amount of signature bonus being offered.

The open bid rounds have been considered a success by LNOC due to the competitive bids being tendered.

The Participation Agreements forced the then concession holders to surrender 51% of their stake to the LNOC. In the last 5 years, a number of these agreements have come to the end of their period and the IOCs have been able to renegotiate their interests in the old agreements but at a significantly lower stake in line with the recent open bid rounds.

Regulatory Framework

Upstream Industry

Libya has had a policy of trying to spread production rights across nations. LNOC has in the past tried to prevent offshore deals that swap production rights between different foreign entities. Current EPSAs give LNOC first refusal to the sale of any production rights. Libyan oil exports during 2010 went approximately 25% to Italy, 15% to France, 10% to Germany, 10% to Spain and 40% to other countries.

Midstream Industry

Libya has a good network of pipelines, but they need modernization. The Melitah subsea pipeline has had a significant impact on gas exports since its opening in 2004. The pipeline is 520 km long, connecting to Gela in Sicily, flowing into the Italian mainland and then onwards to the rest of Europe.

Libya uses 7 export terminals to export crude oil, some of which suffered severe damages 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 Industry

Libya has 5 domestic refineries with a combined capacity of 378 thousand barrels per day. The largest refinery is at Ras Lanuf which had a capacity of 220 thousand barrels of oil per day prior to the 2011 conflict. UN Resolution 883 of 1993 banned Libya from importing refinery equipment. Consequently, Libya is seeking a comprehensive upgrade to its entire refining system, with a aim of increasing output of gasoline and other light products.

Libya has, through its overseas retail arm Oil invest, refinery operations in Europe (Germany, Italy and Switzerland)

Capital investment regulations

EPSAs contain an agreed minimum work commitment of the number of wells to be drilled and the amount of 2D and 3D seismic to be run. The agreement also contains a value for the minimum work commitment, where guarantees have to be put in place, as a penalty, if the minimum work commitment is not completed within the requisite time.

Local Content Regulations

EPSAs normally require that operators shall at all times, use Libyan contractors, provided that they are competitive in terms of performance, price and availability. Since LNOC has representation on the IOCs management committee during the exploration phase, it would be involved in the awarding of major contracts. If a commercial discovery is made, then LNOC would have control of the newly formed operator.

Taxation Regime

Basis of taxation

IOCs tax liability is in accordance with the Petroleum Law, as amended. Revenues are assessed at the official selling price, based on global market prices with a slight adjustment for the different types of Libyan blends. The law set taxes on petroleum related income at 65%, comprising of corporate income taxes and a surtax. Current corporate income taxes are 24 % and therefore the surtax is 41%.

LNOC acts as receiving agent for the petroleum tax returns of the IOCs and issues receipt 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 settle 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 amortized 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 unfavorable taxation terms meant that IOCs stopped lifting and the CAs had no requirement to lift. The TPC system was initially intended to provide tax credits to the IOCs but has rather resulted in additional taxes being paid. The system provides the IOCs, a fixed margin of 6.5%. Fixed assets are written off over 3 years on a straight-line basis.

Company Income Tax (CIT)

CIT returns are to be filed latest four months after the year end and payments are in four equal instalments starting June, September, December and January the following year. The tax rate is 24%.

Capital Gains Tax

Libya has no separate Capital Gains Tax. Capital gains are added to the taxpayer's normal taxable income and assessed accordingly.

Thin capitalisation

Libya has no thin capitalization regulations.

Profit repatriation

Libya has no profit repatriation issues. The IOCs operating as branches of foreign companies are permitted to hold foreign currency accounts offshore and do not have to make any formal branch profit distributions.

Transfer pricing regulation

Libya has no transfer pricing regulations. The price of liftings by the IOCs is set for local tax and cost recovery purposes and the IOCs have no obligation to declare what price their products have been sold offshore.

Indirect taxes

Customs Duties

Petroleum Law, as amended, provides exemption on customs duties relating to oilfield specific materials or equipment. If equipment is imported on a temporary import basis then a deposit or guarantee would be required.

Stamp Duty

Stamp Duty Law applies duty on various documents and transactions. EPSAs are now subject to a stamp duty at a rate of 1% on the initial minimum work commitment of the exploration phase as defined within the individual agreements.

Value Added Tax (VAT) and Withholding Tax (WHT)

Libya has no value added taxes or withholding taxes.

Other Taxes

Employee Taxation

Payroll tax is withheld by the employer. It is 5% for the first LD 1,000 per month and 10% thereafter. Jihad tax at 3% is also applicable.

Social security contributions

Social security contribution rates are 3.75% by the employee and 11.25% by the employer on the employee's basic salary.

Taxation of Oil Service Companies (OFS)

Oil service companies are subject to the normal tax law and the corporate tax rate is effectively 24%. The tax return needs to be submitted four months after the year end (i.e. 30 April) the following year.

Deemed Profit Taxation

In Libya, this does not apply to oil exploration and production companies but rather to service companies.

Other Tax Issues

Libyan Nationals or expatriates working in Libya are subject to various taxes, contributions and duties as follows:

- Income Tax: 5% – 10%
- Jihad Tax: 3% Social Security Contributions: 3.75% Employees and 11.25% Employers
- Social Solidarity Fund: 1%
- Stamp Duty: 0.5% on net salary

Incentives

The main incentives to IOCs are the exemption from customs duties and, as branches of foreign companies, there is no requirement to make formal distributions, and are permitted to receive revenues for oil sales to offshore bank accounts.

The attraction for the IOCs to sign EPSAs is the relatively low cost of production, in some fields USD 1 per barrel, and its proximity to the European market. Libya is the single largest supplier to the European market. In addition, only 25% of Libya's oil has been explored.

Compliance requirements

Statement of Cumulative Expenditure

The operating IOCs during the exploration phase must file to LNOC on a monthly basis, a statement of expenditure and a final annual return which must be submitted within two months following the year-end which the statement relates.

Financial Declarations

For the concession holders, a monthly Financial Declaration coupled with a payment for taxes and royalties is required within 30 days after the month-end. A final annual Financial Declaration is filed four months after the year-end. The notional Financial Declaration prepared by the EPSA holders should be filed quarterly, 30 days after the quarter-end. The final annual notional Financial Declaration should be filed three months after the year-end.

Branch Financial Statements

All registered entities in Libya have an obligation to file financial statements to the tax authorities. Filing should, under normal circumstances, be completed within four months of the entity's year-end or one month after the date of the audit report, whichever comes first.

Tax Audits

The authorities carry out audits every three to four years. Normally the final tax assessment is based on deemed profit which is a percentage of the revenue.





Madagascar

Contact



Andriamisa Ravelomanana

andriamisa.ravelomanana@pwc.com



Lanto Ralison

lanto.ralison@pwc.com



Sylviane Rakotomanana

sylviane.rakotomanana@pwc.com



Oil and Gas Sector



Brief overview of the Oil and Gas industry in Madagascar

Economic updates

The Madagascar Financial Acts provide estimated major economic indicator forecasts twice a year: the initial financial act and the amended financial act which modifies some provisions of the initial financial act according to the economic context.

Political updates

During 2022, Madagascar's political climate was stable.

The new President took office on January 19, 2019 and is still facing a challenge to revitalize the economic recovery and risk of political instability. His mandate will end in 2023.

Overview of the oil and gas developments in Madagascar

The oil and gas industry in Madagascar is regulated by the Petroleum Laws dated 1996 & 1999 (which regulate the upstream and downstream sectors respectively) however, several bills seeking to reform regulation of sector are in discussion.

The 1999 Petroleum Law created the Office des Mines Nationales et des Industries Stratégiques - Office of National Mining and Strategic Resources (OMNIS) to regulate upstream operations. The main function of the OMNIS is to establish a national policy on mining activities, manage contractor relationships, and work with relevant experts on research and exploration. As for downstream operations, the regulating body is the Office Malgache des Hydrocarbures - Malagasy Office for Hydrocarbons (OMH).

Exploration of oil in Madagascar has been from the major blocks such as the Tsimiroro block.

A new oil and gas code related to upstream activities has been under preparation since few years. In the meantime, issuance of new mining title is suspended.

Fiscal regime

Oil and gas companies are subject to the General Tax Code which contains some specific provisions for upstream activities.

Petroleum Contractors' regime

Upstream activities must be conducted with partnership with OMNIS.

Regulatory framework

- Upstream: Entities operating in the upstream sector are regulated by the Office des Mines Nationales et des Industries Stratégiques (OMNIS) – national office for national mining and strategic industries
- Downstream: Entities operating in the downstream sector are regulated by the Office Malgache des Hydrocarbures (OMH) – national office for hydrocarbons

Forms of contract

Production Sharing Contract (PSC) structures apply.

Local content regulations

No local content regulations apply.

Taxation regime

Direct Taxes

Oil and gas activities are subject to the following direct taxes.

Royalties:

- On crude oil: Royalty is charged at the rate of 8% to 20%, depending on barrel production; This is payable on hydrocarbon extracted from a well
- On natural gas : Royalty is charged at the rate of 5% to 10% depending on m3 production
- On heavy oil and bitumen : Royalty charged is to as determined in the Production Sharing Contract

Direct Tax on Hydrocarbons (IDH): Direct Tax on Hydrocarbons is a tax on profit oil realized by an upstream business. Tax rate is 20%. It is representative of corporate tax and withholding tax on interest.

IDH is levied at the rate of 20% and is paid provisionally on a bimonthly frequency, based on the past year's IDH.

The final balance and return is due yearly either on 15-May or 15-Nov, depending on Financial Year end (31-Dec or 30-Jun respectively), or 15th day of the fourth month following the end of the financial year, for other closing dates of the financial year.

The tax payable during a year cannot be less than 100.000 Ariary plus 0.5% of annual revenue

Capital Gains Tax

Gains realized from the sale of interest in upstream business is not taxable revenue.

Corporate Income Tax (CIT)

Corporate tax is applicable on downstream business. Upstream business is not subject to CIT.

Downstream business realizing a turnover equal to or exceeding MGA 200 000 000 are subject to Normal Regime (“régime du réel”) and those realizing a turnover under MGA 200 000 000 may choose between the Normal Regime and the Lower Revenue Regime (“impôt synthétique”).

Corporate Income Tax (CIT) is levied at the rate of 20% and is paid provisionally on a bimonthly frequency, based on the past year’s CIT.

The final balance and return is due yearly either on 15-May or 15-Nov, depending on Financial Year end (31-Dec or 30-Jun respectively), or 15th day of the fourth month following the end of the financial year, for other closing dates of the financial year.

The minimum corporate income tax for Oil & Gas companies is 100.000 MGA plus 5/1000 of turnover.

Withholding taxes

A 10% withholding tax (WHT) applies on payments made to foreign services providers by a locally established beneficiary.

A 5% WHT also applies to payments for goods and services to local, non-registered suppliers..

Thin capitalisation and transfer pricing

Thin capitalization rule is not applicable to upstream business.

The following provision is applicable to other business.

For intercompany loans, deductible interest is limited to interest calculated on twice the shareholders’ equity at the rate of the Central Bank of Madagascar plus two (+2) points. In case of an infringement of this provision, tax adjustments and a 40% penalty shall be applied.

Transfer Pricing Documentation (TP Documentation)

In addition, where TP documentation is claimed during tax audit but not available, a penalty of MGA 10.000.000 is applicable.

Intra-group transactions must be supported by TP documentation.

TP documentation shall be filed at the same time as the yearly financial statements.

Double Tax Treaties (DTT)

Double Tax Treaties have been ratified with Mauritius, France, Canada and Morocco.

Indirect Taxes

Value-Added Tax

The taxpayer with an annual turnover equal to or greater than 400 000 000 MGA is subject to VAT (20%). VAT on export rate is 0%.

VAT Returns are due monthly on the 15th of the month following the operative event.

Sales Tax

N/A – refer to VAT

Customs and excise duties

Customs rate is levied at the rate of 0% - 20%, depending on the nature of the goods.

However, during the research and exploration, goods required for the petroleum project may be imported under temporary admission regime (AT), exempt from import and customs duties.

Property Tax

- Land Tax (IFT) (in local currency units per hectare): on any titled bare land.
- Tax on Built Property (IFPB): 5% to 10% on all titled buildings and surrounding land depending on the location of the property

Other taxes

Taxation of Oil Field Service (OFS) companies

OFS Companies are subject to the normal, common law taxation including VAT.

Employment tax (IRSA)

Employee' remuneration is subject to 20% salary income tax, which is directly withheld by employer.

- Social Security contributions: National pensions (CNaPS): 13% (employer) and 1% (employee) of the gross salary, which is capped to 8 times of the minimum salary applicable.
- Medical care contributions (SMIE): 5% (employer); 1% (employee)

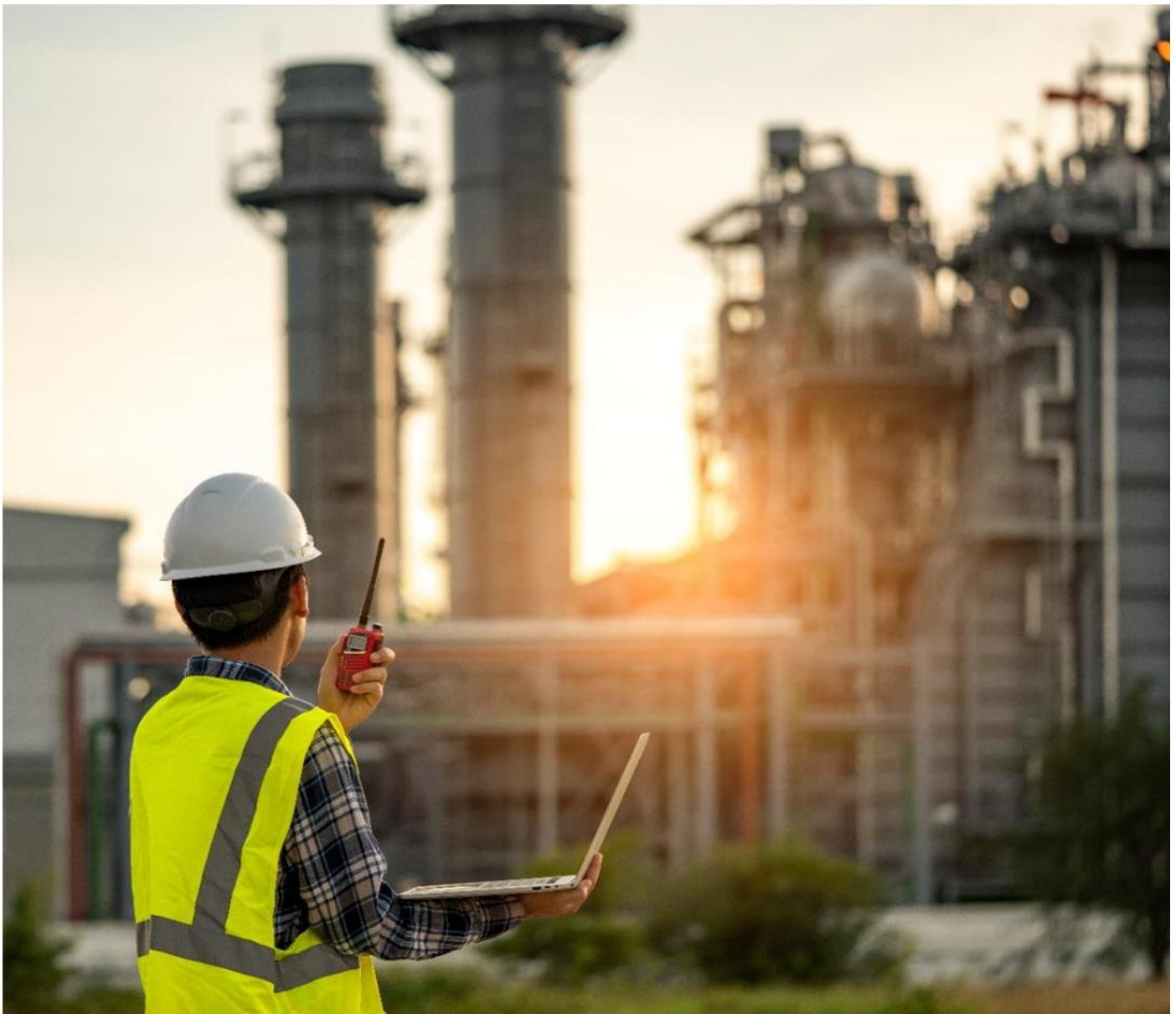
Employer must also contribute to 1% of the payroll, to the National Fund for the financing of vocational training or the National Fund for Industrial Development.

Deemed Profit Taxation

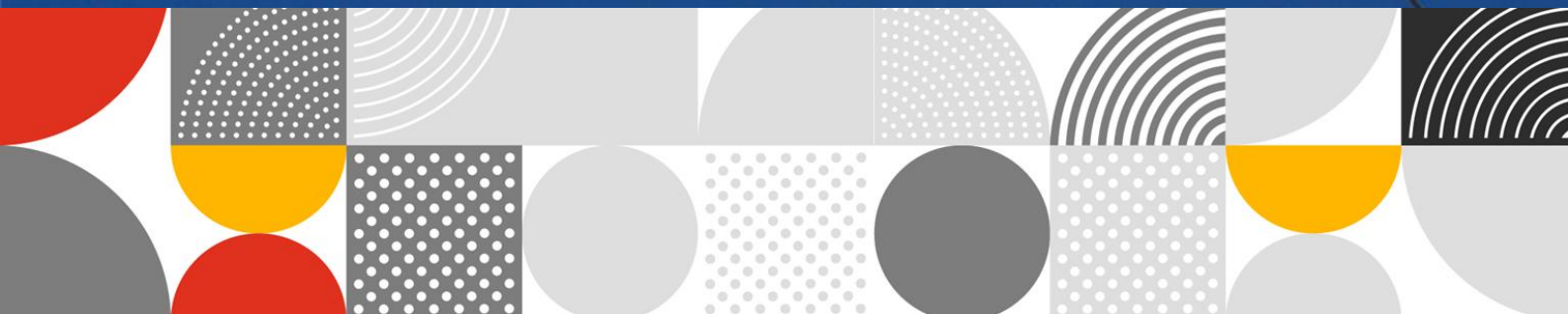
Deemed profit taxation applies to all companies, regardless of their industry, specifically companies that are not legally registered but are conducting business in Madagascar, or where companies do not file tax returns in due time.

Tax Audits

Tax Audits are usually carried out every three (3) years. In practice, they happen with transactions that have high potential tax adjustments, which require lengthy and technical discussions with tax authorities.



Power and Utilities Sector



Brief overview of Power and Utilities development in Madagascar

The business of generating, transmitting and distributing electricity, throughout the country must be done under a concession agreement.

JIRAMA a state-owned company is the sole authorized to sell to customers. Any other operator having a concession agreement must sell production and transportation of electricity to JIRAMA.

JIRAMA is also in charge of collecting tax and royalties on electricity from customers, which inthen remits them to the tax authority and the relevant municipality respectively.

The tax and royalties for electricity are composed of:

- Municipality tax and contribution for Fonds National pour l'Electricité (FNE)
- VAT at a rate of 20%

Tax and royalties on electricity are based on the value of the consumption of electricity.

The royalty rate is set by the corresponding municipality.





ESG



ESG Framework

ESG is expected to have an impact on attractiveness of the country on Oil and Gas exploration. However post COP26, the government of Madagascar has not put in place any concrete action or made any commitments towards ESG.

Community engagement on ESG

Amongst others, there were two main workshops held in Madagascar:

- Fair on Corporate Social Responsibility (CSR) and Sustainable Development Initiatives (SDI)

It took place on 06 and 07 October 2021. The objective was to facilitate the meeting and the exchanges between actors, experts and the general public to deploy a strategy of sustainability.

- Indian Ocean Sustainable Development Conference

The Indian Ocean Sustainable Development Conference was held in Antananarivo on November 4 and 5, 2022 at the Novotel, as part of Madagascar's presidency of the Indian Ocean Commission and in response to the commitments made by the 8 islands (Madagascar, Mayotte, Comoros, Mauritius, Seychelles, Reunion, Maldives, and Zanzibar) to actively combat climate change through concrete and targeted projects involving these islands and three partners: Morocco, the United Arab Emirates and India.

Investors from these 3 countries are invited and prioritized to collaborate and build transformative projects in the Indian Ocean, in partnership with the 8 islands.

The discussion was about three main themes:

- The Blue Economy
- The common carbon offset strategy
- 1 year after Glasgow: about Global warming

Other ESG Considerations

Not specifically for ESG, but as general information, the following organisations are very active in the fight against corruption and money laundering in Madagascar:

- SAMIFIN or in malagasy: Sampan-draharaha Malagasy Iadiana amin'ny Famotsiam-bola (Financial information service)
- CSI ou Comité de Sauvegarde de l'Intégrité (Committee for safeguarding the integrity)
- BIANCO or Bureau Indépendant Anti-Corruption in french (Independent Anti-Corruption Office).
- ARAI : Agence de recouvrement des avoirs illicites
- SIIGAC or Système d'Information Intégré de la Gouvernance et de l'Anti-corruption The objectives of SIIGAC are to promote a culture of transparency and accountability; to provide a synthetic view of the corruption situation in the country, providing information on the effectiveness and compliance of the anti-corruption system; to assist in targeted decision making and implementation of anti-corruption measures; to relay both positive and negative signals from international indicators on anti-corruption and governance; as well as to contribute to the internalization of the main regional and international anti-corruption legal instruments.





Mauritania

Contact

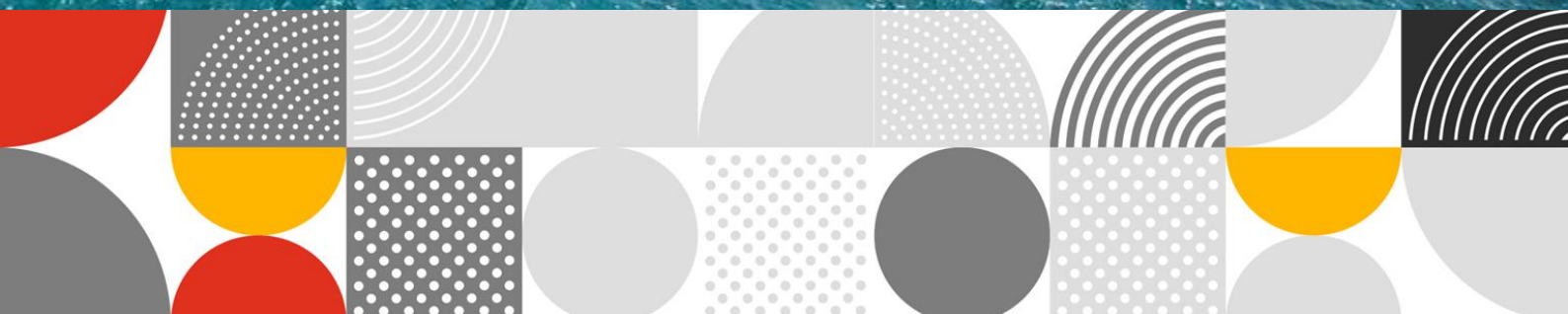


Moussa Awe

moussa.awe@pwc.com



Oil and Gas Sector



Brief overview of the Oil and Gas industry in Mauritania

O&G sector actuality in Mauritania is characterised by reports on the progress of work in the GTA field.

Indeed, despite COVID 19 having pushed many oil companies into bankruptcy, BP, Kosmos and their partners have been able to resist. Moreover, to facilitate the financing of the project, a lease-back contract for the FNLG was signed with a foreign partner. This contract required an Additional Act No. 2 signed in Q3 of 2021 taking into account the imperatives of the moment.

In 2021, the work was approximately 70% completed through the efforts of **IEFFAGE MARINE**, to the happiness of the population and the government.

BP and its partners have been working hard to make the first gas production in Mauritania and Senegal a reality by 2023.

The sector is also marked by the closure of Tullow Oil's Banda and Thioff wells, the decommissioning of which is entrusted to Maersk Decom. After the failure of this first experiment with Tullow Oil, the Ministry of Oil, Mines and Energy signed a memorandum with the international energy operator, **NEW FORTRESS ENERGY (NFE)** for the development of this offshore gas field for the generation of electricity, a gas-to-power scheme.

Another fact is the handing over of the **EXXON MOBIL** and **TOTAL E&P** blocks and its return from the country.

Also, in Q3 of 2021, the government signed a memorandum of understanding with the British company Chariot Oil & Gas to develop up to 10 gigawatts of green hydrogen from wind and solar power plants, taking advantage of its proximity to Europe to export green hydrogen and its derivatives.

Also, the giant **CAPRICORN** has been awarded a C7 block on the coastal basin in May 2021.

Political Updates

Since the regime change in 2019, one of the pillars in the Department of Energy's vision to "produce clean, sustainable and affordable energy for industrial and domestic needs by drawing on the country's gas resources" is "gas to power". Agreements for the construction of new power plants have been concluded by the Ministry and contracts for seismic surveys of most waters have been signed for resource estimation and mapping.

Economic changes

No major economic changes occurred during the year.

Regulatory framework

- **Société Mauritanienne des Hydrocarbures et de Patrimoine Minier:** It is the State Oil company that prepares and negotiates all petroleum conventions and contracts.
- **The Ministry of Petroleum and Renewable Energy:** This department controls oil and gas operations carried out in Mauritania.
- **The French Central Bank for Mauritania:** this bank keeps the National Fund for Hydrocarbons Revenue. They receive all Mauritanian hydrocarbons revenue.
- **The Strategic Orientation Committee for Oil and Gas:** This committee is in charge of assisting the President of the Republic and the Government in defining, supervising, evaluating and monitoring the implementation of the State policy on the development of oil and gas projects.

Forms of Contract

Production sharing contract (PSC)

It is a service contract whereby the State or a State Company awards exclusive hydrocarbon exploration and exploitation rights within a defined perimeter, to one or several qualified persons or companies. The production sharing contract specifies the rights and obligations of the holder and of the State or a State Company, including the conditions for the sharing of the hydrocarbons produced and the recovery of petroleum costs incurred by the holder and its remuneration.

Taxation regime

The domestic tax

The fiscal regime applicable to the oil and gas industry primarily consists of corporate tax, various indirect taxes, and a mineral and petroleum royalty regime.

Oil & Gas companies are subject to corporate income tax in accordance with the Income Tax Act #2011-044 of October 25th, 2011 amending and supplementing Law #2010-033 of July 20th, 2010 governing the Hydrocarbon Code (HCC).

However, in addition, the taxation of oil and gas companies, as defined, is regulated by the Title VI (the

Custom & Tax of the HCC), which provides for specific treatment of various items applicable to these companies.

Thus, in accordance with section 86 of the HCC, the Contractor and its affiliates are exempt from all other taxes, including minimum tax, general income tax (and all other income taxes), withholding tax on dividends (and similar taxes which might apply on distribution of income), all sales taxes (including taxes on services), apprenticeship tax, business licence tax, registration fees, stamp duties and all other taxes/duty/right, as long as the income generated is connected to Petroleum Operations.

A Production Sharing Contract (PSC) providing a stabilisation clause to insulate the agreement between Mauritanian State and the Contractor (Petroleum company) from adverse changes to the legal and fiscal environment is usually signed to govern the legal, administrative, tax and customs requirements (rights and obligations) agreed.

The GTA Additional Act taxation

As said above, operations in the GTA field are taxed under provisions of GTA Additional Act (GTA/AA) defining tax and customs regime applicable to subcontractors working in this field. They are subject to an actual regime or a WHT regime and exempted from all tax and duties for their activities in the field.

The concerned field is related to Grand Tortue/Ahmeyim, maritime border between Mauritania and Senegal.

Direct taxes

Corporate tax

- Contractors are subject to Corporate Income Tax (CIT) on net profits from oil and gas operations in accordance with the actual regime provided by the provisions of the General Tax Code, subject to the specific terms and conditions set forth below.

This tax is established annually separately for each entity party to the contract and for the results of each PSC.

For this purpose, each of these entities shall keep separate accounts for each calendar year. Thus, making it possible to establish a profit and loss account and a balance sheet showing the results obtained from their participation in each PSC and the assets and liabilities allocated to it or directly related to it.

The PSC specifies the rules and bases for the allocation of profits and expenses to be recorded in the income statement.

The tax rate applicable for the entire term of the PSC is also stated in the PSC. It is at least equal to the rate of the domestic law in force on the date the contract was signed.

The CIT return and the annual financial statements shall be submitted by March 31 of each year at the latest.

- GTA subcontractors subject to the actual regime are submitted to a CIT at 25% rate with a minimum of collection of 1.75% of the turnover carried out in GTA. This regime is similar to the domestic tax regime of the real regime. This GTA/AA actual regime is applicable to subcontractors for which their activities are deemed to be a PE.

Oil and Gas deductions

The following charges incurred for oil operations, within the limits specified in the PSC, are considered as deductible:

- Cost of supplies, personnel and services;
- General expenses;
- Depreciation of fixed assets;
- Interest and bank charges paid by the contractor in respect of loans contracted from third parties and loans obtained from affiliated companies insofar as such loans, duly approved by the Minister, are allocated to funding petroleum development operations. The rate of interest paid to affiliated companies shall not exceed the rates usually applied on international financial markets for loans of a similar nature;
- Losses of equipment or property resulting from destruction or damage, bad debts and compensation paid to third parties as damages, unless such damages are caused by the fault or negligence of the contractor;
- Reasonable and justified provisions set up to meet with clearly specified losses or charges which current events make probable;
- The unadjusted number of deficits relating to previous years, within the limit provided for in the General Tax Code.

Royalties

Under the HCC, contractors shall pay annual area fees, calculated on the basis of the area of the contract

perimeter on the due date for each payment.

These royalties are neither considered as deductible charges for the establishment of the income tax, nor as recoverable petroleum costs.

The PSC shall specify the rate and basis of the surface royalty for each phase: the exploration period and the exploitation period.

Bonuses

Under the HCC, contractors are liable for a signature bonus on the effective date of the PSC, as well as a production bonus when the quantity of hydrocarbons produced reaches certain thresholds set out in the PSC.

The signature and production bonuses do not constitute a deductible expense for the establishment of the income tax, nor do they constitute recoverable oil costs.

Administrative contribution

Under HCC, contractors are required to pay an annual contribution for the training and development of the Ministry staff, the monitoring of oil operations and the promotion of the oil sector.

The contribution amount and its collection requirements are set by the PSC.

The contribution is deductible for the establishment of the income tax but is not a recoverable petroleum cost.

Capital gains tax (CGT)

The corporate income tax rate is applicable on the capital gains from transfer of shares. The capital gains are equal to the difference between the sale price (arm length price) minus the acquisition value.

Under the General Tax Code, a property income tax is applicable to the sale of exploration permits at a rate of 10%.

The sale of production permits is subject to an immovable property tax at the rate of 10%.

Transfer Pricing

The transfer pricing regulation has been introduced by the financial law #2018-001 dated January 1, 2018.

The regulation globally corresponds to the OECD requirements standards, i.e. identify related party transactions, choose the suitable transfer pricing

method and prepare the documentation to support the selection of such method.

It applies to intercompany transactions or transactions with a company located in non-cooperative states or with states with a privileged taxation regime. The documentation should be readily available upon request from the tax authorities. Otherwise, the tax authorities may set the prices themselves and reassess the tax accordingly.

The financial law #2018-001 of January 1, 2018 has provided new obligations regarding to transfer pricing:

- Transfer pricing annual return: This declaration must be filed along with the financial statements and CIT return, on March 31 of each year, at the latest.
- Country by country report: This declaration must be filed in a dematerialized form, within twelve months following the closing of the fiscal year.

For the GTA field subcontractors are subject to TP requirements as described above.

Thin capitalization

There is a limitation of deductibility for corporate tax purposes.

Under HCC provisions, Interest and bank charges paid by the contractor in respect of loans contracted from third parties and loans obtained from affiliated companies insofar as such loans, must be duly approved by the Minister and allocated to funding petroleum development operations.

The rate of interest paid to affiliated companies shall not exceed the rates usually applied on international financial markets for loans of a similar nature.

Withholding tax

- Under section 87 of the HCC, the contractors are subject to a withholding tax of 7.5% (CIT 4% and PIT 3.5%) on services rendered by non-established subcontractors approved to the Simplified Tax Regime (STR). This WHT is collected at the time of the payment and remitted to the Public treasury at least the 15th day of the following month.

Services provided by foreign companies, which are not approved to STR are subject to a WHT of 15%.

Contractors are also subject to 18% WHT on house or office rental and on 2.5% WHT on services rendered by non-commercial entities (previously 3% before the 2020 General Tax Code).

- Under GTA AA, the WHT regime is provided for subcontractors that are not deemed to be a PE and those who realised a turnover lower than the threshold of USD 3 million. It consists of a WHT of 7% corresponding to CIT (4%) and PIT (3%) on payments made to foreign subcontractors by the contractor/operator and subcontractors subject to the GTA/AA actual regime.

Double Tax Treaties

Mauritania entered into double tax treaties with France, Senegal, the states of the Arab Maghreb Union (Algeria, Libya, Morocco and Tunisia) and UAE (United Arab Emirates).

Indirect taxes

Value-added tax (VAT)

Contractors shall be subject to value added tax (VAT) under the domestic law, subject to the provisions below:

- Exports of hydrocarbons are subject to VAT at a zero rate;
 - Local purchases of goods and services directly related to oil operations are subject to VAT at the zero rate;
 - Imports are subject to VAT either at the zero rate for any material or equipment directly necessary for the proper performance of oil operations, or to temporary admission under suspension of VAT for goods admitted to this customs regime;
 - Any VAT credit refundable according to the regulations in force and which has encumbered local purchases and imports shall, after verification, be refunded within ninety (90) days following the introduction of the refund application.

Subcontractors operating under GTA/AA rules are exempted from VAT.

Custom duties/Import tariffs

- Contractors and their subcontractors' imports shall be subject to the provisions of the Customs Code and its implementing legislation in force. Customs duties are from 0%, 5%, 13%, 20% et 22% depending on the nature of the goods and customs regime and the Statistical Import charge is at 1%.

Imports are subject to the special terms and conditions set out below.

Materials, machinery, equipment, engines and vehicles, spare parts and consumables intended for oil operations and appearing on specific customs lists may be imported either with total exemption from customs duties and taxes, or temporary admission with suspension of customs duties and taxes for those intended to be re-exported after use. Food products and articles for private use are excluded from the specific customs lists.

- Under GTA/AA provisions, subcontractors are exempted from import duties and taxes, including fees, charges and para-fiscal and community levies for the materials, machinery, vessels, facilities, platforms, vehicles utility, gear and equipment, as well as spare parts, products and consumable materials imported into Mauritania or Senegal, used directly and exclusively in the Oil Operations of the GTA Project.

This exemption also covers fuels and lubricants for fixed installations, drilling equipment, machinery, vessels, utility vehicles, gear and other equipment intended for oil operations of the GTA Project. Food products and items intended to be used privately are excluded from the exemption.

However, the materials, machinery, vessels, facilities, platforms, vehicles, utility, gear and equipment that may be re-exported or assigned/transferred after their use, will be declared under the temporary admission regime.

Other indirect taxes

The petroleum products tax rate is 20%.

Besides, the production and importation of some products are subject to a consumption tax at the following rates:

- Regular gasoline: 5.7 OUGUIYA/L
- Super fuel: 5.8 OUGUIYA/L
- Diesel (gasoil): 3.67 OUGUIYA/L
- Diesel-oil: 3.45 OUGUIYA/L
- Kerosene: 3.086 OUGUIYA/L
- Light fuel oil and heavy fuel oil: 0.45 OUGUIYA/L
- Lubricating oils and lubricants: 3.42 OUGUIYA/kg
- Liquefied gaseous hydrocarbons (propane): 3.104 OUGUIYA/kg

Other taxes

The contractor shall be subject in accordance with the

conditions of domestic law to the following:

Housing tax determined by the Municipal Council;
Tax on motor vehicles, with the exception of off-road vehicles;

Charges levied by the State, local authorities, public establishments or public services for the use by contractors of roads, various networks and other services, at the rates and under the conditions generally applicable to users of these services.

Personal income tax

Contractors are required to withhold and remit to the public treasury the tax on wages and salaries (PIT) provided for in the General Tax Code at the rates and according to the rules in force.

However, for expatriate staff working in Mauritania, the rate is capped at thirty-five percent (35%)

Social Security

Act No. 67-039 of 3 February 1967, as amended by Act no. 72-145 of July 18th, 1972 and Order 87-296 of November 24th 1967, established a Social Security Regime in the Islamic Republic of Mauritania to provide social security for the service of:

- Family benefits (family benefits branch);
- Occupational accidents and professional diseases (professional risks branch);
- Old age, invalidity and death pensions (pensions branch);
 - and any other social security benefits which may be established at a later stage for employees.

Social security contributions are withheld monthly by employers and are computed on the basis of gross salary paid up to MRU 7,000. Besides, rates of social security contributions are 1% for employees and 15% for employers.

Social security benefits concern sickness, maternity, retirement, disability, or invalidity.

The rates are the following:

- Industrial Health 2%;

- Industrial Injury 5%;
- Retirement Plans 5%;
- Family Allowances 4%

The withheld amounts must be remitted to the Social Security Administration quarterly (the 15 of each April, July, October and January at the latest).

Taxation of Oil Field Service (OFS) Companies

OFS are subject to the domestic law in Mauritania, except if they meet the conditions under section 87 of the HCC. Indeed, according to the HCC provisions, the oil and gas subcontractors shall benefit from a Simplified Tax Regime (STR).

Deemed Profit Taxation

In accordance with the HCC, a deemed profit taxation is applied to an STR approved subcontractor. Its income is taxed at 25% of taxable income applied on a turnover valued at 16%, i.e. 4% of turnover.

Deemed Salary Taxation

In accordance with the HCC a deemed profit salary taxation is applied to an STR approved subcontractor. Income is taxed at 35% of taxable income applied on a turnover valued at 10%, i.e. 3.5% of turnover.

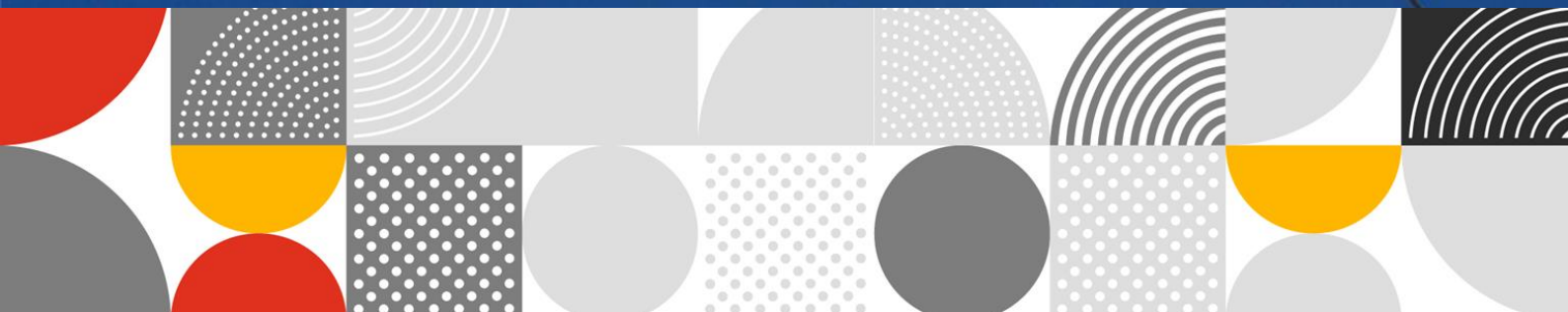
Tax audits

The tax administration has its own agenda to conduct tax audits, but we can confirm that tax audits and tax reassessments are frequent. In practice, an objection letter is transmitted to the tax administration within the statutory deadline and then meetings are scheduled to discuss items that need more clarification.

Local content regulations

A decree- 2018-025 of 8 February 2018 cancelling decree No. 2009-224 of 29 October 2009 repealing and replacing Decree No. 74-092 of 19 April 1974 stating conditions of employment of foreign workers and establishing a Mauritanization plan is applied to companies established in Mauritania.

Power and Utilities Sector



Brief overview of Power and Utilities development in Mauritania

The National Energy Agency (SOMELEC) has been empowered by the government to build many power houses across the country. The government of Mauritania understands that the nation can only achieve full economic growth if the energy sector achieves optimal performance and aligns with the energy needs of its population.

Presently, the country has attained self-sufficiency in the energy sector.

Regulatory Framework

The main regulators of the energy sector are as follows:

- :Ministry of Petroleum and Energy;
- National Electricity Agency of Mauritania (SOMELEC);
- Electricity Regulatory Authority (ARSE)

The Electricity Regulatory Authority is an independent body responsible for the regulation of the production, transport, distribution and sale.

Tax regime

The general tax regime applies to participants in the energy sector and the companies in the power sector are subject to the standard tax audit procedures.





Morocco

Contact



Mahat Chraibi

mahat.chraibi@pwc.com

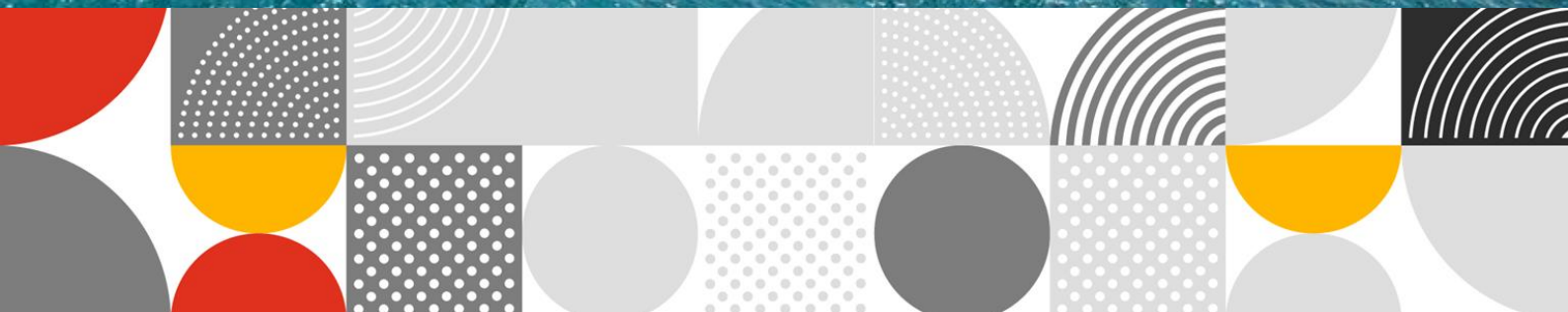


Nouredine Marzouk

nouredine.marzouk@pwc.com



Oil and Gas Sector



Brief history on Oil and Gas industry in Morocco

Morocco is a largely mountainous country in North Africa. It is geographically close to many oil and gas producing countries and presents oil-rich geological potential. Although the growing interest of oil companies in the region could imply that Morocco's hydrocarbon assets and reserves have a lot of potential, its oil and gas reserves remain underexplored.

As of 31 December 2020, hydrocarbon exploration licence was granted on a total area of 126,913.28 Km² and included 28 onshore permits, 26 offshore permits, 2 onshore reconnaissance licences, 1 offshore reconnaissance licence, 8 exploitation concessions and 2 Memorandums of Understanding (MOU) for oil sale.

Morocco aspires to become the new investment hub for oil and gas in the region, benefiting from its geostrategic position at the crossroads of Africa, Europe and the Middle East as well as the several free trade agreements concluded during the past few years.

Significant updates

The 2023 Finance law became effective on 1 January 2023.

Fiscal regime

Exploration and exploitation of hydrocarbons in Morocco is governed by law N0. 21-90 (enacted in 1992) as amended by law No. 27-99 (enacted in 2000) together with the hydrocarbon code. The hydrocarbon and tax codes provide the following:

Corporate Income Tax

A 10-year exemption from corporate tax is provided for the holders of Exploitation Concessions. However, this only applies from the date of regular production, prior to this the corporate tax rate levied is:

- 20% for companies with a net tax income lower than MAD 100 million and
- 35% for companies with a net tax income equal to or higher than MAD 100 million

The following rates applied as of January 1st, 2022.

Taxable basis	2022	2023	2024	2025	2026
Below or Equals to 300 KMAD	10%	12.50%	15%	17.50%	20%
Between 301 KMAD and 1 MMAD	10%	20%	20%	20%	20%
Between 1 MMAD and 100 MMAD	20%	28.25%	25.50%	22.75%	20%
Greater than 100 MMAD	31%	32%	33%	34%	35%

The following companies are excluded from the applicability of the 35% rate:

1. Service companies having the "Casablanca Finance City" status, being eligible to the tax regime provided for such status.
2. Companies carrying out their activities in the industrial acceleration zones.
3. Companies incorporated as from January 1st, 2023 which undertake within the framework of an agreement signed with the Government to invest an amount of at least MAD 1 500 000 000 during a period of 5 years as from the date of signature of the aforesaid agreement, except for public establishments and companies and their subsidiaries in accordance with the legislative and regulatory texts in force. This exclusion is subject to conditions.

Value Added Tax:

VAT is generally suffered at 20%. However, products and materials used in the manufacture of photovoltaic panels, acquired by the manufacturers of said panels, are exempt from VAT with the right of deduction. On the other hand, oil, gas Hydrocarbons, photovoltaic panels and solar water heaters are subject to VAT at a reduced rate of 10%.

Surface rental

The holder or co-holder of an exploitation concession must pay to the State, in accordance with the rates and procedures provided by regulations, an annual surface rental proportional to the surface of the exploitation concession.

Royalty

The holder or co-holder of a concession must pay to the State, in accordance with the scales, rates and procedures provided by regulations, an annual royalty on its share of the production of hydrocarbons originating from the concession, payable, in accordance with petroleum agreement provisions, either in cash or in kind, or partly in cash and partly in kind.

Regulatory Framework

In Morocco, the oil & gas sector is regulated by the Hydrocarbon law. However, other laws may apply such as the tax code, laws on environmental impacts, labor code and industrial property.

Key Regulators

The key regulators in the oil and gas sector include

- “Office National des Hydrocarbures et des Mines” (ONHYM): Established in 1928, it is a citizen organisation with a long mining history and is the basis for the discovery of almost all mines in Morocco;
- Ministry of energy, mines, water and environment (MEMWE) – Department of energy and mines: Develop and implement government policy in the fields of energy, mining and geology. The ministry also ensures the supervision of public enterprises under its jurisdiction (i.e. ONHYM) and controls sectors dependent on his authority; and
- Moroccan Tax authority.

Forms of contracts

The hydrocarbon code distinguishes two forms of contracts of which oil companies must conclude with the state in order to be granted the reconnaissance licence, the exploration permit or the exploitation concession.

- Reconnaissance contract: A contract concluded between the ONHYM and the company, for the reconnaissance and the evaluation of the petroleum potential of the area of interest. This contract is valid for a period of one year and can be extended.
- Petroleum Agreement: the purpose of this Agreement, which is concluded with the state, is to specify the rights and obligations of the Parties resulting from the Exploration Permit(s) and any Exploitation Concession which might derive therefrom.

The interested company agrees with the ONHYM on the delimitation of the area of interest and negotiates the terms of the Reconnaissance Contract or the Petroleum Agreement.

Local content regulation in the Oil and Gas Industry

There are no specific regulations provided with regards to the Moroccan local content, in the sense that it is not required for Moroccan individuals or entities to acquire the majority of share capital in oil & gas companies nor to hire a minimum number of Moroccan employees. However, the Hydrocarbon Code provides that, in the petroleum agreement, the state will hold no less than 25% stake in the exploration licence and the exploitation concession.

Taxation regime

Direct taxation

The taxable profit is computed as difference between:

- The gross income which is comprised of the value of the proportion relating to the holder of the exploitation concession in respect of a given fiscal year.
- The expenses, costs and amortization relating to the same fiscal year as well as tax losses to carry forward.

The tax losses are subject to statute of limitation rules defined as follows:

- For the part relating to amortization (other than nominal assets): the tax loss is carried forward without limitation in time.
- For the operating tax loss, it may be carried forward for 4 years.

Expenses and costs should be understood as the expenses of starting-up, of reconnaissance works, of operating cycle and those relating to the concession royalty and the surface rental.

Moreover, the expenses must be CIT deductible under the normal Moroccan tax law. Finance law 2023 has introduced CIT reform over 4 years with target rates of 20% and 35% depending on the net taxable profits. The progressive implementation of the target rates is as follows:

Taxable basis	2022	2023	2024	2025	2026
Below or Equals to 300 KMAD	10%	12.50%	15%	17.50%	20%
Between 301 KMAD and 1 MMAD	10%	20%	20%	20%	20%
Between 1 MMAD and 100 MMAD	20%	28.25%	25.50%	22.75%	20%
Greater than 100 MMAD	31%	32%	33%	34%	35%

A CIT exemption of 10 years is provided for oil and gas companies holding the exploitation concession as from the beginning of the production.

- The taxable period corresponds to 12 months.
- CIT returns must be filed within three months following the closing of the fiscal year.
- Payment of tax is made during the fiscal year by way of four instalments of 25% each based on the CIT of the previous year. A regularization is undertaken along with the submission of the taxable income return.

Concession royalty

The concession royalty is due on annual basis according to the following rates:

- Onshore and offshore less than 200 meters water depth: Royalties are levied on oil at 10% and gas at 5%. However, for the first 300,000 tons of oil and the first 300 million m³ of gas produced from each exploitation concession are exempt from royalties.
- Offshore beyond 200 metres water depth: Oil royalties are 7% and Gas is 3.5%. The first 500,000 tons of oil and 500 million m³ of gas produced from each exploitation concession are also exempt from royalties.

Surface rentals

- **Exploration permit:** for each exploration permit, a fee of 1,000 MAD is payable at the time of filing a request or applying for an extension period.
- **Exploitation concession:** for each exploitation concession a rental of 1,000 MAD per Sq. Km. is payable each year.

Consolidation

Moroccan law allows holders and / or co-holders of concessions to consolidate all revenues and expenses of which it holds for the purposes of calculating corporate income tax.

Corporate Income Tax (CIT)

Oil and gas companies holding a hydrocarbon concession are exempt from CIT for a period of 10 years as from the date of regular production of that concession. Further, newly established entities in Morocco are exempt from the “minimum contribution” for 36 months as from the beginning of the activity.

This minimum contribution is calculated on the amount of turnover, specific financial income, and specific non-current income at the rate of 0,25%.

The minimum contribution rate is reduced to 0,.125% for operations carried out by commercial companies for the sale of a number of products including: petroleum products, gas and electricity;

Moreover, the minimum contribution could not be lower than 3,000 MAD.

Withholding tax

Interest

Interest payments to non-residents are subject to 10% withholding tax. Having said this, the MTC provides withholding tax exemption for loans denominated in foreign currency for a period of 10 years at least.

Royalties

Royalty payments to non-resident entities attract 10% withholding tax.

Dividends

Dividends for companies operating in the hydrocarbon sector are exempt from withholding tax. Similarly, no withholding tax is levied on branch repatriation of profits.

Double Tax Treaties (DTT)

Morocco currently has more than 50 double tax treaties (DTTs) in force under which the domestic withholding tax rates could be reduced provided all relevant conditions are met. Eight tax treaties signed by Morocco came into force in 2022 and took effect on January 1st, 2023; These treaties are signed with Saudi Arabia, Benin, Ghana, Japan, Lithuania, Madagascar, Serbia and Slovenia.

Capital gains realised by non-resident companies:

The MTC provides for exemption of capital gains realised by non-resident entities on shares in Moroccan entities that are listed on the stock exchange except shares on rich land entities. This exemption is subject to the provisions of the relevant DTTs. The capital gain realised by an oil and gas company in Morocco is included within the taxable basis of the company unless stated otherwise by the DTT.

Capital gains on shares of property rich companies are generally taxable in Morocco under some DTTs.

Thin capitalization and Transfer Pricing

Article 213 of the MTC provides that the Moroccan Tax administration is entitled to adjust the taxable income and/or the declared turnover of Moroccan companies which are “dependent”, directly or indirectly, on enterprises located inside or outside Morocco. In this case, the MTC allows the tax authorities to re-determine profits that have been indirectly transferred. These adjustments are performed by way of comparison with similar enterprises or by way of direct assessment based on available information to the tax administration.

The Finance law 2019 introduced the mandatory filing of TP documentation in the event of Tax Audits. According to the provisions of Article 210 of the MTC, companies having direct or indirect links of dependence with companies located outside Morocco must provide tax authorities with documentation justifying their transfer pricing policy, on the date on which the tax audit begins.

The finance act 2021 has supplemented the provisions relating to transfer pricing documentation by requiring the submission of transfer pricing documentation during a tax audit. This obligation concerns companies that carry out transactions with foreign affiliates which meet the following conditions:

- Their turnover is higher or equal to 50 million dirhams.
- The value of their gross assets equals or exceeds MAD 50 million dirhams.

The said documentation includes:

A master file containing information relating to all the activities of the related enterprises, the transfer pricing policy applied and the distribution of profits and activities on a global scale and

A local file containing information specific to the transactions that the audited enterprise carries out with non-arm's length enterprises.

The 2021 finance law has also introduced a fine applicable to taxpayers who do not comply with this obligation. The fine is 0.5% of the amount of the audited transactions without being lower than 200,000 MAD per year.

The terms and conditions for the application of these measures will be determined by a decree.

Oil and Gas companies are allowed to deduct financial interest relating to loans. However, in the special case of Shareholder Current Account Advances (Shareholders loans), relating interests are deductible to the extent that the following conditions and limits are respected:

- The share capital must be entirely paid-up;
- Deductible interest is computed on an amount not exceeding the amount of share capital; and
- Interest must be computed based on rates provided by the Ministry of Finance. For 2023, the applicable rate is 1,89 %.

Indirect Tax

Value-added tax (VAT)

As a general principle, all industrial, commercial and handcraft transactions performed in Morocco are subject to VAT at 20%. Nevertheless, acquisition by the holders of reconnaissance licences, exploration permits or exploitation concession, as well as by their contractors or subcontractors, of goods and services necessary to the activity are exempt from VAT. The same rule is applicable for imported goods and services. It is worth noting that the VAT exemption is subject to some formalities and that sale of oil and gas are subject to 10% VAT.

All taxpayers making taxable supplies will need to register and account for VAT. Based on the level of turnover/taxable supply made, VAT returns are required to be prepared and filed either monthly or quarterly.

The VAT filing should be done electronically. The payment deadline is the end of each month or the end of the first month of each quarter.

Custom duties

Holders of a reconnaissance licence, exploration permit or concession as well as their contractors or subcontractors are exempted from customs duties and import VAT on equipment, materials and consumable items that are necessary to undertake hydrocarbon activity.

However, these incentives are not granted if said materials and equipment were purchased locally in the limit of 10% mark-up – price CIF – and in the same quality and delivery delay conditions.

Furniture and other personal items belonging to the personnel recruited aboard are released for consumption without payment of customs duties. The materials and items having benefited from the above exemptions cannot be used except for the use they were imported for. The holders of hydrocarbons reconnaissance, exploration or concession may be subject to audit by the customs administration.

These items cannot be sold unless related customs duties are paid. Furthermore, new items are eligible

for the “temporary admission regime” as provided by the Moroccan Customs Code.

Holders of hydrocarbon reconnaissance, exploration, or concession as well as the contractors and subcontractors, are eligible for the “temporary admission regime” in consideration of importing

materials and consumable items necessary for hydrocarbon activity and annex services. As such, these items are exempted from the payment of the quarterly royalties as provided by the Customs Code. The list of those materials and items must be approved by the administration.

Consumption tax on energy products and bitumen

Unless they are expressly exempted, the energy products and bitumen are subject to the consumption tax. In this context, crude oil and crude bituminous minerals imported are exempt from import duty and consumption taxes.

As far as the Moroccan production is concerned, crude oil or crude bituminous minerals obtained locally are exempt from the domestic consumption tax and are no longer subject to sampling by customs. On the other hand, the natural gas extracted from the Moroccan subsoil is subject to consumption tax in addition to the VAT calculated on the amount of the said consumption tax.

Other Taxes

Social solidarity contribution

Finance Law 2023 has reinstated the social solidarity contribution (SSC) for fiscal years 2023, 2024, 2025 and 2026. This contribution is applicable to:

- all companies excluding companies permanently exempt from CIT.
- Individuals earning professional income.
- Individuals earning taxable agricultural income.

This contribution is calculated according to the following proportional rates:

Amount of profit or income subject to contribution (MAD)	Rate
One million to less than 5 million	1,50%
5 million to less than 10 million	2,50%
10 million to less than 40 million	3,50%
40 million and above	5%

Concerning individuals, the contribution is calculated on annual Moroccan sourced income after tax which is equal to or greater than MAD 240,000. The applicable rate is 1.5%.

Furthermore, if the Morocco resident employees receive both Moroccan and foreign source revenues, they will have to submit via e-filing platform their personal individual tax return to the tax administration before the 1st March of the following year

Earned salary income is taxed at a progressing scale from 0% to 38%.

Social security contributions

The only mandatory social security regime in Morocco is managed by the Moroccan Social Security Fund "C.N.S.S" as regulated through the Dahir enacting the Law No. 1-72-184.

Except for some exemption cases, all employers must affiliate their employees before the National Social Security. It is worth noticing that the social security contribution is apportioned between the employer and the employee.

Employer Contribution	Rates (%)
Family allowances	6.4
Short-term & long-term benefits contribution payable on earning up to MAD 6,000 per month	8.98
Mandatory medical insurance	4.11
Professional training	1.6
Employee Contribution	Rates (%)
Short-term & long term benefits contributions payable on earnings up to MAD 6,000 per month	4.48
Mandatory medical insurance	2.26

Property taxes

Property tax is levied on the transfer of property at the rate of 1.5% of the value of the property.

Registration taxes

Registration is a formality that the law provides for some acts and conventions. The applicable rates are

1%, 1.5%, 3%, 4%, 5% and 6%. They vary depending on the nature of the operation with a minimum charge of 100 MAD. This minimum charge is increased to 1000 MAD for the acts of incorporation and capital increase of companies.

Please note that the MTC provides for an exemption of registration duty on incorporations and transfer of shares.

Companies Income Tax (CIT)

Article 6-II-B-2° of the MTC grants the 10 years exemption to Hydrocarbon Concession holders.

OFS companies do not fall within the scope of this exemption. As such, OFS companies would be subject to CIT under the common law conditions.

Value Added Tax (VAT)

Being contractors of the reconnaissance licence holders, OFS companies should benefit from the VAT exemption subject to some formalities.

Oil and gas field services companies (OFS)

Companies supplying oil and gas services are not subject to the same tax regime in Morocco as exploration and production companies. Instead they will be subject to the general tax law of Morocco and will be subject to tax on profits at the CIT target rates of 20% and 35% as provided above.

Deemed Profit Taxation

Non-resident companies, tenderers of work, construction or assembly contracts may opt for the flat-rate taxation at the rate of 8% levied on the gross value of the work contract.

Compliance Requirements

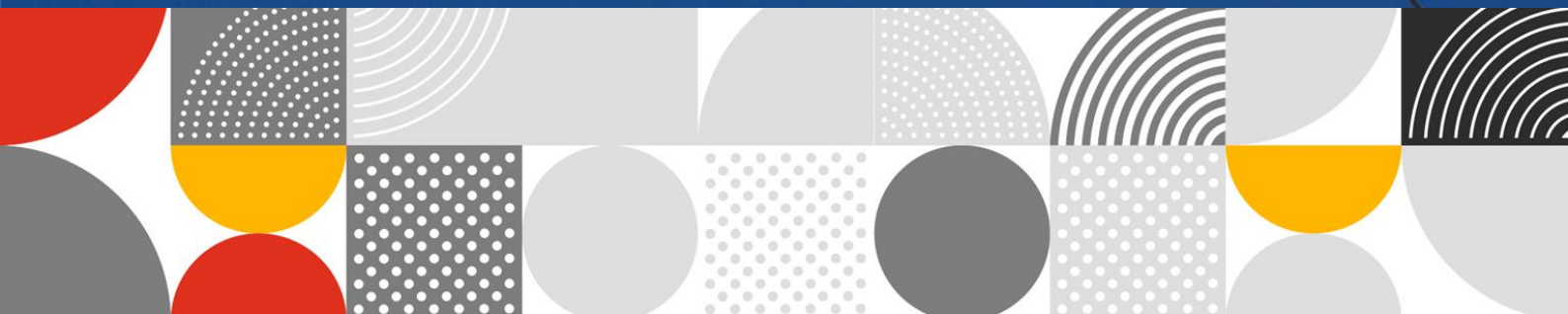
The MTC does not provide any specific tax rules for hydrocarbon activities. Oil and gas companies established in Morocco are required to comply with all formal obligations to which a Moroccan company is subject. Oil companies must also maintain bookkeeping and records according to the Moroccan accounting principles (Moroccan GAAP).

Tax Audits

The tax authorities may carry out an inspection whenever necessary. Although the statute of limitations period is 4 years, it may be extended to 8 years in case of tax losses. However, the company/branch documents must be kept for ten years.



Power and Utilities Sector



Brief overview of Power and Utilities development in Morocco

The Ministry of Energy, Mines and Sustainable Development is responsible for power and utilities in Morocco. A number of developments have taken place in the power and utilities sector since Morocco's independence, especially in Electricity and Mines. Morocco continues to develop Wind and Solar Energies in the Northern and Southern of Morocco, notably Noor Projects. Morocco aims to supply most of its energy needs through Renewable Energy complexes.

The Moroccan solar program "NOOR" is part of the energy strategy established according to the High Souverain's instructions. This program will be implemented by the construction of solar power plants NOOR Ouarzazate (510 MW CSP and 70 PV), NOOR Tafilalt and Atlas (300 MW PV), NOOR Midelt (300 MW CSP and 300 MW PV), NOOR Laayoune and Boujdour (100 MW PV), NOOR Tata (300 MW and 300 MW in CSP PV) and solar power plants in the economic zones (150 MW PV)[1]. In January 2020, the Ministry of Energy, Mines and Environment (MEME) and MASEN (the main actor in the implementation of Morocco's strategy relating to renewable energies) introduced the programme of capacity allocation in qualified sites and pre-equipped by MASEN for the development of photovoltaic projects with a total capacity of about 400 MW. This was in order to encourage the implementation of solar projects by private operators.

This programme constitutes the first phase of NOOR PV II.

Fiscal regime

The Moroccan Tax Code does not provide for a specific tax regime for entities in Power & Utilities. Income derived from power and utilities activities in Morocco is subject to the standard CIT target rates detailed above.

Tax Compliance

Income Tax compliance requirements for entities subject to Corporate Income Tax (CIT) in Morocco are:

- Payment of provisional CIT: payment of tax is made during the fiscal year by way of four instalments of 25% each based on the CIT of the previous year. A regularisation is undertaken along with the submission of the annual income return
- Submission of annual tax returns within 3 months as of the closing date.

Withholding taxes

- Same provisions provided for the Oil & Gas Sector.

Thin Capitalization

- Same provisions provided for the Oil & Gas Sector.

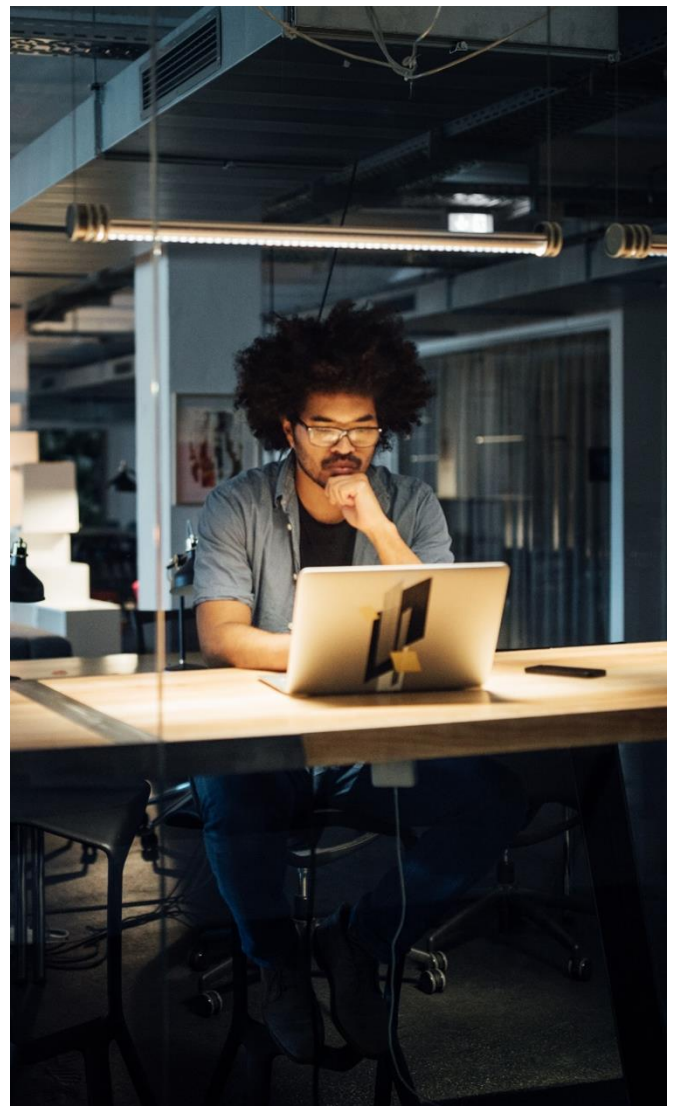
Transfer pricing

- Same provisions provided for the Oil & Gas Sector.

Value Added Tax

Same general rules outlined above for the Oil & Gas Sector remain applicable for Power and utilities. However, specific VAT rates are applicable either locally or on importation to Energy products:

- Electric energy: 14%





Mozambique

Contact



Ahmad Essak

ahmad.essak@pwc.com



Driaan Ruppig

driaan.ruppig@pwc.com

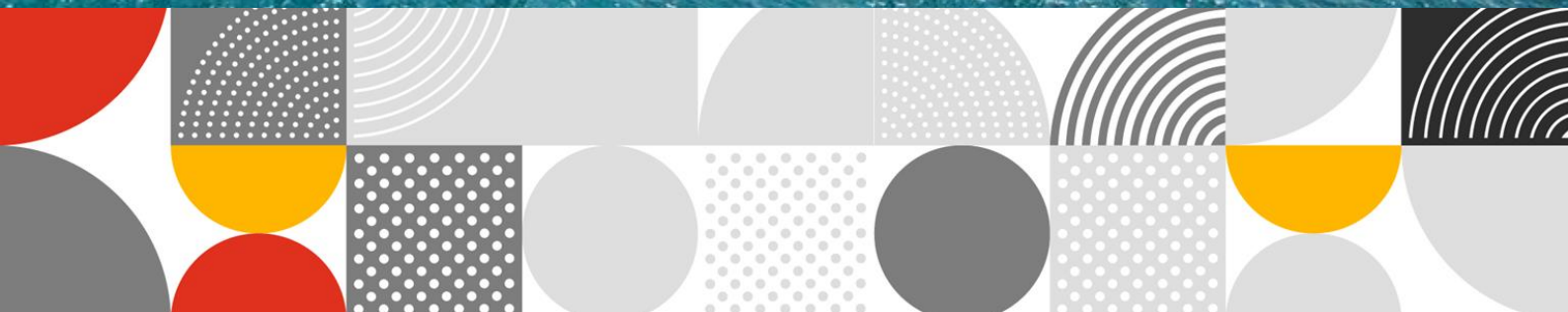


Adriano João

adriano.joão@pwc.com



Oil and Gas Sector



Brief overview of Mozambique's energy industry

Mozambique is situated in the Southern Africa area, comprising of 11 provinces, and has Maputo as its capital. The official language is Portuguese, and the currency is Metical (MZN).

Mozambique boasts both offshore gas and oil reserves, along with onshore gas discoveries. The oil & gas sector has shown fluctuating growth rates over the last decade, including growth of net exports, with the sector highly vulnerable to commodity price fluctuations. Nonetheless, there remains significant opportunities for future oil and gas discoveries, with large amounts of unexplored land. Some of the key products produced in the sector include dry natural gas, crude liquids, natural gas plant liquids, and refined products, which includes refined crude oil.

Increasing participation of large oil players in the country's petroleum sector has highlighted increased confidence in the sector. The largest opportunity for future growth lies in the Liquefied Natural Gas ("LNG") sector, with commercial production forecast to start by 2022, and projects already moving towards the development stage. Mozambique is set to become one of the world's key LNG exporters, as well as a key gas producer. The country is well positioned to tap into Asia's profitable gas market, even more so once the LNG market is in full swing. LNG exports are also forecast to provide significant growth opportunities for oil and gas companies, along with other industries such as power generation, as well as fertilizer and methanol production. However, the Cabo Delgado conflicts in the Northern Province, where much of Mozambique's LNG projects are located, could hinder progress, posing a threat to future sector growth. Already in April 2021, Total suspended its LNG project at the Afungi site after a nearby town was attacked by insurgents.

The Petroleum Law no. 21/2014 of 18 August governs all aspects related to petroleum operations; including the infrastructure (owned or held by a holder of petroleum right or a third party) used in connection with petroleum operations (it therefore typically includes the LNG activities as well). It also applies to oil & gas consumption used in connection with production operations or transport.

The refining, operations, industrial, distribution and marketing of petroleum products are expressly excluded from the Petroleum Law, as these activities are governed by a specific Decree no. 2/2014 of 2 December, which established the Legal and Contractual Special Regime applicable to the Liquefied Natural Gas in areas 1 and 4 of the Rovuma Basin (i.e. the LNG Regime). In order to ensure benefits flow to the local private sector, the Petroleum Law includes provisions, which establish a more equitable profit

sharing fiscal structure with international extractive companies strengthens the governance arrangements supporting these sectors, clarifies the public and private sector's role in exploiting and managing these resources and explores options to support local content (LC) development.

The Rovuma Basin has secured the following three key LNG projects that will determine the country's future as a gas economy and global player:

- Area 4: Coral FLNG (Eni), first gas export took place at the end of 2022 with the arrival of the Coral Sul FLNG vessel in Mozambican waters.
- Area 1: Mozambique LNG (Anadarko, but subsequently taken over by Total), first gas expected in 2025 / 2026.

The project reached FID in 2019. The planned liquefaction and export terminal will include two liquefaction trains with a total capacity of 12.88 mtpa. According to IMF predictions, the processing facilities should cost about US\$7bn, with a total project cost reaching around USD\$25bn.

- Area 4: Rovuma LNG (ExxonMobil), first gas expected 2028

Eni and ExxonMobil expect to sanction their onshore Rovuma LNG terminal in 2023. Start-up of production in 2028 should see Mozambique's natural gas output increase to over 30 mtpa. The Rovuma LNG project aims to monetise the vast gas resources of offshore Area 4, including the large Mamba gas field. ExxonMobil is leading operations related to the LNG facilities, while Eni is heading the development of the upstream. The planned liquefaction and export terminal will include two 7.6 mtpa liquefaction trains for a total LNG production capacity of 15.2 mtpa. An announcement was made in late December 2018 that sufficient offtake commitments had been signed with the partners' affiliated buyer entities, which is a key milestone towards FID. Total project costs are estimated to be around US\$27bn. FID is yet to be completed.

Political Updates

The two major political forces in Mozambique are the Front for the Liberation of Mozambique (Frelimo) and the Mozambican National Resistance (Renamo), followed by the Mozambique Democratic Movement (MDM).

Presidential, legislative and provincial elections took place on 15 October 2019. For the first time, provincial governors were elected, effectively ending their appointment by executive decrees. Frelimo increased its vote share in the presidential contest to record a landslide 73%. It won every single province and

extended its majority in the National Assembly to more than the two-thirds needed to change the constitution. Just before the general elections in October 2019, the definitive general peace agreement between the Government and Renamo was concluded in August, which also made it possible to hold the general elections.

Regulatory Framework

In Mozambique, petroleum operations are defined as “all or some of the operations related with the research, development, production, separation and treatment, storage, transport, sale or delivery of oil as agreed by the parties, including the operations of processing natural gas and ending of all concluding operations.”

Petroleum operations are governed by the following legislation:

- Law no. 21/2014, of 18 August (Petroleum Law);
- Regulations on Petroleum Operations, approved by Decree no. 34/2015, of 31 December (PO Regulations), with the amendments introduced by Decrees 34/2019 and 48/2018;
- Law no. 27/2014, of 23 September (Specific Rules on Taxation and Tax Benefits of Petroleum Operations) with the amendments introduced by Law no. 14/2017, of 28 December.
- Decree-Law no. 2/2014 of 2 December, provides a special legal and contractual framework for the Liquefied Natural Gas Project in Offshore Areas 1 and 4 in the Rovuma Basin.

In addition, the Government approved the following regulations:

- Decree no. 32/2015 of 31 December the Regulation of the Specific Tax Regime and Fiscal Benefit of Petroleum Operations as amended by Decree no. 77/2022 of 30 December;
- Decree no. 74/2016 which approves the complementary terms of the EPCC (Concession contract) in Area 1 of the Rovuma Basin;
- Decree no. 75/2016 which approves the terms of the alterations of the EPCC (Concession contract) in Area 4 of the Rovuma Basin;
- Decree 76/2016 concerning the option under the law 27/2014 of September 23, not to receive in kind the Liquefied Natural Gas corresponding to the production Tax, committing it to the joint sale by the concessionaire;
- Decree no. 77/2016 approves the terms and conditions of the Liquefied Natural Gas Agreement with the Government for Area 1;

- Decree no. 78/2016 which approves the terms of the sale of shares in the Liquefied Natural Gas Project for Area 1 within the Concessionaires.
- Decree no. 37/2017 which approves the terms and conditions of the Concession Contract of the LNG Maritime terminal in Ponta Afugi, Tungue's Bay, Palma's District, Cabo Delgado's Province.

In terms of taxation of petroleum operations, they are subject to the general corporate taxation rules, as established in the Corporate Income Tax Code (CIT Code). The Corporate Income Tax (CIT) regime accommodates some specific rules related to the oil & gas sector and ensures a greater competitiveness in the sector.

Finally, the key regulators in the oil & gas industry include:

- Ministry of Energy and Mineral Resource (MIREME): This ministry regulates the activities of companies operating in the energy, oil & gas sector.
- National Institute of Petroleum (INP): This Institute is subordinate to MIREME and is responsible for the negotiation of the petroleum concession contracts on behalf of the government.
- National Hydrocarbons Company (ENH) is the entity that manages and holds the participating interests on behalf of the State.

Fiscal regime

Forms of contract

In accordance with the Petroleum Law, petroleum operations should be carried out through a concession contract following a public tender, which is launched by the Government for the activities of exploration, production and exploration of oil & gas.

The petroleum operations are subject to the prior execution of a concession contract under the Petroleum Law which will grant the following rights:

- Reconnaissance – the reconnaissance concession contract grants the non-exclusive right to carry out preliminary exploration work and assessment operations in the concession contract area;
- Exploration and production – an exploration and production concession contract grants an exclusive right to carry out petroleum exploration and production as well as a non-exclusive right to

- construct and operate oil pipeline or gas pipeline systems for the purpose of transporting crude oil or natural gas, in those cases that such operations are not covered by an exploration and production concession contract; and
- Construction and operation of infrastructure – which grants the right to construct and operate infrastructure for petroleum operations, such as processing and conversion, which are not covered by an approved exploration and production development plan.

All concessionaires must, after the date of approval of any development plan, be listed on the Mozambique Stock Exchange, in accordance with applicable legislation.

There are very specific procedures that must be included in applications for the issuance of each type of licenses. Fees to be paid vary according to the class of licenses.

The most common forms of petroleum contracts in Mozambique are:

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 & gas concessions, contribute towards costs and subsequently derive benefits based on their equity participation in an oil block.

The parties will typically sign a Joint Operating Agreement (JOA) to govern relations between them.

Exploration and Production Contract (EPC)

This type of agreement is basically an agreement between an Oil & gas Company and the Government. The Government grants to the contractor a determined area for research, exploration or production on the contractor's own risk and costs.

The contractors provide the funds and bear 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. Petroleum Concession Agreement was updated in mid-June 2016.

Compliance Requirements

It is established that the taxpayer must obtain a Number of Individual Tax Identification (NUIT) for each area of the concession contract and organise a separate accounting for each area of the referred contract (i.e. ring-fencing applies to each Concession).

Tax returns and payments

The Tax Code establishes the following deadlines for payment of this tax. Two types of provisional payments of income tax: advance and special advance payments:

Advance

3 equal monthly instalments in May, July and September (or 5th, 7th and 9th months if not December year-end) of the tax year to which the tax relates. Total amount = 80% of tax assessed in preceding year, less the amount of tax withheld by third parties in the previous year.

Special advance

3 equal monthly instalments in June, August and October (or 6th, 8th and 10th months if not December year-end). They equal the difference between 0.5% of the company's turnover and the total of advance payments made in the preceding tax year. Minimum amounts = MT 30,000, maximum amounts = MT 100,000.

Final payment

The annual corporate tax return must be lodged and any final payment made by 31 May each year (or 5th month after year end), with all supporting documents to be lodged by 30 June, or 6th month after year end (see below for more details).

Other declarative obligations

Corporate taxpayers should also comply, amongst others, with the following declarative obligations:

Annual Income Tax Return (M/22)	By the last working day of May or by the last working day of the fifth month subsequent to the end of the tax period for the taxpayers authorized to adopt a different tax year
Annual Declarations of Accounting and Tax information (M/20) and supporting documents	By the last working day of June or by the last working day of the sixth month subsequent to the end of the tax period for the taxpayers authorized to adopt a different tax year
Annual Communication on the Income Paid to Non-Resident Entities (M/20-I)	By the last working day of June
Annual Communication of commencement of activities (M/02)	Fifteen (15) days before start of activities
Declaration of alterations (M/02)	Fifteen (15) days after occurrence of alteration
Declaration of termination of activities (M/03)	Thirty (30) days after termination
Declaration of substitution (applicable when tax assessed is less than tax due, or tax losses declared are higher than effective losses) (M/22)	No legal deadline foreseen by law. However, it is recommended that such declaration be submitted together with the Annual Declaration of Accounting and Tax Information (M/20)

Every company engaged in petroleum operations is required to have separate file returns for each concession and individual tax returns.

Local Content regulations

Mozambique introduced certain local content rules for the industry, some of which are:

- i. Mozambican companies or foreign entities associated with Mozambican citizens or companies, have right of preference in the attribution of concession agreements;
- ii. Foreign citizens or entities providing services to the oil operations must associate with Mozambican citizens or companies;
- iii. Holders of the rights to conduct oil operations must give preference to local products and services, when same are comparable in quality, to the international products, materials and services that are available within the required deadline and quantities, and when the price, including taxes, is not superior in more than 10% (ten per cent) comparing to the price of the available imported goods;
- iv. Except as otherwise provided, and except in the case of contracts with a value of less than USD 3,000,000.00 (three million US dollars) or equivalent in any other currency, the acquisition of services, supplies, materials and construction or works contracts are subject to tender;
 - i. In the case of contracts with a value greater than USD 3,000,000.00 (three million U.S. dollars), but less than USD 25,000,000.00 (twenty-five million U.S. dollars), or its equivalent in any other currency, the procedure for its adjudication is subject to the specific procedures such as, public tender, communications to INP; etc
 - ii. In the case of contracts with a value greater than USD 25,000,000.00 (twenty five million U.S. dollars) or its equivalent in another currency, the respective awarding procedure is solemn and involves notification to INP of the selected entity and submission of the process to prior approval of the referred Public Entity;
 - iii. The Concessionaires must contribute to the training of local technicians in accordance with the provisions of the respective concession agreement with the Mozambican Government; Acquisition of goods and services within the oil operations in an amount equal or superior to MZN 40,000,000.00 must be made through public tender;

Concessionaires and the Specific Purpose Entities must prepare and submit to the competent Governmental entities, every year, a training plan aimed at a gradual increase of the percentage of Mozambican citizens working in any project of the Rovuma Basin, at all levels of organisation. This must include an effective training plan of Mozambican workers, either in Mozambique or abroad, for each phase and level of the operations.

Taxation Regime

Direct Taxes

Tax resident companies and permanent establishments that carry out upstream petroleum activities are subject to specific CIT rules. We set these out below;

Profits and Gains

Without prejudice to the general terms of the CIT Code, in terms of the Petroleum Tax Regime, the following are considered profits and gains derived from petroleum operations:

- Revenues from the sale or disposition of the produced oil;
- Compensations received for any loss or destruction of the produced oil, resulting from an insurance contract or other source;
- Amounts received from a sale of information regarding the petroleum operations;
- Capital gains resulting from the sale, directly or indirectly, of real estate assets, located in Mozambique, related to oil & gas operations, regardless of whether the disposition occurs abroad;
- Unused amounts of the fund related to the costs for the demobilization of oil & gas operations;
- Any other withdrawals related to Demobilization Fund of oil & gas operations; and
- Any other amounts obtained by virtue of oil & gas operations in respect of the concession contract.

Costs and Losses

Without prejudice to the costs and losses that are not deductible under the general terms of the CIT Code, there are costs and losses that are specifically non-deductible by entities that carry upstream petroleum operations. These include, amongst others, the costs or losses resulting from:

- Violation of legal or regulatory obligations by the taxpayer in relation to the management of

exploration development and production operations;

- Hedging arrangements;
- Expatriate personnel training and training programs not in compliance with the legislation;
- Signature bonus paid to the Government as part of acquisition of concession rights;
- Trading or transport downstream of the delivery point;
- Independent experts consulted with for purposes of determining petroleum price, if not requested by Government;
- Petroleum Production Tax;
- Commissions paid to intermediaries;
- Arbitration costs, except those to defend exploration, development or production activities;
- Indemnities paid for damages;
- Damages caused by negligence or fraud; and
- Capital Gains deriving from the sale or not of shares in the petroleum sector.

General administrative costs incurred by related parties or head offices of permanent establishments outside of the Mozambican territory related with management of petroleum operations, consulting and assistance to staff, including financial, legal, and accounting services and labour expertise acquired to an affiliate are deductible in general terms. However, the deductibility of such costs is limited to:

- 5% of total costs incurred up the limit of the equivalent of five (5) million US Dollars;
- 3% of the fraction of the total costs between the equivalent to five (5) million US Dollars and up to ten million US Dollar; and
- 1.5% of the total costs exceeding the equivalent to ten (10) million US Dollars.

Amortization / depreciation

The exploration, development and production expenditures are depreciated in the year in which they are incurred or when commercial production commences, whichever occurs later and are subject to the following depreciation rates:

Assets	Rates	Tangible or intangible asset
Prospecting and Exploration expenditures	100%	Intangible
Development expenditures	25%	Tangible
Production expenditures	20%	Tangible
Acquisition of Petroleum rights	10%	Intangible
Other Assets	10%	Depends on the nature of the assets

The amortization is deducted with the above rates unless the useful life of the petroleum operation approved in the development plan is reduced, in which case the rate shall be divided by the number of expected years of oil & gas operations.

Withholding tax

Withholding tax is an advance payment of income taxes. It is deductible from payments made on qualifying transactions which include payments in respect of services, rents, dividends, interests, royalties and commissions. Note however that payments for services between local entities subject to Corporate Tax are exempted from withholding tax.

Payments to non-residents without permanent establishment are taxed through a final withholding tax of 20% on the income listed on the specific legislation. The rate of 20% is reduced to 10% in cases where Concessionaires in the oil & gas sector acquire the services from non-resident entities provided such services relate to Concession Contract.

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

- Telecommunication services and international transport services, including assembly and installation of the equipment made by such service providers;
- Construction and rehabilitation of infrastructure of production, transport and distribution of electricity in rural areas, within the scope of public rural electrification projects;
- Chartering of seafaring vessels for fishing and cabotage activities; and
- Securities listed on the Mozambican Stock Exchange.

By the 20th day of the following month, all amounts withheld must be delivered by the company to the tax authorities.

However, if payments of income subject to withholding are to be made to foreign entities, proof of payment of the tax must be presented to the commercial bank or central bank (where applicable) before the transfer is processed or approved. Therefore, in these cases, the withholding tax must be paid to the State before the transfer is made. However, the applicable withholding tax rate may be reduced where the recipient is a resident of a country that has a double tax treaty with Mozambique. Mozambique, currently, has in force Double Taxation Treaties (DTTs) with some African, European and Asian countries namely: Portugal, Italy, Mauritius, United Arab Emirates (UAE), Macau, South Africa, Botswana, India and Vietnam.

Capital gains tax

Capital gains derived from direct or indirect disposal of petroleum and mining assets located in Mozambique are taxed

on a separate and autonomous basis (and not as part of normal income) and are taxed at a rate of 32%. Any tax derived from capital gains must be paid to the MTA within 30 days from completion of the underlying transaction.

In addition, tax resident companies and permanent establishments are joint and severally liable with non-resident taxpayers in the context of direct or indirect disposal of petroleum or mineral assets, including shares and participating interest.

Tax reporting

Possibility to adopt US dollars as the currency to present the company's accounts, subject to prior authorisation from the Minister of Finance, not subject to alteration during the life of the project. Companies are eligible if an investment equal to or greater than the equivalent of USD 500 million is made and more than 90% of its transactions are in US dollars.

Petroleum Production Tax ("PPT")

The PPT or Royalty is levied on the petroleum produced in the Mozambican territory from a development and production area, with such tax liability being generated upon the extraction of the petroleum produced from a petroleum deposit.

The PPT rates are 10% for crude oil and 6% for natural gas. Please note that when the production is intended for the development of local industry, the above rates are reduced by 50%.

The State may opt for the collection in kind of part or all 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 base 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.

Transfer Pricing

On the 12th of September 2017, the Council of Ministers approved Decree no 70/2017 of 6 December which regulates the Transfer Pricing Regime ("the TP Regime") in Mozambique.

With effect from 1 January 2018, the TP Regime introduced the rules and procedures to be observed by taxpayers whenever they carry out transactions with related parties, regardless of whether such related parties are residents or non-residents in Mozambique.

By enacting rules on Transfer Pricing ("TP"), the intention is to neutralise certain base erosion and profit-sharing practices observed. The TP Regime aims to protect the domestic tax base and increase tax revenues as well as to establish equal tax treatment between entities integrated in groups and independent companies under the same situation.

With the approval of the TP Regime, all taxpayers who carry out transactions with related parties, will need to ensure at the end of the 2018 financial year that all transactions carried out with such parties are supported and comply with the TP Regime in order to avoid the disregarding of such costs by the Mozambique Revenue Authorities.

Pursuant to the Corporate Income Tax Code ("CIT Code"), the TP Regime applies to:

- Corporate Income Tax ("CIT") and Personal Income Taxpayers ("PIT") resident in Mozambique carrying out transactions with resident or non-resident related parties;
- Permanent Establishments ("PE") carrying out related party transactions with non-resident related entities;
- PE's located on Mozambican territory carrying out transactions with other PE's of the same entity located outside Mozambique;
- A resident or non-resident entity with a PE located in Mozambique that carries out related-party transactions with an entity subject to a clearly more favorable tax regime, under the terms of the CIT Code; and
- Transactions carried out by the taxpayer domiciled in Mozambique, through an intermediary party not characterized as a related party, operating with another entity abroad, characterized as a related party to the Mozambican taxpayer.

For purposes of establishing TP, a party is related to an entity in the current context, if directly or indirectly, through one or more intermediaries, the party:

- controls, or is controlled by, or is under the common control of the entity.
- has an interest in the entity that has a significant influence over it; or
- has a joint control over the entity.

According to the TP regime, whenever there are transactions carried out by taxpayers and any other entity with which they are in a special relationship, the relevant parties must agree and apply substantially identical terms and conditions to those that would

normally be agreed, accepted and applied between independent entities in comparable circumstances (i.e. the arm's length principle)

When the terms and conditions of a related transaction differ from those which would normally be agreed upon, accepted or practiced between independent entities in comparable circumstances, the Tax Authorities may undertake the respective adjustments to the taxable profit which are deemed necessary in order for the amount thereof to correspond to the one that would have been earned in the absence of special relationships.

The key objective of the arm's length principle is to compare prices applied on intra-group transactions to the prices applied on similar transactions between independent/unrelated parties.

Therefore, the taxpayer must ensure that when setting prices in intra-group transactions, such prices correspond to the arm's length principle (i.e. the market price).

Ring-fencing

With regards to the CIT, the following operations are considered to be conducted by independent entities applying the transfer pricing rules provided by the CIT:

- Transactions relating to different concession contracts of the same taxpayer;
- Transactions relating to a concession contract and other activities of the same taxpayer;
- Transactions relating to oil & gas operations downstream of the development plan/ point of delivery;
- Services provided to activities downstream to the delivery point; and
- Any transactions between entities with special relationships.

It is clear from the above that Mozambique adopts a ring-fencing principle, and as annual profits and tax obligations must be reported and assessed individually for each oil & gas concession. Although the law provides for the possibility of the same taxpayer to hold more than one oil & gas concession or mining title, in practice, the MTA encourages the taxpayers to set-up a business vehicle for each oil & gas concession or mining title.

When two or more taxpayers develop activities of reconnaissance, research, development and production of oil & gas within the same concession agreement, each taxpayer must separately calculate

the taxable income of the petroleum operations in respect of that concession contract as if they are associated entities conducting intergroup transactions by applying transfer pricing principles (i.e. principle of independent entities.)

Thin Capitalisation

A debt-to-equity safe harbour ratio of 2:1 applies in Mozambique. Any interest incurred on the portion of the loan deemed excessive will not be tax deductible for corporate tax purposes.

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. The Mozambican Parliament recently approved Law n. 22/2022, of 28 December, which came into force on 01 January 2023, amending some articles of the VAT Code. Firstly, the general VAT rate has now been reduced from 17% to 16%.

A reduced rate of 5% has been introduced applicable only to, amongst others, the supplies of medical and health services carried out by private hospitals, clinics, dispensaries, etc. Note that expenses subject to a reduced rate of 5% are excluded from the right to deduct.

Please note that the supply of medical health services and related operations, carried out by private establishments and the rental of properties located in rural areas for commercial, industrial and service purposes etc is now subject to VAT. Mozambican VAT is levied on the supply of goods or services carried out within the national territory without exceptions (territoriality concept), as well as on the imports (e.g. entry of goods in the territory, with a few exceptions.

As from 1 January 2017, the new VAT Law revoked the exemption granted to Oil & Gas companies for the acquisition of services related to drilling, research and construction of infrastructures during the prospecting and research phase. The reason why this exemption was revoked is unclear.

Taxable persons within the upstream petroleum and mining industry are often in a VAT credit position, due to the fact that their production is mainly destined for exports.

Considering the magnitude of the VAT credits, the Government introduced a special regime for such taxable persons that export more than 70% of their

production, whereby the VAT assessed to them is settled by means of VAT regularization notes pre-authorized by the MTA. In essence, under this regime, instead of handing over cash to their suppliers, the taxable persons covered by this regime hand over the VAT regularization notes, which settles their VAT obligation to their suppliers. Besides not addressing the VAT credit issues of the taxable persons that are either in exploration or development phase, this regime is not extensive to the value chain and, consequently, it may shift the VAT credit burden to the suppliers.

VAT payment is required monthly. The payment is accompanied by three copies of the form called Declaração Periódica de IVA – Modelo A. The VAT returns should be submitted on a monthly basis, by the end of the following month. The new VAT Law introduced an additional requirement for submission for periodic declarations when the result for the month is a credit in favour of the taxpayer. If so, the VAT return should be submitted to the relevant tax office by the 15th day of the following month.

In addition, all periodic declarations must be submitted with an indication of the first and last order number of the series of invoices issued or other equivalent documents. Please bear in mind that the submission of the Modelo A outside the statutory period is subject to payment of fines and interest (if there is a VAT amount to pay) to the Tax Authority. The submission of the VAT form currently is done by submitting the original forms. Please note that VAT Returns are now submitted electronically on an online platform.

Custom duties/Import tariffs

Custom duties in Mozambique are levied only on imports. Rates vary for different items, typically from 0% to 20%, and are assessed with reference to the prevailing Harmonized Custom Tariff. The fiscal benefits available for the petroleum operations are the following:

- a) Exemption from customs duties, VAT (16%) 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.

Social Security Contributions and personal income taxes

Employment tax

All remunerations paid to employees are subject to monthly withholding as per the definitive tax rates that are established in a specific schedule approved by law, depending on the gross amounts received and personal and family specific circumstances. The employer is obligated to withhold at source the tax due by the employees.

For resident employees, the monthly withholding rates vary from 0% to 32%, being withheld definitively at source. For non-resident employees, the withholding rates above are reduced to 20%. However, the Expatriate Personnel of the Concessionaire (O&G) and its Subcontractors (OFS) shall be exempt under the EPC (older versions) from any and all taxes on or related to the income of non-resident Expatriate Personnel of the Concessionaire or its Subcontractors or any other tax of a similar nature imposed on the work earnings of such Expatriate Personnel. The amounts withheld by the company shall be delivered to the tax authorities by the 20th day of the following month.

Social security contributions

Pension contribution companies must be registered with the national social security system. In order to register the company (as a contribution payer) with the National Social Security System, a proper form must be completed, and a letter must be submitted to such Authorities. Social Security is payable by employers and employees on their monthly remuneration. The aggregate rate of contribution is 7%, 4% and 3% payable by employers and employees, respectively. These amounts must be delivered to the Social Security authorities by the 10th day of the following month.

There is no difference between the normal regime and that of O&G companies. However, as stated above, the Expatriate Personnel of the Concessionaire (O&G) and its Subcontractors (OFS) shall be exempt under the EPC from any and all taxes on or related to the income of non-resident Expatriate Personnel of the Concessionaire or its Subcontractors or any other tax of a similar nature imposed on the work earnings of such Expatriate Personnel. This exemption is present in the old Concession Agreements but is being removed from the latest versions of the concession agreements.

Municipal Individual Tax

Municipal Individual Tax (IPA) is a fixed value payable annually by all resident individuals aged between 18 and 60. The tax is payable once a year. This tax replaces the National Reconstruction tax within the Municipalities. It is levied on the salary of the employees. Currently the IPA for the FY23 in Maputo amounts to MZM 510.00. This tax is payable in March of each financial year and must be withheld from the employees' salary during March.

Other Taxes

Municipal Property Transfer Tax

Municipal Property Transfer Tax (SISA) is charged on the onerous transmission of property rights or other minor rights over immovable property (e.g. sale and purchase, accord and satisfaction, constitution of servitudes, etc.) considered as urban tenements located in the Mozambican territory.

A property is considered urban tenement if the source of income from the property is derived from any building on the land, with the grounds on which it is based, and not the land itself.

The obligation to pay the property transfer tax is triggered the moment that the onerous transmission of a property right or a minor right as referred above is considered transferred (including as referred above, the signature of promise of sale agreements). The rate of tax is 2% of the selling price of the building. When the beneficiaries live in a country with a privileged tax regime, the applicable rate is 10%.

Municipal Tax on Real Estate

This tax is levied on buildings situated within a municipality. The rates applicable are 0.4% for buildings used for habitation purposes and 0.7% for buildings used for commercial purposes. This tax is paid in two installments, being the 1st in January and 2nd installment in June, it can be paid in one installment until 31 January. Currently, the value of immovable property is determined on the grounds of a formula established by the State Department for Sale of State Real Estate.

Stamp taxes

Under the Stamp Duty Code, stamp duty is payable on any agreement, bank transactions, and specific acts foreseen in the said Code and executed in Mozambique. The payment of the stamp tax is due by the 20th day of the following month of first execution of

the agreement or other act. Stamp duty is chargeable at either fixed rates or ad valorem (i.e. in proportion to the value of the consideration) depending on the class of instrument.

Taxation of Oil Field Service Companies (OFS)

The OFS are subject to the normal tax regime as a normal business operator and are not entitled to the specific tax regime applicable to the Exploration and Production Companies

Corporate Income Tax

CIT rate is 32% (although a penalty rate of 35% may be charged on unsubstantiated payments). Resident entities are taxed on worldwide income. Branch tax rate is also 32% and there is no branch remittance tax.

Dividends

20% final tax on dividends (10% for shares listed on the Maputo stock exchange) unless treaty relief applies.

Non-Resident Services WHT

20% for non-resident entities with no head office, or effective management or control in Mozambique (this is applicable to payments made by OFS to its non-resident service providers. The rate is reduced to 10% when it is the Concessionaire making the payment to a non-resident OFS.

Value Added Tax

VAT is chargeable on the supply of goods and services in Mozambique carried out in the national territory by a taxpayer acting as such, and on imports. The VAT rate is 16%. It is deductible and can be offset from output VAT. It can also be carried forward or reimbursed.

Penalty

Late submission of returns attracts a fine that varies from MZN 3.000 to MZN 65.000 while late payment attracts a fine that can be up to the double amount of tax due, plus daily interest calculated based on the Prime rate + 2%.

Tax audits

The statute of limitation in Mozambique is 5 years. Normally the Authorities perform audits in case of reimbursement applications or before the 5-year period expires.

Incentives in the oil & gas industry

The fiscal benefits available for the petroleum operations are the following:

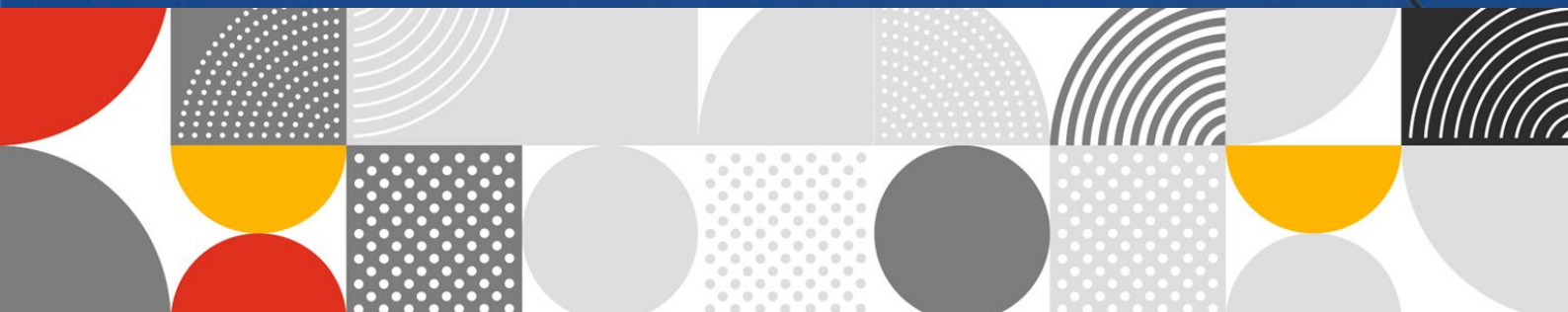
- Exemption from customs duties, VAT (16%) and excise duties on import of capital equipment, listed in Class “K” of the Customs Tariff Schedule, during a period of 5 years counting from the commencement of activity’s date.
- In addition to those listed in the Class “K” of the customs tariff schedule, the exemptions from customs duties, VAT and excise duties also apply on importation of specified goods/equipment used for exploration purposes.

The above benefit shall only be granted whenever the goods to be imported are not made in Mozambique or, if so, such goods do not satisfy the specific features in terms of purpose and functionality required by or inherent in the nature of the activity to be developed and exploited.

Whenever the tax benefit refers to the acquisition of goods intended for the direct realization of the purposes of the acquirers, it will be rendered void in case of sale of such goods, or should they be used for a purpose other than the intended purpose, without the prior authorization of the competent entity; in which case the sanctions provided for in the applicable legislation will be applied.



Power and Utilities Sector



Brief overview of Power and Utilities development in Mozambique

Mozambique's energy sector is currently dominated by hydropower generation, with the country home to Southern Africa's largest hydroelectric dam. In 2020, hydropower accounted for 82.0% of the electricity generated, followed by natural gas at 17.1%, and non-hydropower renewables at 0.8%. Renewable energy and natural gas have increased their share of the energy mix over the past few years. Total energy generation has also grown over the last decade, from 16.6 terawatt hours (TWh) in 2010 to 17.0 TWh's in 2020.

Mozambique has very strong potential for power generation in Southern Africa, with large amounts of untapped hydro, coal, solar and wind resources. The country's large generation capacity also creates increased opportunities for exports to other African countries. The government has expanded its efforts to increase household electrification rates to 100% by 2030, with only 31.1% of the population having access to electricity in 2019. This, along with stronger economic growth and additional power generation projects, should see increased power capacity over the next few years. Economic growth will also see increased domestic demand, further boosting growth in the sector. Decreasing technology costs, along with the scalability of renewable energy projects in rural areas, provide great potential for future growth. The Government is also looking to expand the domestic gas sector, and build coal-fired power projects, in the near future.

The country has received funding from international donors (World Bank, Norfund, etc) that are channeled to the rehabilitation and modernization of the infrastructure network to increase the security and reliability of electricity supply through the reinforcement of transmission and distribution lines, the installation of additional transformers to increase reactive compensation capacity and equipment in the cities of Maputo, Matola, Nacala, Pemba and Lichinga.

In addition, the Government, through public-private partnerships, is also investing in exploration and development of solar energy. Over the last years, the Electricidade de Moçambique- Electricity of Mozambique (EDM), in partnership with private entities, started to construct solar power plants in some Country's provinces with the purpose of increasing the low access to the electricity by the populations living in rural zones.

Political Updates

The two major political forces in Mozambique are the Front for the Liberation of Mozambique (Frelimo) and

the Mozambican National Resistance (Renamo), followed by the Mozambique Democratic Movement (MDM).

Presidential, legislative and provincial elections also took place on 15 October 2019. For the first time, provincial governors were elected, effectively ending their appointment by executive decree. Frelimo increased its vote share in the presidential contest to record a landslide 73%. It won every single province and extended its majority in the National Assembly to more than the two-thirds needed to change the constitution. However, despite Frelimo winning the elections by a landslide, opposition parties performed quite well, especially in provincial and legislative elections. The 2018 municipal elections confirmed ruling Frelimo dominance, however Renamo gained ground, winning eight municipalities out of 58 country wide, the most it has ever held.

Just before the general elections in October 2019, the definitive general peace agreement between the Government and this political force was concluded in August, which also made it possible to hold the general elections.

Due to these developments over the last couple of years, Mozambique's currency, the Metical, has weakened substantially against the dollar, with minimal growth registered in the year 2017. Given this pressure on the economy, tax collections by the Tax Authorities decreased and naturally, the Authorities are more focused on large transactions where capital gains or related taxes are due and payable and are also aggressive with tax inspections/audits. Usually, these types of transactions are in the extractive and energy industries.

Regulatory Framework

In Mozambique, the supply of energy activity comprises jointly or separately, production, transportation, distribution and commercialization including the import and export of electric energy.

The production, transportation, distribution and marketing of electricity in Mozambique, as well as its importation and exportation to or from the national territory, is controlled by the State. For such, the Government has approved the following legislation:

- Law no. 21/97 of 1 October which approves the Energy Law, with the amendments introduced by Law no. 15/2011 of 10 August;
- Decree no. 8/2000 of 20 April which approves the Energy Law Regulation;

In addition, the Government approved the following regulations:

- Decree no. 42/2005 of 29 November establishes the rules related to the planning, financing, construction, possession, maintenance and operation of electricity production, transmission, distribution and commercialization facilities, as well as the rules and procedures related to the management, operation and overall development of the National Network of Electric Power Transport;
- Decree no. 48/2007 of 22 October which approves the regulation for the issuance of licences for electrical installations, with the amendments introduced by Decree no. 10/2016 of 25 April and Decree no. 34/2019 of 2 May;
- Resolution no. 62/2009 of 14 October which approves the Policy for the development of New and Renewable Energies.
- Decree no. 58/2014 of 17 October which approves the Regulation establishing the Tariff Regime for New and Renewable Energies;
- Ministerial Diploma no. 184/2014 of 12 November which approves the National Electric Grid Code;
- Resolution no. 14/2015 of 8 July which approves the Organic Status of the Ministry of Energy and Mineral Resources;
- Law no. 11/2017 of 8 September which creates the Regulatory Authority of Energy (“ARENE”);
- Decree no. 93/2021 of 10 December which approves the Regulation on Access to Energy in Off-Grid Zones.

The key regulators in the energy industry include:

- Ministry of Energy and Mineral Resource (MIREME): This ministry regulates the activities of companies operating in the energy, oil & gas sector.
- Electricity of Mozambique (EDM): it is a vertically integrated, government-owned electric utility responsible for the generation, transmission and distribution of electricity in the national grid.
- Energy Regulatory Authority (Autoridade Reguladora de Energia - ARENE): A public entity with financial and administrative autonomy, established to supervise, regulate, represent and apply sanctions within the energy sector;
- National Energy Fund (FUNAE): It is a public institution that promotes rural electrification and rural access to modern energy services, in a sustainable manner, and as a contributor to economic and social development in the country;

- National Council of Electricity (“CNELEC”): This entity is subordinate to MIREME, and is responsible for the conciliation, mediation and arbitration between concessionaires or between the concessionaires and its customers on behalf of the government.

The New Electricity Law 12/2022, of 11 July which came into effect last October sets out the legal rules for electricity supply activities and regulates the entire energy generation chain, from production, storage, transport, distribution, commercialization, to the consumption of energy, while also addressing import and export matters. The New Electricity Law is aimed at deepening and extending the conditions for the opening of the electricity generation and supply market to the private sector and also at adapting the legal framework to the current social, technical and financial dynamics, as well as the sustainable development objectives. It is also directed at ensuring universal quality and reliable energy, especially from renewable sources and promotes the continuation of the country's, electrification, reemphasizing the focus on matters such as self-consumption, mini-grids and storage.

Fiscal Regime

Forms of contract

The Energy Law states that the concessionaires from Energy sector are subject to the standard tax regime set by the tax legislation in force, and the Council of Ministers may set a specific taxation regime applicable to supply of power activities, by setting appropriate taxation rules and incentives for the investments to be carried on in this area.

So far, no specific tax regime has been created for the energy sector; therefore, the standard taxation regime must be applicable for this sector.

The Energy Law in force sets that all others than the Government, that wish to, among others, produce, transport, distribute, commercialise and manage electric installations, need to enter into a Concession Agreement (“CA”) with the Government for such purposes. The CA is granted by means of public tenders.

The Law sets various types of CA, namely:

- Production concession;
- Transportation concession;
- Distribution concession,
- Commercialisation concession;
- Import and export of electric energy concession.

In order to enter into a CA the interested entity (which can either be an individual or a company) must apply for the concession by means of a proposal, to be presented before the MIREME.

Compliance Requirements

It is established that the taxpayer must obtain a Number of Individual Tax Identification (NUIT) for each area of the concession contract and organise a separate accounting for each area of the referred contract.

Tax returns and payments

The Tax Code establishes the following deadlines for payment of this tax. Two types of provisional payments of income tax: advance and special advance payments:

Advance

3 equal monthly instalments in May, July and September (or 5th, 7th and 9th month if not December year-end) of the tax year to which the tax relates. Total amount = 80% of tax assessed in the preceding year, less the amount of tax withheld by third parties in the previous year.

Special advance

3 equal monthly instalments in June, August and October (or 6th, 8th and 10th month if not December year-end). They equal the difference between 0.5% of the company's turnover and the total of advance payments made in the preceding tax year. Minimum amounts = MT 30,000, maximum amounts = MT 100,000.

Final payment

The annual corporate tax return must be lodged and any final payment made by 31 May each year (or 5th month after year end), with all supporting documents to be lodged by 30 June, or 6th month after year end (see below for more details).

Other declarative obligations

Corporate taxpayers should also comply, amongst others, with the following declarative obligations:

Annual Income Tax Return (M/22)	By the last working day of May or by the last working day of the fifth month subsequent to the end of the tax period for the taxpayers authorized to adopt a different tax year
Annual Declarations of Accounting and Tax information (M/20) and supporting documents	By the last working day of June or by the last working day of the sixth month subsequent to the end of the tax period for the taxpayers authorized to adopt a different tax year
Annual Communication on the Income Paid to Non-Resident Entities (M/20-I)	By the last working day of June
Annual Communication of commencement of activities (M/02)	Fifteen days before start of activities
Declaration of alterations (M/02)	Fifteen days after occurrence of alteration
Declaration of termination of activities (M/03)	Thirty days after termination
Declaration of substitution (applicable when tax assessed is less than tax due, or tax losses declared are higher than effective losses) (M/22)	No legal deadline foreseen by law. However, it is recommended that such declaration be submitted together with the Annual Declaration of Accounting and Tax Information (M/20)

Every company engaged in petroleum operations is required to file separate returns for each concession and individual tax returns.

Local Content regulations

So far, Mozambique does not have a general legal framework, which sets the standard rules of local content applicable to all the sectors of the economy. Currently, the local content rules appear dispersed in the legislation of specific sectors of the economy (Oil & Gas, Construction).

In the energy legislation, there is no reference to local content rules for the energy and utilities industry in Mozambique.

Direct Taxes

Withholding tax

Withholding tax is an advance payment of income taxes. It is deductible from payments made on qualifying transactions which include payments in respect of services, rents, dividends, interests, royalties and commissions. Note however that payments for services between local entities subject to Corporate Tax are exempted from withholding tax.

Payments to non-residents without permanent establishment are taxed through a final withholding tax of 20% on the income listed on the specific legislation. The rate of 20% is reduced to 10% in cases where Concessionaires in oil & gas sector acquire the services from non-resident entities provided such services relate to Concession Contract.

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

- Telecommunication services and international transport services, including assembly and installation of the equipment made by such service providers;
- Construction and rehabilitation of infrastructure of production, transport and distribution of electricity in rural areas, within the scope of public rural electrification projects;
- Chartering of seafaring vessels for fishing and cabotage activities; and
- Securities listed on the Mozambican Stock Exchange.

By the 20th day of the following month, all amounts withheld must 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 must be presented to the commercial bank or

central bank (where applicable) before the transfer is processed or approved. Therefore, in these cases, the withholding tax must be paid to the State before the transfer is made. However, the applicable withholding tax rate may be reduced where the recipient is a resident of a country that has a double tax treaty with Mozambique. Mozambique, currently, has in force Double Taxation Treaties (DTTs) with some African, European and Asian countries namely: Portugal, Italy, Mauritius, United Arab Emirates (UAE), Macau, South Africa, Botswana, India and Vietnam.

Capital gains tax

In Mozambique, capital gains are not taxed separately from other company's incomes, they must be added to the remaining company's income and taxed at the end of the year based on the Corporate Income Tax rate (e.g. 32%). The following changes were introduced to the CIT Code regarding capital gains, with effect from 2013:

- Capital Gains derived from direct or indirect transfer of shares, participating interests and other rights involving assets located in Mozambique and between non-resident entities, are regarded as obtained in the country; and
- The direct and/or indirect disposal of Mozambican companies by non-residents are subject to tax at a rate of 32% in Mozambique (certain reliefs may be available depending on the nature of the asset sold (i.e. direct participative interest sale or share sale).

The compliance requirements will include obtaining the necessary approvals for the sale from the competent authorities and disclosing the gain in the tax return. For gains by non-resident entities, the compliance requirements will depend on the structure of the sale, but approval must be obtained, and the non-resident will likely be required to register for tax, pay over the tax in Mozambique and then deregister.

Transfer Pricing

On the 12th of September 2017, the Council of Ministers approved Decree no 70/2017 of 6 December which regulates the Transfer Pricing Regime ("the TP Regime") in Mozambique.

With effect from 1 January 2018, the TP Regime introduced the rules and procedures to be observed by taxpayers whenever they carry out transactions with related parties, regardless of whether such related parties are residents or non-residents in Mozambique.

By enacting rules on Transfer Pricing ("TP"), the intention is to neutralise certain base erosion and profit-sharing practices observed. The TP Regime aims to protect the domestic tax base and increase tax revenues as well as to establish equal tax treatment between entities integrated into groups and independent

companies under the same situation.

With the approval of the TP Regime, all taxpayers who carry out transactions with related parties, will need to ensure at the end of the 2018 financial year that all transactions carried out with such parties are supported and comply with the TP Regime in order to avoid the disregarding of such costs by the Mozambique Revenue Authorities.

Pursuant to the Corporate Income Tax Code (“CIT Code”), the TP Regime applies to:

- Corporate Income Tax (“CIT”) and Personal Income Tax (“PIT”) resident in Mozambique carrying out transactions with resident or non-resident related parties;
- Permanent Establishments (“PE”) carrying out related party transactions with non-resident related entities;
- PE’s located on Mozambican territory carrying out transactions with other PE’s of the same entity located outside Mozambique;
- A resident or non-resident entity with a PE located in Mozambique that carries out related-party transactions with an entity subject to a clearly more favourable tax regime, under the terms of the CIT CodeC; and
- Transactions carried out by the taxpayer domiciled in Mozambique, through an intermediary party not characterized as a related party, operating with another entity abroad, characterized as a related party to the Mozambican taxpayer.

For purposes of establishing TP, a party is related to an entity in the current context, if directly or indirectly, through one or more intermediaries, the party:

- controls, or is controlled by, or is under the common control of the entity.
- has an interest in the entity that has a significant influence over it; or
- has a joint control over the entity.

According to the TP Regime, whenever there are transactions carried out by taxpayers and any other entity with which they are in a special relationship, the relevant parties must agree and apply substantially identical terms and conditions to those that would normally be agreed, accepted and applied between independent entities in comparable circumstances (i.e. the arm’s length principle)

When the terms and conditions of a related transaction differ from those which would normally be agreed upon, accepted or practiced between independent entities in comparable circumstances, the Tax Authorities may undertake the respective adjustments to the taxable profit which are deemed necessary in order for the amount thereof to correspond to the one that would have been earned in the absence of special relationships.

The key objective of the arm’s length principle is to compare prices applied on intra-group transactions to the prices applied on similar transactions between independent/unrelated parties.

Therefore, the taxpayer must ensure that when setting prices in intra-group transactions, such prices correspond to the arm’s length principle (i.e. the market price).

Principle of Independent Entities

With regards to the CIT, the following operations are considered to be conducted by independent entities applying the transfer pricing rules provided by the CIT:

- Transactions relating to different concession contracts of the same taxpayer;
- Transactions relating to a concession contract and other activities of the same taxpayer;
- Transactions relating to oil & gas operations downstream of the development plan/ point of delivery;
- Services provided to activities downstream to the delivery point; and
- Any transactions between entities with special relationships.

According to this principle, when two or more taxpayers develop activities of production, transportation, distribution or commercialization in the same concession agreement, each taxpayer must separately calculate the taxable income of the operations in respect of that concession contract as if they were associated entities conducting intergroup transactions by applying transfer pricing principles (i.e. principle of independent entities.)

Thin Capitalisation

A debt-to-equity safe harbour ratio of 2:1 applies in Mozambique. Any interest incurred on the portion of the loan deemed excessive will not be tax deductible for corporate tax purposes.

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. The Mozambican Parliament recently approved Law n. 2/2022, of 28 December, which came into force on 01 January 2023, amending some articles of the VAT Code. Firstly, the general VAT rate has now been reduced from 17% to 16%.

A reduced rate of 5% has been introduced applicable only to, amongst others, the supplies of medical and health services carried out by private hospitals, clinics, dispensaries, etc. Note that expenses subject to a reduced rate of 5% are excluded from the right to deduct.

Please note that the supply of medical health services and related operations, carried out by private establishments and the rental of properties located in rural areas for commercial, industrial and service purposes etc are now subject to VAT,

The transmissions of inputs of solar panels for rural electrification, listed in the Customs Tariff and detailed in Annex IV, which is an integral part of the VAT Code, are exempt from VAT until 31 December 2025. And lastly, the definitive imports of input of solar panels for rural electrification are exempt from VAT until 31 December 2025.

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.

Further, the VAT tax base can be reduced from 100% of the invoice value to only 62% of its amount in cases where the price of electricity is fixed by Public Authority, meaning in practical terms the benefit of a reduced rate.

VAT payment is required monthly. The payment is accompanied by three copies of the form called Declaração Periódica de IVA – Modelo A. The VAT returns should be submitted on a monthly basis, by the end of the following month. The new VAT Law introduced an additional requirement for submission of periodic declarations when the result for the month is a credit in favour of the taxpayer. If so, the VAT return should be submitted to the relevant tax office by the 15th day of the following month.

In addition, all periodic declarations must be submitted with an indication of the first and last order numbers of the series of invoices issued or other equivalent documents. Please bear in mind that the submission of the Modelo A outside the statutory period is subject to payment of fines and interest (if there is a VAT amount to pay) to the Tax Authority. The submission of the VAT form currently is done by submitting the original forms, since there is no electronic form application currently used by the Tax Authorities.

Custom duties/Import tariffs

Customs duties in Mozambique are levied only on imports. Rates vary for different items, typically from 0% to 20%, and are assessed with reference to the prevailing Harmonized Custom Tariff. The fiscal benefits available for the petroleum operations are the following:

- a) Exemption from customs duties, VAT (167%) and excise duties on the import of capital equipment, listed in Class “K” of the Customs Tariff Schedule, during a period of 5 years counting from the commencement of the 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.

Social Security Contributions and personal income taxes

Employment tax

All remunerations paid to employees are subject to monthly withholding as per the definitive tax rates that are established in a specific schedule approved by law, depending on the gross amounts received and personal and family specific circumstances. The employer is obligated to withhold at source the tax due by the employees.

For resident employees, the monthly withholding rates vary from 0% to 32%, being withheld definitively at source. For non-resident employees, the withholding rates above is reduced to 20%. The amounts withheld by the company shall be delivered to the tax authorities by the 20th day of the following month.

Social security contributions

Pension contribution companies must be registered with the national social security system. In order to register the company (as a contribution payer) with the National Social Security System, a proper form must be completed, and a letter must be submitted to such Authorities. Social Security is payable by employers and employees on their monthly remuneration.

The aggregate rate of contribution is 7%, 4% and 3% payable by employers and employees, respectively. These amounts must be delivered to the Social Security authorities by the 10th day of the following month.

Municipal Individual Tax

Municipal Individual Tax (IPA) is a fixed value payable annually by all resident individuals aged between 18 and 60. The tax is payable once a year. This tax replaces the National Reconstruction tax within the Municipalities. It is levied on the salary of the employees. Currently the IPA for the FY2318 in Maputo amounts to MZM 510.00. This tax is payable in March of each financial year and must be withheld from the employees' salary during March.

Other Taxes

Municipal Property Transfer Tax

Municipal Property Transfer Tax (SISA) is charged on the onerous transmission of property rights or other minor rights over immovable property (e.g. sale and purchase, accord and satisfaction, constitution of servitudes, etc.) considered as urban tenements located in the Mozambican territory.

A property is considered an urban tenement if the source of income from the property is derived from any building on the land, with the grounds on which it is based, and not the land itself.

The obligation to pay the property transfer tax is triggered the moment that the onerous transmission of a property right or a minor right as referred above is considered transferred (including as referred above, the signature of promise of sale agreements). The rate of tax is 2% of the selling price of the building. When the beneficiaries live in a country with a privileged tax regime, the applicable rate is 10%.

Municipal Tax on Real Estate

This tax is levied on buildings situated within a municipality. The rates applicable are 0.4% for buildings used for habitation purposes and 0.7% for buildings used for commercial purposes. This tax is paid in two instalments, being the 1st in January and 2nd instalment in June, it can be paid in one instalment until 31 January. Currently, the value of immovable property is determined on the grounds of a formula established by the State Department for Sale of State Real Estate.

Stamp taxes

Under the Stamp Duty Code, stamp duty is payable on any agreement, bank transactions, and specific acts foreseen in the said Code and executed in

Mozambique. The payment of the stamp tax is due by the 20th day of the following month of the first execution of the agreement or other act. Stamp duty is chargeable at either fixed rates or ad valorem (i.e. in proportion to the value of the consideration) depending on the class of instrument.

Corporate Income Tax

32% (although a penalty rate of 35% may be charged on unsubstantiated payments). Resident entities are taxed on worldwide income. Branch tax rate is also 32%. There is no branch remittance tax.

Dividends

20% final tax (10% for shares listed on the Maputo stock exchange) unless treaty relief applies.

Non-Resident Services WHT

20% for non-resident entity with no head office, or effective management or control in Mozambique (this is applicable to payments made by OFS to its non-resident service providers).

Value Added Tax

VAT is chargeable on the supply of goods and services in Mozambique carried out in the national territory by a taxpayer acting as such, and on imports. The VAT rate is 167%. It is deductible and can be offset from output VAT. It can also be carried forward or reimbursed.

Investment incentives in the power and utilities industry

Investments carried out in a public domain area, such as the case of electricity supply, are governed by the Public Private Partnerships ("PPP") legislation, provided for in Law no. 15/2011 of 10 August and Regulation created by Decree No. 16/2012 of 4 July.

The investments carried out under the PPP regime benefit from the tax incentives foreseen in the investment legislation provided they are eligible for such purposes.

Depending on the nature and dimension of the investment, the concessionaire may benefit from the following incentives:

- Exemption from customs duties, VAT (167%) 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 the activity's date.
- Accelerated amortizations and reintegration;
- Tax credit per investment;
- Deductions of training expenses as well as specific expenses directly related to the investment, etc.

AfCFTA Considerations

The African Continental Free Trade Area (“AfCFTA”) has commenced on the 1st January. Despite Mozambique being one of the first countries to sign the accession agreement, has not yet ratified it, and impact assessment studies are underway, as well as the drafting of the national implementation strategy, which will enable the country to take better advantage in the medium and long term.

The government aims to ensure a strategic implementation of the AfCFTA with a realistic and phased action, while continuing to build the country's geography of multilateral economic development, increasingly integrating its economy in Africa and in the world, drawing on the lessons of other integration processes. Also, Mozambique aims to be a competitive benchmark for logistics services and port infrastructure, development corridors, tourism, industrialization, technological specialization and modernization, applied research, strategic energy distribution, inclusion and participation of micro, small and medium-sized enterprises (SMEs), development of the entrepreneurial capacity of young people and women, trade facilitation as a structural part of improving the business environment, amongst other areas.

Energy Transition

As per the Mozambican Prime Minister’s speech during the Leaders’ Summit of the 26th Session of the Conference of the States Parties of the United Nations Framework Convention on Climate Change, Mozambique should adopt a transition to cleaner and more environmentally friendly energies that is gradual and phased in order to minimize the impact on the economic development process.

As of this moment, the main priority is the implementation of an energy transition program based on a diversified matrix, with cleaner and environmentally friendly sources, which are in consonance with the country's development programs. In this context, the use of natural gas as transition energy to cleaner sources is proposed, by making efforts to reach, by the year 2030, the levels of 62% of renewable energy contribution in the national energy matrix within the scope of achieving the Sustainable Development Goals.

It is important to note that, reaching those levels is a great challenge as it presupposes financing sources and adequate technologies duly ensured to facilitate the massification of the use of clean energies.

Currently, solar energy is the most abundant renewable source in Mozambique, with 23000 GW of potential, however hydro is the source with the highest priority projects (over 5.6 GW).

The most competitive source after hydro is wind power, with a special focus on the south of the country. However, several other locations throughout the territory also offer conditions for the development of projects at reasonable prices.

Biomass projects have higher costs but high benefits and job creation potential.

Solar projects, despite their higher costs, present a high speed of implementation and reasonable costs if adequate financing solutions can be obtained.

Finally, geothermal energy, despite the higher risk and cost, offers the possibility to support energy quality and electrification in Niassa province.



Namibia

Contact



Chantell Husselmann

chantell.husselmann@pwc.com



Johan Nel

johan.nel@pwc.com

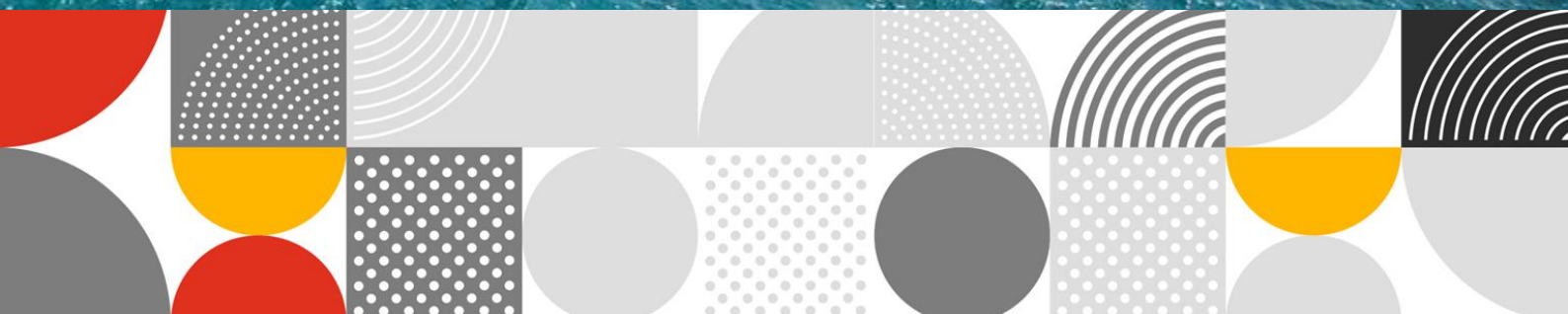


Adriano João

adriano.joão@pwc.com



Oil and Gas Sector



Brief history on Oil & Gas industry in Namibia

The Republic of Namibia is located in Southern Africa, bordering the Atlantic Ocean to the west. 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.

Most of Namibian current open blocks for licensing are at deep and ultra-deep-water depths. Prior to 2011, 20 wells were drilled ('95 – '99: 13). In 2012, 2 wells were drilled. In 2013, 3 wells were drilled. In 2014, 1 well was drilled. In 2014, 1 well was drilled. Since 2015 to date two wells were drilled, both in 2018. During 2022, both TotalEnergies and Shell PLC drilled successful offshore wells in the country's territory.

While the results of interpretations of the seismic survey data is considered to be very promising, laboratory analyses are still in progress to gain a better understanding of the reservoir quality and potential flow rates achievable. This is attributed to the limited exploration activities carried out. The petroleum industry in Namibia is thus still in its infant stage.

Significant Developments

The political environment in Namibia is currently very stable. The country successfully concluded its last general elections on 27 November 2019.

The Namibian economy has experienced a decline since 2020. This was majorly due to factors such as the covid-19 pandemic, severe historic drought, decrease in government spending and decline in the wholesale, retail and tourism sectors.

Fiscal regime

The laws that regulate the petroleum industry in Namibia are Petroleum (Taxation) Act 3 of 1991 ("PTA"), the Income Tax Act 24 of 1981 dealing with administrative provisions and the Petroleum (Exploration and Production) Act 2 of 1991 responsible for the levying of royalties.

Petroleum Tax, as levied under the PTA, is paid annually for the benefit of the State Revenue Fund in respect of taxable income received by or accrued to or in favour of any person from a licence area in connection with exploration or production operations carried out in any tax year in such licence area.

The tax rate is 35% with an additional profit tax payable on a sliding scale of between 15% and 25%.

- Royalties are payable at 5% of gross revenues. The market value of crude oil is used as the basis to levy royalty and petroleum tax.

- relating to downstream activities are not considered to be petroleum activities and are taxed under the Income Tax Act.

The PTA is 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.

Forms of contract

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 licences. 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 licence 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 & 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 & 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 Licencing System in 1999 for Reconnaissance, Exploration and Production licences.

Annual licence fees

Licence holders are required to pay annual charges to the State Revenue Fund. The charges are calculated by multiplying the number of square kilometres included in the block or blocks by the amounts provided for in Section 67 of the Petroleum Act. In the case of exploration licences, the charge is calculated as follows:

- During the first four years, N\$60 per square kilometer
- During the next two years, N\$90 per square kilometer
- During the subsequent two years, N\$120 per square kilometer
- Thereafter, N\$150 per square kilometer

In the case of the production licences, the fee is N\$1,500 per square kilometre.

Government participation

No applicant is compelled to offer the State a share in a licence. However, the State can participate in licences and this is agreed upon during negotiations. These regulations may change from time to time and it is advised to consider this with each potential transaction.

Taxation regime

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 licence holder.

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 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) must submit a tax return in respect of their Namibian source, or deemed

source, income

In terms of the provisions of the Income Tax Act, certain types of income will be subject to withholding tax.

These are:

- Royalties (Withholding tax on royalties of 10%);
- The right to use (i.e. rental) of industrial, commercial or scientific equipment (Withholding tax on royalties of 10%);
- Management, consulting, technical, administration fees (Withholding tax on services of 10%)
- Directors fees (Withholding tax on services of 25%).
- Interest paid to non-residents (Withholding tax on interest of 10%)

Petroleum companies are exempt from withholding tax on dividends.

Compliance dates

Royalties withholding tax is payable within 20 days after the end of the month during which the liability for payment is incurred. Taxes withheld on payment for services are payable to Namibia Revenue Agency ("NamRA") within 20 days after the end of the month during which the amount was deducted or withheld.

Withholding tax on interest is payable to NamRA within 20 days following the month during which the interest was paid. Interest is deemed to be paid on the earlier of actual payment or when due and payable.

Non-resident Shareholders Tax (NRST) – not applicable to petroleum companies

Dividends declared by a Namibian company to a non-resident holding company are subject to non-resident shareholders tax, which is a form of withholding tax. NRST is payable at the standard rate of 10% where more than 25% shares are held in the Namibian company, unless treaty relief is available. Where less than 25% shares are held in the Namibian company, the NRST payable is 20%, unless treaty relief is available. NRST is payable within 20 days after declaration of a dividend.

Capital gains tax

Petroleum Licences/Rights

In terms of the Namibian Income Tax Act, any "sale, donation, expropriation, cession, grant or other alienation or transfer of ownership of a petroleum licence, or right to mine petroleum in Namibia, and

includes a sale, donation, expropriation, cession, grant or any other alienation or transfer of ownership of any share or member's interest in a company that holds a petroleum licence or petroleum right, whether directly or indirectly", is specifically included in the definition of gross income. A petroleum licence is defined as "include exploration licence, reconnaissance licence and production licence as defined in the Petroleum (Exploration and Production) Act, 1991 (Act No 2 of 1991)."

Section 15(9) deems these profits to be from a Namibian source irrespective of:

- whether the transaction is concluded in or outside Namibia;
- the place where the payment of such amount is made;
- the place where the funds from which the payment is made are held.

The taxable amount is determined by taxing the consideration received (or payment of like nature) or the open market value (whichever is higher) less the following costs:

- i. acquisition costs and exploration expenditure relating to the petroleum licence or right;
- ii. costs of improving the value of the petroleum licence or right.

Note that (i) and (ii) above may not create a loss.

In the context of a petroleum licence or right, the term "directly" can thus be interpreted to imply ownership for the taxpayer's own benefit, whereas "indirectly" would imply that the benefit is available through an intermediate person or arrangement. Therefore, the sale of shares in a company that indirectly has an interest in a petroleum licence/right in Namibia would be subject to tax.

The rate of tax applicable would be 32%, however we would propose that this is confirmed with the NamRA where a disposal takes place.

It may be difficult for NamRA to track the sale of foreign shares in foreign entities; however, we understand they are working closely with the Ministry of Mines and Energy, who must be notified when there is a change of shareholding in a petroleum licence.

Further matters that need clarification and should be confirmed with the NamRA are:

- Sale of listed shares in a foreign country – How must the seller account for the taxes in Namibia? To register in Namibia for tax for only one transaction is not considered reasonable, as the taxpayer is then required to deregister subsequently. Could Namibia?

someone act as an agent for the taxpayer in

- Sale of shares in a company (directly or indirectly) that owns various petroleum licences in more than one jurisdiction – It may be the case that a holding company is established that owns shares in more than one petroleum licence. How should the tax be accounted for as the selling price for the shares relate to more than one company?

Any farm-in and farm-out agreements would likely be captured by this provision where it results in the direct or indirect sale, donation, expropriation, cession, grant or other alienation or transfer of ownership of a licence or the shares in a company that owns a licence.

Petroleum information and assets

Section 7 of the PTA determines the amounts to be included in the gross income of companies falling under the PTA. Paragraph (f) states that "*any amount received by or accrued to or in favour of such person in the tax year from such licence area and deemed, under the provisions of section 12(1), to be gross income for purposes of this section,*"

Section 12(1) of the PTA 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."

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 the hands of the licence holder.

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. 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.

Indirect Taxes

Value-added tax (VAT)

Imposition of VAT

VAT is chargeable on the supply of goods or services in the course or furtherance of a taxable activity (excluding exempt supplies) and on the importation of goods, and in certain instances services, into Namibia.

“Taxable activity” means any activity that is carried on continuously or regularly by any person in Namibia or partly in Namibia whether or not for a pecuniary profit, that involves or is intended to involve, in whole or in part, the supply of goods or services to any other person for a consideration.

“Continuously” or “regularly” has not been defined in the VAT Act and thus reference is made to a case interpreted by the New Zealand Taxation Revenue Authorities where the two terms are deemed to be complementary – “regularly” being concerned with repeated actions and “continuously” with an ongoing assignment or assignments.

It is however strongly advised to obtain professional advice prior to commencing activities in Namibia and/or written confirmation from NamRA whether the activities, as envisaged, will constitute taxable activities or not.

“Namibia” is defined for the purpose of the VAT Act as including the territorial sea, excluding the economic zone and the continental shelf. As such, for VAT purposes, goods or services supplied by a taxable person up to 200 nautical miles from the low watermark may be subject to VAT.

Compulsory VAT registration

If taxable supplies, being zero-rated and standard rated supplies, exceed N\$500,000 in any 12-month period, VAT registration is compulsory.

A person who becomes liable to register will have to apply to the Commissioner of NamRA for registration within 21 days of becoming liable to register.

Voluntary VAT registration

Previously, a person could register for VAT voluntarily where taxable supplies fell below the VAT threshold, and entities in the development phase could still apply for VAT registration at the discretion of the Revenue Authorities based on detailed motivation provided in support of the VAT registration.

A minimum registration threshold of N\$200,000 was however introduced in December 2015 for all voluntary VAT registrations. This effectively means that, where it is not likely that the applicant will be making taxable supplies in excess of N\$200,000 in its first year of operation, the applicant will not be able to register for VAT. In such a case, it is however recommended that the Revenue Authorities be approached in writing to motivate voluntary VAT registration.

VAT registration for exploration entities

An important amendment to the VAT Act was passed in December 2022, with a coming into effect date of 1 January 2023, allowing VAT registration by persons having and intending to have a taxable activity and is likely to make taxable supplies after a certain period. Once registered, input tax may be claimed on condition that the input tax incurred must be directly related to the current or intended future taxable supplies.

VAT registered

As a VAT registered person, licence holders must levy VAT at 15% on invoices for goods or services supplied locally. Goods sold and exported from Namibia may qualify for zero-rating (0%) where supported by sufficient documentary proof to prove goods have been exported from Namibia by the licence holder. Goods subject to the fuel levy will be zero-rated (0%), whether supplied locally or exported.

When registered for VAT, licence holders will be entitled to claim an input tax credit for VAT paid on goods and services acquired from local Namibian suppliers against output VAT charged on supplies made in Namibia or partly in Namibia. Import VAT paid on goods imported into Namibia and used or consumed in making taxable supplies by the VAT registered person may also be claimed against output VAT charged on supplies made in Namibia or partly in Namibia, provided sufficient documentary proof is retained to support the VAT and Import VAT claims.

VAT & Import VAT Compliance

VAT returns are to be submitted on a bi-monthly basis depending on the tax period awarded to the VAT registered person i.e. either ending on even months or uneven months e.g. 02/2021 (two months ending Feb

2021) or 03/2021 (two months ending March 2021). VAT returns and payments are due on/before the 25th of the month following the tax period.

Import VAT returns and payments are due on a monthly basis on/before the 20th of the month following the month of import.

Custom duties/Import tariffs

Import VAT on goods

Imports, generally, are subject to VAT at the standard rate of 15% on the higher of the open market value of the goods or the free-on-board value ("FOB") uplifted with 10%. In the latter case, the effective rate of Import VAT is 16.5%. The importer is responsible for paying the VAT when the goods are imported. It is irrelevant whether or not the importer is a registered person.

Where the importer is registered for VAT and has an Import VAT account (deferment account), Import VAT becomes payable by the 20th of the month following the month of import.

Import VAT paid may be claimed back on the VAT return as an input credit, provided it is directly attributable to generating taxable supplies. It can only be claimed back in the period that it has been paid and not during the period of importation.

In any other case, the Import VAT is payable when the goods are physically entered into Namibia.

Import VAT and customs duty exemptions

Licence 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").

A person who has been licenced by the Ministry of Mines and Energy to explore or mine for petroleum products, may import goods directly or from a Customs bonded warehouse under rebate of customs duties. Customs and Excise service Namibia issues a confirmation of the rebate item (460.23) upon application, subject to certain exclusions such as the importation of distillate fuel and foodstuffs.

The goods imported by the licence holders must be for use solely in operations in connection with the prospecting for or the mining of natural oil or natural gas to qualify for exemption from import VAT, and subject further to the provisions of rebate item 460.23 above for rebate of customs duties, to the extent

indicated.

The following will also enjoy Import VAT exemption:

- Goods and services imported by an Export Processing Zone entity ("EPZ") or EPZ management company for use by that entity or company in an export processing zone;
- Fuel levy goods;
- Import of goods donated to the State; and
- Import of goods or services by the State.

Customs duties

Imports from member countries of the Southern African Customs Union ("SACU"), i.e. Botswana, Lesotho, South Africa and eSwatini (previously Swaziland) into Namibia do not attract Customs duties. Excise duties on excisable goods not subject to duty at source collection in the SACU country of manufacture, e.g. wine, will attract excise duties on importation into Namibia.

Imports from outside SACU member countries may attract Customs duties which will be a cost to the importer (not claimable). Imports under preferential trade arrangements may benefit from lower or no duty payable. Namibia currently enjoys benefits, subject to rules of origin being observed under the African Continental Free Trade Area (AfCFTA), EU-ETAS agreement, Namibia/Zimbabwe free trade agreement, SADC Trade Protocol, EFTA and the Mercosur FTA.

Goods entered into a bonded warehouse

Only goods subject to Customs duties at a positive rate may be entered or stored in a Customs & Excise storage warehouse ("Customs bonded warehouse") in Namibia. When goods are cleared into a Customs bonded warehouse, the payment of Customs duties and Import VAT is deferred to the date of clearance and release of the goods for home consumption in Namibia.

If goods are moved to another Customs bonded warehouse, payment of duties and Import VAT is also suspended. The liability to pay Customs duties is acquitted when goods are directly exported from the Customs bonded warehouse. Goods may stay in a Customs bonded warehouse for a period of 5 years.

Control over stock in a Customs bonded warehouse is very important and subject to Customs inspections. This can be quite an administrative burden.

Export Levy

The Export Levy Act, No. 2 of 2016, was published in the Government Gazette on 20 June 2016 and came into effect on 1 June 2017. This Act introduces Export Levies on certain raw materials exported from Namibia.

Product	Product Form	Export Levy
Gas	Unrefined gas of all types	1.5%
	Refined gas of all types	0.0%
Crude Oil	Unrefined crude oil of all types	1.5%
	Refined crude oil of all types	0.0%

Export Incentives

In general, export incentives are available where the entity exporting minerals mined in Namibia is approved as an Export Processing Zone Entity (“EPZ entity”) by the Minister of Industrialisation, Trade and SME Development.

With effect from 31 December 2020, an EPZ Enterprise that obtains an EPZ certificate issued under Section 14 of the EPZ Act of 1995 after 31 December 2020 will not benefit from the tax exemption allowances per the Income Tax Act. Existing EPZ Enterprises with EPZ certificates issued prior to 31 December 2020 will enjoy a phasing out of EPZ tax benefits for a period of 5 years commencing on 31 December 2020.

The export of minerals from Namibia is not subject to Namibian VAT, provided the zero-rating provisions of the VAT Act have been complied with. The EPZ entity will be required to retain all documentation as is required for VAT purposes in order to export the minerals from Namibia.

Proof of export may however be required to be retained for purposes of retaining EPZ status in Namibia.

New legislation must still be finalised for the introduction of a new incentive regime, Special Economic Zones (“SEZ”) in Namibia and negotiations on tax exemptions must be conducted on a case-by-case basis.

Fuel rebates

Fuel users in the mining sector are entitled to partial fuel levy refunds by the Road Fund of Namibia Administration (“RFA”) on bulk fuel purchases (diesel) for off-road use. To qualify for such refunds, fuel users should register with the “RFA” and submit claims on a specified form accompanied by the original purchase invoices issued in the name of the refund claimant by fuel wholesalers registered in terms of the Namibian Petroleum Products and Energy Act.

Environmental Duties

Environmental levies (known first as “environmental duties”) were introduced in May 2016 and became payable as from 11 July 2016 on certain motor vehicles, light bulbs and tyres.

The Customs Schedule 1, Part 3 was amended on 26 September 2016 to include the levying of environmental duties on the import of trucks, including dumpers designed for off-road use and shuttle cars for use in underground mines. The rate of duty is N\$40 for each g/km CO₂ exceeding 140g/km emitted by the vehicle’s engine. If a manufacturer’s certificate confirming the CO₂ emission cannot be produced at time of Customs clearing, a formula based on the engine capacity of the vehicle is applied.

With effect from 1 October 2019, environmental levies also became payable on certain oils and fluids, certain plastic bags and certain primary cells and batteries.

Other taxes

Personal income tax

All persons other than companies are regarded as individuals and their year of assessment runs from the 1st of March to the 28th of February. There is no distinction between different classes of individual taxpayers and married men and women are taxed on the same basis.

The same principles apply for individuals and for other taxpayers except for certain inclusions, exemptions and deductions, which relate specifically to individuals. Services rendered within Namibia will be deemed to be from a Namibian source.

The definition of Namibia was added to the Namibian Income Tax Act in 2015 and reads as follows:

“Namibia means the Republic of Namibia and, when used in geographical sense, includes the territorial sea as well as the exclusive economic zone and the continental shelf over which Namibia exercises sovereign rights in accordance with its national and international laws concerning the exploration and exploitation of the natural resource of the sea-bed and its subsoil and the superjacent waters as defined in sections 2, 4 and 6 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990).”

The impact of this is that Namibia is for income tax purposes now extended from 12 nautical miles to 200 nautical miles from the low watermark. This gives the NamRA an increased right to Namibian source income.

Therefore, if employees render services on a vessel within 200 nautical miles, they will be taxable in Namibia.

The above has a major impact on the oil & gas industry as expats that were otherwise exempted from income tax in Namibia whilst working offshore would now be subject to tax. Furthermore, any subcontractors performing work in Namibia were previously not subject to tax, however with the new legislation they are now subject to tax. This will effectively increase the cost of exploration for oil & gas offshore Namibia as the costs would most likely be passed on to the Namibian operators.

This places a significant administrative burden for the following reasons:

- i. The Namibian entities employing the foreign crew will have to withhold PAYE from remuneration paid to them. The foreign individuals are rendering services and earning income in Namibia and will thus be liable to register as taxpayers with the local office of NamRA. The registered foreign individuals must submit annual income tax returns by 30 June annually.
- i. Employment periods for foreign crew differ between entities in the industry, but on very often foreign crew employment periods last between 3 to 6 months with the foreign crew subsequently returning to their country of residence.

The administrative burden of registering and deregistering all foreign crew members for income tax which involves the following: obtaining information to complete the income tax registration and deregistration forms, compiling PAYE 5 certificates, completing annual income tax returns, obtaining copies of passports as proof of exit from Namibia, obtaining affidavits declaring permanent exit from Namibia etc. This proves to be a logistical hurdle and can be very taxing on the entity and the Human Resources staff responsible for this function with extra costs to be incurred by the entity in certain instances.

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

- Employees' tax by way of employees' taxes - Pay-As-You-Earn ("PAYE").
- Provisional tax payments.
- Assessment when PAYE and provisional tax payments fall short of the assessed liability for the year.

The due dates of annual income tax returns are as follows:

- Persons with taxable income of less than N\$50,000 per year are exempt from submitting an income tax return;
- Salaried individuals must submit income tax returns by the 30th of June each year;
- Business individuals need to submit their income tax returns by the 30th of September each year.

Social security contribution

The Social Security Act 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 (minimum 6 months membership period).

Employers are required to register with the Social Security Commission as well as register all their employees who are younger than 65 years of age and who work for more than one day per week.

Contributions should be remitted within 30 days after the end of the month.

Both employer and employee contributions are calculated at 0.9% of earnings. The maximum monthly contribution per employee and employer is N\$81-00 by each (i.e. N\$162 -00 in total). Should the employer choose to carry the full cost of the contribution, there is a taxable fringe benefit to the employee on half of the contribution made by the employer.

Workmen's compensation

Employers are required, under the Employee Compensation Act, to contribute to a fund that provides cash benefits for industrial injury, disability and death.

Contribution rates vary according to inherent occupational risk, from less than 1 percent in most low-risk commercial/administrative occupations, to 8 percent (drilling, tunnelling and rock blasting).

For the purposes of the Employee Compensation Act the term "employee" means any person whether employed permanently, temporarily or casually, with the exception of the following:

- Persons earning more than N\$81,300 per annum (N\$6,775 per month)
- Outworkers performing work on premises not under the control of the employer;
- Persons employed casually and not for the purpose of the employer's business;

- Seamen or airmen under a contract of service whose remuneration is fixed solely by a share in the takings; and
- Persons employed temporarily outside the Republic of Namibia for a continuous period of more than 12 months, unless their employers have made special arrangements with the Commission.

Assessments are not calculated on that part of an employee's earnings that exceeds N\$81,300 per annum and are payable by employers to the Accident Fund in terms of section 69 of the Act.

Vocational and Educational Training (“VET”) levy

With the exception of exempted organisations (please see below), all employers operating within the borders of Namibia with an estimated annual payroll of N\$1,000,000 or above for each financial year are required to register with the Namibia Training Authority (“NTA”) and pay the levy of 1% on the total payroll.

Registration should be done within the first month of business in Namibia. Employers who fail to register on time may face interest and penalties that will be backdated to their commencement date.

Employers are required to register with the NTA by completing the registration form via the NTA Website.

(www.nta.com.na or <http://lcds.nta.com.na/content/home.cshtml>)

Payroll is defined by the VET Act as “...the total annual remuneration paid or payable by an employer to its employees during any financial year”. The definition of remuneration for the purposes of the VET Act has changed effective 1 April 2021 and is defined in the VET Act as having the same definition as defined in Part I of Schedule 2 of the Income Tax Act, 1981 (Act No. 24 of 1981). Remuneration is defined as:

“means any amount of income which is paid or is payable to any person by way of any salary, leave pay, allowance, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, whether in cash or otherwise and whether or not in respect of services rendered...”

Inter alia, incentive bonuses, severance pay and fringe benefits are included in the definition of “remuneration”.

This levy must be paid to NTA and not the Namibian Revenue Authorities.

The following employers are exempt from payment of the levy:-

The State;

Regional Councils as defined in Sect. 1 of the Regional Councils Act of 1992;

- Charitable organisations;
- Public and not-for-gain educational institutions; and
- Faith-based organisations; whether or not supported wholly or partly by grants from the government.

The levy is payable on a monthly basis on or before the 20th day of the following month and each consecutive month thereafter. Payment of the levy must be accompanied by a completed payroll monthly return form (which is available online) and should be completed online or returned to the National Training Forum (“NTF”) for reconciliation with the paid amounts. A Penalty of 10% on the outstanding levy will be applied together with interest.

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.

Property taxes – Transfer duty

Natural Persons: Fixed property	
Value of property N\$	
0 – 600,000	Nil
600,001 – 1,000,000	1% of value exceeding N\$ 600 000
1,000,001 – 2,000,000	N\$4 000 plus 5% of value exceeding N\$1 000 000
2,000,000 and above	N\$54 000 plus 8% of value exceeding N\$2 000 000
Other Persons	
Any value	12%

The Minister of Finance announced that the Transfer Duty Act will be amended to levy transfer duty on the sales of shares of entities who own property and/or mining rights. Further details and effective date of this amendment was not yet announced.

Stamp taxes

Certain transactions may attract stamp duty. The amount of stamp duty payable differs and is based on the nature of every individual transaction.

The basic transactions can be summarised as follows:

Transaction	Stamp duty payable
Agreements or contracts (other than those where duty is specifically provided)	N\$5.00
Lease agreement or lease	The stamp duty will be based on lease payments and periods together with additional considerations specified in the lease agreement.
<u>Transfer or issue of marketable securities and other share transactions:</u>	
Authorisation of share capital	N\$7.50 for every N\$1,000 or any part thereof of the nominal value of the shares.
Subsequent authorisations / increase of share capital	N\$10.00 for every N\$1,000 or any part thereof of the nominal value of the shares.
Original issue of shares within Namibia (if transferable only by registration)	N\$2 for every N\$1,000 or any part thereof of the nominal value of the shares together with any premium payable.
<u>Issue within Namibia of any certificate or other like instrument representing any interest in respect of shares stock, debentures, whether a called unit or fixed trust certificates or by any other name:</u>	
a) not transferable or if transferable only by registration for every N\$ 1,000 or part thereof of the issue price	N\$2
b) made out to bearer or in any manner so as to be transferable only by delivery for every N\$ 1,000 or part thereof of the issue price	N\$5

Transaction	Stamp duty payable
<u>Registration of transfer of any marketable security:</u>	
a.) Transfer is registered before the expiry of a period of six months from the date of execution of the relevant instrument of transfer for every N\$ 1 000, or part thereof, of the amount or value of the consideration given or, where no consideration is given or the consideration is less than the value of the marketable security transferred, of the value of the marketable security transferred	N\$2
b.) if transfer is registered after the expiry of six months	Three times the duty which would have been payable under (a) if transfer had been registered before the expiry of the said period.

The below duties were adjusted per the Transfer Duty Amendment Act and the Stamp Duty Amendment Act and became effective 01 June 2013.

Non-Natural Persons:	
Value of Property	Stamp duties
Any value	1.2%

Additional stamp duty of N\$5 for every N\$1,000 of debt secured will be payable on the registration of a bond over immovable property.

Further, in terms of the amendments effective 1 January 2023, a stamp duty of N\$100 will be payable, per an existing mortgage bond that is transferred to a special purpose entity.

Annual duties

Annual Duty is calculated at 0.065% (i.e. N\$6,50) on the issued share capital of the company and is payable annually. The minimum amount payable is N\$130 per annum.

Incentives

Prior to production

Accumulated exploration expenditures are deductible in full in the first year of production (unless they have already been transferred to another licence area that has gross income from production).

During production

Exploration expenditures incurred when production already commenced are immediately deductible. Accumulated development expenditures are deductible in three equal instalments commencing in the first year of production.

Losses

Losses resulting from allowable deductions may be deducted as an allowable loss against the gross income from the licence 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 licence area or other operations.

Compliance requirements

Petroleum entities are subject to the administrative procedures set out in the Income Tax Act. Income Tax compliance requirements for a branch, company, joint venture, businessperson 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;

Losses

Losses resulting from allowable deductions may be deducted as an allowable loss against the gross income from the licence 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 licence area or other operations.

Compliance requirements

Petroleum entities are subject to the administrative procedures set out in the Income Tax Act. Income Tax compliance requirements for a branch, company, joint venture, businessperson or close corporation will consist of:

- Submission of provisional tax returns (including payment of provisional taxes); and
- Submission of annual tax returns.

Provisional returns and payments must be made, as follows:

- The 1st provisional tax return and payment is due 6 months before the end of the tax year in question. The payment should be based on the taxable income for the first six-months of the tax year and should be calculated at the relevant corporate tax rate;
- The 2nd provisional return and payment is due at the end of each financial year (determined by the year-end of the company, branch, joint venture or close corporation). Provisional tax payable must be calculated based on actual taxable profit for the year, at the relevant corporate tax rate, less the amount paid on the first provisional
- The 1st and 2nd provisional payments should be equal to at least 40% and 80% respectively of the tax payable for the year. Penalties and interest may be levied on an underestimation of provisional taxes; and
- A top-up provisional payment should be made no later than 7 months after the financial year-end of the company, equal to outstanding taxes for the year, after deducting 1st.
- The company/branch/joint venture is required to submit an annual income tax return to NamRA. 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 NamRA for an additional 5 months on receipt of a written request for such.

The Income Tax Act was amended in 2015 to include a number of additional administrative provisions. We have outlined the most significant changes below:

- The Minister may, if he has reasonable grounds to believe that a taxpayer may permanently leave Namibia without paying the full amount of tax due, issue a certificate to the Permanent secretary of the Ministry of Immigration and Home Affairs to prevent that person's departure from Namibia until all taxes are paid in full or arrangements satisfactory to the Minister have been made for payment of the taxes.
- The Minister, or an authorised official, is now authorised, by notice to any person who holds for, or owes money to, a taxpayer, or is liable to pay remuneration to the taxpayer, to require such person to pay the money to NamRA.
- A person who controls or is regularly involved in the management of the overall financial affairs of a taxpayer may now be held personally liable for the tax debts of a taxpayer (i.e. taxes due and payable, penalties and interest) if the Minister is satisfied that the person was negligent or fraudulent in respect of the payment of a tax debt of the taxpayer.
- A joint and several liability exists for any shareholder or member of a close corporation ("CC") to pay the tax debt of the company or close corporation to the extent that the tax debt arose at a time when the person was a shareholder or member.
- A person ("transferee") who receives an asset from a taxpayer who is a connected person in relation to the transferee without consideration or for a consideration below the fair market value of the asset is liable for the tax debt of the taxpayer.

Local Content Regulation

The local content is covered under petroleum agreement. The Government completed the draft local content policy. The draft policy is aligned to the content of the petroleum agreement. We do not yet have Regulations related to local content.

African Continental Free Trade Area ("AfCFTA") considerations

Namibia, after signing and ratifying the AfCFTA Agreement, confirmed the duty rates applicable to imports under the Agreement which was launched on 1 January 2021 and the duty rates on imports under this Agreement were duly published in the Government Gazette of Namibia, dated 16 March 2021, by amendment of Schedule 1 to the Customs and Excise Act, 1998 (Act No. 20 of 1998). Thus, provision has now been made for the duty rates on goods imported into Namibia from countries under the AfCFTA

OECD framework

Namibia joined the OECD's inclusive framework on BEPS in August 2019. Due to this there may be changes in the future of how Transfer Pricing documentation should be prepared. This may involve Namibian Revenue Authorities changing certain aspects of the legislation. To date, the Minister of Finance has not yet communicated any such changes and the guidance as per the Practice Note issued in 2006 still remains the same.

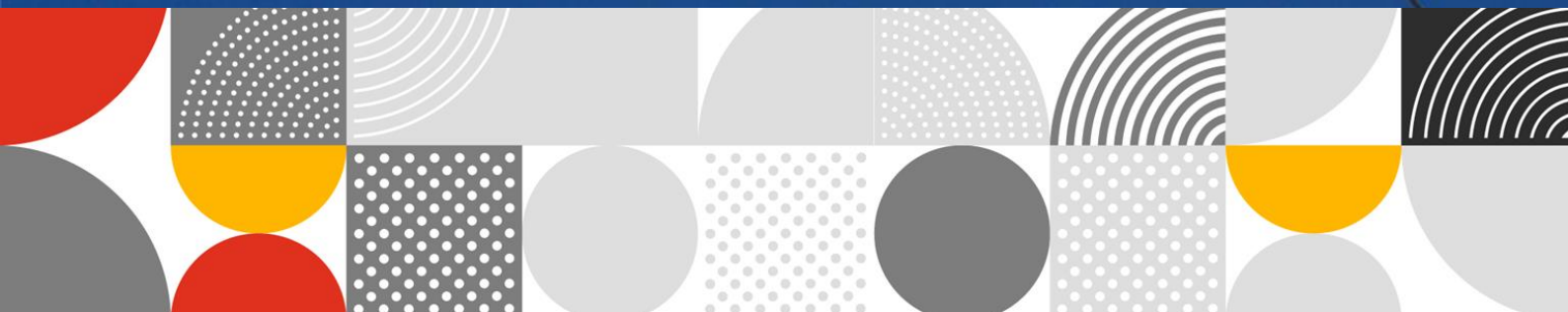
Energy Transition

No specific policies have been enacted to drive the global sentiment of carbon neutrality and transition to cleaner forms of energy.

During Namibia's participation in COP26, we have promised to reduce our emissions by 91% over the next five years. We are also ready to pledge open access to our pristine and precious land as a means to participate in significant climate action.



Power and Utilities Sector



Brief overview of Power and Utilities development in Namibia

The Energy Directorate under the Ministry of Mines and Energy is responsible for power and utilities in Namibia.

A number of developments have taken place in the power and utilities sector since Namibia's independence, most notably on the side of regulation and distribution. On the supply side more than half of Namibia's electricity supply is still imported, with the majority from South Africa.

The Electricity Supply Industry's ("ESI") main role players are the Ministry of Mines and Energy (MME) as custodian of Namibia's energy sector; the Electricity Control Board (ECB) as regulator of the ESI; Namibia's electricity utility (NamPower); the Regional Electricity Distributors (REDs), and some municipalities as the country's distribution licensees across the country. A number of Independent Power Producers (IPPs) have recently come on board as generators of renewable energy.

NamPower is the direct supplier of electricity to the REDs and other redistributors such as large mines, some municipalities and end-users who are located outside the licenced area of local authorities and REDs.

Political and Economic updates

Although Namibia is presently under heavy economic pressure, a number of initiatives to allow replacement and improvements of infrastructure have been coming to light. These include the introduction of independent power producers (IPPs), the National Energy Policy and National Renewable Energy Policy under the Ministry of Mines and Energy and renewable energy projects being initiated, all aimed at reducing electricity imports.

Government is still busy with public consultations regarding the New Equitable Economic Empowerment (NEEE) Draft Bill, 2015. The purpose of this Bill, amongst others, is for the implementation, supervision, administration and review of the NEEE Framework ("NEEEF").

We expect that during the next year more clarity will be provided and a revised bill may be tabled for approval.

Fiscal regime

The Energy Directorate under the Ministry of Mines and Energy is responsible for power and utilities in Namibia.

The Electricity Supply Industry's ("ESI") main role players are the Ministry of Mines and Energy (MME) as custodian of Namibia's energy sector; the Electricity

Control Board (ECB) as regulator of the ESI; Namibia's electricity utility (NamPower); the Regional Electricity Distributors (REDs), and some municipalities as the country's distribution licensees across the country. A number of Independent Power Producers (IPPs) have recently come on board as generators of renewable energy.

NamPower is the direct supplier of electricity to the REDs and other redistributors such as large mines, some municipalities and end-users who are located outside the licenced area of local authorities and REDs.

The Energy Directorate enforces compliance of legal requirements of energy legislation (Electricity Act (Act 4 of 2007)) through the Electricity Control Board. Public entities (for example NamPower) are also subject to the Public Procurement Act (Act 15 of 2015). Other laws, except tax laws, that regulate entities operating in the energy sector includes:

- Environmental Management Act (Act 7 of 2007);
- Labour Act (Act 11 of 2007);
- Companies Act (Act 28 of 2004); and

Taxation regime

Income tax on power and utility entities is governed by the Income Tax Act (Act 24 of 1981). Namibia's income tax legislation applies a source basis of taxation and is not residency based.

The following taxes are levied under the Namibian Income Tax Act:

- income tax on companies, individuals and trusts; and
- withholding taxes.

The Act also contains provisions on the administration of tax affairs. This Act is the standard tax regime for Namibian taxpayers. The gross income definition states that you will be taxed on

- income which is received or accrued,
- from a source or deemed source within Namibia,
- provided that the income is not of a capital nature.

There are certain specific inclusions that would form part of gross income as included in Section 1 of the Income Tax Act. Taxable income is calculated as "Gross income" less deductions allowed in determination of taxable income.

Deductions allowed in the determination of taxable income are those that:

- result from carrying on a trade;

- constitute expenditure or losses;
- are actually incurred;
- be in the production of income; and
- not be of a capital nature.

Payments of a capital nature cannot be deducted for tax purposes; for example, when buying a motor vehicle. Certain capital assets may, however, qualify for capital allowances. These assets are usually claimed over a period of time for tax purposes.

The following capital allowances are available under the Income Tax Act:

- Wear and tear allowances & financing expenditure – Section 17(1)(e) & (eA)
- Building allowances – Section 17(1)(f)
- Lease premium deductions – Section 17(1)(g)
- Leasehold improvements – Section 17(1)(h)
- Intangible assets - Section 17(1)(i)
- Renewal of a trademark, design or patent – Section 17(1)(j)
- Allowances relating to leasehold improvements - Section 17(1)(k)
- Scrapping allowances – Section 17(1)(u).

Tax Compliance

Income Tax compliance requirements for a branch, company, joint venture, business person or close corporation will consist of:

- Submission of provisional tax returns (including payment of provisional taxes); and
- Submission of annual tax returns.

Provisional returns and payments must be made, as follows:

- The 1st provisional tax return and payment is due 6 months before the end of the tax year in question. The payment should be based on the taxable income for the first six-months of the tax year and should be calculated at the relevant corporate tax rate;
- The 2nd provisional return and payment is due at the end of each financial year (determined by the year-end of the company, branch, joint venture or close corporation). Provisional tax payable must be calculated based on actual taxable profit for the year, at the relevant corporate tax rate, less the amount paid on the first provisional.
- The 1st and 2nd provisional payments should be equal to at least 40% and 80% respectively of the tax payable for the year. Penalties and interest may be levied on an underestimation of provisional taxes; and

- A top-up provisional payment should be made no later than 7 months after the financial year-end of the company, equal to outstanding taxes for the year, after deducting 1st and 2nd provisional payments made.

The company/branch/joint venture is required to submit an annual income tax return to NamRA. 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 NamRA for an additional 5 months on receipt of a written request for such.

The Income Tax Act was amended in 2015 to include a number of additional administrative provisions. We have outlined the most significant changes below:

- The Minister may, if he has reasonable grounds to believe that a taxpayer may permanently leave Namibia without paying the full amount of tax due, issue a certificate to the Permanent secretary of the Ministry of Immigration and Home Affairs to prevent that person's departure from Namibia until all taxes are paid in full or arrangements satisfactory to the Minister have been made for payment of the taxes.
- The Minister, or an authorised official, is now authorised, by notice to any person who holds for, or owes money to, a taxpayer, or is liable to pay remuneration to the taxpayer, to require such person to pay the money to NamRA.
- A person who controls or is regularly involved in the management of the overall financial affairs of a taxpayer may now be held personally liable for the tax debts of a taxpayer (i.e. taxes due and payable, penalties and interest) if the Minister is satisfied that the person was negligent or fraudulent in respect of the payment of a tax debt of the taxpayer.
- A joint and several liability exists for any shareholder or member of a close corporation ("CC") to pay the tax debt of the company or close corporation to the extent that the tax debt arose at a time when the person was a shareholder or member.
- A person ("transferee") who receives an asset from a taxpayer who is a connected person in relation to the transferee without consideration or for a consideration below the fair market value of the asset is liable for the tax debt of the taxpayer.

Withholding taxes

The general principle, on which Namibia's tax system is based, is the source principle. This implies that residents and non-residents are taxed on exactly the same basis in respect of income which is from a Namibian source or deemed source. All non-resident taxpayers (individuals as well as companies) have to submit a tax return in respect of their Namibian source income.

In terms of the provisions of the Income Tax Act, certain types of income will be subject to withholding tax. These are:

Royalties (Withholding tax on royalties of 10%)

- The right to use (i.e. rental) of industrial, commercial or scientific equipment (Withholding tax on royalties of 10%);
- Management, consulting, technical, administration fees (Withholding tax on services of 10%)
- Directors fees (Withholding tax on services of 25%).
- Interest paid to non-residents (Withholding tax on interest of 10%)
- Non-resident shareholders tax (NRST) (withholding tax on dividends). NRST is payable at the standard rate of 10% where more than 25% shares are held in the Namibian company. Where less than 25% shares are held in the Namibian company, the NRST payable is 20%.

Compliance dates

Royalties withholding tax is payable within 20 days after the end of the month during which the liability for payment is incurred.

Taxes withheld on payment for services are payable to NamRA within 20 days after the end of the month during which the amount was deducted or withheld.

Withholding tax on interest is payable to NamRA within 20 days following the month during which the interest was paid. Interest is deemed to be paid on the earlier of actual payment or when due and payable.

NRST is payable within 20 days after declaration of a dividend.

Thin Capitalisation

Thin capitalisation rules empower the Minister to disallow the interest expense on the portion of a related party/shareholder loan that he considers to be excessive in relation to the equity of the company.

When a non-resident (referred to as the "investor") has granted, directly or indirectly, financial assistance to:

- any resident "connected person" or
- any other resident person in whom he has a direct or indirect interest of 25% or more (other than a natural person) (the "recipient")

and the Minister, under the circumstances, is of the opinion that the total value of financial assistance given by the "investor" is excessive in relation to the fixed capital of the Namibian borrower (the "connected person" or the "recipient"), the excessive interest may be disallowed.

The cost of the financial assistance (interest and finance charges) on the portion of the financial assistance which is considered excessive will not be allowed as a tax deduction in the hands of the borrower.

The Income Tax Act was amended, effective 1 January 2023, to now specifically include instances when financial assistance is regarded as excessive. In terms of the newly added Section 95A(4), if a debt to fixed capital (being share capital, share premium, accumulated profits and any other permanent owners capital) ratio exceeds 3:1, then all interest deductions and all realised foreign exchange losses in excess of the ratio will be disallowed. NamRA may, however, be approached for approval to exceed the above threshold, taking into account the circumstances and risks associated with the business of the taxpayer.

Transfer pricing

Namibia introduced transfer pricing legislation on 14 May 2005. The legislation is aimed at enforcing the arm's-length principle in cross-border transactions carried out between connected persons. On 5 September 2006 NamRA issued a Practice Note ("PN 2/2006") that contains guidance on the application of the transfer pricing legislation. The Practice Note is based on the Transfer Pricing Guidelines for multinational enterprises and tax administrations as set out by the Organisation for Economic Co-operation and Development (OECD).

The objective of this Practice Note is to provide taxpayers with guidelines regarding the procedures to be followed in the determination of arm's-length prices, taking into account the Namibian business environment. It also explains the Minister of Finance's views on documentation and other practical issues that are relevant in setting and reviewing transfer pricing in international agreements.

Transfer pricing legislation is essentially aimed at ensuring that cross-border transactions between companies operating in a multinational group are fairly priced and that profits are not stripped from Namibia and taxed in lower tax jurisdictions. The legislation achieves this by giving the Minister of Finance (who delegates to NamRA) the power to adjust any non-market related prices charged or paid by Namibian entities in cross-border transactions with related parties to arm's-length prices. It is therefore entitled to tax the Namibian entity as if the transactions had been carried out at market-related prices.

Tax Audits

The tax audit process is a discretionary process instituted by NamRA. NamRA will inspect the validity of invoices and whether such expenses are deductible for tax purposes. Generally, income tax audits are initiated on amounts being refunded to taxpayers, with the focus being on high-value refunds. Subsequent to an audit, a letter will be sent to the taxpayer indicating changes made to the return of income.

VAT audits are conducted on all VAT refund returns. Focus areas during VAT audits are capital additions and disposals, adjustments on the returns relating to prior period transactions, Import VAT claimed on VAT returns and significant input credits. VAT refund audits performed by NamRA are conducted in a manner where the physical presence of the taxpayer, or a representative of the taxpayer, is required, as well as original hard copy documentation, as per the requirements of the VAT Act. This process should be driven by the taxpayer, in scheduling meetings with the responsible NamRA taxation officer.

Subsequent to the finalisation of the VAT refund audit process, the refund may be paid within 2 weeks, provided it is below N\$5 million. VAT refunds in excess of N\$5 million are expected to be paid out within 6 – 8 weeks as this requires an extensive level of authorisation of various senior personnel within the Ministry of Finance. In the event that the taxpayer agrees with the outcome, an assessment is issued. Where the taxpayer is not satisfied with the outcome, an objection may be lodged within 90 days from the date of assessment.

Indirect Taxes

Imposition of VAT

VAT is chargeable on the supply of goods or services in the course or furtherance of a taxable activity (excluding exempt supplies) and on the importation of

goods and in certain instances services into Namibia.

“Taxable activity” means any activity that is carried on continuously or regularly by any person in Namibia or partly in Namibia whether or not for a pecuniary profit, that involves or is intended to involve, in whole or in part, the supply of goods or services to any other person for a consideration.

“Continuously” or “regularly” has not been defined in the VAT Act and thus reference is made to a case interpreted by the New Zealand Taxation Revenue Authorities where the two terms are deemed to be complementary – “regularly” being concerned with repeated actions and “continuously” with an ongoing assignment or assignments.

It is however strongly advised to obtain professional advice prior to commencing activities in Namibia and/or written confirmation from NamRA whether the activities, as envisaged, will constitute taxable activities or not.

“Namibia” is defined for the purpose of the VAT Act as including the territorial sea, excluding the economic zone and the continental shelf. As such, for VAT purposes, goods or services supplied by a taxable person up to 200 nautical miles from the low watermark may be subject to VAT.

Compulsory VAT registration

If taxable supplies, being zero-rated and standard rated supplies, exceed N\$500,000 in any 12-month period, VAT registration is compulsory.

A person who becomes liable to register will have to apply to the Commissioner of NamRA for registration within 21 days of becoming liable to register.

Voluntary VAT registration

Previously, a person could register for VAT voluntarily where taxable supplies fell below the VAT threshold, and entities in the development phase could still apply for VAT registration at the discretion of the Revenue Authorities based on detailed motivation provided in support of the VAT registration.

A minimum registration threshold of N\$200,000 was however introduced in December 2015 for all voluntary VAT registrations. This effectively means that, where it is not likely that the applicant will be making taxable supplies in excess of N\$200,000 in its first year of operation, the applicant will not be able to register for VAT. In such a case, it is however recommended that the Revenue Authorities be approached in writing to motivate voluntary VAT registration.

VAT registered

As a VAT registered person, licence holders must levy VAT at 15% on invoices for goods or services supplied locally. A supply of electricity to a residential account is regarded as a zero-rated (0%) supply, whether supplied locally or exported.

It is important to note that, for VAT purposes, the supply of electricity is regarded as a supply of goods.

When registered for VAT, licence holders will be entitled to claim an input tax credit for VAT paid on goods and services acquired from local Namibian suppliers against output VAT charged on supplies made in Namibia or partly in Namibia. Import VAT paid on goods imported into Namibia and used or consumed in making taxable supplies by the VAT registered person may also be claimed against output VAT charged on supplies made in Namibia or partly in Namibia, provided sufficient documentary proof is retained to support the VAT and Import VAT claims.

VAT & Import VAT Compliance

VAT returns are to be submitted on a bi-monthly basis depending on the tax period awarded to the VAT registered person i.e. either ending on even months or uneven months e.g. 02/2021 (two months ending Feb 2021) or 03/2021 (two months ending March 2021). VAT returns and payments are due on/before the 25th of the month following the tax period.

Import VAT returns and payments are due on a monthly basis on/before the 20th of the month following the month of import.

Custom duties / Import tariffs

Import VAT on goods

Imports, generally, are subject to VAT at the standard rate of 15% on the higher of the open market value of the goods or the free-on-board value ("FOB") uplifted with 10%. In the latter case, the effective rate of Import VAT is 16.5%. The importer is responsible for paying the VAT when the goods are imported. It is irrelevant whether or not the importer is a registered person.

Where the importer is registered for VAT and has an Import VAT account (deferment account), Import VAT becomes payable by the 20th of the month following the month of import.

Import VAT paid may be claimed back on the VAT return as an input credit, provided it is directly attributable to generating taxable supplies. It can only

be claimed back in the period that it has been paid and not during the period of importation.

In any other case, the Import VAT is payable when the goods are physically entered into Namibia.

Customs duties

Imports from member countries of the Southern African Customs Union ("SACU"), i.e. Botswana, Lesotho, South Africa and eSwatini (previously Swaziland) into Namibia do not attract Customs duties. Excise duties on excisable goods not subject to duty at source collection in the SACU country of manufacture, e.g. wine, will attract excise duties on importation into Namibia.

Imports from outside SACU member countries may attract Customs duties which will be a cost to the importer (not claimable). Imports under preferential trade arrangements may benefit from lower or no duty payable. Namibia currently enjoys benefits, subject to rules of origin being observed under the African Continental Free Trade Area (AfCFTA), EU-ETAS agreement, Namibia/Zimbabwe free trade agreement, SADC Trade Protocol, EFTA and the Mercosur FTA.

Specific rebates (exemptions) do not exist in the Customs and Excise Act for goods imported under the commissioning of a power plant in Namibia, although it is possible to import goods under a preferential trade agreement to which Namibia is a party, e.g. the EU, EFTA, SADC or Mercosur with no or reduced customs duties.

Goods entered into a bonded warehouse

Only goods subject to Customs duties at a positive rate may be entered or stored in a Customs & Excise storage warehouse ("Customs bonded warehouse") in Namibia. When goods are cleared into a Customs bonded warehouse, the payment of Customs duties and Import VAT is deferred to the date of clearance and release of the goods for home consumption in Namibia.

If goods are moved to another Customs bonded warehouse, payment of duties and Import VAT is also suspended. The liability to pay Customs duties is acquitted when goods are directly exported from the Customs bonded warehouse. Goods may stay in a Customs bonded warehouse for a period of 5 years.

Control over stock in a Customs bonded warehouse is very important and subject to Customs inspections. This can be quite an administrative burden.

Import VAT exemptions

The following will enjoy Import VAT exemption:

- Goods and services imported by an Export Processing Zone entity (“EPZ”) or EPZ management company for use by that entity or company in an export processing zone;
- Fuel levy goods;
- The importation of electrical energy;
- Import of goods donated to the State; and
- Import of goods or services by the State.

Environmental Duties

Environmental levies (known first as “environmental duties”) were introduced in May 2016 and became payable as from 11 July 2016 on certain motor vehicles, light bulbs and tyres.

The Customs Schedule 1, Part 3 was amended on 26 September 2016 to include the levying of environmental duties on the import of passenger vehicles, tractors, trucks and other vehicles. The rate of duty is N\$40 for each g/km CO₂ exceeding 140g/km emitted by the vehicle’s engine. If a manufacturer’s certificate confirming the CO₂ emission cannot be produced at time of Customs clearing, a formula based on the engine capacity of the vehicle is applied.

With effect from 1 October 2019, environmental levies also became payable on certain oils and fluids, certain plastic bags and certain primary cells and batteries.

Other taxes

Personal income tax

All persons other than companies are regarded as individuals and their year of assessment runs from the 1st of March to the 28th of February. There is no distinction between different classes of individual taxpayers and married men and women are taxed on the same basis. The same principles apply for individuals and for other taxpayers except for certain inclusions, exemptions and deductions, which relate specifically to individuals. Services rendered within Namibia will be deemed to be from a Namibian source.

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

- Employees’ tax by way of employees’ taxes (Pay-As-You-Earn (“PAYE”)).
- Provisional tax payments.
- Assessment when PAYE and provisional tax payments fall short of the assessed liability for the year.

The due dates of annual income tax returns are as follows:

- Persons with taxable income of less than N\$50,000 per year are exempt from submitting an income tax return;
- Salaried individuals must submit income tax returns by the 30th of June each year;
- Business individuals need to submit their income tax returns by the 30th of September each year.

Compliance requirements for Employers:

Employers: PAYE Returns

The employer should submit within 20 days following the month during which PAYE is required to be withheld.

Employers: PAYE reconciliation return

Annual PAYE reconciliation should be submitted within 30 days from the tax year end (30 March each year)

Social security contribution

The Social Security Act 22 provides for an income support system designed for the broadest possible number of Namibians. The system provides for maternity leave, sick leave and death/retirement benefits for its members. Social security is based on a principle of 50:50 contributions from employers and employees. This entitles the employee to certain benefits after a set period of time (minimum 6 months membership period).

Employers are required to register with the Social Security Commission as well as register all their employees who are younger than 65 years of age and who work for more than one day per week. Contributions should be remitted within 30 days after the end of the month.

Both employer and employee contributions are calculated at 0.9% of earnings. The maximum monthly contribution per employee and employer is N\$81-00 by each (i.e. N\$162 -00 in total). Should the employer choose to carry the full cost of the contribution, there is a taxable fringe benefit to the employee on half of the contribution made by the employer.

Workmen’s compensation

Employers are required, under the Employee Compensation Act, to contribute to a fund that provides cash benefits for industrial injury, disability and death.

Contribution rates vary according to inherent occupational risk, from less than 1 percent in most low-risk commercial/administrative occupations, to 8 percent (drilling, tunnelling and rock blasting).

For the purpose of the Employee Compensation Act the term “employee” means any person whether employed permanently, temporarily or casually, with the exception of the following:

- Persons earning more than N\$81,300 per annum (N\$6,775 per month)
- Outworkers performing work on premises not under the control of the employer;
- Persons employed casually and not for the purpose of the employer’s business;
- Seamen or airmen under a contract of service whose remuneration is fixed solely by a share in the takings; and
- Persons employed temporarily outside the Republic of Namibia for a continuous period of more than 12 months, unless their employers have made special arrangements with the Commission.

Assessments are not calculated on that part of an employee’s earnings that exceeds N\$81,300 per annum and are payable by employers to the Accident Fund in terms of section 69 of the Act.

Vocational and Educational Training (“VET”) levy

With the exception of exempted organisations (please see below), all employers operating within the borders of Namibia with an estimated annual payroll of N\$1,000,000 or above for each financial year are required to register with the Namibia Training Authority (“NTA”) and pay the levy of 1% on the total payroll.

Registration should be done within the first month of business in Namibia. Employers who fail to register on time may face interest and penalties that will be backdated to their commencement date.

Employers are required to register with the NTA by completing the registration form via the NTA Website (www.nta.com.na or <http://lcds.nta.com.na/content/home.cshtml>)

Payroll is defined by the VET Act as “...the total annual remuneration paid or payable by an employer to its employees during any financial year”. The definition of remuneration for the purposes of the VET Act has changed effective 1 April 2021 and is defined in the VET Act as having the same definition as defined in Part I of Schedule 2 of the Income Tax Act, 1981 (Act No. 24 of 1981). Remuneration is defined as:

“means any amount of income which is paid or is payable to any person by way of any salary, leave pay, allowance, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation

allowance, retiring allowance or stipend, whether in cash or otherwise and whether or not in respect of services rendered...”

Inter alia, incentive bonuses, severance pay and fringe benefits are included in the definition of “remuneration”.

This levy must be paid to NTA and not the Namibian Revenue Authorities.

The following employers are exempt from payment of the levy:

- The State;
- Regional Councils as defined in Sect. 1 of the Regional Councils Act of 1992;
- Charitable organisations;
- Public and not-for-gain educational institutions; and
- Faith-based organisations; whether or not supported wholly or partly by grants from the government.

The levy is payable on a monthly basis on or before the 20th day of the following month and each consecutive month thereafter. Payment of the levy must be accompanied by a completed payroll monthly return form (which is available online) and should be completed online or returned to the National Training Forum (“NTF”) for reconciliation with the paid amounts. A Penalty of 10% on the outstanding levy will be applied together with interest.

Property taxes – Transfer duty

Natural Persons: Fixed property	
Value of property N\$	
0 - 600 000	Nil
600 001 - 1 000 000	1% of value exceeding N\$ 600 000
1 000 001 - 2 000 000	N\$4 000 plus 5% of value exceeding N\$1 000 000
2 000 000 and above	N\$54 000 plus 8% of value exceeding N\$2 000 000
Other Persons	
Any value	12%

The Minister of Finance announced that the Transfer Duty Act will be amended to levy transfer duty on the sale of shares of entities who own property and/or mining rights. The new legislation is expected to be tabled during 2018/19. The detailed and effective date of this amendment was not yet announced.

Stamp taxes

Certain transactions may attract stamp duty. The amount of stamp duty payable differs and is based on the nature of every individual transaction.

The basic transactions can be summarised as follows:

Transaction	Stamp duty
Agreements or contracts (other than those where duty is specifically provided for in the Act)	N\$ 5
Lease agreement or lease	The stamp duty will be based on lease payments, together with additional considerations specified in the lease agreement
Transfer or issue of marketable securities and other share transactions:	
Authorisation of share capital	N\$7.50 for every N\$1,000 or any part thereof of the nominal value of the shares.
Subsequent authorisations / increase of share capital	N\$10.00 for every N\$1,000 or any part thereof of the nominal value of the shares.
Original issue of shares within Namibia (if transferable only by registration)	N\$2 for every N\$1,000 or any part thereof of the nominal value of the shares together with any premium payable
Registration of a bond over immovable property	
a.) Transfer is registered before the expiry of a period of six months from the date of execution of the relevant instrument of transfer for every N\$ 1,000, or part thereof, of the amount or value of the consideration given or, where no consideration is given or the consideration is less than the value of the marketable security transferred, of the value of the marketable security transferred	N\$2
b.) if transfer is registered after the expiry of six months	Three times the duty which would have been payable under (a) if transfer had been registered before the expiry of the said period.

The Minister of Finance announced that the Transfer Duty Act will be amended to levy transfer duty on the sale of shares of entities who own property and/or mining rights. The new legislation is expected to be tabled during 2018/19. The detailed and effective date of this amendment was not yet announced.

Annual duties

Annual Duty is calculated at 0.065% on the issued share capital of the company and it is payable annually. The minimum amount payable is N\$130 per annum.

Incentives in the industry

No specific incentives are available for the industry. Refer to “Taxation regime” for information on standard capital allowances available.

AfCFTA considerations

No specific provisions exist to accommodate or address the global drive for carbon neutrality under AfCFTA.

Non-Natural Persons:	
Value of Property	Stamp duties
Any value	1.2%

Namibia's national legislation currently does not offer any customs duty or VAT exemption on the importation or supply of goods and services for the establishment of renewable energy plants.

OECD framework

Namibia joined the OECD's inclusive framework on BEPS in August 2019. Due to this there may be changes in future of how Transfer Pricing documentation should be prepared. This may involve Namibian Revenue Authorities changing certain aspects of the legislation. To date, the Minister of Finance has not yet communicated any such changes and the guidance as per the Practice Note issued in 2006 still remains the same.

Energy Transition

No specific policies have been enacted to drive the global sentiment of carbon neutrality and transition to cleaner forms of energy.

During Namibia's participation in COP26, we have promised to reduce our emissions by 91% over the next five years. We are also ready to pledge open access to our pristine and precious land as a means to participate in significant climate action.





ESG



ESG

Namibia's energy is mainly imported and from non-renewable sources. Therefore the application of the ESG framework will be very relevant in order to attract foreign investments.





Nigeria

Contact



Chijioke Uwaegbute

chijioke.uwaegbute@pwc.com



Emuesiri Agbeyi

emuesiri.agbeyi@pwc.com



Tiwalade Otufale

tiwalade.otufale@pwc.com



Babatunde Olaniyi

Babatunde.x.olaniyi@pwc.com



Ayo Akinduyite

ayo.akinduyite@pwc.com



Olayemi Williams

olayemi.williams@pwc.com



Chidera Ude

chidera.ude@pwc.com

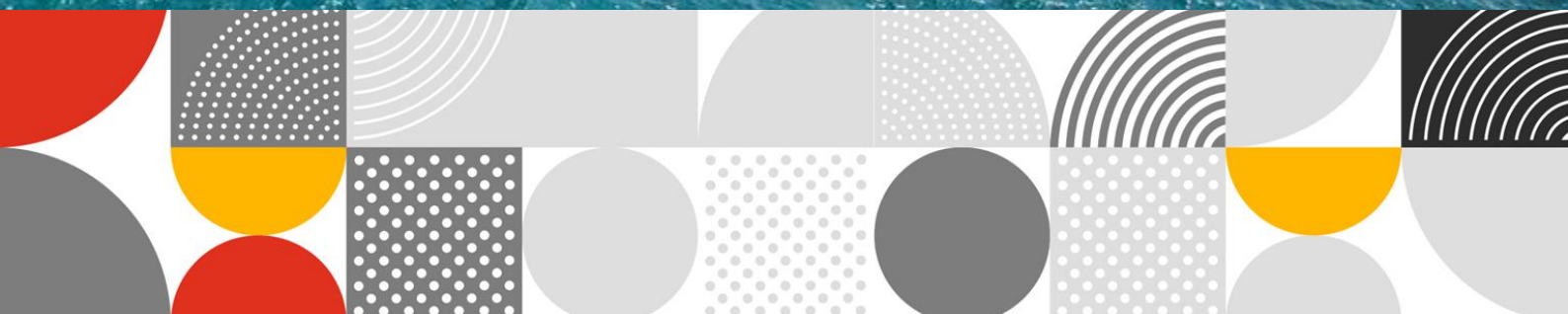


Oyintare Abang

Oyintare.abang@pwc.com



Oil and Gas Sector



Brief overview of the Oil and Gas Industry in Nigeria

The Federal Republic of Nigeria is a West African nation located along the Gulf of Guinea of the Atlantic Ocean. The country comprises 36 states and the Federal Capital Territory – Abuja. English is the official language in Nigeria, and its currency is the Nigerian Naira (NGN).

The Nigeria Energy industry consists of various players within the oil and gas, power and utilities and renewable energy sectors. Nigeria is endowed with natural energy resources such as crude oil, natural gas, coal, hydroelectricity, solar and wind. Investment has also been made to harness energy through biomass and waste.

In 1956, Shell-BP discovered oil in commercial quantities in Oloibiri (Yenagoa province, now Bayelsa State). Since this commercial discovery, the oil & gas industry continues to remain the mainstay of the Nigerian economy. In the fiscal year 2022, the oil & gas industry contributed approximately 90% of the country's foreign trade earnings and 5.6% of the gross domestic product (GDP). The oil & gas industry comprises three functional sectors namely the; Upstream, Midstream and Downstream sectors. Some of the key players within the Nigerian oil & gas industry are Chevron Corporation, Exxon Mobil Corporation, TotalEnergies SE, Shell Plc, Seplat and Nigerian National Petroleum Corporation Limited (NNPC)

Nigeria currently has about 37 million barrels of proven crude oil reserves and about 202 trillion cubic feet (tcf) of untapped proven gas reserves according to data from NNPC. Due to the large gas reserves, the Federal government has put in measures to harness the untapped gas reserves.

According to the 2022 SDG 7 energy tracking report, Nigeria has the world's largest energy deficit, with 92 million people lacking access to power. The government has turned to public private partnerships as a means of developing the power sector and closing up the deficit.

Economic and Political Updates

In 2022, the Nigerian economy witnessed some growth. The economy recorded a real GDP figure of NGN 74.64 trillion in 2022, an increase from the NGN 72.39 trillion that was recorded in 2021. The annual gross domestic product (GDP) growth rate dropped to 3.10% compared to the 2021 growth rate of 3.40%. Although the economy witnessed some growth, other macroeconomic factors such as foreign exchange (FX) challenges, rising inflation, fuel scarcity, security issues and government policies continued to impact business operations within the Nigerian environment.

Amidst the economic challenges faced by the Nigerian economy in 2022, the Nigerian government embarked on further borrowing to meet its developmental needs. The debt profile rose to [NGN 44 trillion in the third quarter of 2022](#) from NGN 38 trillion in the third quarter of 2021 since the government was not getting enough revenue from crude oil.

The Ukraine-Russia war which intensified in February 2022 saw the price of crude oil increase significantly with Brent Crude averaging [\\$100/barrel](#) in 2022. However, the benefits of the increase in price did not translate to significant earnings for the country. This is as a result of low output and revenue wasted on the payment of petrol subsidies. The sustained cases of oil thefts and vandalization of pipelines within the oil producing regions forced a reduction in oil production, much below the production quota (1.88 million barrels per day) set by OPEC. According to data, Nigeria produced just [about 60%](#) of its quota.

The government has continued to implement certain measures to unlock the full potential within the energy industry especially fiscal policy frameworks and legislations.

Sequel to the conclusion of the 2020 marginal bid rounds where 161 companies emerged winners of 57 fields, the federal government of Nigeria through the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), announced the commencement 2022 mini bid round for seven (7) deep offshore blocks. The bid process was set to commence in January 2023 with a pre-bid conference. The NUPRC also set up a portal where interested investors can register.

The Dangote Oil Refinery, a 650,000 barrels per day (BPD) integrated refinery project, is still under construction at the Lekki Free Trade Zone (FTZ) area in Lagos. It is widely dubbed to be Africa's biggest oil refinery. The Nigerian Midstream and Downstream Petroleum Regulatory Authority (The Authority) revealed in the fourth quarter of 2022 that the [Dangote Refinery project is 97% completed](#). It is however uncertain as to the date the project will be commissioned nor the date of commencement of operations.

In 2022, President Muhammadu Buhari flagged off the [Kolmani Integrated Development Project](#) which comprises upstream production, oil refining, power generation and fertiliser production. This project was targeted at developing the Kolmani Oil field discovered in 2019 in Northern Nigeria. The Kolmani field is located at the borderline area between Bauchi and Gombe states. This is the first oil discovery in Northern Nigeria. According to the NNPC Limited, the Kolmani area has over 1 billion barrels of oil reserves and 500 billion cubic feet of gas with huge potentials.

In July 2022, [UTM Offshore Limited](#) signed a FEED contract with JGC Corp., Technip Energies and KBR for the development of Nigeria's first Floating Liquefied Natural Gas (FLNG) facility. This FLNG will have a capacity to process 176 MMscf/d of natural gas and condensate. It will be located at the Yoho Field in offshore Block OML 204, Akwa Ibom State and [operated by Exxon Mobil, in partnership with NNPC Limited](#). This vessel once completed (possibly in 2026) will feature a turret mooring system, gas pre-treatment modules, LNG production modules, living quarters, self-contained power generation and utilities, along with storage and offloading.

In August 2022, the Nigeria Energy Transition Plan was launched in a bid to achieve carbon neutrality, safeguard lives and properties and promote economic growth. This is in line with Nigeria's commitment to achieve net zero by 2060 and provide access to reliable, affordable and sustainable energy to all of its citizens by 2030.

For the past five years in Nigeria, the revision of the tax laws to aid tax administration efficiency and boost revenue have become an annual practice. The 2022 Finance Bill was passed by the National Assembly on the 29th December 2022 to address certain existing tax laws, however as at April 2023, the President is yet to sign the bill into law. With subsequent Finance Acts, the country has recorded some successes around better tax efficiency, tax administration, reduction of tax burden on the taxpayers and aided the increase of revenue for the government.

The Petroleum Industry Act

Following the passage of the Petroleum Industry Act (PIA) in 2021 into law, significant efforts were made by both private and public sectors to progress its implementation in 2022. The PIA seeks to provide legal, governance, regulatory and fiscal framework for the Nigerian Petroleum Industry. Draft regulations for the various sectors (across upstream, midstream and downstream sectors) within the petroleum industry which will support the implementation of the PIA have commenced, some of which have been gazetted and are currently operational.

Upstream operations

1. Introduction of regulations to signal implementation of the Petroleum Industry Act (PIA)

In April 2022, thirteen (13) regulations supporting the provisions of the PIA were published by the NUPRC. Out of thirteen (13) regulations published, eight (8) are still in draft while five (5) have been Gazetted. These regulations include: [In draft](#)

1. Upstream Petroleum Fees and Rents Regulations;

2. Upstream Decommissioning and Abandonment Regulations;
3. Unitisation Regulations;
4. Acreage Management (Drilling & Production) Regulations;
5. Frontier Exploration Fund Administration Regulations;
6. Upstream Environmental Remediation Fund Regulations;
7. Upstream Petroleum Safety Regulations; and
8. Upstream Petroleum Environmental Regulations.

Gazetted

1. Nigeria Upstream Petroleum Host Communities Development Regulations (Including the Host Communities' Development Trust Implementation Template);
2. Royalty Regulations;
3. Domestic Gas Delivery Obligation Regulations;
4. Nigeria Conversion & Renewal (Licence and Lease) Regulations; and
5. Petroleum Licensing Round Regulations

2. The 2022 Mini Bid Round (MBR)

The 2022 [Mini Bid Round](#) was the first in a series of bid rounds which came with the implementation of the PIA. The 2022 MBR was aimed at furthering development of prospective petroleum basins (i.e., deep offshore acreages) in accordance with the PIA. It seeks to encourage new investors and investment into the next phase of exploration in Nigeria. For the 2022 MBR, seven (7) Offshore blocks covering an area of approximately 6,700 km² in water depths of 1,150m to 3,100m are put on offer. These blocks have extensive 2D and 3D seismic data coverages including multibeam and analog data. The MBR process will be in accordance with the provisions of the PIA and the Petroleum Licensing Round Regulations.

3. The Nigerian Gas Flare Commercialisation Program (NGFCP)

In line with its mandate in the PIA, the NUPRC reintroduced the [NGFCP](#) to drive Nigeria's commitment to eradicate routine gas flaring and reinforce the Nigeria Energy Transition Plan. The NGFCP seeks to supplement the efforts of the federal government in curbing the impact of gas flaring on the global climate, resource wastage and value erosion. This is also in line with the Federal Government of Nigeria COP26 pledge to be carbon neutral by 2060. This pledge encouraged the introduction of the Climate Change Act and the Nigeria Energy Transition Plan. Harnessing of natural gas destined for flaring will reduce carbon emissions, stimulate growth and create jobs. Investors (indigenous and international) with proven technical and commercial capacity to convert flare gas for useful purposes are encouraged to apply.

Midstream operations and Downstream operations

The Nigerian Midstream and Downstream Petroleum Regulatory Authority (“Authority”) in March 2023 issued 6 new regulations to guide the implementation of the PIA. The regulations are yet to be gazetted as consultations are being made with relevant stakeholders. The authority is also in the process of drafting another 14 regulations. The six (6) regulations issued include;

1. Midstream and Downstream Petroleum Operations Regulations;
2. Petroleum Measurement Regulations;
3. Assignment or Transfer of Licence and Permit Regulations;
4. Natural Gas Pipeline Tariffs Regulations;
5. Gas Pricing Regulations; and
6. Domestic Demand and Delivery Regulations and Petroleum (Transportation and Shipment) Regulations.

Natural gas operations

In 2022, NNPC signed a number of Memoranda of Understanding (MoUs) with West African countries, including the national oil companies of Gambia, Ghana, Guinea, Guinea Bissau and Sierra Leone ahead of the planned [Nigeria-Morocco Gas pipeline project](#).

The pipeline which would be an extension of the existing West African Gas Pipeline would connect Nigerian Gas to every coastal country in West Africa. Upon completion, the pipeline will supply around 3 billion standard cubic feet of gas per day (3bscf/d) from [Nigeria to the Kingdom of Morocco](#) and subsequently to Europe.

Regulatory framework

1. Minister of Petroleum Resources (The Minister) – The Minister performs a supervisory role on the petroleum industry and formulates, monitors and administers Government Policies in the industry. The Minister is also responsible for promoting an enabling environment for investment in the Industry. The Minister also has the powers to grant and revoke licences through the processes established under the PIA.
2. The Nigerian Upstream Petroleum Regulatory Commission (The Commission) - The Commission is responsible for the regulation of Upstream Petroleum operations including all technical, operational and commercial activities. The Commission is responsible for the administration, monitoring and enforcement of compliance with the terms and conditions of leases, licences, permits and authorisations granted or issued to a company in respect of upstream petroleum operations.

3. Nigerian Midstream and Downstream Petroleum Regulatory Authority (The Authority) - The Authority is responsible for the regulation of Midstream and Downstream petroleum operations including all technical, operational and commercial activities. The Authority is responsible for the promotion, establishment and development of a positive environment for international and domestic investment in the midstream and downstream operations.
4. Federal Inland Revenue Service (FIRS) - This FIRS is the revenue collection agency of the Nigerian Government. It administers the Companies Income Tax Act (CITA), Hydrocarbon Tax (HT) and other taxation issues on behalf of the government. There is a proposal to change the name of the service to Nigeria Revenue Service, but the President is yet to give his assent.

Fiscal/taxation regime

Forms of contracts

There are different types of contracts in the petroleum industry in Nigeria. These contracts determine the rights and duties of both sides. Each specific type of contract regulates the risks and expenses borne by the contractor(s). 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 & gas concessions and contribute towards costs and subsequently derive benefits based on their equity participation in an oil block. There is usually a balanced risk-sharing formula agreed to by the parties, along with capital and production distribution based on the parties' equity share. The parties will typically sign a Joint Operating Agreement to govern relations amongst themselves.

Joint ventures are significantly common in the Nigerian petroleum industry and are accountable for most of its oil production. The Nigerian government currently holds 15 JV contracts with contractors and its equity in those ventures are held by the National Petroleum Investment Management Services (NAPIMS). NAPIMS is also responsible for monitoring and enhancing the benefits accruing to the Nigerian government from its equity in the Upstream Petroleum Industry. It achieves this through effective cost control and supervision of the Joint Venture Operations.

In 2021, the petroleum industry act introduced a key change with the aim to encourage investment and competitiveness by the creation of incorporated joint venture companies that are not subject to the provisions of the Fiscal Responsibility Act and the Public Procurement Act. This practise would allow the JV partners to take investment decisions swiftly as such processes will not be required to follow the government bureaucracy thereby creating efficiencies in field development and production.

Production Sharing Contract

The Federal Government is the holder of the concession (in a number of blocks) and appoints a Contractor to conduct petroleum operations in the contract area. The Contractor provides the funds and bears the risks until commercial production is achieved. Production is allocated in barrels to royalty, then costs then taxes and finally profit using a predetermined sharing formula.

Risk Service Contract

The Contractor has no title to oil produced but bears all the risk of exploration, development and production of petroleum on behalf of the concession holder. The Contractor is reimbursed and remunerated from the sale of oil produced based on the commercial success of the project. In reality, this arrangement comprises mostly local petroleum companies operating in partnership with IOCs under “sole risk” arrangement .

The Contractor is subject to tax under the Companies Income Tax Act, since it is carrying out operations on behalf of the concession holder.

Special transactions/arrangements

Farm out arrangements

A farm out arrangement may be a financing or technical arrangement typically adopted when the licence holder is incapable of developing the licence area on its own. It is also used by the licence holder to reduce risks. The licence holder called the “farmor” surrenders a percentage of his rights to the “farmee” in return for funding and provision of technical services required. Such funding may involve partial or full reimbursement of past costs previously incurred by the farmor.

With the PIA introducing the new acreage management system that results in holders of Petroleum Mining Lease (“PML”) only retaining ‘field-sized’ lease areas, which effectively bring to a close the marginal field regime, there are doubts as to whether farm out agreements will continue to be relevant.

Carry arrangements

A carry arrangement is one in which one party to a joint venture called the “carrying party” finances exploration and development costs on behalf of all parties to the contract including the NNPC in return for a reward out of probable future production. The carrying party is compensated for taking on additional risks based on agreed terms. Most carry arrangements in Nigeria are usually full carry arrangements.

Modified carry arrangements

This is a financing arrangement whereby an international oil company advances loan to the NNPC for the purpose of investing in upstream projects. Repayment and compensation is mostly on a cash basis which introduces greater transparency and accountability.

Unitisation arrangements

Under a unitisation arrangement, two or more companies may decide to jointly develop an oil/gas field that cuts across different licences with different equity interest, as a single unit.

It involves re-determining the interests of the parties to the single unit in consideration. This usually leads to adjustments in the share of each party’s production and costs.

Forms of Oil and Gas Licences

The PIA also introduces a national grid system to be used for acreage management. The grid will be used to define licence and lease areas, relinquishments, identification of well locations, petroleum conservation measures and other regulatory and acreage management procedures.

The administration of licenses in the upstream petroleum operations sector is one of the key roles that fall within the purview of the Commission. Under the PIA, the applicable licenses for the upstream petroleum sector in Nigeria include;

- Petroleum Exploration Licence (“PEL”) which gives the licensee exploratory rights on a non-exclusive basis for a single renewable 3-year term.
- Petroleum Prospecting Licence (PPL) which gives licensees the exclusive right to drill exploration and appraisal wells, do corresponding test production and nonexclusive right to carry out petroleum exploration for a maximum of 6 years for onshore and shallow water acreages and 10 years for deep offshore and frontier acreages.

- Petroleum Mining Lease (PML), granted to qualified applicants to win and dispose of crude oil, condensates and natural gas for a maximum of 20 years.

The administration of the licenses (including approvals and revocation) will be handled by the Commission and no longer solely under the purview of the Minister as is the case under the Petroleum Act.

The PEL will be granted on a discretionary basis while PPL and PML will only be granted after a transparent and competitive bidding process. Where the consents and approvals required under the Act are not provided within the stipulated time, deemed approvals will apply.

Compliance requirements

There are various compliance obligations for upstream, midstream and downstream operations. Some of these are summarised below.

Compliance Obligations for Upstream Operators

Companies operating within the upstream oil & gas subsector has the following compliance obligation:

- The company must be registered in Nigeria and must obtain relevant licence from Commission before operation;
- Submit geological and technical petroleum data obtained during upstream petroleum operations to the National Data Repository of the Commission;
- They must submit a Natural Gas Flare Elimination and Monetization Plan;
- A holder of a PML or PPL is required to obtain prior written consent of the Minister /Commission for assignment, novation or transfer of licence, power, right or interest of a licensee/lessee;
- Submit Environment Management Plan and make payment of prescribed financial contribution to Environmental Remediation Fund established by the Commission;
- PPL holders must Inform the Commission of discovery that merits appraisal within 180 days of discovery;
- PPL and PML holders must submit to the Commission and the Minister of Finance a yearly summary of royalties, fees, taxes, profit oil shares and other payments made to the Government within 6 months after each calendar year;
- For upstream petroleum operations, hydrocarbon tax (HT) is payable on an actual year basis in 12 equal monthly instalments with a final 13th instalment (if there is an underpayment). The first instalment for the year is due by the end of March of the fiscal year;
- Actual tax returns must be filed within 5 months after the end of the accounting period, that is, not later than 31 May;
- Companies engaged in upstream petroleum operations will also be taxed under CIT and are required to settle their CIT liability on an actual year basis;
- PPL holders are required to present annual work program and status report as prescribed for approval by the Commission;
- PML holders have obligation to set up, maintain and manage a decommissioning and abandonment fund;
- PPL and PML holders are required to notify the commission of any petroleum reservoir which extends beyond the boundaries of its licence/lease area.
- Exploration and production companies, under the PIA, are required to set up a Host Communities Development Trust (HCDDT); and
- Settlor to submit annual report of the activities of the HCDDT and audited accounts to the commission or authority - Not later than 31 May of the following year.

Compliance Obligations for Midstream Operators

- The company must be registered in Nigeria and must obtain licence to operate in midstream oil & gas subsector;
- They have an obligation to not discriminate against customers, classes of customers or related undertaking;
- They must obtain prior written consent of the Authority for assignment, novation or transfer of licence, power, right or interest of a licensee/lessee;
- They must comply with the provision of Land Use Act in respect of compensation for acquisition of land;
- Where a lessee is allocated volumes of gas to be supplied under the gas supply obligation, it is required to submit a marketable natural gas production and supply plan consistent with the obligations of the Authority;
- Lessees who fail to comply with the set domestic gas delivery obligation will be liable to a penalty of \$3.50 per MMBtu. However under certain circumstances, lessees can be excused for failing to meet the domestic gas delivery obligations;
- Submit Environment Management Plan and payment of financial contribution to the Environmental Remediation Fund established by the Authority;
- They must submit a Natural Gas Flare Elimination and Monetization Plan; and
- Set up, maintain and manage a decommissioning and abandonment fund.

Compliance Obligations for Downstream Operators

- The company must be registered in Nigeria and must obtain licence to operate in Downstream oil & gas subsector;
- They have an obligation to not discriminate against customers, classes of customers or related undertaking;
- Obtain prior written consent of the Authority for assignment, novation or transfer of licence, power, right or interest of a licensee/lessee; and
- They must comply with the provision of the Land Use Act in respect of compensation for acquisition of land.

Gas Flaring

The PIA prohibits the flaring of gas by operators except where certain reasonable conditions are met. Such conditions includes:

- In the case of an emergency
- In case of exemption granted by the commission
- Where it is an acceptable practice under a regulation

Gas flaring penalty will be determined by Regulation and will not be tax deductible or cost recoverable. All monies received from gas flaring penalties shall be transferred to the Midstream and Downstream Gas Infrastructure Fund for investment in infrastructure within the host community. Under the PIA, the obligation to pay gas flaring penalty falls on the licensee, lessee or marginal field operator and natural gas producers are required to provide the Commission with a Natural Gas Flare Elimination and Monetisation plan.

Although the Commission is yet to issue a regulation on gas flaring, the penalty prior to passing of the PIA was USD 2 per 28.317 standard cubic metres (1,000 standard cubic feet) of gas flared where at least 10,000 barrels per day of oil is produced in any OML area or Marginal Field (or USD 0.50 per 28.317 standard cubic metres where oil production is less than 10,000 barrels per day).

Local content regulations

Nigerian Oil & gas Industry Content Development Act (NOGICDA)

The NOGICDA ("Local Content Act") was passed in 2010 to increase the level of Nigerian content in the oil & 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 & gas industry.

Compliance with Nigerian content is a condition precedent for:

- renewal of licences and permits to operate in the industry.
- short-listing companies during pre-qualification exercises and for the grant of contracts in the oil & gas industry.

The Act introduces a levy of 1% on every contract awarded in the upstream oil & 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.

There is currently a Nigerian Local Content Development and Enforcement Commission Bill before the legislature undergoing legislative action before both houses of the National Assembly. The bill seeks to infuse local content in all regulated sectors of the Nigerian economy and applies to both the private and public sectors of the Nigerian economy

Direct taxes

The PIA provides for a 29% reduction in the corporate income tax rate for the Company from 85% to a combined 60% i.e (Hydrocarbon rate of 30% and Companies Income Tax of 30%).

Hydrocarbon Tax (HT)

The PIA introduced the Hydrocarbon Tax ("HT") which is to replace the Petroleum Profits Tax. Hydrocarbon Tax is payable by upstream companies operating in onshore and shallow water areas at the varied rates of 15% or 30%. Crude oil, field condensates and natural gas liquids derived from associated gas and produced in the upstream of the measurement points are the petroleum resources subject to Hydrocarbon Tax. HT is payable during each accounting period. According to the PIA, the crude oil revenue of the company is the value of any chargeable oil adjusted to the measuring points based on the proceeds of the chargeable oil sold by the company and the value of all chargeable oil disposed of by the company. HT computation is to be computed in US Dollars. Also, any assessment made by the Federal Inland Revenue Services will be in US Dollars. Failure to pay HT attracts an additional sum equal to 10% of the amount of the tax payable and interest at the prevailing LIBOR or any successor rate, plus 10% from the date when the tax becomes payable until it is paid.

Companies Income Tax (CIT)

The PIA subjects all companies, concessionaires, licencees, lessees, contractors or subcontractors in the oil and gas sector to companies income tax in line with the Nigerian Companies Income Tax Act.

For the purpose of CIT a Nigerian company (company registered in Nigeria) is liable to tax on its worldwide income being its profits accruing in, derived from, brought into, or received in Nigeria. Non-resident companies are liable to tax on income derived from Nigeria, i.e., income attributable to their Nigerian operations or where it has significant economic presence. Companies who are subject to hydrocarbon tax will also be subjected to CIT.

A company that converts to the PIA and sets up new companies to carry out its midstream and downstream operations will be eligible to enjoy a 10 year tax holiday among other incentives in the tax laws prior to PIA. Tax losses will also be carried forward after conversion to the fiscal regime in the PIA.

Education tax

All companies in Nigeria, other than small companies are expected to pay tertiary education tax ("TET") at a rate of 3% on their assessable profits, that is, tax adjusted profit before capital allowances. This became effective September 2023.

Personal Income Tax (PIT)

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.

Personal Income Tax (PIT) is levied on individuals including employees, partners in a partnership, unincorporated trust, joint ventures, families and communities based on source and residency rules. The rates are progressive between 7% and 24%. Minimum tax is computed at 1% while minimum wage earners are exempt from the tax.

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 ₦300,000	7%
Next ₦300,000	11%
Next ₦500,000	15%
Next ₦500,000	19%
Next ₦1,600,000	21%
Above ₦3,200,000	24%

Taxpayers are entitled to a consolidated relief allowance (CRA) of the higher of NGN 200,000 or 1% of gross income plus 20% of gross income. Other reliefs and deductions available include life assurance premium and interest on mortgage for owner occupied homes, payments made for other social security schemes such as NHF and pension, disability allowance. 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 which is 10% per annum on the amount plus interest computed on an annual basis at bank lending rate.

Employers are to file the Employers' Declaration Form (Form H1), Employers' Remittance Card (Form G) and Declaration of estimated income and application for tax reliefs (Form A) by 31st January in respect of the preceding year. Individuals are to file returns not later than 31 March annually. Late filing attracts a fine of ₦500,000 in the case of corporate bodies, and ₦50,000 in the case of individuals.

Withholding tax

WHT is an advance payment of income taxes. It is deductible from payments made on qualifying transactions which include payments in respect of contracts, fees, rent, dividend, interest, royalty, commission. However, WHT is now applicable on dividends distribution made from profits on which PPT has been paid.

The company making payment 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 Transaction	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 of buildings, roads, bridges and power plant	2.5	2.5
All types of contracts, and agency arrangement, other than sales in the ordinary course of business	5	5

The applicable WHT rate may be reduced where the recipient is a resident of a country that has a double tax treaty with Nigeria.

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. Persons who have disposed of chargeable assets are required to compute and pay CGT as well as file the required returns not later than 30 June or 31 December of the year of disposal. CGT also applies on payments exceeding ₦10m made to employees as compensation for loss of employment. The employer is obligated to deduct and remit the CGT to the tax authorities.

CGT will not apply on gains from the disposal of a Nigerian company's shares where the disposal proceeds are less than ₦100m in any 12 consecutive months, or where sale proceeds are reinvested in shares of a Nigerian company within the same year of assessment. Shares disposed in a regulated Securities Lending Transaction are also exempt. The tax will not apply during a business reorganisation.

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. Allowable deductions from proceeds on disposal are the initial cost of the asset, stamp duty, and other costs of sale of the asset. Rollover reliefs can be claimed where proceeds of disposal are used to purchase a new asset of the same class within 12 months before or after the disposal of the old asset.

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.

Transfer Pricing

The PIA requires companies operating in the oil and gas sector to transact at arm's length and discharge their TP obligations. The FIRS issued new TP regulations in 2018. The Income Tax (Transfer Pricing) Regulations, 2018 (2018 TP Regulations) are effective for basis periods commencing after 12 March 2018.

In line with the 2018 TP Regulations, an affected entity is required to complete and file annual Transfer Pricing returns (which comprise TP declaration and TP disclosure forms) and prepare a TP documentation report (if its transactions with related parties exceed 300 million naira). Taxpayers are obligated to maintain a Master file (a high-level TP policy for the group) and Local file (analysis of the local entity's intercompany transactions) as part of the annual TP documentation. The TP documentation is due to be submitted within 21 days of a request by the FIRS. Failure to submit the TP documentation (i.e., both Master and Local file) within 21 days of an FIRS request will attract a penalty at the higher of: ₦10 million or 1% value of related party transactions + ₦10,000/day.

The 2018 TP Regulations introduce penalties for non-compliance. The respective penalties are summarised below:

- a. **Failure to file TP declaration:** ₦10 million + ₦10,000/day.
- b. **Failure to file updated TP declaration:** ₦25,000/day.
- c. **Failure to file TP disclosure form:** higher of: ₦10 million or 1% value transactions not disclosed + ₦10,000/day.
- d. **Filing incorrect / inaccurate information:** Higher of: ₦10 million or 1% value of transactions incorrectly disclosed.
- e. **Failure to file TP documentation upon request:** Higher of: ₦10 million or 1% value of related party transactions + ₦10,000/day.
- f. **Failure to furnish information upon request:** 1% value of related party transactions information relates to + ₦10,000/day

Thin capitalization

The Finance Act 2019 introduced a limit on the amount of tax deductions that a Nigerian entity can take on loans provided by a foreign "connected person" to 30% of earnings before interest, taxes, depreciation and amortisation (EBITDA). Finance Act 2019 also provides that (a) any excess interest expense can only be carried forward for 5 subsequent years; and (b)

violation of the above provision may result in an administrative penalty of: 10% and interest at the CBN's monetary policy rate (MPR) which is currently 11.5% + a spread on the excess interest charged.

Indirect Taxes

Value-Added Tax (VAT)

VAT is charged at a flat rate of 7.5% 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, petroleum products (such as aviation spirit, motor spirit, kerosene, natural gas, other liquefied petroleum gases and gaseous hydrocarbons excluding AGO). Renewable energy equipments (such as wind powered, solar cells and solar powered generator) 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.

Taxable persons making VATable supplies of ₦25 million and above are required to register for VAT and issue a tax invoice. Companies operating in the oil and gas sector are required to withhold VAT at source from payments to their suppliers / contractors. The amount deducted must be remitted to the FIRS and the monthly VAT returns must be filed not later than the 21st day of the succeeding month.

Non-Resident Companies (NRCs) making taxable supplies to Nigeria are required to register with the tax authority using the address of the local customer and charge VAT on its invoices for the supply of VATable goods and services. The local customer is obligated to deduct the tax at source and remit the VAT to the tax authority. Where a supplier (either non-resident or local) fails to or is exempt from charging VAT on the supply of non-exempt goods and services, the Nigerian recipient of the service is statutorily required to self-charge the VAT and remit to the FIRS.

The Finance Act (FA) 2019 granted small businesses (defined as businesses with turnover of ₦25 million or below) an exemption from accounting for VAT i.e., issuing a tax invoice and filing monthly tax returns. The passed FA 2021 removes this exemption for

upstream petroleum companies in the oil and gas industry. This will ensure visibility of all operations in the sector to the Revenue Agency.

Custom and Excise Duties

Customs duties are taxes payable on goods imported into Nigeria. Rates vary for different items, typically from 5% to 35%, and are assessed with reference to the prevailing Harmonised Commodity and Coding System (HS code).

Excise duties are payable on the manufacture, sale or use of specified locally manufactured goods. The tax may also be levied on services, consumption and imported goods. Excise duties are charged on applicable products either on ad-valorem basis, fixed charge per unit, or both.

The various duties are governed by the Custom and Excise Management Act (CEMA) and several other Acts and Regulations relating to customs and excise matters. 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 piece of legislation. It would also change the basis on which customs and excise is computed.

Social security contributions

Pension contribution

An employer with 15 or more employees is statutorily required to participate in a contributory pension. A new Pension Reform Act was signed into law on 1 July 2014, replacing the old pension law which has been in operation since 2004. The new pension law introduced several key changes including:

- a. Increase in the minimum contribution into the Scheme. Employers are required to contribute a minimum of 10% of their employees' monthly emoluments while the employees are to contribute not less than 8%. Under the old law, the minimum contribution by both parties was 15% of basic pay, housing and transport allowances with a minimum of 7.5% by the employer;
- b. Inclusion of less private sector employers. A private sector entity is now subject to the scheme where it has 15 or more employees (previously the minimum threshold was 5 employees); The Act also provides that in the case of private organisations with less than 3 employees participation in the Scheme would be governed by guidelines issued

by the National Pension Commission (PenCom). However, the Act is silent on the applicability of the Scheme to private organisations with more than 3 but less than 15 employees. Persons exempted under the Act are substantially the same as under the repealed Act.

The imposition of a 10-year jail term for persons found guilty of misappropriating pension funds.

National Housing Fund

This is applicable to Nigerian employees earning a minimum of ₦3,000 per annum. The employer is required to deduct 2.5% of basic monthly salary from employees earning more than ₦3,000 per annum and remit the 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, the 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 ₦50 million are required to contribute 1% of its annual payroll cost towards the ITF. The due date for payment and filing 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 as prescribed by the ITF and supported by the necessary documentation.

Other Taxes

Stamp Duties Act (SDA)

Stamp duty is an instrument tax charged on written or electronic documents whether executed in Nigeria or not, except such instruments are specifically exempted under the Stamp Duties Act ("SDA") CAP S8 LFN 2004

as amended. The Schedule to the SDA provides a list of dutiable documents and the applicable stamp duty (“SD”) rates which may be levied at a fixed (flat amount) or ad valorem (percentage of the value of the transaction) rate. Any agreement / contract not specifically provided under the SDA is to be stamped at a nominal rate of 15 Kobo.

In addition to this, a ₦50 charge on any transfer of ₦10,000 or more as “Electronic Money Transfer” (EMT) levy was introduced by Finance Act 2020. On 20 July 2020, the (“FIRS”) released a Public Notice which provided a summary of dutiable instruments, with their corresponding stamp duty rates. This included a charge of 1% stamp duty on contracts.

The FIRS further classified services and other unspecified agreements on the FIRS portal as “Contract Agreements” and imposed a 1% stamp duty on such contracts. The Circular also imposed a stamp duty flat rate of ₦500 on instruments such as Guarantor's Form (For Loan Application), Loan Agreement (as accompanying document to a mortgage or debenture), Power of Attorney (Revocable/not Land Related).

National Agency for Science and Engineering Infrastructure (NASENI) Levy

The NASENI levy is collected by the Federal Inland Revenue Service (FIRS) in accordance with the NASENI Act, as amended by the FA 2021. Its purpose is to facilitate the local mass-production of standard goods, services, and parts needed for the advancement of science and technology within Nigeria. The levy is assessed at a rate of 0.25% of profit before tax of commercial entities operating in the banking, mobile communication, ICT, aviation, maritime, and oil and gas sectors whose annual turnovers exceed ₦100m.

There were no amendments to the act by the proposed FA22.

Nigeria Police Trust Fund (NPTF) Levy

The Nigerian Police Trust Fund Act (NPTF Act) was passed in June 2019 and subsequently amended by the FA 2021. It establishes a six-year fund that will be utilised to train police personnel and procure security machinery and equipment. The NPTF levy is imposed at a rate of 0.005% on the net profits of all companies operating in Nigeria.

The levy will be administered by the FIRS, and all relevant provisions of the Companies Income Tax Act (CITA) and the Federal Inland Revenue Service Establishment Act (FIRSEA) will apply regarding the assessment, collection, and enforcement of the levy.

The effective date for the implementation of the provision was January 1, 2022, which means that the NPTF levy is applicable to the net profits of companies' 2021 financial statements that conduct business operations in Nigeria.

Power and Utilities Sector



Brief overview of the Power and Utilities development in Nigeria

Despite being the largest economy in Africa, Nigeria's growth continues to be severely constrained by an insufficient supply of reliable electricity. Over the past decade, the Federal Government has embarked on several initiatives to facilitate increased investments in the power sector and bridge the demand-supply gap. These initiatives are aimed at increasing the generating capacity, improving transmission infrastructure, encouraging the distribution companies to become efficient and generally creating an enabling environment for the industry to thrive.

The industry has seen significant developments recently, such as the landmark listing of electricity generation company, Geregu Power Plc, on the Nigerian Stock Exchange (NSE). Given the stringent governance and listing rules of the NSE, the listing is regarded as a key achievement and a worthy end goal for other successor companies in the sector.

However, the industry continues to struggle with legacy issues such as regulated tariffs that are not cost reflective and outdated infrastructure leading to value chain losses.

Fiscal Regime and taxation regime

The fiscal and taxation regime are not different from the standard regime. Companies in this sector are subject to Companies Income Tax at a rate of 30%, 20% or 0% for large, medium and small companies respectively and Tertiary Education Tax at a rate of 2.5%. All other taxes that are applicable to regular companies are also applicable to companies in this industry.

Tax audits

Companies in this sector are subject to tax audits in the same manner as companies in other industries.

Regulatory Framework

The regulation framework in the power and utilities sector is governed by the following acts and regulations.

- Electric Power Sector Reform Act (EPSRA)
- Regulations issued by National Electricity Regulatory Commission (NERC), including but not limited to the Grid Code, Metering Code, Distribution Code, Feed-In-Tariff (F-I-T) Regulation, Multi Year Tariff Order etc.

Some relevant regulators involved in managing and regulating the Nigerian electricity sector include:

1. Federal Ministry of Power (FMP): Policy making arm of FGN responsible for initiating and formulating programs on the development of the power sector.
2. Nigerian Electricity Regulatory Commission (NERC) is an independent regulatory agency responsible for regulating the electricity sector.
 1. Nigerian Bulk Electricity Trading Company (NBET) is a Federal Government owned company established in 2010 as a transitional SPV for carrying out, under licence from NERC, the bulk purchase and resale of power.
 1. Niger Delta Power Holding Company (NDPHC) started in 2004 and was conceived as a fast track government initiative to stabilise the Nigerian Power sector while the privatisation efforts were gaining momentum. As part of the privatisation efforts, NDPHC will divest 80% of its ownership in 10 generation assets with a combined capacity in excess of 5,100 MW together with requisite transmission infrastructure.
 1. Transmission Company of Nigeria (TCN) is a government owned entity whose responsibilities include electricity transmission, system operation, and electricity market operations.
 2. Gas Aggregation Company Nigeria Limited (GACN) was established in 2010 to stimulate growth of natural gas utilisation in Nigeria. Among its chief responsibilities, GACN is to facilitate transactions between gas buyers and sellers including managing the dispute resolution process for stakeholders.
 1. The Bureau of Public Enterprises (BPE) serves as the secretariat of the National Council on Privatisation (NCP) and is charged with the overall responsibility of implementing the council's policies on privatisation and commercialisation.
 1. Rural Electrification Agency (REA) is tasked with promoting, supporting and providing electricity access to rural and semi-urban areas as well as administering the Rural Electrification Fund (REF) to support electrification programs.

Forms of contracts

There are no special forms of contracts in this sector.

Local content regulations

The Regulations on National Content Development for the Power Sector 2014 (RNC DPS)

In line with its powers under the Electric Power Sector Reform Act, the NERC issued the Regulations on National Content Development for the Power Sector (Local Content Regulations) in 2014. Under the Local Content Regulations, licensees must promote Nigerian content in various aspects of the power sector value chain from executing projects to procuring contractors, hiring employees, and transferring technology. As a supplement to the regulations, the NERC issued a schedule specifying the minimum percentage of Nigerian content to be maintained in carrying out approved activities within the sector.

To demonstrate compliance with the Local Content Regulations, operators are required to prepare and submit Annual Nigerian Content Performance Reports to the NERC. Likewise, they must submit a Nigerian content plan before commencing any major project, and any bids submitted by contractors at commercial stage must be awarded based on the local content demonstrated.

The NERC is empowered to establish and apply penalties for non-compliance with the local content requirements. However, no penalties have been published since the Local Content Regulations were issued.

The Electricity Bill

As part of ongoing efforts to mature the power sector, the upper house of the Nigerian legislature passed the Electricity Bill in July 2022. The Bill, which is currently being considered by the lower legislative house, seeks to consolidate all the laws governing the Nigerian Electricity Supply Industry (NESI), provide a more efficient legal framework for the industry, and integrate renewable energy into Nigeria's energy mix.

Other objectives of the Bill include to:

- accelerate growth in the power sector and capitalise on the post-privatization gains of the NESI;
- promote policies and regulatory measures to expand Nigeria's power transmission capacity;
- enable the development of a competitive electricity market;
- promote indigenous capacity for renewable energy through a local content framework; and
- strengthen the relationship between the federal and state electricity markets.

In line with the government's redoubled emphasis on climate action, the Electricity Bill provides legal backing for the development and utilisation of renewable power in Nigeria. It encourages generation of electricity from renewable sources like solar, wind, hydro, and hydrogen. As an incentive for investment in the sector, the Bill provides exemption from customs levies and other duties on equipment for development, production,

and utilisation of conventional and renewable energy sources.

Another provision of the Bill is its stipulation that state governments may now enact laws regulating the generation, transmission, and distribution of electricity in all areas within the state. However, this provision has been overtaken by a recent amendment to the Nigerian Constitution which extends the legislative power of states over electricity to areas already covered by the national grid. Under the proposed rules in the Electricity Bill, states may issue licences for the operation of mini-grids and power plants in all areas within that state.

Continuing the drive towards unbundling government-owned operators in the sector, the Bill provides for the incorporation of an Independent System Operator (ISO). Currently, TCN operates as a transmission service provider, market operator, and system operator. Under the Bill, the ISO will take over the market operator and system operator roles in which it will be responsible for managing connections to the national grid and administering the electricity market. The Bill provides that transfers and transactions made in implementing these provisions will be exempt from stamp duties.

The Bill retains the Rural Electrification Fund (REF) to be funded by grants, gifts, endowments, the operating surplus of the NERC, and other stated sources. The Bill provides that sources of money paid into the REF are to be exempt from income tax.

Climate and Sustainability

The power sector is notable for its carbon footprint. According to government estimates, the Nigerian power sector contributes roughly 48 metric tons of carbon dioxide equivalent (MtCO₂e) to Nigeria's total greenhouse gas emissions (GHG). Consequently, the power sector represents a key focus area for the country's climate action.

To help deliver sustainable GHG reductions and ultimately reach net-zero by 2060, the government issued an Energy Transition Plan with the following objectives for the power sector:

- Transition away from diesel and petrol generators which are currently a major energy source;
- Initially expand gas generation capacity to meet electricity demand while integrating renewables; and
- Accelerate electricity generation from renewable sources to foster decarbonisation in use cases like transportation, cooking, heating/cooling, and industry.

A Climate Change Act was enacted in 2021 to provide legal backing for the drive towards carbon neutrality. Amongst several measures, the Act provides for a carbon tax to be introduced by the Nigerian Climate Change Council (NCCC) and the Federal Inland Revenue Service (FIRS). Plans are underway to issue the framework for the carbon levy and an emissions trading system for Nigeria.

Incentives within the EUR industry

Efforts to reduce the world's consumption of fossil fuels due to concerns over climate change have caused many companies, institutions, and countries to divest from oil and gas. However, there is a growing urgency for the country to improve its investment and take advantage of these resources before it falls behind. Unfortunately, the energy sector is facing a host of challenges such as a lack of infrastructure, security concerns, policy uncertainty, and inefficient administration. These issues have created a great deal of uncertainty for investors and have prevented the sector from growing to its full potential.

Despite the challenges faced by the energy sector, there are some incentives currently available to companies in the industry, including those involved in oil, gas, power, and other areas. These incentives are designed to encourage investment in the sector and drive growth. However, there is a need for more targeted and effective policies to ensure that these incentives are maximised, and the energy sector can reach its full potential. Without the right policies and investments, the sector risks being left behind, and the country will miss out on the economic benefits of a thriving energy industry.

We have highlighted the following incentives that are currently available to companies in the energy sector (oil, gas, power and others).

1. Pioneer Status Incentives

The Pioneer Incentive legislation proposes a tax exemption for companies operating in approved industries on their approved products. The list of eligible industries - there are 71 industries eligible for pioneer status which include manufacturing, solid material, pharmaceuticals, information and communication, trade, construction, waste management, electricity and gas supply, tourism, infrastructure, among others with products, ranging from electricity and gas supply to e-commerce, waste management/recycling, creative industries, oil refining, and petrochemicals. The aim of the legislation is to incentivize companies to invest in these industries and to spur economic growth in these areas.

The incentive is governed by the Industrial Development (Income Tax Relief) Act (IDITRA) and pioneer companies investing in specified industrial activities may, on application, be granted a tax holiday for three years initially, which may be extended for up to two years upon satisfaction of specified conditions.

Under the Pioneer Incentive legislation in Nigeria, companies that qualify for pioneer status and enjoy the accompanying tax exemption cannot receive similar tax holiday incentives under any other Act in the country. This incentive is limited to the operations of the company and not the entire company. However, companies must meet certain conditions before being granted pioneer status, such as having non-current tangible assets valued at over ₦100 million. Additionally, during the pioneer period, these companies must submit an annual performance report to the Nigeria Investment Promotion Commission (NIPC) for monitoring and evaluation purposes.

Oil & Gas Free Zone Incentives

The government has approved incentives and fiscal measures aimed at encouraging significant investment in the oil and gas free zone by approved enterprises. These incentives are designed to promote investment in the zone and include a range of fiscal measures that are beneficial to qualifying companies which includes:

- Exemption from all federal, state and local government taxes, levies and rates;
- Repatriation of 100% capital investment including any capital appreciation, profits and dividends earned by foreign investors;
- Exemption from import or export licence requirements; no pre-shipment inspection for goods imported into the free zone;
- Optimise Cash flow management as no payment of duties till goods are exported into Nigeria from the Free Trade Zone;
- Sale of up to 25% of production in the Customs Territory against a valid permit, and on payment of appropriate duties;
- Export to the Customs Territory shall be subject to the same customs and licensing requirements as apply to goods imported from other countries;

- Rent free land at construction stage and thereafter, rent as determined by the Zone Authority;
- No foreign exchange regulation;
- Up to 100% foreign ownership of business; and
- Employment of foreign managers and qualified personnel; no expatriate quota.

There were no amendments to the act by the proposed FA22.

1. Gas Incentives

i. Gas Exploitation (Upstream Operations)

In Nigeria, companies that invest in natural gas liquid extraction facilities to provide usable gas for domestic gas utilisation projects such as aluminium smelting and Methanol, Methyl tert-butyl ether (MTBE), and other associated gas projects are eligible for certain incentives. These incentives are designed to encourage the exploration and production of natural gas in Nigeria's upstream operations. By providing incentives for companies to extract and utilise natural gas, Nigeria hopes to promote economic growth and reduce dependence on traditional fossil fuels like oil. These efforts align with Nigeria's long-term energy strategy, which emphasises the development of cleaner and more sustainable sources of energy.

- All capital investment relating the gas-to-liquids facilities shall be treated as chargeable capital allowance and recoverable against oil income;
- Gas transferred from the natural gas liquid facility to the gas-to-liquid facility shall be at 0% tax and 0% royalty;
- Capital allowance at the rate of 20% per annum in the first 4 years, 19% in the 5th year and the remaining 1% in the books;
- Petroleum Investment Allowance (PIA) at the rate of 10% as for oil;
- Income tax is based on CITA (30%) where expenses are identified as exclusively for gas; and
- Custom Duty at 2.5%.

i. Gas Utilisation (Downstream Operations)

In Nigeria, companies involved in downstream gas utilisation operations,

such as manufacturing and distributing natural gas for commercial purposes, including power generation, liquefied natural gas, gas-to-liquids plants, fertiliser plants, and gas transmission and distribution pipelines, are eligible for incentives. These incentives aim to encourage investment in the downstream sector and promote the development of value-added industries, creating jobs and contributing to the country's economic growth. Nigeria has significant natural gas reserves, and the government is committed to developing the gas sector as a key driver of economic growth. To this end, the Nigerian government has implemented policies and initiatives to attract investment in the downstream sector, such as the Nigerian Gas Master Plan and the Nigerian Gas Flare Commercialization Programme. These efforts align with Nigeria's long-term energy strategy, which emphasises the development of natural gas resources to diversify the country's energy mix and reduce dependence on traditional fossil fuels.

- Capital Allowance at 90% in the first year of production and 10% retained in the books;
- Petroleum Investment Allowance (PIA): 35% (if no tax holiday is exercised or 15% (if tax holiday is exercised);
- Tax Free Period of 3 years in the first instance, and renewable for additional two (2) years subject to satisfactory performance. The tax-free period shall start on the day the Company commences production as certified by the Ministry of Petroleum Resources;
- Tax free dividend during the tax-free period;
- VAT exemption on plant, machinery, and equipment;
- Custom Duty at 2.5%; and
- Deductible interest on loan provided there is prior approval of the Federal Ministry of Finance.

1. Power Incentives

Power sector Companies operating in Nigeria receive various incentives, including but not limited to exemptions on Value Added Tax (VAT) for electricity generated by Generation Companies (GENCOs) and supplied to the National Grid or the Nigeria Bulk Electricity Trading Company (NBET). Additionally, there are VAT exemptions on electricity transmitted by the Transmission Company of Nigeria (TCN) to Electricity Distribution Companies (DISCOs).

These exemptions apply specifically to electricity generated by GENCOs and supplied to the National Grid or NBET, as well as electricity transmitted by TCN to DISCOs.

AFCFTA Consideration

The African Continental Free Trade Agreement (“AfCFTA”), which became effective in January 2021, seeks to boost intra-African trade and create a single, continent-wide market through progressive elimination of tariffs and non-tariff barriers to trade. The agreement creates the world’s largest free trade area connecting 1.3 billion people with a combined GDP of about \$3.4trillion. According to a report from the World Bank, the AfCFTA has the potential to boost Africa’s income by \$450 billion by 2035 and increase Africa’s exports by \$560 billion.

With the AfCFTA in place, it is proposed that over the next 10 years, there will be reduced trade costs with elimination of 90% of tariffs currently in play, simplified customs procedures and free movement of persons, properties, and investment. This promises to create a larger market for Nigeria that will trigger substantial investment in the energy sector from countries overseas, increased investment will build up more competition and facilitate trade growth and economic development.

The recent implementation of the PanAfrican Payment and Settlement System (PAPSS) to simplify and facilitate payments across countries in the continent is an essential indication of a promising future.

Nigeria has ratified the AfCFTA. However, this is yet to take effect in Nigeria because the changes in the duties have not been gazetted. Also, the custom processes like the procedures for presentation, identification and clearance of goods have not been completed

Energy Transition

Nigeria is facing severe climate change impacts, including desertification, floods, pollution, and erosion, with associated socio-economic consequences. Urgent action is needed to limit the impacts of climate change. Simultaneously, the country needs accelerated development to improve the living conditions of millions of Nigerians due to the rapidly rising population. The next few decades offer a unique opportunity to merge economic development and climate action to achieve a just transition in Africa’s largest economy.

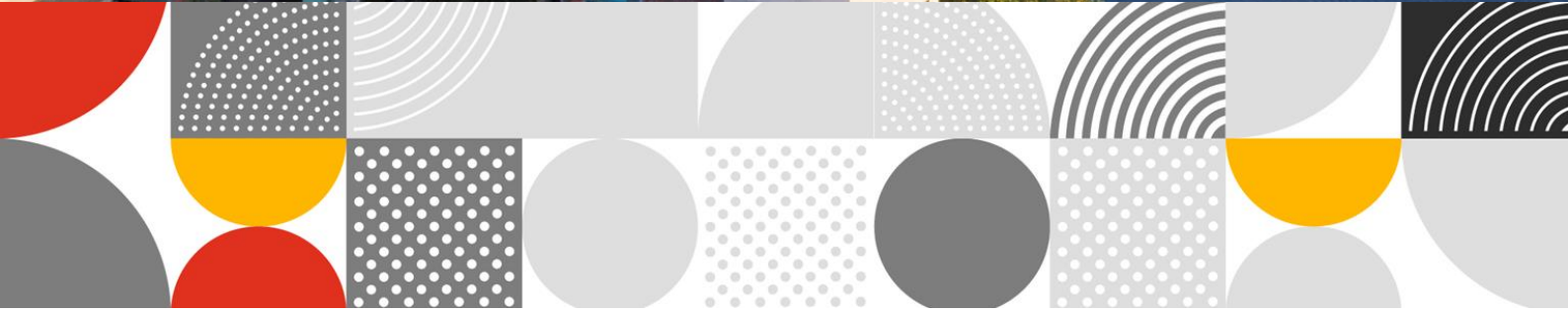
At COP26, President Buhari committed Nigeria to achieving carbon neutrality by 2060 and shortly after unveiled the Nigeria Energy Transition Plan (ETP), a data-backed strategy aimed at achieving net-zero emissions across five key sectors, including power, cooking, oil and gas, transport, and industry. The plan addresses about 65% of Nigeria’s emissions and sets out a timeline and framework for achieving emissions reduction. The ETP is a multipronged approach aimed at balancing the need for meeting the nation’s energy needs while achieving the 2060 net zero target.

The key five sectors include:

- **Power:** This is the transition away from diesel or petrol generators which accounts for the bulk of current generation capacity;
- **Transport:** The targeted emissions reduction by -97% due to making use of Electric Passenger Cars;
- **Oil and Gas** – emissions decrease primarily because of global response to climate change;
- **Cooking** – replacement of kerosene, firewood and charcoal with locally produced gas; and
- **Industry** – emissions decrease by -97% due to decarbonization efforts in cement and ammonia production, and 100% shift to zero emission fuels for heating.



ESG



Environmental, social and governance (ESG)

ESG matters are crucial for companies, investors, and stakeholders in all industries, including the energy sector. As the sector moves towards energy transition, companies that prioritise ESG issues can differentiate themselves and attract more investors. This is especially important for the energy sector, which currently faces negative sentiment from investors due to its impact on climate change.

The Nigerian energy sector has a history of sustainability initiatives ingrained in its business model and culture. Environmental initiatives, host community wellbeing, and employee safety have always been a priority for the oil and gas business. Health, Safety and Environment (HSE) qualifications are necessary for many roles in the sector.

The introduction of the PIA is a major development for Nigeria's ESG objectives. The new law outlines clear roles for good governance, social and environmental remediation. Proper and rigorous implementation of the PIA could be a game changer for the industry, with ESG initiatives having a positive impact on profitability and other non-economic value creation streams.

In 2022, the Nigerian government announced plans to reduce gas flaring in the country's oil and gas industry. The government aims to reduce gas flaring to less than 2% of total gas production by 2025, down from the current rate of about 10%. The government also plans to increase the use of renewable energy in the country, with a target of 30% of total energy generation from renewable sources by 2030. These developments show a growing commitment to ESG issues in the Nigerian energy sector.

Near Term considerations

Development in the local ESG reporting framework

While the Petroleum Industry Act 2021 (PIA) and the Climate Change Act propose broad ESG reporting requirements, there are no detailed ESG reporting frameworks in the Nigerian petroleum industry.

The Climate Change Act states that private entities with 50 or more employees are to install measures to achieve annual emissions reduction targets. Each entity must also appoint a climate change or environmental sustainability officer who will be responsible for submitting annual reports on the company's emissions reduction efforts.

The PIA requires the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) to "promote healthy, safe, efficient and effective conduct of upstream petroleum operations in an environmentally acceptable and sustainable manner."

The Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) has a similar mandate with respect to the midstream and downstream sectors of the petroleum industry. However, neither agency has released specific ESG-focused reporting guidelines.

While the NMDPRA released the Midstream (Gas Flare) Regulations in 2023, imposing an obligation on holders of flare gas permits to report annually the volume of flare gas vented by the permit holder, the focus of the regulations is limited and does not require any social or governance reporting.

In June 2023, Nigeria became the first African country to adopt the two IFRS sustainability standards developed by the International Sustainability Standards Board (ISSB) in collaboration with the Financial Reporting Council (FRC) of Nigeria and the NGX Regulation Limited (NGX RegCo).

At COP26 held in November 2021, the International Financial Reporting Standards Foundation (IFRS Foundation) announced the creation of the International Sustainability Standards Board (ISSB). The goal of the ISSB is to deliver high-quality sustainability disclosure standards that provide investors and other capital market participants with information about companies' sustainability-related issues to inform their decisions. The ISSB subsequently released two exposure draft standards for consultation which will complement the conventional IASB reporting standards. These exposure drafts include;

- Exposure Draft Proposed IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information. This standard sets out the core content for a complete set of sustainability-related financial disclosures and establishes a comprehensive baseline of sustainability-related financial information; and
- Exposure Draft Proposed IFRS S2 Climate-related Disclosures. This standard requires a company to disclose information on its significant climate-related risks and opportunities that would enable an investor to assess the effect of climate-related risks and opportunities on its enterprise value

With the adoption of the standards in Nigeria, companies that are integral to fighting climate change will commence sustainability reporting by 1 January 2024.

These standards adopted will have implications on various aspects of a company's financial reporting, including Tax.

For instance, the ISSB standards will affect the provisions made for decommissioning environmental liabilities and additional disclosure requirements (IAS 37), attention would be paid to recognition of Deferred Tax Assets as a result of Taxable profits possibly reducing due to climate risk exposures (IAS 12), amongst others

Government pledges post-COP27 summit

Since COP27, the Nigerian government has reiterated its commitment towards combating climate change. The Director General of the National Council on Climate Change (NCCC) announced in February 2023 that preparations were being concluded to unveil a carbon taxing policy and budgetary system for Nigeria. This is in line with provisions of the Climate Change Act which empowers the NCCC to make policies on climate matters and collaborate with the FIRS to develop a carbon tax and trading system.

The NCCC also announced plans to address the issue of gas flaring in the petroleum sector. The Energy Transition Plan identifies gas as a critical transition fuel that will help meet electricity and transportation demands pending the development of more sustainable alternatives. The NCCC says it intends to focus on gas flaring as one of its first-line tasks in implementing the Energy Transition Plan.

In May 2023, the government approved the introduction of a 10% excise duty on single use plastics in its Fiscal Policy Measures for the year 2023. The excise duty is expected to cover items such as plastic containers, films and bags. However, current president has suspended the excise duty.

ESG and Governance

There are no petroleum-industry focused governance requirements. However, a number of general governance codes apply to the petroleum industry. They include:

- The Nigerian Code of Corporate Governance:** Issued by the FRCN, this code applies to all Nigerian public companies, private companies that are holding companies of public companies, concessioned or privatized companies, and regulated private companies reporting to any regulatory authority other than the FIRS or the Corporate Affairs Commission. The code imposes several governance standards, including requirements for appointment of independent non-executive directors and a cap on appointment tenure of external auditors.
- The Code of Corporate Governance for Public Companies:** This code was issued by the SEC and it applies to all companies listed on a recognized stock exchange in Nigeria and companies wishing to raise funds through the capital market. The code encourages companies to recognize corruption as a key national development and sustainability issue. The governance standards under the code include requirements for a minimum number of non-executive directors, cross-membership of boards, re election cycles for directors.

Nigeria also does not have a whistleblowing policy that applies to the petroleum industry. While the Nigerian federal government recently approved the submission of a Whistleblower Protection Bill to the National Assembly, the scope and provisions of the intended bill are as yet announced.

Fiscal consideration towards Good ESG Practices

The primary fiscal framework targeted towards good environmental practices is contained within the Climate Change Act 2021. The Act mandates the NCCC, in conjunction with the FIRS, to develop a carbon tax policy and a carbon trading framework. However, regulations implementing these provisions are still prospective with no specific timeline for issuance.

Trends and key challenges with ESG adoption

As ESG awareness and disclosure continue to grow, many organisations are getting lost in the wave of trends in ESG. Some of the common challenges organisations face today include:

Stakeholder need and materiality: Stakeholders are requesting more information on ESG oversight and performance. But many clients are still struggling with understanding, identifying, and communicating the priority ESG topics that are relevant to their businesses and important to their stakeholders.

ESG maturity: Many organisations are still at the pragmatic stage of ESG growth, after long years of adopting sustainability practices. They are unable to scale up in their ESG maturity journey with time.

Embedding ESG in operations: For others, embedding ESG into risk management and strategy has been their concern. These organisations have their ESG activities independently and have not connected them for improving risk management and identifying insights for competitive advantage.

Data Quality and authenticity: In communicating sustainability performance, there is a scarcity of quality and authentic data. Many clients do not measure and monitor their ESG performance in a consistent manner, making it difficult to improve their performance.

- **Leadership and accountability:** ESG leadership and accountability have been another challenge of business leaders. Many organisations do not have a senior management officer responsible for ESG implementation and reporting to the Board.
- **Building stakeholder trust and improving corporate brand:** As customers, suppliers, shareholders, employees, regulators, and other third parties are making decisions using available information, most of them are concerned about the credibility of the available data for their use.





Republic of Congo

Contact



Moïse Kokolo

moïse.kokolo@pwc.com



Emmanuel Le Bras

emmanuel.lebras@pwc.com



Zita Mbuana Makumbu

zita.mbuana-makumbu@pwc.com

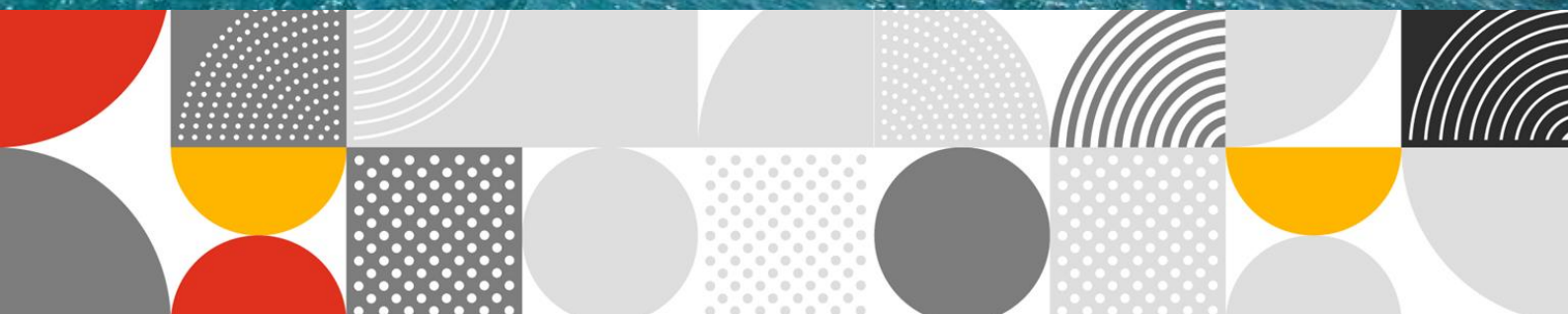


Cynthia Adoua-Nsingoulou

cynthia.adoua.pwc.com



Oil and Gas Sector



Brief overview of the Oil & gas development in Republic of Congo

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 recognized.

Historically, the petroleum industry accounts for an estimated 60% of the State budget. As at 2019, despite the decade of modest reforms initiated by the government of President Sassou Nguesso, Congo still remains heavily dependent on oil revenues to finance its development. The economy has been badly hit by low oil prices and poor fiscal management, causing total government revenue to fall by nearly a third since 2015 and causing the public debt profile to rise to around 110 percent of GDP.

On the other end, the Congolese government has initiated political and economic actions to diversify its revenue stream in a bid to reduce its dependence on hydrocarbon and increase the contribution of tax-based revenue, but with the outbreak of the Covid 19 pandemic, these political and economic actions have lagged.

GDP growth should stand at 1.9% in 2022 and reach 4.1% on average over the period 2023-2024. These forecasts could be revised downwards or upwards. Downside risks relate to uncertainties surrounding oil production and prices, as well as the COVID-19 pandemic. A protracted war in Ukraine is likely to increase inflationary pressures in the country, but high oil prices could bolster economic recovery.

The provisions of the 2016 Congolese Hydrocarbon Code aim to valorize both the oil and the gas sectors. Incentives are also granted for the development of other sectors such as agriculture, forestry, tourism, etc. The 2020 Finance Act, as well as numerous decrees were published to change the Congo oil environment from a regulatory perspective.

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 and Perenco.

Significant new developments in the Republic of Congo

The downturn in the oil & gas sector has significantly impacted the economic environment, and the Congolese administration’s drive to collect taxes, contributions or duties from operators of economic activities in Congo.

On 22 June 2018, the Republic of the Congo, Africa’s third largest oil producer, joined the Organisation for Petroleum Exporting Countries (OPEC). Congo Brazzaville became the fifteenth member of OPEC and the seventh African member nation.

Although Congo’s oil sector was badly affected by the global dip in prices and a slowdown in its own output since 2014, it has been rejuvenated by new projects scheduled to boost output by a quarter to 350,000 barrels per day (bpd) this year. It has become the third-largest producer in sub-Saharan Africa, up from fourth.

Almost each year the Finance Act introduces provisions relating to the Exploration and Production (E&P) sector, as well as to the Energy and utilities sectors.

Fiscal/Legal Regime

The provisions of the Hydrocarbons Code

The 2016 Hydrocarbons Code implemented or modified tax and legal provisions, as follows:

The legal provisions of the Hydrocarbons Code

- Previously, the hydrocarbons code provided for the possibility of a licence holder to be the National Oil Company or an International Oil Company, however the new code has consecrated the exclusive granting of hydrocarbons titles to the National Oil Company in Congo, Société Nationale des Pétroles du Congo (SNPC). These provisions are confirmation of an old practice in the country, and will allow the SNPC to have a formal and central role under the negotiation phases with international oil companies;
- Regarding national participation, the provisions of the new code establishes a minimum participation of 15% for national private companies in the PSCs. The interest is carried during the exploration phase and the rate is set at 25% for Cooperation Contracts concluded in order to continue the production on a field whose production licence expired;
- The Operator is allowed to register a branch in country during the exploration phase and during this phase, the Operator must incorporate a company;

- Regarding the duration of the authorisation and licences (prospection and exploration), the provisions of the new code are more or less unchanged for the initial duration granted (1 year for prospection authorization, 4 years for the exploration licence) as well as the extension period (with a twice 3 years extension). However, more details are provided for licences in borders zones or marine zones beyond 550 metres of water depth which are granted for 6 years;
- Regarding the Production licence, under the previous code, this was granted for an initial period of 20 years, with an extension of 5 years and so forth. Under the new code, the granting period depends on the expected duration of production of the deposit. It cannot exceed 25 years for liquid hydrocarbons, 30 years for gas or solid hydrocarbons deposit but this period can be extended for one period of 5 years;
- Under the previous code, the State's after-tax profit oil was negotiable. However, with the new code, a minimum state profit oil is now set at a minimum of 35% of the calendar year profit oil and cash payment or in-kind-payment at the request of the State;
- Any member of the Contractor may assign all or part of its participating interest in a petroleum contract, including its rights and obligations under that contract, subject to the approval of the assignment by the Minister in charge of hydrocarbons. Under the previous code, the approval of the Ministry in charge of hydrocarbons was still required, but with the new code, the requirements for such assignment to be approved will be set under a specific regulation;
- Also, such transfer of interests was free between related entities, but subject to the approval of the Ministry in charge of hydrocarbons. Now, with the new provisions, the approval of the Ministry in charge of hydrocarbons is still necessary, but the transfer agreements must be tax registered within one month from their date against a fixed registration fee. For the applicable fee, the new code refers to the General tax code provisions;
- Any change in the shareholding of the entities forming the Contractor's group must be reported to the Minister in charge of hydrocarbons;
- Any relinquishment decision by one of the entities forming the Contractor's Group implies the loss of the petroleum cost recovery and the loss of funds advances made to the national oil company;
- Gas flaring which was allowed with approval of the Minister in charge of hydrocarbons only is now prohibited except in few exceptional cases and with the special and prior approval of the Minister in charge of hydrocarbons

The tax and custom provisions of the 2016 Hydrocarbons Code

- The 2016 Hydrocarbons Code has maintained the tax stability clause mechanism and the survival of the existing charter conventions and contracts signed with the State, to ensure the contractor maintaining the general economic balance of the oil contract on change of laws and regulations affecting the taxation regime applicable to the contractor or other members of the contractor after the entry into force of the PSC. However, any amendment to these PSCs must be compliant with the provisions of the 2016 Hydrocarbons Code. In this respect, the new code has granted a period of 24 months to allow companies comply with these provisions;
- However, 24 months after the publications of the 2016 Hydrocarbons Code, no additional provision related to the 24 months regularisation period was published. Although the 2019 & 2020 Finance Act inserted some E&P related provisions, there has been no further discussions on the 24 months grace period.
- The Minister responsible for hydrocarbons, along with other administrative authorities and the oil companies, will implement the establishment of a national fund for environmental risk prevention. The National fund will comprise an annual contribution of 0.05% of net hydrocarbon production valued at the tax price from each operator. The contribution is recoverable and is a tax-deductible cost;
- The 2016 HC has introduced the bonus mechanism, according to which bonus will be awarded upon the execution of a contract, amendment, the granting of exploration or production licence and the extension of production licence. The bonuses are not recoverable; however, they are tax deductible;
- Contractor's Group members are liable for a provision for diversified investments ('PID') levied at the rate of 1% on the annual production. It is a recoverable and tax-deductible cost;
- For the corporate income tax rate, the 2016 code refers to the General tax code provisions, i.e. 30%;
- The New Code lists the taxes the Contractor's Group members are liable to;
- The Contractor is jointly liable with its subcontractors for any abuse in the application of the provisions relating to the customs regime of the petroleum operations;
- During the validity of the contracts, Oil & Gas subcontractors can benefit from specific custom regimes, provided these subcontractors were delivered certificates/attestations from the contractors

Summary of special editions of the official gazette published on August 16, 2022 containing texts relating exclusively to oil industry oil

Three (3) special editions of the Official Gazette, numbered from 7 to 9, published on August 16, 2022 contain texts relating exclusively to the oil industry, whose contribution is as follows:

- **Modification of the regime of the petroleum works affected by the repeal of Eni Congo's and TotalEnergies EP Congo's charter conventions**

Specific agreements were concluded, on May 12, 2022 for most of them, between the Republic of Congo and, notably, Eni Congo, on the one hand and TotalEnergies EP Congo, on the other, as operators on certain oil exploitation permits, to formalize modifications made to the provisions of the production sharing contracts relating to the said permits.

Laws approving addendums, signed in the same view, to certain production sharing contracts in which these two companies are members of the contractor, have also been published.

These modifications were necessary due to the decision of the Republic of Congo to repeal, with effect from January 1, 2020, the charter conventions, dated 1968, under which the two aforementioned companies carried out their oil activities in Congo.

This decision, which resulted from laws dated December 30, 2019 (law n°42-2019 on the finance law for 2020, and laws n°43-2019 and n°44-2019 repealing Orders n°8-68 and n°9-68 of 29 November 1968 approving, respectively, Eni Congo and TotalEnergies EP Congo, under the Regime II of the Common Convention on Investments in the states of the Customs and Economic Union of Central Africa - "UDEAC"), had indeed significantly impacted the conditions under which these companies carry out their activities as part of the oil exploitation permits to which the said charter conventions applied.

The special agreements and amendments mentioned above thus intend to remedy the consequences of the changes made by the repeal of these charter conventions, by regularizing the operating conditions on the abovementioned oil exploitation permits since January 1, 2020.

These special agreements and amendments modify the tax, customs and foreign exchange control regime, as well as the stabilization clause, applicable to the petroleum works carried out under the production sharing contracts relating to the concerned oil permits, namely:

- Kouakouala, Djambala II, Foukanda II, Kitina II, Mwafi II, Loufika-Tioni, Zingali, Marine VI Bis, Ikalou/Ikalou Sud, Awa-Paloukou, Marine XII, Mboundi and the Likouala concession (PNGF), for Eni Congo
- Nkossa and Moho Bilondo (Haute Mer), for Total Energies EP Congo
- Kombi-Likalala-Libondo, Loango II, Zatchi II and Yanga-Sendji for these two companies

In addition, the validity period of the Nkossa and Moho Bilondo licenses is extended until June 24, 2040.

The other provisions of the concerned production sharing contracts, not modified by these agreements and amendments, remain applicable as they stand but, for the licenses to which these contracts relate and whose period of validity has expired since January 1, 2020 (Loufika-Tioni, Zingali and Kombi-Likalala-Libondo), only insofar as they would continue to produce their effects after the expiry of the permit.

The benefit of the aforementioned adjustments is extended to the suppliers, service providers and subcontractors of the concerned production sharing contracts' contractor's members. For the Likouala concession, their benefit is also extended to the contractor's members' shareholders and affiliates. Likewise, the benefit of some tax incentives is extended to the shareholders and/or affiliates of the Haute Mer and Nsoko II production sharing contracts' contractor's members.

These adjustments are applicable from January 1, 2020 and should remain in force until the expiry of the rights and obligations surviving the production sharing contracts that they modify.

- **Modification of the regime of the petroleum works carried out by Perenco Congo on certain permits**

Laws approving amendments to certain production sharing contracts signed since 2015 and relating to licenses on which Perenco Congo operates (Emeraude II, Marine XXVII, Marine XXVIII, Yombo-Masseko, Kombi-Likalala-Libondo II, Tchendo II, Tchibeli Litanzi II and Tchibouela II) have also been published.

These amendments aim to transcribe the new tax, customs and foreign exchange control regime applicable to petroleum works carried out on certain permits since January 1, 2020, following the Republic of Congo's renegotiation invitation made to the members of these permits' contractors. Some of these production sharing contracts (relating to the Tchibeli Litanzi II, Tchendo II, Tchibouela and Yombo-Masseko permits) have also seen their articles 1, 7 and 8 relating, respectively, to definitions, oil costs' reimbursement and oil production sharing, amended. The other provisions of the concerned production sharing contracts, not modified by these amendments, remain applicable as they stand.

The benefit of these modifications, which apply from January 1, 2020 (July 22, 2020 for the Kombi-Likalala-Libondo II permit) and should remain in force until the expiry of the rights and obligations surviving the production sharing contracts that they modify, is extended to the shareholders, affiliates, suppliers, service providers and subcontractors of the concerned contractor's members.

- **Modification of the regime of the petroleum works carried out by TotalEnergies EP Congo on certain permits**

Laws approving amendments n°1 to the production sharing contracts signed since 2019 and relating to the Marine XX, Mokelebembé and Nanga I oil exploration permits, as well as to the Nsoko II oil exploitation permit, in which TotalEnergies EP Congo acts as operator, have also been published.

These amendments aim to transcribe the new tax, customs and foreign exchange control regime, as well as the new stabilization clause, applicable to the petroleum works carried out on these permits since January 1, 2020, which is the date the modifications made to these contracts take effect. The said modifications should remain in force until the expiry of the rights and obligations surviving the production sharing contracts that they amend.

The other provisions of the concerned production sharing contracts, not modified by these amendments, remain applicable as they stand.

- **Implementation modalities for the regularizations resulting from the aforementioned modifications to the regime of the petroleum works carried out on certain permits.**

The regularizations resulting from the above-mentioned modifications must be carried out without any fine, penalty or other sanction for the concerned contractors' members or their respective affiliates, suppliers, service providers or subcontractors.

On this occasion, any overpayments of taxes, fees, duties or other contributions, paid by the contractor, must be taken into account.

Tax regime resulting from Decree n° 2022-1858 of October 12, 2022, fixing the modalities of application of the domestic fiscal provisions to the upstream oil sector

Specific taxes

Bonuses:

The contractor, with the exception of the national company (Société Nationale des Pétroles du Congo), is subject to the payment of the following bonuses (the production sharing contract may provide for other types of bonuses) :

- The bonus for the attribution of the exploration permit,
- The bonus for signing or concluding the production sharing contract,
- The bonus for the award of the exploitation permit,
- The production bonus;
- The bonus for the extension of the exploration permit,
- The bonus for the extension of the operating permit,
- The production sharing contract modification bonus,
- The bonus for reallocation of the operating permit.

The bonus is paid by the operator on behalf of the contractor.

The amount of the bonus is negotiated between the contractor and the ministries in charge of hydrocarbons and finance.

The nature, amount, terms and conditions of payment of the bonus are set by decree by the Council of Ministers.

In the case of the exploration permit, the bonuses are fixed according to the perimeter of the exploration area and the economic potential of the zone,

In the case of the exploitation permit, the bonuses are set according to the perimeter of the exploitation area, the reserves in place and the production thresholds, if any.

Royalties:

Surface royalty

This surface royalty is due by the contractor for the exploration and exploitation perimeters related to the oil contract. The basis of taxation of the surface royalty is the area measured in square kilometers of the permit. However, for simplification purposes, for pipelines, the length in kilometers of the pipeline is used.

The amount of the surface royalty is set as follows :

- 3,000 CFA francs/km² for research permits,
- 800 USD/km² for exploitation permits,
- 0.9 USD/km for pipelines.

The proportional mining royalty :

- 15% for liquid hydrocarbons,
- 5% for natural gas and solid hydrocarbons,
- Reduced royalty rate negotiated for liquid hydrocarbons, but not less than twelve percent (12%), for oil operations conducted in difficult areas (such as the Congolese basin, the deep-water ante-salt beyond five hundred meters of water depth), in which case the proportional mining royalty rate of the exploitation permit is fixed in the related oil contract.

Contributions

The provision for diversified investments (PID)

- 1% of the value of net hydrocarbon production.

The contribution to the verification and audit of accountancy

The annual amount of this contribution is freely determined by the management committee of the oil contract.

Contribution to the national fund for the prevention of environmental risks:

- 0.05% of the net production of hydrocarbons valued at fiscal price,
- 0.05% of the expenses of prospecting, exploration, and development activities, excluding provisions for site restoration for non-producing contractors,

Tax on capital gains on the sale of participating interests in production sharing contracts

- 10% in case of capital gain realized on the transfer
- Exemption for the transfer of rights or obligations in a production sharing contract from a company that is a member of the contractor to a company under Congolese law in which that member holds all the capital.

Provision for abandonment and rehabilitation of sites

Deposit of a sum in United States dollars representing the total cost of dismantling hydrocarbon production facilities and rehabilitating sites, as a guarantee, of which 20% of the guarantee in question must be paid into an escrow account each year until the fixed sum is fully constituted (i.e., over a period of five years), plus interest for the benefit of the oil companies of 1.5%.

The taxes under common law (i.e., the general tax code),

The business tax:

Taxable according to a sliding scale without exceeding the rate of 0.045 for an annual turnover of 20,000 000,001.

The land tax on built properties:

Applicable rates are set by the deliberations of the councils of local authorities approved by the supervisory authority after the opinion of the minister in charge of the budget.

These rates are between 10% and 20%. They amount to 15% for the commune of Pointe-Noire and 20% for the commune of Brazzaville.

Land tax on non-built properties

The rate of the land tax on undeveloped properties is set by the deliberations of the local authority councils approved by the supervisory authority after the opinion of the Minister of Finance, without exceeding 40%.

Exceptional property taxes

The tax on the occupation of premises:

For residential premises

- 60,000 CFA francs for premises located in the city center;
- 12,000 CFA francs for premises located on the outskirts;

For premises for professional use :

- 500,000 CFA francs for the main entity of large companies, i.e. for the main entity of the contractor or members of the contractor,
- 120,000 CFA francs for the main entity of medium-sized companies and other entities of large companies.

The single tax on salaries: 2.5% of the gross salary

Social security contributions paid to the National Social Security Fund (CNSS):

For the employer's share:

20.28% of which 12% of the gross salary for the old age, death and disability pensions branch and 10.03% gross salary for the family benefits branch and 2.25% gross salary for the accident repair and prevention branch.

For the share employee

- 4% of gross salary

The solidarity contribution for universal health insurance coverage (CAMU):

0.5% of the amount of business tax due

The corporate income tax

This corporate income tax is paid in a flat-rate and final manner by remitting to the State its share of profit-oil

Registration and stamp duties

- CFAF 1,000,000 for deeds of transfer of participating interests in exploration or exploitation permits
- CFAF 100,000 for contracts with their suppliers, service providers and subcontractors.
- 100,000 CFA francs for purchase orders
- Exemption for purchase orders with a value of less than 25,000,000 CFA francs
- Free of charge for operations to reconstitute the equity of oil companies and for the extension of the company,
- 1,000,000 CFA francs for the transfer of shares of oil companies whose assets are only participating interests in exploration or exploitation permits

The tax on transfer of funds

1% on the gross amount

Exempt taxes

- Minimum tax (TSS),
- Tax on company cars,
- The tax on dividends when the contractor or the members of the contractor receive income from movable assets,
- Rent tax when the contractor is a real estate lessor.
- VAT for operations related to the upstream oil sector.

Local content regulations

The introduction of local content provisions occurred with the publication of the Law no 3-2000 dated February 1st, 2000 regulating the requirements for carrying out activities under the sub-contracting services.

With the 2016 Hydrocarbons Code, a specific part of the Code is dedicated to local content regulation with which contractors will have to be compliant.

Some of the key provisions related to the local content rules, are as follows:

- The obligation of contractors and their subcontractors to implement and enforce training and promotion programme for Congolese staff in all areas of the upstream oil & gas sector;
- The obligation for the contractors and subcontractors to give priority to the realization of works necessary for their operations to Congolese supplies and services companies, as long as the conditions of price, time and quality are substantially equivalent. It is stated that this obligation remains even if the price offers made by the Congolese companies are 10% higher than those of foreign companies;
- the obligation for other suppliers to partner with Congolese suppliers when the offer of the latter is recognized as technically acceptable;
- The production and development costs of Congolese origin cannot be lower than 25% of the whole production and development costs. When this cap is not met, and not justified, the costs representing the difference is not recoverable. In exploration phase, the percentage is set in the minimum works program;
- Under the previous code, unless a waiver was granted, upstream oil & gas risks had to be insured through Congolese and foreign brokers with Congolese insurance companies. The new code provides for insurance through Congolese insurance brokers and with Congolese licenced insurance companies (except a waiver from the Minister in charge of insurances is obtained).

These rules relating to local content have just been reinforced by the entry into force of the 4 decrees below dated November 15, 2019, namely:

- Decree No. 2019-342 of November 15, 2019 setting terms and procedures for the exercise of subcontracting in the upstream petroleum sector;
- Decree No. 2019-343 of November 15, 2019 setting the terms and conditions for the exercise of service in the upstream petroleum sector;
- Decree No 2019-344 of November 15, 2019 setting the penalties for non-compliance with the provisions relating to local content in the upstream petroleum sector;

- Decree No. 2019-345 of November 15, 2019 regulating the employment, promotion and training of Congolese staff in the petroleum sector

These texts now provide for the following:

Regarding decree n ° 2019-342 of November 15, 2019, which sets the conditions and procedures for the exercise of subcontracting in the upstream oil sector, the text, published in Official Gazette No. 47 of 21 November 2019, made the following changes:

- Only public or private national companies, foreign-owned companies established in the Republic of Congo having opened up to the Congolese at least 30% of their share capital, foreign companies operating in joint-venture with national private companies, foreign companies operating under the short-term license to do business or branch regime, are authorized to carry out the subcontracting activity in the upstream oil sector,
- Congolese companies promoted and managed by Congolese companies and whose technical and supervisory staff consists of at least 60% of Congolese are given priority in awarding subcontracting contracts,
- The minimum participation of Congolese in the share capital of companies engaged in subcontracting activity in the upstream oil sector is 30%.

Regarding the decree No 2019-344 of November 15, 2019, which set the penalties applicable for non-compliance with local content provisions in the upstream oil sector.

The following provisions are inserted:

- Fines ranging from XAF 20 million to XAF 200 million, depending on the case, for non-compliance with the provisions relating to the employment and training of Congolese personnel. These fines also apply to subcontractors' companies or service providers companies operating in the upstream oil sector.

- Sanctions relating to the promotion and use of local goods and services:
 - A fine of XAF 250 million, in addition to the impossibility of recovering the oil costs related to the work carried out by this company, for any operating company using subcontracting companies not having license or whose licenses are not valid;
 - A fine of XAF 100 million for any subcontracting company or service provider exercising without prior license or authorization to practice,
 - A fine of XAF 250 million, in addition to the withdrawal of license or authorization, for any subcontracting company or service provider that carries out activities other than those covered by its license or authorization;
 - A fine of 50 XAF million for non-compliance with the provisions relating to exclusive and semi-competitive regimes;
 - A fine of XAF 100 million for any company having a tender procedure that does not comply with the production sharing agreement signed with the Republic of Congo;
 - A fine of 20 million FCFA for failure of prior approval by the Republic of Congo of local content clauses contained in the specifications;
 - A fine of XAF 100 million, in addition to the withdrawal of the license or authorization, for non-compliance by any subcontractor or service provider with the local content clauses contained in his contract;
 - A fine of 50 XAF million, in addition to the impossibility of recovering the associated oil costs, for non-compliance by any oil company with the local content clauses contained in the contract;
 - A fine of XAF 50 million for failure to submit the half-yearly program of works or failure to present half-yearly accounts of the purchase transactions carried out during the previous semester;
 - A fine of XAF 100 million, in addition to the impossibility of recovering all oil costs incurred for the year, for failure to observe the minimum percentage of oil costs of Congolese origin; and

- A fine of XAF 100 million, in addition to the impossibility of recovering all related oil costs and the nullity of this market, for any award of private contract without prior authorization from the Republic of Congo.

Under the decree No. 2019-345 of November 15, 2019 regulating the employment, promotion and training of Congolese staff in the petroleum sector, the contractor, its subcontractors, service providers and suppliers must employ Congolese personnel as a priority;

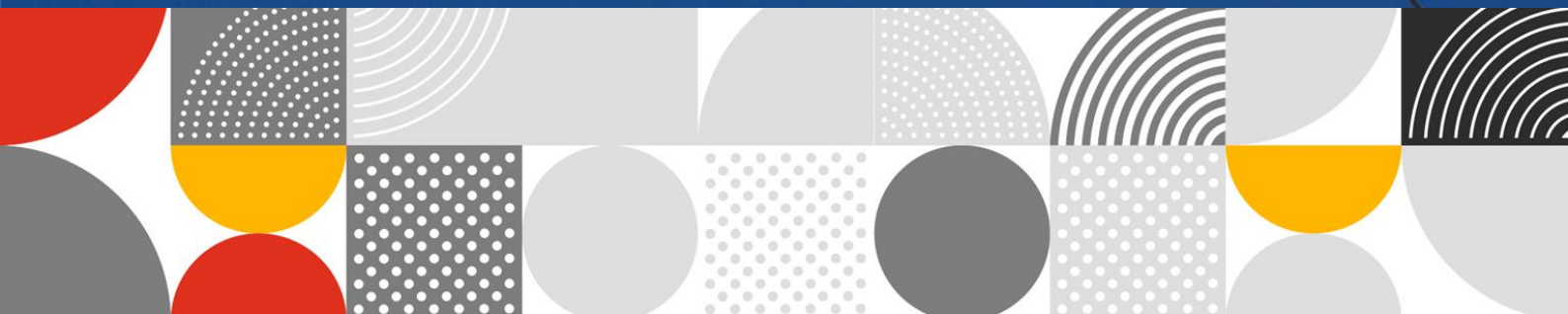
Any contractor, its subcontractors, service providers and suppliers in the oil & gas sector wishing to recruit personnel must conclude a recruitment contract with the Ministry of hydrocarbons and the Ministry responsible for employment and skills training;

- Any contractor, its subcontractors, service providers and suppliers, in the oil & gas sector, must, within ninety days of their establishment in Congo, submit to the Minister in charge of hydrocarbons and the Minister in charge of the employment and skills training a plan of “congolisation” of the positions to be filled;
- 90% of the total personnel must be Congolese personnel ten years after the establishment of any contractor, its subcontractors, service providers and suppliers, of which at least 80% senior executives;
- The hiring of foreign personnel in the oil sector is done only with the prior authorization of the Minister in charge of employment;
- The duration of expatriation contracts within the same company is limited to five years at all periods;
- No expatriate employee may work in the oil sector unless he has obtained from his employer, in advance, a contract of employment duly validated by the Minister in charge of employment;
- Any application for the hiring of expatriate personnel must include evidence of non-existence or unavailability of Congolese citizens with the qualifications and experience required on the national market;
- Any contractor, its subcontractors, service providers and suppliers must submit a physical and digital copy of the human resources development program and related revisions to the Ministry in charge of hydrocarbons and the ministry in charge of employment; all necessary documentation for this program;

- promotion and advancement to Congolese personnel, and to communicate to the Ministry in charge of hydrocarbons and the ministry in charge of employment, the list of promotions and advancements made during the detailed examination of the individual situations of Congolese personnel held each year;
- Any contractor, its subcontractors, service providers and suppliers have the obligation to pay Congolese personnel remuneration in accordance with the Collective Bargaining Agreements of the sector of activity to which it belongs;
- The seafarers' premium allocated to employees of subcontractors, service providers and suppliers operating on offshore sites must be identical to that received by the contractor's personnel;
- Any contractor in the oil & gas sector must, from the effective date of his oil contract, finance a training program for Congolese personnel on all oil operations;
- Posts held by expatriates are subject to mentoring; and
- Any expatriate has the obligation, for a period not exceeding five years, to transmit to the Congolese staff who will take over the post, the theoretical knowledge and skills necessary for the proper exercise of the profession that the post, subject of the guiding, requires.
- Posts held by expatriates are subject to mentoring; and
- Any expatriate has the obligation, for a period not exceeding five years, to transmit to the Congolese staff who will take over the post, the theoretical knowledge and skills necessary for the proper exercise of the profession that the post, subject of the guiding, requires.



Power and Utilities Sector



Brief overview of Power and Utilities development in Republic of Congo

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 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 or ‘CFA’) franc (XAF), and the official language is French. However, several regional languages are also recognized. Like some other countries in Central Africa, the Republic of Congo has a vast river system with many rivers, including the Congo River. This gives it an immense energy potential.

The Congo River (also spelled Kongo River), which is the world's deepest river with measured depths in excess of 220 m, is the second longest river in Africa after the Nile and the second largest river in the world by discharge volume of water. Its size/dimension makes it the world's ninth-longest river. It is the only river to cross the equator twice. The Congo Basin has a total area of about 4,000,000 km² (1,500,000 sq. mi), or 13% of the entire African landmass.

Economic updates

The Republic of Congo benefits from an impressive hydrographic network made up of about thirty rivers and other navigable rivers, among which tributaries of the majestic Congo River. In this respect, the Congo and its tributaries conceal a huge potential electrical energy (100,000 MW), doubly favoured in this respect by their sustained flow, and their long profile interspersed with sudden unevenness.

However, despite its immense potential hydroelectricity and the commissioning of a new hydroelectric dam (Imboulou dam) and a gas-fired power plant, the Congo still suffers from a deficit in the supply of electricity.

Notwithstanding the liberalisation of the energy sector in 2003, following the entry into force of the new Electricity Code, the Republic of Congo has not been able to take advantage of its immense hydropower resources, of which exploitation would allow real energy independence.

The energy supply is barely sufficient and the reliability of the electricity supply remains in deficit due to a dilapidated network, significant technical losses and a very uncertain electricity management by the electricity company SNE (National Electricity Company) which has a monopoly on the transportation, distribution and

sale of electricity in the Congo). The SNE and SNDE, the National Water Supply Company, were dissolved in September 2018. Both entities were respectively replaced by “Énergie électrique du Congo” and “La Congolaise des Eaux”.

In 2017, the country's electricity coverage rate was below 50% in cities and estimated at 5.6% in rural areas; the national distribution network, which covers only the main cities of the country, forces villagers to resort to alternative solutions such as kerosene, which is more expensive.

Despite difficult economic conditions, some hydroelectric projects are developing, conducted by foreign companies, mainly Chinese, and should generate an additional installed capacity of nearly 1,500 MW:

- Dam Chollet between Cameroon and Congo,
- Liouesso hydroelectric power station in the Sangha department, inaugurated on May 29, 2017, with a capacity of 19.9 MW,
- Sounda Dam (estimated production capacity: 700 MW) in the Department of Kouilou, whose studies are ongoing.

Dam rehabilitation projects are also underway: the Moukoulou dam in the Bouenza department, with a capacity of 74 MW, and the Djoué dam (Brazzaville), which would increase from 15 to 24 MW.

Political updates

The diversification of the Congolese economy is more than ever the priority strategic option, as structured and expressed in the action program of his Excellency Mr. Denis Sassou Nguesso, President of the Republic, «The March towards development» (from 2016 to 2021).

To achieve this, the Government has considered that the improvement and modernisation of this energy sector by building a national energy boulevard for the whole country, would provide to the Republic of Congo an energy independence capable of supporting the industrial diversification effort that the country has started.

Also, with the same view, the Government of the Republic, by the law n° 22-2018 of June 13, 2018 has recently decided to dissolve the SNE and replace it with a new company to be created.

The energy and hydraulics sector provisions of the 2019 Finance Act;

- A 1% fee is set up in the energy and hydraulics sector. This fee is set in the energy sector at 1% of turnover for independent producers, and at 0.75% of turnover for self-producers.
- In the hydraulic sector, the fee is determined according to the use of the water collected (agro pastoral, domestic, mining, industrial or commercial uses). It is set per cubic metre of water taken according to the use that is made of it. This price ranges from 0 to 400 FCFA per cubic metre of water withdrawn. Any delay in the payment of the fee carries a penalty of 10% and the non-payment of the fee is subject to a penalty of 100%.
- The payment of electricity invoice, as well as water should be made by bank transfer or e-payment / tele-payment.
- Establishment of royalties in the energy and hydraulic sector of:
 - For the energy sector rate:
 - 1% of turnover for independent producers,
 - 0.75% of turnover for self-producers;;

For the hydraulic sector rate: from 0 to 400 CFA F per cubic metre depending on the nature of the use (mining, industrial, agro pastoral, etc.). This provision is also addressing oil operators since they are also effectively self-producers.

Changes within the Energy and Hydraulics Sector by provisions of the 2020 Finance Law

The operative event of the royalty: the royalty is applicable when the self-producer of electricity transfers part of its production to third parties.

Basis of the royalty: the royalty payable by operators in the electricity sector is calculated based on the turnover before taxes made by producers and self-producers of electricity.

Royalty rate:

- 1% of annual turnover for electricity producers,
- 0.75% of annual turnover for self-producers,

Electric independent producer licence issuance fees

- XAF 25,000,000 for an installed power between 5MW and 25 MW,
- XAF 75,000,000 for an installed power between 25 MW and 50 MW,
- XAF 150,000,000 for an installed power greater than or equal to 50 MW

Fiscal regime and taxation regime

The Law No. 14-2003 dated April 10, 2003 on the Electricity Code. According to the Article 33 of the Law No. 14-2003 dated April 10, 2003 on the Electricity Code, "The activity of the delegate related to the public electricity service is subject to the legal and fiscal ordinary tax law system, without prejudice to the application of the provisions of this code" (translated)

It emerges from the above recalled provisions that, with the exception of the specific provisions provided in the Electricity Code applicable to companies benefiting from a delegation of public electricity service, the tax regime applicable to companies operating in the field of electricity is the standard tax regime.

As such, the above-mentioned tax provisions applicable to the delegates of the public electricity service concern:

- The depreciation,
- The provisions, and
- The value added tax.

Depreciation:

Based on the article 34 of the Republic of Congo Electricity Code, delegates of the public electricity service are authorised to make financial depreciation charges on the assets created in the delegation contract.

These financial depreciation charges are calculated annually by allocating the carry forward of the gross value of the property by umpteenth on the number of years of the delegation contract remaining to run, regardless of this number of years.

Provisions:

Delegates of the public electricity service are authorised to make provisions for renewal. These provisions are intended to allow renewal; replacement value of the goods referred to in the delegation contract. These provisions are the subject of a plan based on an inventory which fixes, for each property, its life and its renewal value. This plan is updated each year for both dates and values.

Value Added Tax (VAT):

Delegates of the public electricity service are authorised to recover the VAT on the work carried out. The terms of recovery are determined in the delegation contracts in accordance with the texts in force.

Regulatory framework

The electricity sector is governed mainly by the following Laws:

- Law No 06/67 dated June 15, 1967 relating to the creation of the National Energy Company,
- Law 067/84 dated September 11, 1984, relating to the amendment of the corporate name of National Energy Company,
- Law No. 14-2003 dated April 10, 2003 on the Electricity Code,
- Law No. 15-2003 dated April 1st, 2003 establishing the National Rural Electrification Agency,
- Law No. 16-2003 dated April 10, 2003 establishing the Electricity Regulatory Agency
- Law No. 17 -2003 dated April 10, 2003 establishing the Electricity Sector Development Fund,
- Law No.22-2018 dated June 3rd, 2018 on the dissolution of the National Electricity Company,
- Decree No. 2007-290 dated May 31st, 2007 approving the Articles of Association of the Electricity Regulatory Agency,
- Decree No. 2007-291 dated May 31st, 2007 approving the Article of Association of the regulatory agency of the rural electrification sector,
- Order No. 681 dated March 19, 1994 on the revaluation of electricity tariffs in the Republic of Congo.

Forms of contracts

It should be noted that the delegation contracts of the public electricity service can take the following forms:

- The Concession,
- The Farming contract,
- The public management service,
- The licence, etc.

Local content regulations

The Electricity Code provides for the delegation of the management of all or part of the public electricity sector only to Congolese public or private persons (Article 23).

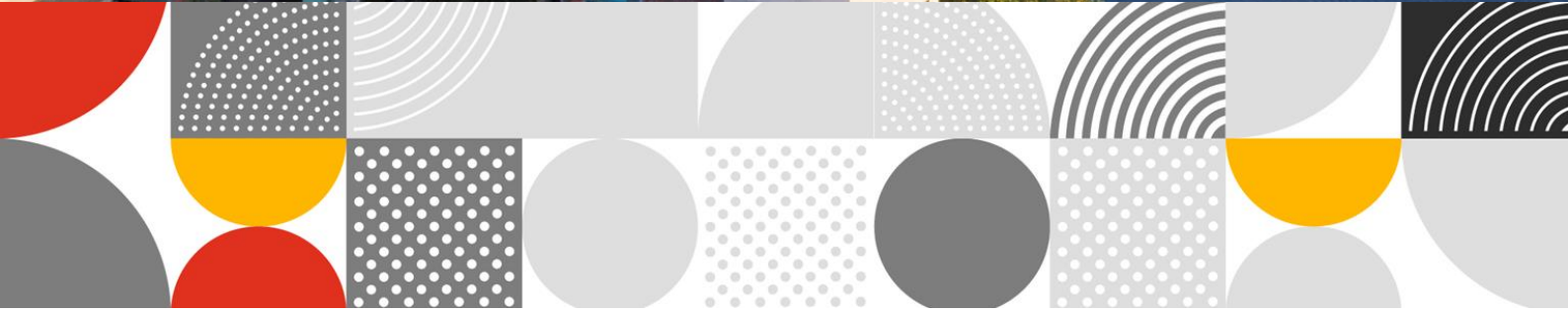
Incentives in the industry

There are no special incentives for companies operating in the power or electricity industry sector, except those provided for companies wishing to benefit from the benefits provided by the investment charter. These companies can request to benefit from customs and tax advantages provided by the Investment Charter (Law No 6-2003 dated January 18, 2003) in relation with the importance of their investments in the Republic of Congo.





ESG



ESG

Pursuant to Decree No. 2007-294 of May 31, 2007 setting the rules relating to the use and recovery of gas, the Minister of Hydrocarbons, through the Circular Note No. 21-11010/MHC/CAB of December 17, 2021, has requested to the general managers of oil companies established in the Republic of Congo to take all measures to put an end to gas flaring on oil installations, under penalty of sanction, and that from July 1, 2022, special exemptions will no longer be issued.

The period of six (6) months is granted to companies in the oil sector to develop and submit their plans for the development, use and enhancement of gas for the approval of the Ministry of Hydrocarbons.

Indeed, under the terms of Decree No. 2007-294 of May 31, 2007 referenced above, the flaring of natural gas or associated gas, with the exception of flaring carried out within the framework of tests or other specific oil operations in accordance with practices generally accepted by the international oil industry is prohibited, without special authorization from the Minister of hydrocarbons.

In addition, it should be noted that Entities with more than 250 employees are required to provide a list of social, environmental and societal information in Note 35 of the statistical and tax return (annual tax declaration).





Senegal

Contact



Matthais Hubert

Matthais.hubert@pwc.com

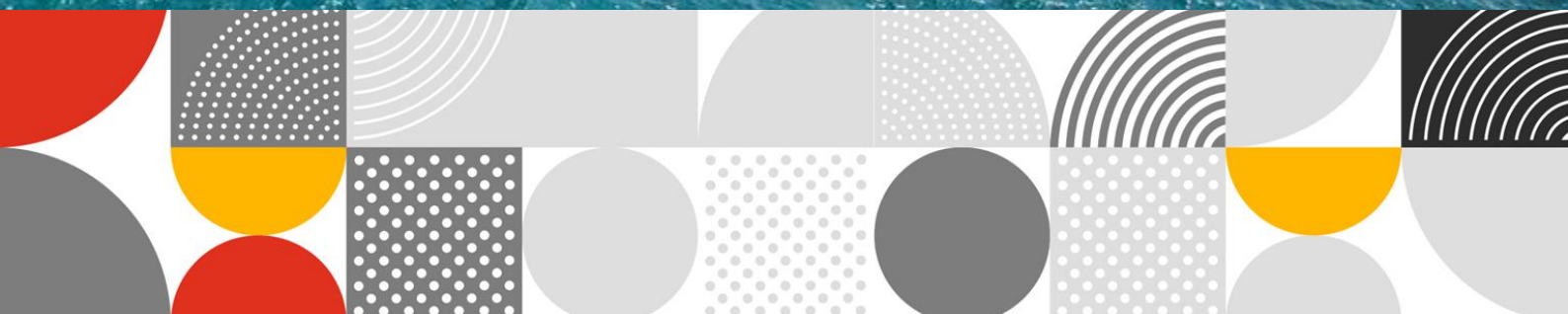


Mahi Kane

mahi.kani@sn.pwc.com



Oil and Gas Sector



Brief overview of the Oil & Gas industry in Senegal

Senegal is a West African country which covers an area of 196,190 km². It borders the Atlantic Ocean in the West and has terrestrial borders in the north with Mauritania, in the East with Mali, in the Southeast with Guinea and in the Southwest with Guinea-Bissau.

Senegal is one of only a handful of countries to have a near-enclave within its borders. The official language is French.

In the wake of the discovery of oil & gas deposits in 2014, the Government of Senegal has adopted a set of measures aiming to establish a framework for the upcoming oil & gas activity.

The Strategic Orientation Committee for Oil & gas was also created. This committee is in charge of assisting the President of the Republic and the Government in defining, supervising, evaluating and monitoring the implementation of the State policy on the development of oil & gas projects. From a tax and legal perspective, the General Tax Code was amended, and a new Petroleum Code was adopted.

Senegal has also concluded the Grand Tortue/Ahmeyin agreement with Mauritania in February 2018 for the development of the oil & gas field located at the sea border shared by both countries. An additional act to this agreement has also been ratified in 2019. These agreements aim to provide a framework for the exploitation of the GTA, the equitable sharing of revenues, for tax purposes, among others.

Significant new developments in Senegal

In 2020, a new government has also been presented, and a new Minister for Oil & Energy has been designated. No major economic changes occurred last year. The authorities pursued the PSE vision (Plan Senegal Emergent) which is a multi-billion investment program, currently underway to establish Senegal as a crucial economic hub in the region.

However, the development of the Grand Tortue gas province has been delayed due to the coronavirus pandemic, and production will start in two years. The delay could have been longer, but stakeholder engagement played a key role in setting this agenda.

The Senegalese National Assembly adopted, Monday evening, a new gas code during a plenary session in the presence of the Minister of Oil and Energy.

The new law provides a new regime of validation of licenses and concessions, the modalities of exercise of the intermediate and downstream segments of the gas sub-sector, the tax and customs regime, the regulation of easements of gas transport and distribution facilities.

Also, The USTDA (U.S. Trade and Development Agency) and the Sovereign Fund for Strategic Investments (FONSIS), signed in 2020, a protocol granting the latter a grant of 1.2 million USD (over 700 million CFA francs). This grant from the U.S. Trade and Development Agency is intended to finance studies relating to the construction of the RGS S.A. pipeline network.

RGS S.A., a company created by PETROSEN, SENELEC and FONSIS, will transport gas from production sites to places of use (power plants, industries, domestic gas, etc.).

Regulatory Framework

- Petrosen: It is the State petroleum company that prepares and negotiates all petroleum conventions and contracts;
- Ministry of Petroleum and Renewable Energy: This department controls oil & gas operations carried out in Senegal;
- AGC: This agency is a joint committee set up to manage petroleum, mineral and fishing activities in the Common Maritime Zone between Guinea-Bissau and Senegal.
- The Strategic Orientation Committee for Oil & gas: This committee assists the President of the Republic and the Government in defining, supervising, evaluating and monitoring the implementation of the State policy on the development of oil & gas projects.
- National Committee for Hydrocarbons prepare, propose and implement the national strategy in terms of hedging against price risks on hydrocarbon imports.

Local contents regulations

- Law 2019-04 of February 1st related to the local content in the Oil & Gas sector in Senegal.
- Decree No. 2021-249 of February 22, 2021, amending decree 2020-2065 of October 28th, 2020 setting out the terms and conditions of participations of Senegalese investors in companies involved in Oil and Gas activities and classification of upstream Oil and Gas activities in the exclusive, mixed and non-exclusive regimes
- Decree 2020-2065 of October 28th, 2020 setting out the terms and conditions of participations of Senegalese investors in companies involved in Oil and Gas activities and classification of upstream Oil and Gas activities in the exclusive, mixed and non-exclusive regimes

- Decree No. 2020- 2047 regarding the organization and the functioning of the National Committee of the local content application
- Decree No. 2020-2048 dated on October 21, 2020 setting of the terms and conditions for funding and operating the support fund for the development of the local content

Forms of contracts

Production sharing contract

It is a risk service contract whereby the State or a State Company awards exclusive hydrocarbon exploration and exploitation rights within a defined perimeter, to one or several qualified persons or companies.

The production sharing contract specifies the rights and obligations of the holder and of the State or a State Company, including the conditions for the sharing of the hydrocarbons produced and the recovery of petroleum costs incurred by the holder and its remuneration.

Service contract

It is a risk service contract for the exploration and exploitation of hydrocarbons whereby the State or a State Company grants to a qualified entity, which assumes the financial risks, exclusive rights for the exploration and exploitation of hydrocarbons within a defined perimeter. The oil company may be remunerated only if commercially exploitable reserves are discovered.

Government participation

The State, either directly or through a State Company, reserves the right to participate in all or part of the petroleum operations, by entering partnerships with the holders of conventions or service contracts. The conditions of participation will then be specified in the related convention or service contract.

The conditions of participation will then be specified in the related convention or service contract.

Taxation regime

The taxation of the petroleum operations is regulated in Senegal by the General Tax Code and the Petroleum Code.

Companies involved in the oil & gas industry are subject to taxes applicable to Senegal. However, they benefit from various exemptions with an objective to adapt to their activities and to attract new operators.

Holders of exploration permit are not subject to the following taxes:

- Employer payroll tax;
- VAT;
- Business licence tax;
- Tax on built real estate;
- Tax on non-built real estate;
- Customs duties on all items of plant, equipment and materials intended to be used solely for petroleum activities (ranging from 0% to 20%).

Holders of exploitation permit are not liable during the exploitation phase to the following taxes:

- Minimum corporate tax, during 3 years after the issuance of an exploitation permit;
- Tax on built real estate, during the investments phase, plus 3 years after the issuance of an exploitation permit;
- Tax on non-built real estate, during the investments phase, plus 3 years after the issuance of an exploitation permit;
- Customs duties on all items of plant, equipment and materials intended to be used solely for petroleum activities (ranging from 0% to 20%).

A convention or contract may provide additional exemptions other than those provided by the law and mentioned above. It could be an exemption of withholding taxes on services. Besides, the convention or contract may provide a stabilisation clause to insulate the project from adverse changes to the legal and fiscal environment.

It is noteworthy that the General Tax Code and the Petroleum Code do not provide for a special status, from a tax perspective, for subcontractors. So, the latter will be taxed according to the ordinary law.

Finally, there is no deemed profit taxation in Senegal.

Law 2018-10 of March 30, 2018 has amended the Senegalese GTC and has provided new fiscal measures for the non-renewable energy area (oil & gas mainly). The changes are as follows:

- Possibility of deducting provisions, guarantees or funds established for the rehabilitation of mining sites or abandoned oil fields (if the sums concerned are domiciled near the Caisse des dépôts et consignations).
- Exemption of minimum CIT and Tax on built real estate for holders of mining and petroleum exploration licence during the research phase,

development phase or investment phase throughout the duration of the research permit or the year following the first production, unless otherwise permitted by law. Companies holding mining concessions also benefit from the exemption within the 3 years following first production.

- Creation of a levy on consignment operations of petroleum products and hydrocarbon refuelling of foreign-flagged vessels.
- Tax on real estate capital gains: regarding the transfer of rights attached to mining or petroleum titles, the tax is withheld and paid by the transferee on the amount paid to the transferor. For the sellers domiciled in Senegal, the amount paid in respect of the tax is, based on the payment receipt, deducted from the income tax and carried forward for a period of three years, without possibility of reimbursement.
- Specific provisions for companies benefiting from an agreement between Senegal and another State such as the Grand Tortue/ Ahmeyin agreement (a 0.02% contribution applies instead of the Local Economic Contribution on added value).
- Obligation for oil & gas companies to provide the tax administration with the list of their subcontractors, their address, the nature and the amounts of operations realised during the previous year.
- Extension of the tax on real estate capital gains to rights transfer pertaining to oil & gas.
- Obligation to assess the taxable income separately for each research, exploration and exploitation area for upstream activity.

Direct Taxation

Corporate Tax

Entities operating in the oil/gas sector are subject to corporate tax at a rate of 30%. The corporate tax rate is applied on the taxable profit determined after deductions of all expenses which are deductible against that income according to the General Tax Code.

In order to be deductible, the expenses must meet the following conditions:

- leads to a reduction of the assets;
- paid in the interest of the company;
- be regularly recorded in the accounts of the entity and justified by receipts;
- relate to the current fiscal year; and
- relate to a taxable income.

It should be noted that losses can be carried forward within a period of 3 years whereas depreciation recorded during a deficit year can be carried forward indefinitely. The CIT return and the annual financial statements shall be submitted latest by April 30 of each year. Two prepayments are made by February 15 and April 30, before a final payment is made by June 15.

As above-mentioned, Law No. 2019-13 dated 08 July 2019 creates an obligation for oil & gas companies to assess their taxable income separately for each research, exploration and exploitation area.

Royalties

Under the new petroleum code of February 2019, the holder of an operating permit or an exclusive hydrocarbon exploitation is subject to payment of a fee on the value hydrocarbons produced. The fee is calculated from the total quantities hydrocarbons products in the area operation and not used in operations.

The fee is payable, in whole or in part, either in kind or in cash, to the option of the state with each payment. In the event of delay in payment or delivery of the fee, the sums or quantities are increased by [1/1000] per day of delay.

The royalty rate applicable on crude oil or natural gas production are fixed as follow:

- Liquid hydrocarbons exploited shallow onshore: 9%
- Liquid hydrocarbons exploited shallow offshore: 9%
- Liquid hydrocarbons exploited deep offshore: 8%
- Liquid hydrocarbons exploited ultra-deep offshore: 7%
- Gaseous hydrocarbons exploited onshore, shallow offshore, deep offshore, and ultra-deep offshore: 6%

Withholding taxes

Under the common tax law, any resident entity or permanent establishment shall withhold taxes on payments made to resident and non-resident, under certain conditions.

The applicable rates depend on the type of transactions and/or the country of residence of the suppliers (existence of a double tax treaty).

The withholding taxes applicable on payments are as follows:

- payment made to a local supplier for services rendered: 5%;

- payment made to foreign suppliers for services rendered or used in Senegal: 20%;
- payment of dividends: 10%;
- payment of bond interest: between 6% and 13%;
- Deposit or guarantee interest on accounts with a Senegalese bank: 8%;
- Payment of interest on loans: 16%.

Senegal has a Double Tax Treaty in force with 19 countries. Since 2015, Senegal has concluded a DTT with the UK and Portugal in addition to the OECD convention on mutual administrative assistance on tax matters and the multilateral competent authority agreement on the exchange of country-by-country reports.

Capital gains tax (CGT)

The 30% corporate income tax rate is applicable on the capital gains from disposal of shares. The capital gains are equal to the difference between the sale price (arm length price) less the acquisition value.

Property Tax

Tax on built real estate is due by owners or usufructuaries of premises or assets permanently attached to the ground. The applicable rate is 5% for common buildings and 7.5% for factories and industrial premises. Tax on non-built real estate: it is due by owners or usufructuaries of lands at 5%.

E&P companies are exempted from both taxes during the exploration and investment phases, plus 3 years after the issuance of the exploitation permit.

Transfer pricing

The transfer pricing regulation has been very recently introduced within the Senegalese law, with the most recent version of the General Tax Code, i.e. law 2013-31 dated December the 31st, 2012.

It applies to intercompany transactions or transactions with a company located in non-cooperative States or territories or with privileged taxation regimes. There is no practice regarding the legislation, but only the general guidance provided within that law.

The regulation globally corresponds to the OECD requirements standards, i.e. identifying related party

transactions, choosing the suitable transfer pricing method and preparing the documentation to support the selection of such method. The documentation should be available upon first request of the tax authorities. Otherwise, the tax authorities may set the prices themselves and apply the correlative tax reassessment accordingly.

Law 2018-10 of March 30, 2018 has provided new obligations regarding to transfer pricing:

- Simplified transfer pricing declaration: this declaration must be filed along with the financial statements and CIT return, on April 30 of each year, at the latest.
- Country by country report: this declaration must be filed in a dematerialized form, within twelve months following the closing of the fiscal year.

Thin capitalisation

There is no limitation of total debt on equity.

However, there is a limitation of deductibility, for corporate tax purpose, of the interests paid or recorded for a loan granted by a shareholder (directly or via other entities).

Indeed, the interests are deductible only if the following 3 conditions are met:

- the share capital of the company receiving the loan shall be, beforehand, fully paid up;
- the deductible interests are calculated based on the amount of the loans within the limit of the share capital;
- the interest rate shall not exceed the base rate of the Central Bank (4,2391% for FY 2021) plus 3 percentage points (i.e. 7.2391%).

The deduction of the interests is organised as follows:

1. The deductibility of the interests payable to a related party is limited to interests on loans that meet the following criteria:
 - the loan should not exceed 15 times the paid share capital of the borrower;
 - the loan should be within the limits of the base rate (3.5437% in 2017) plus 3 points; and
 - the loan should be within a maximum of 15% of the ordinary profits, adjusted upwards by the depreciation, provisions and the concerned interests, the calculation of those limits being made for all the interests paid to all related parties.

2. Besides, the deductibility of all the interests (payable to related or unrelated parties) is limited to 15% of the ordinary profits, increased by the depreciation and provisions and the concerned interests. For this calculation, the non-deductible interests due to related parties are excluded and interest incomes deducted ("net interests"). This second 15% limitation does not apply if it is proved that the ratio of net interests of the group is equal or higher to its own net interest ratio. The group ratio (consolidated level figures of the group) is equal to the interests due to unrelated parties on the ordinary profits, increased by the depreciation and provisions and the interests payable to unrelated parties. In such a case, the interest deductible is calculated by applying the group ratio. This limitation does not apply in case the annual interests are lower than XOF 50,000,000 subject that they are not due to companies established in a privileged taxation regime (taxation below half of the taxation in Senegal).

These rules are new (further the amendment of the General tax code issued from the law No.2018-10 dated March 2018). This law has provided a definition of the concept of interest, which means any expense related to debt securities of any kind, including payments done in return of the granting of a pledge for the repayment of a debt obligation, that would be considered as deductible, unless application of this provision.

This new rule leads to a wide acceptance of the concept of interest, from basic remuneration for loan. It now includes any expenditure for intra group financing.

Indirect Taxes

Value added tax (VAT)

The standard rate of VAT is 18%. There is a 10% reduced rate, which applies to hotel activities. The 18% rate is applicable to oil & gas companies. Legally, holders of exploration permits are exempted from VAT during the exploration phase. In addition, PSAs and service contracts often provide VAT exemption.

VAT returns must be filed, and the associated payments made within 15 days after the end of the month within which the tax event occurred.

Customs and Excise Duties

The customs duties vary between 5% and 35%

depending on the type of goods. Minor royalties shall be added with a total percentage of 2.9%. Legally, customs are exempted during the research and development phases for equipment intended to be used solely for petroleum activities. PSAs usually provide such exemption.

Excise tariffs are as follows: XOF 21,665 per hectoliter for premium gasoline / XOF 19,847 per hectoliter for regular gasoline / XOF 3,856 per hectoliter for canoe gasoline / XOF 10,395 per hectoliter for diesel fuel.

Other Taxes

Personal income tax (Pay-as-you-earn tax)

- Senegal operates a straightforward PAYE system, in which the employer withholds monthly from each employee's gross taxable remuneration the tax due.
- Indeed, resident and non-resident individuals earning revenues from employment in Senegal (subject to any double tax treaty in force) are subject to monthly taxation.

The amount due is calculated by applying a progressive tax scale going from 0% to 40%. The income bracket put under the 40% rate is easily reached but there is a possibility to benefit from a tax reduction due to dependent families.

Minimum Withholding Tax

Any employee is liable to a minimum withholding tax payable monthly and calculated on an annual basis.

The tax due ranges between XOF 900 and XOF 36,000 annually.

If the spouse of an employee is unemployed, the latter must pay then for himself and for his/her spouse (limited to one spouse).

Employer tax

Employers are subject to a 3% tax applicable on the total gross taxable salaries paid to the employees.

Social security contributions

The social security contributions are exclusively borne by the employer. The maximum monthly basis of calculation is XOF 63,000.

The cumulative rates are as follows:

Sector	Rate of contributions	Capped basis
Family	7%	XOF 63,000
Industrial accident / Occupational disease	1%, 3% or 5% depending on the activity of the company	XOF 63,000

Pension contributions

The pension contributions include a part borne by the employer and a part borne by the employee:

Regime	Employer part	Employee part	Capped basis
Genera	8.4%	5.6%	XOF 432,000
Executive	3.6%	2.4%	XOF 1,296,000

Medical coverage

The employer shall subscribe for all employees, a medical coverage. The level of coverage depends on the type of agreement concluded with the dedicated organisation.

Usually, the employee is reimbursed up to 80% of his medical expenses, even though the law provides a range between 50% and 80%.

The monthly rate is 6% to be levied on a base between 60,000 XOF and 250,000 XOF, for both the employee and the employer.

Oil Field Service (OFS) Companies

OFS companies are not subject to the same taxation regime as E&P companies. They do not have a

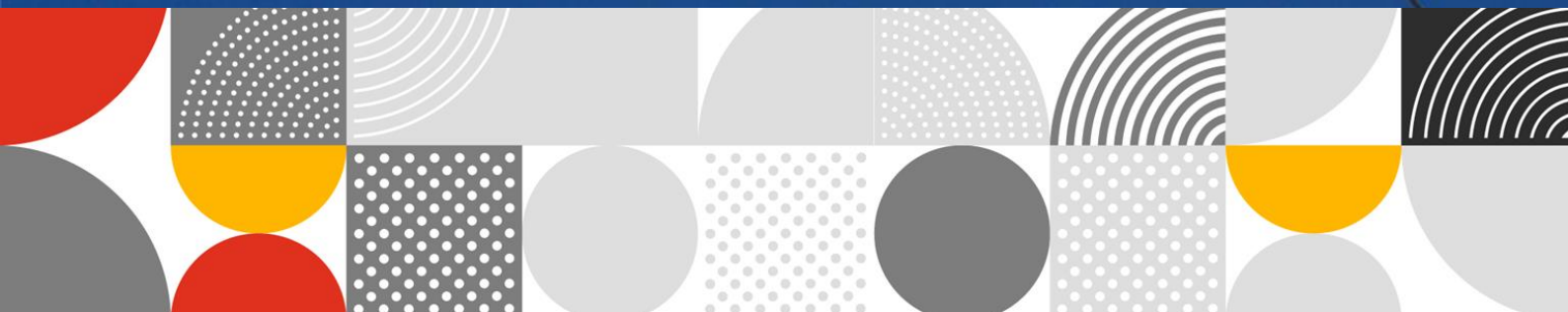
special tax status therefore they are taxed in accordance with the ordinary law, unless a PSA for instance provides an exemption.

Tax audits

The tax administration has its own agenda to conduct tax audits, but we can confirm that tax audits and tax reassessments are frequent. In practice, an objection letter is transmitted to the tax administration within the statutory deadline and then meetings are scheduled to discuss items that need more clarification.



Power and Utilities Sector



Brief overview of Power and Utilities development in Senegal

The Power and Utilities industry in Senegal has been experiencing a crisis for several years. This had led to dysfunctions throughout the sector despite various strategies and reforms implemented and significant financial resources mobilised.

Since energy plays an important role in the economic and social development of any country, Senegal cannot achieve its full economic growth without the energy sector achieving optimal performance.

The Government has therefore decided to make power sector development a key component of its Plan Sénégal Emergent, which aims to make Senegal an emerging economy by 2025. This involves the provision of diversified energy services including renewable energies, in sufficient quantities and at competitive prices.

Fiscal Regime and taxation regime

The Power and Utilities companies benefits from the following fiscal measures:

- 30% Companies Income Tax (“CIT”) basis reduction for companies that produce locally and exclusively to produce renewable energies.
- Exemption from VAT on delivery of supplies intended to produce renewable energies (list of materials not fixed yet by decree).
- Exemption from VAT on deliveries of renewable energy by their producers.

Apart from this, the standard regime is applicable.

Tax audit

Companies in the power and utilities industry are subject to the same tax audit procedures.

Regulatory Framework

The Regulatory Commission of the Electricity Sector, an independent authority, is responsible for the regulation of the activities of production, transmission, distribution and sale of electrical energy.

The National Agency for Renewable Energies has been created to take charge of the promotion and development of these alternative energies, in all their forms: solar power, wind power, small hydropower.

Forms of contracts

Production licence

Any company intending to produce electrical energy by any means must first obtain a licence from the Minister of Energy for this purpose.

Distribution concession

Any company intending to distribute electrical energy by any means and for any purpose whatsoever, must first obtain a licence from the Minister of Energy for this purpose.

Apart from production for self-consumption, the activities of production, distribution and sale of electricity from renewable energies carried out by a company are subject to a concession or licence. A licence is also required for all the operations related to industrial processing, the importation, exportation, transportation, storage and distribution of biofuel.

Sale licence

Any company considering selling electrical energy must first obtain a licence from the Minister of Energy for this purpose. The licence determines the territorial scope where applicable, the duration and the obligations related to public service that binds the licence holder. It also indicates the type of electrical energy and the consumption that the licensee can serve.

Exclusive concession of bulk purchase, transportation and wholesale

SENELEC (Senegalese Electricity Company) is the only company authorized to carry out a bulk purchase, transportation and wholesale activity of electric power throughout the national territory, for a period defined by the concession contract.

Connection contracts (renewable energies)

A connection contract mentioning the technical and financial terms and conditions is mandatory between the operators of the installations and the network operators.

Local contents regulations

- Law 98-29 of April 14, 1998 related to the electricity sector
- Law 2010-21 of December 20, 2010 establishing a framework for renewable energies

- Law 2010-22 of December 15, 2010 establishing a framework for the sector of biofuel

Incentives in the industry

Renewable energies

The acquisition of materials and equipment for research and development in the field of renewable energies benefits from fiscal incentives.

The acquisition of materials and equipment for the production, exploitation and self-consumption of renewable energies benefits fiscal incentives.

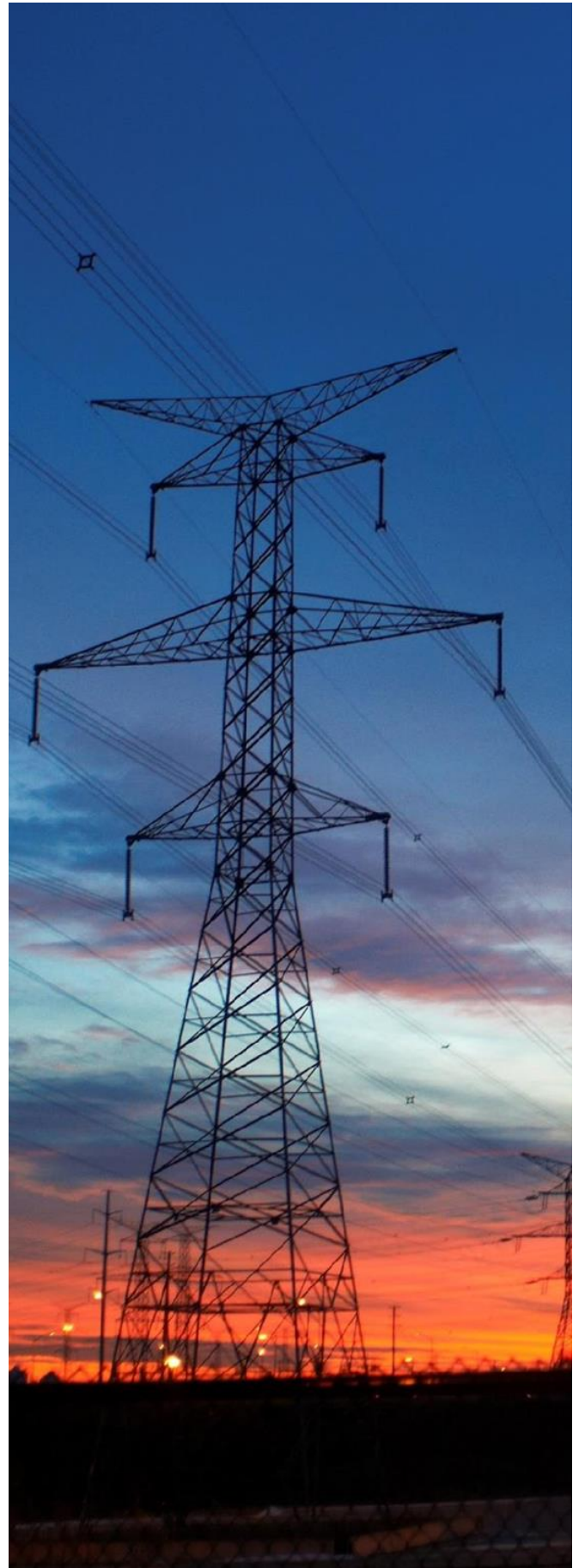
The acquisition of materials and equipment for the production for self-consumption of renewable energies benefits from total exemption (VAT and customs duties).

Biofuel

The acquisitions of equipment, seed and seedlings for the cultivation and exploitation of biofuels are exempt from VAT and custom duties. Revenues from biofuel operations are tax-exempt, up to a maximum of 5 years.

These benefits are reserved for companies whose production is intended for the national market. Companies producing for the international market benefit from the investment code incentives.

Either of the two.





South Africa

Contact

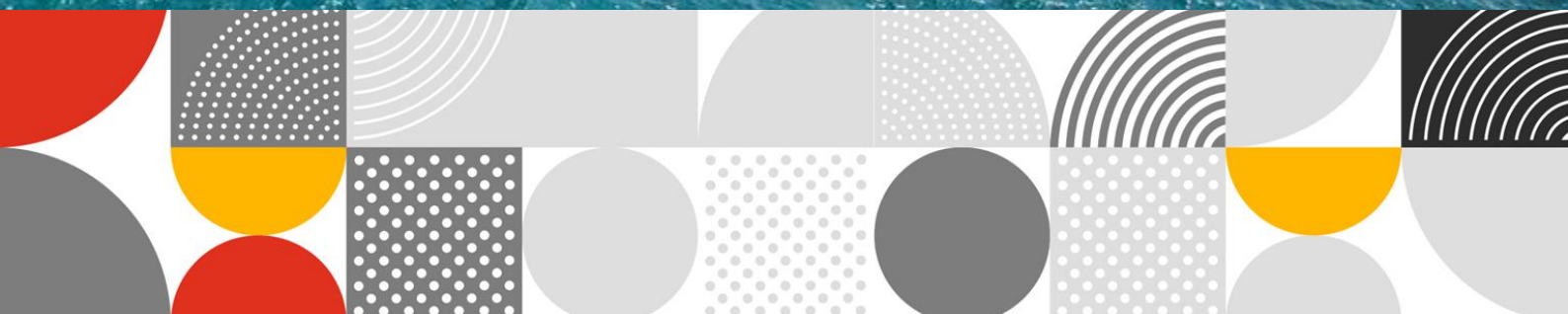


William Eastwood

william.j.eastwood@pwc.com



Oil and Gas Sector



Brief overview of the country's energy industry

South Africa's energy mix is still dominated by coal-fired power generation, where approximately 81.3% of system demand was generated via coal-fired power stations that are owned and operated by the state-owned power utility Eskom. Currently 84.2% of the country's population has access to electricity. Strong policy commitments to decarbonise the power sector have been put in place with a target of reducing coal fired power by over 50% by 2035 and achieving net zero by 2050. Despite this, conventional thermal power sources will likely remain the major source of electricity generation in the immediate future as renewable energy installations ramp up. In H1-2022, the current VRE fleet of 6.2 GW (wind, solar PV, CSP) reduced peak demand and high demand hours by ~ 60%. South Africa is diversifying the generation mix through the national Renewable Energy Independent Power Producer Procurement Programme ("REIPPPP"). As of February 2022, 5,826 MW of electricity capacity from 87 IPP projects have been connected to the national grid supplying energy to Eskom. Following the lifting of the 100 MW cap on RE projects, the registration of a total of 100 private embedded generation projects amounting to approximately 9 GW was confirmed at the end of November 2022 by South African President Cyril Ramaphosa.

It is broadly understood that South Africa currently has a capacity shortfall of approximately 4000 MW to 6000MW, which is resulting in extensive rotational load shedding to keep the grid stable. In 2022 from January to September, load shedding occurred for 1 949 hours with an upper limit of 5 761 gigawatt hours ("GWh"), making it the most load shedding intensive year. This is estimated to increase in the coming years as Eskom fleet average energy availability factor ("EAF"), which as of H1-2022 sits at 59.4%, continues to decline and the Koeberg nuclear power station goes through life-extension work. The EAF for Eskom's as at 14 May 2023 is 52.58%, against a target of 60%.

Eskom has 46 GW of installed generating capacity, generating 90% of the country's electricity of which approximately 80% is coal fired. Following the utility's significant debt and country's energy crisis, the South African government announced in 2019 the unbundling of Eskom into three separate entities responsible for generation, transmission and distribution. Thus far the transmission entity has been successfully decoupled and transferred to the National Transmission Company South Africa SOC Limited ("NTCSA").

Under the Just Energy Transition Plan, the utility aims to reach net zero emissions by 2050. Some of the challenges in achieving this is Eskom's continued reliance on coal with the construction of the Medupi and Kusile coal power plants of more than 4GW each,

as well as opposition from vested parties in the coal sector and trade unions.

Electricity trading in the Southern African Power Pool ("SAPP") is also expected to pose a challenge to the country's electricity supply with SAPP members facing supply issues themselves.

Southern Africa remains a region largely under explored for hydrocarbons with only modest discoveries, mainly in gas, to date. Recent developments have shown increased opportunity, namely:

Mozambique natural gas from the Rovuma basin, the block 11 discoveries off the South-east coast of South Africa, termed Brulpadda and Luiperd and the more recent promising discoveries in Namibia. This has increased the promise that Southern African deep waters could offer significant frontier exploration possibilities. The South African territorial waters currently have four exploration regions of interest:

- South Coast: New discoveries in deep waters offshore South Africa (e.g. Brulpadda and Luiperd), show great promise if timing, scale, economics and other criteria can be met.
- Orange Basin: Situated off the northwest coast of South Africa; adjacent to the Namibian border, this is a vast and underexplored region that could potentially be contiguous with the geology of recent discoveries in Namibia.
- East Coast: This is the offshore area off the eastern part of the country. Interestingly, this region sits at the southern end of the Mozambique Channel; in which a number of significant discoveries have recently been made.
- Onshore: There has been strong interest in onshore unconventional gas resources

South Africa's proven oil reserves are estimated at 17.2mn/bbl with gas at an estimated 20.3bcm for 2023. Total hydrocarbon production for 2023 is forecasted to be 111,810boe/d while domestic consumption is forecasted at 547,450boe/d, leaving a big gap to be filled by gas, crude oil and refined fuel imports.

The country's 2023 gas production is forecasted to reach 1.1bcm and gradually decrease until 2026, when the expected Ibhuesi gas field comes online with an expected gas production reaching 1.4bcm in 2026 and declining gradually to 1.3bcm in 2031. .

Following the significant 2019 and 2020 Brulpadda and Luiperd gas field discoveries, Total Energies is hoping to develop the gas fields with Qatar Energy and Canadian Natural Resources. Petroleum Agency South Africa ("PASA") estimates the Luiperd field to contain approximately 2.1 trillion cubic feet (ft³) of gas and 112 million barrels of condensate, and Brulpadda approximately 1.3 trillion cubic feet of gas and 80 million barrels of condensate.

According to PASA CEO, Phindile Masangane, the first gas is expected to be produced by the end of 2025/6.

South Africa imported approximately 183 gigajoules in 2019 along the Rompco pipeline that links the Mozambique gas fields of Pande and Temane to South Africa. Mozambique has the capacity to significantly ramp-up its exports to South Africa as it brings online its vast offshore reserves, but these reserves are in the Rovuma basin with no connecting infrastructure to South Africa. This would likely require the development of liquefied natural gas (“LNG”) import infrastructure in South Africa to achieve scale. South Africa would have to compete against fast growth economies in Asia to draw any LNG to its shores which will require a significant level of coordination and collaboration given the importance of scale in the LNG industry.

The outlook for a future gas economy in the region could be significantly influenced by world-scale discoveries such as Rovuma and its ability to compete as a bridging fuel in the global energy transition to clean technologies. South Africa also produces a raft of petroleum products and other chemicals from coal (Coal to Liquid and residual product streams like Ammonia).

However, the relative high cost of electricity produced from coal and petroleum in financial, operation and environmental terms has seen South Africa make attempts to diversify its energy mix, with the country looking at transitioning to cleaner fuels such as wind and solar. The REIPPP referenced above includes a determination for the procurement of 3126MW of Gas to Power by 2024. South Africa’s state-owned port, rail, and pipeline company Transnet is planning a multi-million dollar LNG storage and regasification terminal at the port of Richards Bay. However, the target timeline was dependent on Transnet being able to secure the necessary regulatory approvals and funding. The feasibility study of this project will also investigate repurposing existing Transnet pipelines to carry natural gas to inland markets. Virtual pipelines via rail and road, scheduled to be operational by 2024, are also part of the plan. The aim of this project is to import gas from Mozambique since Richards Bay is the closest South African port to Mozambique. South Africa has the opportunity to consider a number of competing LNG import location options, either in direct competition or as a system working in synergy if the timing, scale and economics can meet requirements and objectives. Each LNG location offers discrete local and national/regional benefits. By example the proposed LNG regasification facility in Maputo, driven by Gigajoule in conjunction with other key players, is particularly well positioned to link into the existing gas supply pipeline flowing from Mozambique to South Africa. It would address the needs of established large and smaller customers that are already tied to the gas grid. The Maputo LNG initiative seems to be progressing well as it is working towards a final

investment decision, with financial close projected for end-2022. Given the sub-regional energy economy’s desperate need to address a looming gas supply challenge and a critical requirement to stabilise the power sector, the promise of early introduction of LNG through FSRUs in multiple locations seems most attractive.

Another possible option is an LNG terminal at Coega which the Minister for Mineral Resources and Energy has urged investors to pursue investment opportunities in the “proposed LNG hub at the Coega Special Economic Zone (“SEZ”)” Eastern Cape.

Additional LNG to electricity will be difficult to bring online in a short space of time. LNG cargoes will be at much higher prices due to US sanctions on Russia, which will sanitise a significant portion of the world’s gas supply from Russia. Furthermore, there is fierce competition from Europe to secure new-build or leased LNG infrastructure, notably floating gas transportation and storage solutions.

Should offshore exploration and onshore shale gas exploration prove to be successful, South Africa will have a localised supply of oil & gas to enable and promote the diversification of the country’s energy mix.

South Africa has potential for unconventional gas discovery in the form of Coal Bed Methane and Shale Gas, for which it is ranked 8th and 12th in the world, respectively. Initial licensing is progressing but this may face significant environmental challenges.

The government’s decision to proceed with shale gas exploration wells contradicted a two-year socio-economic and environmental study by the Council for Scientific & Industrial Research analysing the potential impact of shale gas development in the region. The conclusions of the study highlighted major issues with water scarcity and overstated local socio-economic benefits. Shale Gas has not yet progressed to production, with environmental challenges being cited as major stumbling blocks.

South Africa has just over 4200 fuel retail sites for downstream oil products, with the market being dominated by the big 6: Engen, Astron Energy/Caltex, BP, Shell, Total and Sasol. An increasing number of independent retail trading entities have entered the market in recent years.

Refining capacity, particularly for low sulphur diesel, has not been able to be met by the ageing refineries thus leading to increasing imports of refined product. Further, due to ageing facilities and lack of commercial viability in upgrading facilities to cleaner fuels specifications, a number of facilities have or are in the process of shutting down. This will further increase the amount of finished product imports and blending required to service Southern Africa demand.

The refinery capacity in South Africa was 708,000 bbls per day, but with Enref (125,000 bpd) and Sapref (180,000 bpd) stopping refining in Durban the capacity has reduced down to 403,000 bpd. Without increased capital expenditure to improve utilisation and compliance to future cleaner fuel standards, the refining output will remain between 70-80%. The Calref/Astron Refinery (100,000 bpd) is currently being upgraded and downscaled to specific products and PetroSA is under care and maintenance due to depleted natural gas feedstock from their offshore fields.

Karpowership, which won the rights to supply 1 220 megawatts of power for 20 years at a cost of R218 billion, is yet to get environmental authorization for its plans. It also needs to conclude agreements with Eskom and the state ports company. The authenticity of the Risk Mitigation Independent Power Producer Procurement Programme (“RMIPPPP”) award is currently being challenged.

The biggest polluters in South Africa are Eskom, emitting 200 million tonnes per annum (“mtpa”), and Sasol emitting 63 mtpa. However, progress is being made in reducing these levels with Eskom actively seeking to reduce emissions and Sasol already reducing its emissions with aims to reduce by another 20 mtpa by 2030. Sasol will repurpose an electrolyser and harness renewable energy to produce green hydrogen, as well as, through Sasol ecoFT, utilise its world leading Fischer–Tropsch technology to produce sustainable fuels, to reduce its carbon footprint, and not develop new coal fields which will reduce tonnes of coal at Secunda from 40 mtpa to 30 mtpa. The other major oil and gas companies are looking at diversifying, reducing their carbon footprint and becoming energy players to be part of the just transition.

Political updates

The volume of electricity generated in South Africa declined by 3.5% year-on-year during the first 11 months of 2022. This was due to regular tripping and breakdowns of generating units alongside distribution disruptions caused by cable theft and other damage to infrastructure. These challenges caused the country’s EAF to fall to 59.4% in the first three quarters of 2022 compared to 61.7% and 65.0% in 2021 and 2020 respectively.

The severely curtailed EAF resulted in Eskom upscaling its load shedding. Planned rolling blackouts were implemented on 208 days during 2022 (or four days every week), totaling 11,797 GWh of lost power during the year. During 2022, the country was at Level 3 load shedding on average.

PwC estimates that load shedding reduced real GDP growth by up to five percentage points in 2022.

Regulatory framework

On the 14th of September 2021, Cabinet approved South Africa’s updated Nationally Determined Contribution (“NDC”) and its amended climate change mitigation target range to 2030 for submission to the United Nations Framework Convention on Climate Change (“UNFCCC”). Although this is primarily a climate change related policy commitment, its provisions will inevitably have an impact on the regulatory framework for energy in South Africa as the country pursues the decarbonisation of its energy sector. The NDC confirms that a range of policies and measures, including a very ambitious power sector investment plan would need to be introduced in order to achieve the mitigation goals set out in the NDC.

Legal Considerations - Investment Ideation to Execution - Renewable Energy:

In April 2023 South African National Treasury and the South African Revenue Service published the Draft Taxation laws Amendment Bill. The Bill aims to give effect to the incentives announced by President Cyril Ramaphosa in his 2023 budget speech and encourages investment of energy generation capacity by the private sector. The Bill aims to introduce two key tax incentive mechanisms:

1. Expansion of the renewable energy tax incentive

Under the enhanced renewable energy tax incentive, taxpayers who are conducting businesses will be able to claim a 125 per cent tax deduction (in the first year) for qualifying capital expenditure in respect of all renewable energy projects, with no threshold on generation capacity. This provides the private sector with a significant tax advantage and increases the investment case for renewable energy investment. The enhanced incentive will be available for a period of two years and apply to investments in renewable energy projects brought into use for the first time on or after 1 March 2023 and before 1 March 2025.

1. Rooftop solar tax incentive

With respect to the rooftop solar tax incentive, individuals will be able to receive a tax rebate to the value of 25 percent of the cost of any new and unused solar PV panels, up to a maximum of R15 000. The rooftop solar tax incentive will be available for a period of one year and will apply to new and unused solar PV panels that are acquired by the individual and brought into use for the first time on or after 1 March 2023 and before 1 March 2024

Individuals will be able to claim the rebate if they have:

- A VAT invoice that indicates the cost of the solar PV panels separately from other items, along with proof of payment.
- Certificate of Compliance evidencing that the solar PV panels were brought into use for the first time in the period from 1 March 2023 to 29 February 2024.

Oil and Gas

The general fiscal tax regime may be said to comprise primarily of direct tax (mainly corporate income tax) and various indirect taxes, referenced in the oil & gas section below. It is noted that, unlike, for example, the oil & gas industry, the power and utility industry does not enjoy a special fiscal tax regime other than certain enhanced allowances.

South African companies are subject to corporate income tax in terms of the Income Tax Act 58 of 1962 ("the Act"). The taxation of oil & gas companies, as defined ("oil & gas companies"), is regulated by the Tenth Schedule of the Act ("the Tenth Schedule"), which provides for the specific tax treatment of various items. Oil & gas companies either hold an oil & gas right (as defined) or engage in exploration or post-exploration in terms of any oil & gas right.

Budget 2021 announced a move towards a fairer and more certain fiscal and regulatory regime for upstream oil & gas companies and a discussion paper on potential tax reforms was published in December 2021 for public comment. Legislative changes may follow the public consultations.

Currently, South Africa also imposes a mineral and petroleum resources royalty that is payable to the State in respect of the transfer of mineral resources extracted from within South Africa.

Significant changes expected in the overall oil & gas regime in South Africa include the Revised Draft Upstream Petroleum Resources Development Bill, 2021 ("the 2021 Bill"). There is currently, however, no indication of when this Bill will be enacted.

- The main clauses of interest refer to the "carried interest" allocated to the State in an exploration or production right, which interest vests exclusively for the benefit of the State and where the costs of which are borne by the carrying holder as contemplated. The State through PetroSA, the national oil company of South Africa, will get a right to a 20 percent carried interest. With this interest PetroSA will appoint two or more representatives to the joint operating committee of the exploration or production operation to represent the State, as well as corresponding voting rights.

The revised draft also mandates that petroleum right holders need to sell a percentage of petroleum at the prevailing market price to the State petroleum company to meet the State's strategic stock requirements.

- Another significant clause to investors is that every exploration or production right must have a minimum of 10% undivided participating interest by black persons, thereby meaning participation by black persons may be diluted to no less than 5% for the purposes of raising capital. Such dilution will not trigger a requirement for the petroleum right holder to augment black persons' participation to 10%.
- Royalties, production bonus and a petroleum resource rent tax in respect of the development of petroleum resources will be determined and levied by the Minister of Finance in terms of an Act of Parliament.
- The upstream petroleum sector would no longer be regulated under the Mineral and Petroleum Resources Development Act 28 of 2002 ("MPRDA"), but rather under discrete petroleum legislation.
- The key differences between the 2019 Bill and the 2021 Bill are its principal rights, permits and approvals; the State's carried interest; its strategic outlook; its exit and dilution of black persons' participation in petroleum rights; its minimum work commitments and annual plans; transfer restrictions; the postponement of the development of a petroleum field; third party access to upstream petroleum infrastructure; exploration and production periods; and transitional provisions.

Electricity sector:

The law and policy regulating the electricity sector is currently in a dynamic phase with many amendments pointing towards the unbundling of Eskom and the liberalisation of the electricity market. The proposed amendments will also result in the increased deployment of renewables and support the decarbonisation of the electricity grid. Some of the key regulatory developments are set out below.

In October 2020, the Minister of Mineral Resources and Energy published an amendment to the Electricity Regulations on New Generation Capacity published under the Electricity Regulation Act ("ERA"). The amendment allows municipalities to apply to the Minister to procure or buy new generation capacity in accordance with the Integrated Resource Plan, subject to certain conditions. This provision is a fundamental change in the existing municipal electricity procurement model and provides a regulatory platform for municipalities to procure renewable energy directly from independent power producers. This will also allow municipalities to procure unconventional forms of energy, such as battery energy storage technologies in order to alleviate the variability of renewable energy

resources and provide supply capacity during peak demand periods. However, the amendments make the procurement of municipal energy subject to a number of new requirements, including conducting and submitting a feasibility study as well as providing proof of compliance with the procurement provisions set out in the Municipal Systems Municipal Finance Management Act and the Municipal Public-Private Partnership Regulations.

In January 2023, government gazetted an amended version of Schedule 2 of the ERA which regulates categories of generation facilities and resellers who would be exempt from the licensing requirement. For investors, this is a key step towards regulatory certainty. Effectively, the DMRE, through the ERA, requires that all generation must be registered with NERSA and that a generation licence must be obtained, except through exemptions in certain scenarios. The amendment allows a generation facility to operate without the need to obtain a licence but subject to 'registration' with NERSA. Such a facility may be operated by IPPs and the electricity generated by the facility may be sold to an unlimited number of customers, or may be operated by the electricity offtaker itself. A 'customer' is defined as a person who purchases electricity; this could be a purchase of the electricity for own use or could be a purchase for on-sale to a third party, including one or more consumers. Important beneficiaries of these changes will be large industrial and mining companies who will be able to generate electricity, or purchase electricity from IPPs, to satisfy all of the power needs within their groups and have the power 'wheeled' through the grid to facilities throughout the country.

On 10 February 2022, the South African government published the proposed Electricity Regulation Amendment Bill ("the Amendment Bill"). The proposed amendments broaden the national regulatory framework for the electricity supply industry. They aim to establish a wholesale electricity market in line with international best practice and provide for the establishment and functions of a Transmission System Operator. The proposed amendments form part of several steps the country is taking to reform the electricity sector towards achieving a stable and secure supply of energy. The Bill is yet to be finalised and promulgated, but its provisions will result in a significant paradigm shift for the country's energy sector. The Bill will inevitably introduce new forms of electricity trading and contracting mechanisms outlined in section 4 below.

The key regulators in the oil & gas industry include:

- NERSA is a regulatory authority established as a juristic person in terms of Section 3 of the National Energy Regulator Act 40 of 2004. NERSA's mandate is to inter alia regulate the Piped-Gas and Petroleum Pipeline industries in terms of the Gas

Act 48 of 2001 and Petroleum Pipelines Act 60 of 2003.

- The National Nuclear Regulator was established to regulate nuclear energy in terms of the National Nuclear Regulator Act 47 of 1999.
- PASA, one of the Central Energy Fund subsidiary companies, manages the promotion and licensing of oil & gas exploration, development and production in South Africa including the coastal areas offshore South Africa as part of creating a viable upstream oil & gas industry in the country. PASA could divest its operations to the DMRE if recent proposed amendments to the governing legislation are enacted.

The key regulators in the Power and Utility industry include:

- The South African National Energy Development Institute ("SANEDI") is a Schedule 3A state-owned entity that was established as a successor to the previously created South African National Energy Research Institute and the National Energy Efficiency Agency. The main function of SANEDI is to direct, monitor and conduct applied energy research and development, demonstration and deployment as well to undertake specific measures to promote the uptake of Green Energy and Energy Efficiency in South Africa.
- NERSA, as previously mentioned, regulates the energy industry in accordance with government laws, policies, standards and international best practices in support of sustainable development. Some key functions of NERSA include the issuing of licences for the construction and operation of facilities / infrastructure, assisting with planning to ensure orderly infrastructure distribution and development and security of supply, monitoring compliance with licence conditions and tariff approvals along the value chain. Without NERSA's approval and licences, companies can not legally operate.

Fiscal/taxation regime

Forms of contracts

Forms of contracts oil and gas

The most common forms of petroleum contracts in South Africa are defined by the Mineral and Resource Development Act, and include:

- Reconnaissance permit – Permits are typically applicable for 12 months on a non-exclusive basis;
- Technical cooperation permits – 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 extendable for 3 years, but may

be renewable for a maximum of 3 periods of 2 years each; and

- Production rights – These governed by a signed non-standard Production Sharing Contract between the operators and the State, that are typically exclusive, transferable, extend for 30 years and are renewable.

Forms of contracts renewables

Typically, renewable energy has been purchased by means of PPAs between IPPs and Eskom. However, with the finalisation of the Amendment Bill, the trading of renewable energy will occur in a competitive electricity market that needs to be developed under the provisions of this Bill. The structure will assume a competitive market which will provide for market transactions, physical bilateral transactions and regulated transactions. In respect of trading, the Amendment Bill clarifies that trading includes the wholesale or retail buying and selling of electricity. As such a trading licence may be required whether or not the buying and selling of electricity is conducted as a means of commercially generating revenue. This is relevant for buyers of electricity that seek to buy electricity and on-sell it to their affiliated entities on a pass-through cost basis. In addition to this relatively wide definition of trading, the Amendment Bill proposes that the Minister be entitled to determine further categories of trading which require licensing. The Bill also requires the Transmission System Operator to develop processes to manage the efficient implementation of agreements concluded between customers who wish to wheel electricity through the transmission system. Clear processes with regards to wheeling, clear tariff guidelines and successful operation of the proposed day-ahead trading platform will inevitably increase the use of wheeling agreements as a means to trade with electricity.

A requirement of the REIPPPP competitive tenders is that IPPs must accept standardised, non-negotiable Project Agreements as discussed in the Regulatory Framework section (paragraph 3).

In October 2020, the Minister of Mineral Resources and Energy gazetted amendments to the electricity regulations for new Electricity Regulations on New Generation Capacity. The amendments extend the procurement of new renewables, co-generation, baseload, mid-merit, peak load, energy storage and cross-border generation capacity to organs of State “active in the energy sector”, which includes municipalities. This means that municipalities can procure or buy new generation capacity.

Compliance requirements

Compliance requirements

South African companies and all non-resident companies, trusts or other juristic persons deriving South African sourced income (with the exception of certain exempt income) are required to register for corporate income tax purposes. The resultant compliance obligations include the following:

- The filing of three provisional tax returns and related payments, on a 6-monthly basis - the first within 6 months after the commencement of the tax year, the second on the last day of the tax year, and a voluntary third provisional filing and top-up payment 6 months after tax year-end; and
- A 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 every six months 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.

Employment tax returns must be filed on a monthly basis and a bi-annual reconciliation will also need to be submitted. Relevant returns will also need to be filed with the Department of Labour for Unemployment Insurance Fund (“UIF”) and Compensation for Occupational Injuries and Diseases fund (“COIDA”).

Transfer pricing (“TP”) documentation is compulsory in South Africa where a company meets a set list of requirements. This includes Country-by Country Reporting, Master file and Local file documentation, as well as the requirement to generate and retain significant supporting documentation. The provisions are complex, and each company should consider the requirements in detail and assess whether they need to submit TP documentation.

Additional compliance requirements may arise depending on the liability for the other taxes set out in this document.

In addition to the tax compliance aspects above, the provisions set out in the pending Climate Change Bill may also result in the imposition of penalties for the companies within the energy sector. The basis of such penalties will be the non-compliance of carbon budgets allocated to entities in accordance with section 24 of

the Bill. According to the latest version of the Bill before parliament in February 2022, the proposed penalty rate for non-compliance with a carbon budget will be R640 per tonne CO₂e which is substantially higher than the current carbon tax rate of R159 per tonne CO₂e.

Tax Audits

The South African Revenue Service (“SARS”) has not provided details on how they select companies to audit. Tax audits by SARS are common in South Africa.

Local content regulations

South Africa published a new Mining Charter which came into effect on 1 March 2019. It specifies regulations for holders of mining rights (including production rights for oil & gas companies) which regulations include, but are not limited to the following:

- Applicants for new mining rights require a minimum of 30% ownership that needs to be held by Historically Disadvantaged Persons (“HDPs”). The company must further ensure that of that 30%, a minimum of 5% is held by Qualifying Employees, 5% held by the local community and 20% held by black economic empowerment (“BEE”) entrepreneurs (of which at least 5% must be black women). Note that the New Upstream Petroleum Resources Development Bill will replace this for upstream oil & gas exploration once enacted.
- Existing mining right holders who have complied with the historical 26% HDSA ownership requirement, are deemed to be compliant with the new regulations for the duration of the mining right and do not have to increase their HDSA shareholding to 30% until such time as the mining right is renewed.
- Each year, multinational suppliers of goods must contribute 1% of annual turnover generated from local mining companies towards a social development trust fund.

Management levels for mining companies are expected to be as follows:

- i. The Board must comprise of at least 50% HDPs, of which 20% must be women;
- ii. Executive management must comprise of at least 50% HDPs, of which 20% must be females;
- iii. Senior management must comprise of at least 60% HDPs, of which 25% must be females;
- iv. Middle management must comprise of at least 60% HDPs, of which 25% must be females;
- v. Junior management must comprise of at least 70% HDPs, of which 30% must be females;
- vi. The company must ensure that not less than 1.5% of total employees are HDPs with disabilities.

All mining right holders are required to:

- i. Purchase 70% locally manufactured goods from local black suppliers (44% of the 70% is to come from BEE compliant suppliers and 5% from companies owned and controlled by women or youth);
- ii. Obtain 70% of Research & Development (“R&D”) services from South African based entities; and
- iii. Obtain 80% of services from local black suppliers.

Direct taxes

Taxation regime

South African tax resident entities are subject to South African tax on their worldwide income and capital gains, whereas non-resident entities are taxable in South Africa on their South African ‘source’ income and certain specified capital 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 regarding 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 & gas companies’ is determined in terms of the abovementioned principles, but (as mentioned further above) is also regulated by the Tenth Schedule (as summarized below). The Tenth Schedule defines an ‘oil & gas company’ as any company that either holds any oil & gas right or engages in exploration or ‘post-exploration’ activities in terms of any oil & gas right.

For years of assessment ending on/before 30 March 2023, the corporate tax rate is 28% for both South African resident and non-resident companies. For years of assessment ending on any date on/after 31 March 2023, the rate is 27% (note that the rate reduction is accompanied by certain tax base broadening measures). The Tenth Schedule confirms that the rate for oil & gas companies in respect of their oil & gas income, shall not exceed this.

No branch profit remittance tax applies.

Taxation in South Africa operates on an entity basis and hence there is no fiscal unity or other group tax system. However, certain transactions can be undertaken within a ‘group of companies’ as defined (typically common 70% equity ownership) on a tax neutral basis.

Petroleum / oil taxation

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

Oil & gas deductions

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

- All exploration / post-exploration expenditure and losses are deductible from the company's oil & gas income (other than certain expenditure in respect of the acquisition of a right). References to post-exploration expenditure include expenditure incurred after the completion of the appraisal phase, to the extent that these processes are preliminary to refining.
- In addition, the following additional deductions are available against oil & gas income (also excluding the above expenditure in respect of acquisition of a right) during that year of assessment in which the income was derived:
 - 100% of capital exploration expenditure in terms of an oil & gas right; and
 - 50% of capital post-exploration expenditure in terms of an oil & gas right.
- As a general rule, any assessed losses in respect of exploration and post-exploration losses are ring-fenced against oil & gas income and income derived from refining gas, with only 10% of the remaining losses being able to be offset against other income. The excess losses may be carried forward to a future year.

Foreign currency gains or losses

For oil & gas companies there is a specific dispensation to determine currency gains and losses with reference to the functional currency of the company, for tax purposes.

Disposal of oil & gas rights

Special rules apply to disposals of oil & gas rights, which allow a disposing oil & gas company and the purchasing company (a new company or an existing oil & gas company) to agree in writing that one of the following treatments will apply to the disposal instead of the normal capital gains tax treatment, subject to various criteria and requirements:

- Rollover treatment, in terms of which the disposing company is deemed to dispose of the right at its tax cost. The acquiring company is also deemed to acquire the right for the same amount.
- Participation treatment, in terms of which the gains are treated as ordinary revenue, with the acquiring company obtaining an immediate corresponding deduction against its oil & gas income.

Fiscal stability

The Minister may enter into a binding agreement with any oil & gas company in respect of an oil & gas right held by that company (or to be acquired), which agreement will guarantee that the provisions of the Tenth Schedule (as on the date of the agreement) will continue to apply in respect of that right for as long as it is held. The oil & gas company may unilaterally terminate the above agreement. Further detailed provisions apply in this regard.

Note that no fiscal stability agreements have been signed in the last number of years

Capital gains tax

For companies, 80% of gains are included in taxable income and taxed at the standard corporate rates. Refer to special dispensation on disposal of oil & gas rights above.

Non-residents are only subject to capital gains tax ("CGT") on certain specific disposals, as follows:

1. Immovable property or any interest or right of any nature related to immovable property situated in South Africa;
2. Equity shares in a company when 80% or more of the market value of those equity shares, is attributable directly or indirectly to immovable property in South Africa; and
3. The assets of any permanent establishment of a non-resident in South Africa. A permanent establishment is generally considered to include a fixed place of business through which the business of an enterprise is wholly or partly carried on.

Note that the interest or right per (1.) above includes a prospecting right, mining right, exploration right or production right as per the MPRDA.

In terms of compliance, the capital gains from a sale of the above is declared as part of the income tax return of the non-resident and not as a separate return.

Taxation of Oil Field Service Companies

Oil Field Service Companies are subject to the rules of the normal income tax regime in South Africa and do not qualify for the special dispensation that is available to oil & gas companies in terms of the Tenth Schedule.

Deemed Profit Taxation

South Africa does not have any deemed profit taxation. Income is taxed according to the taxation regime discussed above.

International Tax and Transfer Pricing

Withholding tax

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

Royalties

A withholding tax of 15% applies to payments to a non-resident for the use of certain 'intellectual property' (as defined) in South Africa or by a South African resident, as well as for payments for certain specific, technical, industrial or commercial knowledge or information or related assistance.

Dividends

Dividends tax of 20% applies to any dividend paid by a South African tax resident company or foreign company whose shares are listed on the Johannesburg Stock Exchange. Dividends paid by an "oil & gas company" (as defined) that are derived from "oil & gas income" (as defined) are however subject to dividends tax at 0%.

Interest

A 15% withholding tax applies to South African sourced interest payable to non-residents. The tax is reduced to 0% on any interest paid in respect of loans applied to fund "exploration" and "post-exploration" expenditure.

Services

South Africa does not withhold tax on service fees, however, certain service fees are reportable to the revenue authority if they exceed or are expected to exceed R10 million.

Disposal of immovable property

The sale of an interest in an oil & gas right by a non-resident may be subject to withholding tax of between 7.5% and 15% of the amount payable by the purchaser. This is an advance payment and not a final tax (if a return is filed by the non-resident) and may be waived or reduced by the revenue authority on application.

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. The current exchange control regime is (gradually) being replaced with a new Capital Flow Management System, in

terms of which many of the restrictions currently in place would potentially be relaxed to some extent.

In terms of the existing regime, local entities that are oil & gas right holders and whose sole trade relates to exploration and production (i.e. extraction only) may open and conduct Customer Foreign Currency accounts without any restriction on the nature of transactions passing over the account, provided that all reporting requirements are adhered to.

Dividends and disposal proceeds on shares should be able to be remitted from the country provided the share certificates were properly endorsed as 'non-resident'. Interest on loans can be remitted, subject to certain limits on the rates, provided the loan has been approved.

Capital loan repayments require prior approval, but this is usually a formality.

Double Tax Treaties

South Africa has 79 double tax treaties currently in force.

Registration of foreign companies

A foreign company is required to register with the Companies and Intellectual Property Commission as an 'external company' in terms of the Companies Act 71 of 2008 within 20 days of commencing to 'conduct business' in SA.

Registration as an external company does not result in the creation of a separate entity – it is rather the statutory registration of the foreign company for South African company law purposes. Registration results in the requirement to submit an annual company law return, with abridged details of turnover, etc.

Transfer pricing

South Africa's TP regime is governed by section 31 of the Act. The "arm's length" principle must be satisfied for any transaction, operation, scheme, agreement or understanding entered into directly or indirectly between a person that is a South African tax resident and any other connected person which is not a South African tax resident should be at arm's length.

The SARS issued Practice Note 7 ("PN7") as a practical guide to implementing section 31 and applying the arm's-length principle. PN7 is essentially based on the OECD's TP Guidelines, and states that the SARS intends to follow PN7 and the OECD Guidelines when conducting TP reviews. PN7 constitutes an "official publication" under SA tax law and therefore represents "practice generally prevailing" to which the SARS is legally bound.

In summary, therefore, the OECD TP Guidelines must be seen as part of SA tax law except to the extent that any aspect is expressly (officially) excluded or modified.

Transfer Pricing documentation requirements

Apart from specific TP-related questions and disclosures in the taxpayer-company's annual corporate income tax return, SA has additional TP documentation requirements.

Up until 2015/2016, the additional record-keeping requirements were limited to PN7 —and were non-specific in simply recommending that TP documentation should be “adequate”.

More specific and prescriptive documentation rules were introduced in 2016 (as set out in more detail below), with some aspects effective from 1 January 2016 but the majority came into effect from 1 October 2016. These TP documentation rules can be split into:

- Compulsory *submission* —documents to be proactively submitted to (i.e. filed with) the SARS; and
- Record-keeping (or document *retention*) — information to be maintained and kept available, either for on-site inspection by, or submission-upon-request to, the SARS;

although there is substantial overlap between retention and submission in some cases.

1. Thin capitalization

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 TP legislation, which are based on the “arm's length” principle, that is, the current legislation simply requires that the quantum of debt and interest rates are at arm's length. This requires a functional analysis to be performed to support the appropriateness of the taxpayer's arm's length debt assessment, as well as a comparability analysis taking into account the quantitative and qualitative factors that third-party lenders would consider when making lending decisions.

Currently, there is no safe harbour for thin capitalisation purposes.

Note: In addition to the TP provisions, South Africa also has domestic interest limitation rules (based on a specific formula). These provisions limit interest deductions for interest paid between parties in a controlling relationship where such interest is not subject to income tax or withholding tax on interest.

1. Indirect taxes

Mineral royalties

A royalty is payable to the State on the extraction of non-renewable resources, such as coal, oil and gas, in terms of the Mineral and Petroleum Resources Royalty Act and the Mineral and Petroleum Resources Royalty (Administration) Act.

The royalty is an *ad valorem* tax (i.e. based on value of sales), 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 the arm's length price realised in respect of the resources sold, 'gross sales', subject to certain adjustments and exemptions. Consequently, royalty liability is 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 a variable rate that is mainly driven by the profitability of the mining operations and is 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, whereas coal falls into the 'unrefined' mineral resource category. The minimum rate payable for unrefined and refined minerals will be increased from 0.5% to 2%, whereas the maximum rate differs – being 5% for refined minerals (oil and gas) and 7% (coal) for unrefined minerals.

A review of the tax regime for the upstream petroleum industry published at the end of 2021, proposed replacing the variable royalty rate with a flat-rate royalty of 5 per cent.

Value-added tax

There is no specific value-added tax (“VAT”) dispensation for companies within the Energy sector.

Every person (both resident and non-residents) who carries on an enterprise activity in or partly in South Africa on a regular or continuous basis is required to register as a vendor if the total value of taxable supplies made by the person exceeds the threshold of R1 million. VAT must be levied at the standard rate on goods or services supplied in the course or furtherance of an enterprise, unless the supply is specifically exempt from VAT or is subject to VAT at the zero rate. The standard tax rate increased from a flat rate of 14% to 15% effective 1 April 2018.

VAT at the zero rate is applicable on exports and international transport. Other goods that may be zero rated include, *inter alia*, fuel levy goods (i.e. petrol, distillate fuel, biodiesel and other biodiesel), petroleum oil and oils obtained from bituminous minerals (known as crude), and illuminating kerosene intended for use as fuel for illuminating or heating.

The VAT Act provides an exemption for goods supplied in South Africa by a non-resident who is not registered as a vendor to the extent that the goods have not been entered for home consumption. Therefore, non-residents making such supplies (although within the territory of South Africa) may not be required to register for VAT. Other exempt supplies include, *inter alia*, residential rentals, local fare-paying passenger transport by road or rail, financial services (i.e. interest or transferring/issuing shares) and educational services.

The import of goods and services into South Africa is subject to VAT at the standard rate. However, the importation of, *inter alia*, fuel levy goods, crude and illuminating kerosene (for illuminating or heating) is exempt from VAT under Schedule 1 to the VAT Act. In the case of services, no import VAT is payable to the extent that imported services are used or consumed wholly for making taxable supplies.

VAT incurred on the acquisition of goods or services to be used, consumed or supplied in the course or furtherance of making taxable supplies may be deducted from the VAT levied on goods or services supplied by a vendor, provided that the vendor has the necessary documentary proof. It should however be noted that VAT incurred on certain expenses (such as entertainment and car rentals) is prohibited from being deducted as input tax.

When goods or services are not acquired exclusively for use, consumption or supply in the course of making taxable supplies, the vendor would be required to determine the part that relates to taxable supplies and deduct input tax only to that extent. It is therefore imperative that the vendor first determine if the expense can be directly attributed to an intended purpose (i.e. taxable, non-taxable or mixed purposes). It is only when an expense has been incurred for mixed purposes that VAT must be apportioned in terms of a ratio determined by an approved apportionment method.

VAT returns must be submitted on a monthly or bi-monthly basis depending on the value of the taxable supplies made by the vendor in any consecutive 12-month period. Vendors who are registered on the SARS eFiling platform are required to submit returns and make payment thereof (if applicable) by the last business day of the first month commencing after the end of the tax period.

Body of persons (joint ventures)

A 'person' is defined in section 1(1) of the VAT Act to include a body of persons (corporate or unincorporated). A body of persons carrying on an enterprise would be deemed to be a separate person from the members of such body and has to register as a vendor for VAT if it meets the registration requirements. This means that the body of persons will be liable to account for VAT in its own right.

Where a joint venture ("JV") is entered into, such JV would be regarded as a body of persons which could become liable to register as a vendor if the supplies made by the JV exceeds the registration threshold of R1 million. Parties entering into JV agreements should therefore carefully consider the terms and conditions of the agreement and the potential VAT implications before concluding such agreement.

Custom Duties/Import Tariffs

Ordinary customs duties are charged in terms of the Customs and Excise Act on goods imported into South Africa. The duties are usually calculated as a percentage of the value of the goods, as stipulated in the schedules to the Customs and Excise Act. These duties may range between 0% and 20% (industries other than tobacco and textiles). The import duties may also include anti-dumping and countervailing duties of up to 150%.

No customs duties are charged on trade between Governments of South Africa, Botswana, Lesotho, Namibia, and Eswatini (previously Swaziland) as these five countries constitute a Southern African Customs Union (SACU). The effect of the SACU agreement is that a Common Customs Area was created within which goods that are grown, produced or manufactured therein, on importation from one member state to another, shall be free of customs duties.

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 and on the specific tariff classification as per the Harmonised Commodity Description and Coding System (tariff book). Tariff classification of goods determines the necessity for import control permits, the rules of origin obligations, and rebate provisions if applicable.

Diesel fuel levies

South Africa has a system of rebates and refunds of the fuel levy and Road Accident Fund levy which is governed in terms of the Customs and Excise Act.

Entities of qualifying industries that are registered for VAT purposes and that carry on eligible activities may apply for registration for diesel refund purposes.

In general, diesel fuel purchased by a “user” on “eligible purchases” qualifies for a refund when consumed in South Africa by certain industries as part of eligible activities. However, any diesel fuel purchased in South Africa but used in a neighbouring territory will not qualify for diesel refund levies. Currently, the claiming of diesel refund levies is administered through the VAT system.

Part 3 of Schedule 6 to the Customs and Excise Act provides that the diesel must be purchased by the user for use and used as fuel for “own primary production” activities. Explicit to the mining industry, the activities which qualify for a refund must be carried on by the user or by a contractor of the user that is contracted on a dry basis, at the place where the mining operation is carried on and by the holder or cessionary of the necessary authorisation granted or ceded in terms of the MPRDA.

Recent case law has provided insight and much needed guidance on what constitutes “own primary production” and it was determined to mean the mining activities associated with the extraction of minerals from the ground, which is different from activities which occur after minerals have been extracted from the ground, with such latter activities being regarded as “secondary production” activities.

In addition to determining the “own primary production” activities, it is imperative that detailed logbooks and records be retained to support the diesel refund claims. The logbooks should demonstrate, *inter alia*, how the diesel was obtained, stored, dispensed, disposed of and/or lost in respect of eligible and non-eligible activities. Any diesel refund amount which is found to have been incorrectly refunded will have to be paid back to SARS, together with any penalties and interest that are applicable.

Carbon tax

The Carbon Tax Act became effective on 1 June 2019. For the 2023 calendar year, carbon tax, at a rate of R159/tCO₂e, must be levied in respect of the sum of the scope 1 greenhouse gas (“GHG”) emissions of a taxpayer. As per the Taxation Laws Amendment Act, 2022, the carbon tax rate trajectory, over the next 8 years, has been gazetted as follows:

- R159/tCO₂e for tax periods from 1 January 2023 until 31 December 2023;
- R190/tCO₂e for tax periods from 1 January 2024 until 31 December 2024;
- R236/tCO₂e for tax periods from 1 January 2025 until 31 December 2025;
- R308/CO₂e for tax periods from 1 January 2026 until 31 December 2026;
- R347/CO₂e for tax periods from 1 January 2027 until 31 December 2027;
- R385/CO₂e for tax periods from 1 January 2028 until 31 December 2028;
- R424/CO₂e for tax periods from 1 January 2029 until 31 December 2029; and
- R462/CO₂e for tax periods from 1 January 2030 until 31 December 2030.

The GHG emissions resulting from *fuel combustion activities, industrial processes and product use* as well as *fugitive emissions* expressed as a carbon dioxide equivalent (“CO₂e”) will be taxable. Taxpayers ought to be mindful of the intention by National Treasury to widen the carbon tax ambit, which would include the addition of taxable activities that have previously been precluded from the Act’s application. Taxpayers who undertake activities within the “waste”; “agriculture, forestry and other land use” as well as “other” sectors are encouraged to assess whether their activities have triggered the application of additional IPCC Codes. A person conducting an activity in South Africa (being, fuel combustion activities; industrial processes and product use; fugitive emissions; waste; agriculture, forestry and other land use and/or other activities, as prescribed by Schedule 2 of the Carbon Tax Act) resulting in GHG emissions equal to and/or above the prescribed thresholds, as provided for in Schedule 2 of the Carbon Tax Act, will be subject to carbon tax.

Taxpayers can leverage off tax-free allowances that will reduce their tax obligation. These allowances will be administered as rebates, in terms of Schedule 6 of the Customs and Excise Act. The allowances are highlighted below as follows:

- Basic Tax Free / Allowance for fossil fuel combustion – 60%;
- Allowance for industrial process emissions – 10%;
- Allowance in respect of fugitive emissions – 10%;
- Trade exposure allowance – 0% to 10% (capped at 10%);
- Performance allowance – 0% to 5% (capped at 5%);

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

Property means land and any fixtures thereon and includes, but is not limited to:

- a. Real rights in land, excluding rights under mortgage bonds or leases;
- b. Rights to minerals or the rights to mine for minerals including leases or sub-leases to mine for minerals;
- c. A share or member's interest in a "residential property company" as defined;
- d. A contingent right to residential property or share or member's interest in a residential property company; or
- e. A share in a share block company.
 - Carbon budget allowance – 5 % (being phased out)); and
 - Carbon Offset allowance – 5% or 10% (proposed to be increased by an additional 5% at the start of the second phase - 1 January 2026).

Multiple allowances can be granted to the same taxpayer. However, the total may not exceed 95%. It should be noted that per the 2022 National Budget Speech, National Treasury aims to reduce the percentages applicable to the above carbon tax allowances/rebates. At present, we await a public policy document to be released by National Treasury in order to provide taxpayers with clarity regarding the forecasted reduction in percentages. Taxpayers are encouraged to forecast the impact that the forecasted carbon tax rate trajectory/increase, coupled with a reduction in the carbon tax allowance percentages will have on their business.

We understand that from a policy rationale perspective, the above allowances will be reduced, and the carbon tax rate significantly increased, so as to bring the carbon tax rate in line with global carbon prices.

Taxpayers operating within the Republic of South Africa, who conduct activities resulting in GHG emissions equal to or above the prescribed thresholds, as provided for in Annexure 1 of the National Greenhouse Gas Emission Reporting Regulations ("NGER Regulations") as well as Schedule 2 of the Carbon Tax Act, will be considered as a taxpayer under the Carbon Tax Act and as a Data Provider under the NGER Regulations.

From 1 January 2023, Persons and/or Data Providers will be required to submit carbon budgets and adhere to the provisions of the carbon budgeting system set to be governed by the Climate Change Bill. In terms of the provisions of the Climate Change Bill, Persons who exceed their assigned carbon budget, will be penalised at a rate of R640/tCO₂e, for every tonne, exceeded beyond the assigned budget.

Important compliance considerations

Data Provider registration ought to be made at the Department of Forestry, Fisheries and the Environment ("DFFE") and a Carbon Tax Licensing Application made at the South African Revenue Services (SARS). Submission of Annual GHG emissions made to DFFE by 31 March of each year and submission of Environmental Levy Account (Carbon Tax Return) to SARS by the penultimate working day of July of each year, for the preceding year's emissions.

Social Security contributions and personal income taxes

Personal income tax

Non-residents are subject to tax on South African 'source' income unless exempt in terms of a double taxation treaty.

South African employers and certain non-resident employers are required to register for and withhold employees' tax ("Pay-As-You-Earn") from remuneration paid to employees in South Africa.

The employee's tax rates are charged on a sliding scale up to 45%.

Social Security Contributions

South Africa does not have social security per se. However, skills development levies ("SDL") and UIF contributions are payable. The SDL is 1% of remuneration payable by the employer. UIF contributions are set at 2% of remuneration, 1% payable by the employee and 1% payable by the employer. The maximum earnings ceiling is R17,712 per month or R212,544 annually. For employees who earn more than this amount, the contribution is calculated using the maximum earnings ceiling amount. Therefore the maximum contribution which can be deducted, for employees who earn more than R17,712 per month, is R177.12 per month.

In addition to SDL and UIF, there is the requirement to contribute to the COIDA in specific circumstances.

1. Other taxes (property taxes, stamp taxes, etc)

Property taxes

Transfer duty is levied on the acquisition of any immovable property in SA as follows, and is payable by the purchaser, determined on the value of the property:

- R0 to R1,100,000: 0%
- R1,100,001 to R1,512,500: 3% on the value above R1,100,000
- R1,512,501 to R2,117,500: R12,375 plus 6% on the value above R1,512,500
- R2,117,501 to R2,772,500: R48,675 plus 8% on the value above R2,117,500;
- R2,772,501 to R12,100,000: R97,075 plus 11% on the value above R2,772,500; and
- R12,100,001 and above : R1,128,600 + 13% of the value exceeding R12,100,000

Transfer duty is not due where the transaction attracts VAT.

The disposal of shares in a property-rich company by a non-resident will constitute the disposal of an interest in immovable property, which may be subject to South African capital gains tax. A withholding tax of 7.5%, 10% or 15% may be levied on the transaction, but this will not be a final tax. The final tax payable to SARS will be determined when the non-resident submits their tax return.

Securities Transfer Tax

Securities Transfer Tax applies on the transfer of shares and other securities, at 0.25% on the higher of consideration or market value of the securities transferred.

Donations tax

Disposals of assets for inadequate consideration may constitute a donation on which donations tax is payable at 20% on a lifetime limit of R30 million and at 25% thereafter, subject to various requirements and exemptions.

Levies

Various additional levies exist, e.g. air passenger tax, vehicles emissions tax, a fuel levy etc.

1. Investment Incentives

Tax incentives

The tax incentive regime is being reviewed by the National Treasury with a view to reduce incentives to create an environment that is conducive to broad-based economic growth and that avoids complicated incentives for specific sectors or groups of taxpayers.

Some of the current incentives that may be relevant for the energy sector are summarised below.

Regime for oil & gas companies

Oil & gas companies currently enjoy special tax treatment, as set out above.

In 2021, Government announced its intention to move towards a fairer and more certain fiscal and regulatory regime for upstream oil & gas companies. A discussion document was issued for public comment in December 2021, essentially proposing state participation in net revenue / production (in the form of a 20% carried interest) combined with a flat-rate royalty of 5 per cent on gross sales. The discussion document proposes no changes for the capital allowances applicable to oil & gas companies and the withholding taxes.

Capital / special allowances

Specific capital allowances apply depending on the assets and their usage. Refer above for deductibility of capital exploration / post-exploration expenditure by oil & gas companies. Note that Budget 2022 proposed a review of the depreciation allowances during 2022/23.

Certain research and development activities qualify for incentivised tax allowances.

A 150% income tax deduction is currently available for qualifying R&D expenditure incurred in South Africa. The main aim of this incentive is to encourage South African companies to invest in scientific or technological R&D.

The section 11D Research and Development Incentive was introduced into the Income Tax Act, in 2006 to replace the previous research and development rule that existed in terms of section 11B.

Section 11D allows a deduction equal to 150% of expenditure incurred directly for R&D.

The Minister of Science and Technology or a person appointed by the Minister of Science and Technology must approve any R&D being carried on or funded.

The sunset date for claiming a section 11D allowance (in its current form) has been extended to 23 December 2023.

Budget 2023 announced that the current definition of R&D will be refined (i.e. to simplify it and to make it easier to administer) and that the amended allowance will be available for a period of 10 years from 1 January 2024.

Special Economic Zones

SEZs were introduced to stimulate industrial growth in particular geographical areas. All SEZs qualify for VAT and customs relief and the employment tax incentive (refer below). Businesses operating within approved SEZs also qualify for a reduced income tax rate of 15%, as well as an accelerated depreciation allowance of 10% on cost of any new and unused buildings or improvement owned by the qualifying company.

Employment tax incentive

The Employment tax incentive (“ETI”) reduces the employer’s cost of hiring young people through a cost-sharing mechanism with the government, by allowing the employer to reduce the amount of Pay-As-You-Earn paid while leaving the wage received by the employee unaffected.

The ETI is an incentive aimed at encouraging employers to hire young work seekers. It was implemented with effect from 1 January 2014. There are various requirements to qualify for this incentive.

The Minister of Finance announced an increase in the ETI values which will become effective from 1 March 2022. This information was published in the draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill of 23 February 2022.

The ETI came into effect on 1 January 2014 and it will end on 28 February 2029.

Energy Efficiency Income Tax Incentive – Section 12L

SA income tax legislation currently allows for deductions in respect of energy efficiency measures. The current sunset date of the incentive was announced in Budget 2022 as 31 December 2025.

In determining the taxable income derived by a person from carrying on any trade in respect of any year of assessment ending before 1 January 2023, section 12L makes available an allowance in respect of energy efficiency savings.

The amount of the deduction must be calculated at 95 cents per kilowatt hour or kilowatt hour equivalent of energy efficiency savings.

A person claiming the deduction must obtain a certificate issued by an institution, board or body prescribed by the regulations in respect of the energy efficiency savings for which a deduction is claimed. It is important to note that a deduction will not be allowed if the person receives any concurrent benefit in respect of energy efficiency savings.

Registered training contracts

To incentivise employers for job creation and skills development within a regulated environment, section 12H permits the deduction of a so-called learnership allowance. The allowance covers learnerships registered with a Sector Education and Training Authority and apprenticeships registered with the Department of Labour, since both learnerships and apprenticeships fall within the definition of a ‘registered learnership agreement’. The incentive takes the form of an allowance which may be deducted from the employer’s trade income for income tax purposes, and is in addition to the section 11(a) deduction in respect of remuneration paid to the employee

A qualifying employer is entitled to two types of allowance, namely:

- an annual allowance – deductible in any year of assessment during which a learner is a party to a registered learnership agreement; and
- a completion allowance – deductible in the year in which the learner successfully completes the learnership.

It is important to note that the section 12H allowance is based on the qualification held by the employee and not the qualification that the employee is studying towards.

Renewable Energy Income Tax Incentive – Section 12B

Section 12B provides for a capital allowance for movable assets used in the production of renewable energy. More specifically, it allows for a deduction on a 50%, 30%, 20% basis over three years in respect of any machinery, plant, implement, utensil or article (referred to as a qualifying asset) owned by the taxpayer. It is important to note that the allowance is only available if the asset is brought into use for the first time by the taxpayer. In other words, the allowance is not limited to new or unused assets.

The asset has to be brought into use for the purposes of the taxpayer's trade in order to generate electricity from the following renewable energy sources:

- wind power;
- solar energy;
- hydropower (gravitational water forces) to produce electricity of not more than 30 megawatts; and
- biomass comprising organic wastes, landfill gas or plant material.

It should be noted that photovoltaic solar energy not exceeding 1 megawatt enjoys an allowance of 100%.

Where a taxpayer makes improvements to a building or land of which it is not the owner, it may still claim a deduction in respect of any expenditure incurred to effect the improvements, provided certain requirements are met.

Asset brought into use for the first time - between 1 March 2023 and 28 February 2025

Budget 2023 announced that the above mentioned tax incentive will be temporarily expanded to encourage rapid private investment to alleviate the SA energy crisis. Under the expanded incentive, businesses will be able to claim a 125% deduction in the first year for all renewable energy projects with no thresholds on generation capacity. The adjusted incentive will only be available for investments brought into use for the first time between 1 March 2023 and 28 February 2025.

Additional deduction in respect of roads and fences in the production of renewable energy - Section 12U

A 100% deduction is available in respect of expenditure incurred in relation to the construction and/or improvement of roads, fences, foundation or support structures designed for a fence, used for purposes of the taxpayer's trade of generating electricity. The deduction is only available for the generation of renewable energy (wind, solar, hydropower and biomass) and only to the extent that it exceeds 5 megawatts.

Accelerated capital allowance for certain pipelines and transmission lines – Section 12D

Section 12D permits a deduction from taxable income of the cost of certain new and unused assets used by a taxpayer directly for the transportation of persons, goods, things or natural oil or the transmission of electricity or any telecommunication signal. The taxpayer must be the owner of the assets.

The assets qualifying for the allowance are:

- pipelines used for the transportation of natural oil, being any liquid or solid hydrocarbon or combustible gas existing in a natural condition in the earth's crust, including refined by-products of such liquid or solid hydrocarbon or combustible gas;
- pipelines for the transportation of water used by power stations in the process of generating electricity;
- lines or cables used for the transmission of electricity;
- line or cable used for the transmission of electronic communications; and
- railway lines used for the transportation of persons, goods or things,

including any earthworks or supporting structures and equipment forming part thereof or ancillary thereto and any improvement to such pipeline, transmission line or cable or railway line.

The deduction in any one year must not exceed -

- 10% of the cost incurred in respect of pipelines used for transporting natural oil;
- 5% of the cost incurred in respect of any pipeline for the transportation of water used by power stations in generating electricity, or any line or cable used for the transmission of electricity line or cable used for the transmission of electronic communications, and any railway line used for the transportation of persons, goods or things; including any earthworks or supporting structures forming part thereof, and any improvement to such pipeline, transmission line or cable or railway line; or
- 10% of the cost incurred in respect of any line or cable used for the transmission of electronic communications (contemplated in para (c) of the definition of 'affected asset').

● AfCFTA considerations

The African Continental Free Trade Agreement (“AfCFTA”) is an agreement that establishes free trade in Africa. Its objective was to attempt to increase trade on the continent, remove existing barriers and improve trade relations amongst African member states. The AfCFTA aims to create a single market for goods and services that is facilitated by the movement of persons. The purpose is to deepen economic integration in Africa and create a liberalised market with free capital flows.

Energy security and efficiency is central to the economic development and prosperity of Africa as a whole. Integration of regional trade in Africa contributes to strengthening the energy sectors of member states, and improving utilisation of renewable energy and other energy resources, such as natural gas.

Access to affordable, sustainable and clean energy is deficient throughout Africa, a major contributor to economic stagnation in many member states. The AfCFTA would look at addressing these deficiencies by promoting interconnectivity in AfCFTA. One example of this is that energy generation and distribution is a benefit that member states may leverage through power pooling.

AfCFTA has a number of prospects for achieving integrated liberalised energy systems in Africa. These prospects include:

- *An increase in investment opportunities.* The single market created by the AfCFTA may attract more investment from the private sector as well as development financing. Increased intra-Africa trade unlocks possibilities for funding and innovation with lower production costs.
- *Improved coordination in policies and implementation.* A single market created by the AfCFTA establishes a platform for the alignment of local government policies to the broader and overarching regional goals of the AfCFTA.
- *Trust among member states.* More intra-African trade, improves upon relations between geographical neighbours. The AfCFTA solidifies a foundation of trust between member states, creating possibilities for long term cooperation.

The true potential of the AfCFTA and its associated benefits can only be measured once it is fully implemented. Currently, 40 out of the 54 African countries have ratified the agreement. Although the agreement came into force on 1 January 2021, trading under the AfCFTA is slow due to slow member state ratification and uncertainty around the implementation of some of its benefits and rules.

o

Pillar 1 and Pillar 2

South Africa is a member of the Steering Group of the OECD/G20 Inclusive Framework tasked with finding consensus-based solutions to tax challenges associated with digitalisation of the economy. In October 2021, the Inclusive Framework agreed on a two-pillar solution and will work on an implementation framework to take effect by 2023. Following developments worldwide and corresponding measures being taken by the Inclusive Framework countries, Budget 2023 announced that during the 2023 legislative cycle, government will publish a draft position on the implementation of Pillar II for public comment and draft legislation will be prepared for inclusion in the 2024 Taxation Laws Amendment Bill.

Pillar I in brief

Under Pillar One, a formulaic share (**Amount A**) of the consolidated profit of certain multinational enterprises (“MNEs”) will be reallocated to markets (i.e., where sales arise). Pillar One will apply to MNEs with profitability above **10%** and global turnover above **EUR 20bn (Rand equivalent ~350bn)**. The profit to be reallocated to markets will be calculated as 25% of the profit before tax in excess of 10% of revenue.

In that regard, the OECD is in the process of developing Model Rules for all aspects of Amount A to provide a template that jurisdictions can use, if necessary, to give effect to the new taxing right in their domestic legislation. After receiving input from stakeholders, the draft Model Rules will be revised, and translated into the Multilateral Convention (“MLC”) and an accompanying Explanatory Statement for approval by the Inclusive Framework (“IF”). The OECD indicated that the expected commencement date is 2024.

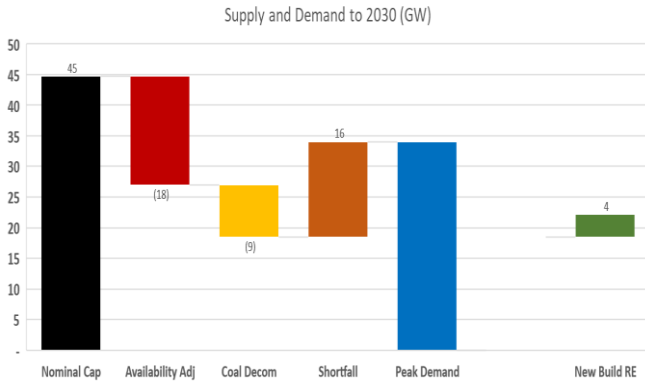
Pillar II in brief

In brief, 140 countries have joined the Pillar Two agreement (the Global Anti-Base Erosion Proposal, or “GloBE”) to reform international corporate taxation rules. The aim of the Pillar is to ensure that MNEs pay a minimum effective tax rate of 15%. The countries of the Inclusive Framework aim to apply this global minimum rate of tax to MNEs as early as 2024.

Although the public’s general perception may be that Pillar Two simply compares local jurisdictional tax rates to the global minimum ETR of 15%, the framework is in fact a highly complex set of rules that can result in some unforeseen outcomes.

Businesses in scope - All multinational enterprises with global turnover above **EUR750m (Rand equivalent ~13bn)** are within scope of the rules. Excluded entities (e.g. pension funds etc) are however not included within the scope of the GloBE rules.

Energy Transition (Renewable energy, etc.)



Notable first movers in this sector include mining companies and retailers. Most of these projects are based on renewable energy, mostly solar PV.

Storage options will include Li-ion batteries for short durations (2-3 hours), vanadium flow and other novel battery systems for intermediate storage (2-12), and green hydrogen for long duration (days, week, months) storage, and green hydrogen could also work to load shift surplus electricity generated in December and January to June and July.

South Africa - National Electricity Projection Model

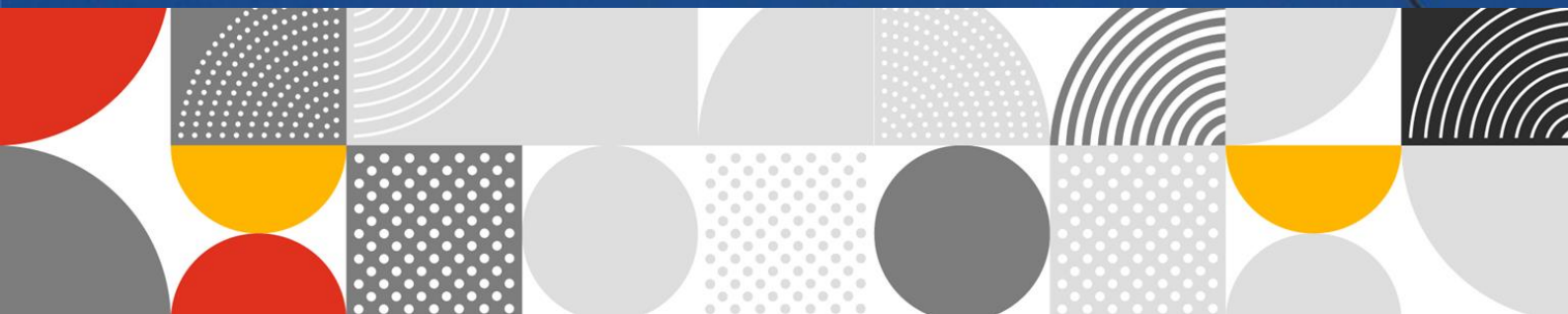
Both Eskom and PwC's analysis calculate a national capacity shortfall of approximately 16000 MW to 2030 based on peak demand of 44000 MW in 2030. The additional electricity generation expected to come online that could be funded based on proven funding mechanisms for renewable energy is estimated at 4000 MW adjusted for capacity factors, leaving a shortfall of 12000 MW.

The decommissioning of coal power plants will see at least 9 GW of coal fired power decommissioned to 2030. While gas/LNG to power is considered in the Integrated Resource Plan ("IRP") 2019, South Africa's co-ordinated schedule for generation expansion and demand-side intervention programmes taking into consideration multiple criteria to meet electricity demand, renewable energy is the most likely option to provide additional generation capacity that can be funded and be brought on-line within a short time frame.

The IRP calls for 17.7 GW of wind, 8.3 GW of solar and 5 GW of storage by 2030. South Africa's higher-than-average onshore wind capacity factors, coupled with the above average solar hours in many areas of the country and optimised with energy storage could enable off-grid islanded renewable energy, which is why many businesses are studying generating their own power.

Businesses where security of supply is key to operations have already commenced with projects or feasibility studies to either enable a significant portion of electricity supply to be off-grid, or are considering islanded systems totally independent of Eskom electricity supply.

Power and Utilities Sector



Brief overview of Power and Utilities development in South Africa

In South Africa, the majority of electricity is generated via coal-fired power stations that are owned and operated by the state-owned power utility Eskom. While conventional thermal power sources will likely remain the major source of electricity generation for the foreseeable future, South Africa is diversifying the generation mix through the Renewable Energy Independent Power Producer Procurement Programme (REIPPPP). As of 31 March 2018, 3 776 MW of electricity generation capacity from 62 IPP projects has been connected to the national grid.

Fiscal tax regime

The general fiscal tax regime may be said to comprise primarily of direct tax (mainly corporate income tax) and various indirect taxes, referenced in the oil & gas section. It is noted that, unlike, for example, the Oil & gas industry, the Power and Utility industry does not enjoy a special fiscal tax regime other than certain enhanced allowances.

Regulatory framework

Key Acts and regulations in the sector include:

The key regulators in the Power and Utility industry include:

- The South African National Energy Development Institute ('SANEDI') is a Schedule 3A state owned entity that was established as a successor to the previously created South African National Energy Research Institute (SANERI) and the National Energy Efficiency Agency (NEEA). The main function of SANEDI is to direct, monitor and conduct applied energy research and development, demonstration and deployment as well to undertake specific measures to promote the uptake of Green Energy and Energy Efficiency in South Africa.
- 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 regulate the electricity, piped gas and petroleum pipelines industries in terms of the Electricity Regulation Act, No. 4 of 2006 Gas Act, No. 48 of 2001 and Petroleum Pipelines Act, No. 60 of 2003.

Forms of contracts

Power Purchase Agreements between Independent Power Producers and Eskom.

Tax Incentives in the industry

Energy Efficiency Income Tax Incentive – Section 12L

Section 12L of the Act allows deductions in respect of energy efficiency measures. The deduction is calculated as 95 cents per kilowatt hour or equivalent of energy savings made within a year against a verified 12-month baseline. The baseline measurement and verification of savings must be done by a South African National Accreditation System (SANAS) accredited Measurement and Verification (M&V) body. Apart from certain renewable energy sources, all energy carriers may qualify for the incentive.

SANEDI plays the role of implementing and overseeing the application process of the incentive claimant by the issuing of the section 12L Tax Incentive certificate at the application approval. A taxpayer may only claim deductions stated in section 12L if they have obtained the Tax Incentive Certificate referred to in section 12L.

To cushion households and energy intensive industries from potential adverse impacts after the introduction of the Carbon Tax Act, and to help industries transition to lower carbon, energy efficient practices, Government has extended the duration of the incentive to be aligned with the first phase of the carbon tax. It is proposed that the energy efficiency savings incentive be extended to years of assessment ending before 1 January 2023.

SARS has issued Interpretation Note 95 on 11 January 2019 pertaining to the technical application of Section 12L.

Renewable Energy Income Tax Incentive – Section 12B

Section 12B of the Act makes provision for an accelerated capital allowance for moveable assets owned by the taxpayer and used in the generation of energy from wind, solar, hydropower and biomass. The incentive provides for an allowance of 50/30/20 percent of the cost of acquisition of the asset during the first three years after the asset is brought into use.

Where a taxpayer makes improvements to a building or land of which it is not the owner, it may still claim a deduction in respect of any expenditure incurred to effect the improvements, provided the requirements of section 12N are met. Section 12N deems the taxpayer for purposes of certain sections (including sections 12B and 12D) to be the owner of the improvements so affected provided (1) the taxpayer holds a right of use or occupation of land or a building ;

(2) effects an improvement on the land or building in terms of the Independent Power Producer Procurement Programme administered by the Department of Energy; and (3) uses or occupies the land or building for the production of income or derives income from the land or building.

Additional deduction in respect of roads and fences in the production of renewable energy - Section 12U

Section 12U provides for a 100% deduction in respect of expenditure incurred in relation to the construction and/or improvement of roads, fences, foundation or support structures used for the purpose of generating electricity, provided generating electricity constitutes that taxpayer's trade. The deduction is only available for the generation of renewable energy (wind, solar, hydropower and biomass) and only to the extent that it exceeds 5 megawatts. Section 12U also provides for the deduction of pre-trade expenditure, provided that the expenditure would have been deductible had the taxpayer, at the time of incurring the expenditure, commenced with carrying on its trade.

Accelerated write-off period for electronic communication cables – Section 12D and 11(f)

To ensure the tax system remains up to date with technological advancements and international industry best practice, the write-off period for electronic

communication cables, irrespective of whether the taxpayer owns or leases the cables, or whether the cables are located outside the territorial waters of South Africa.

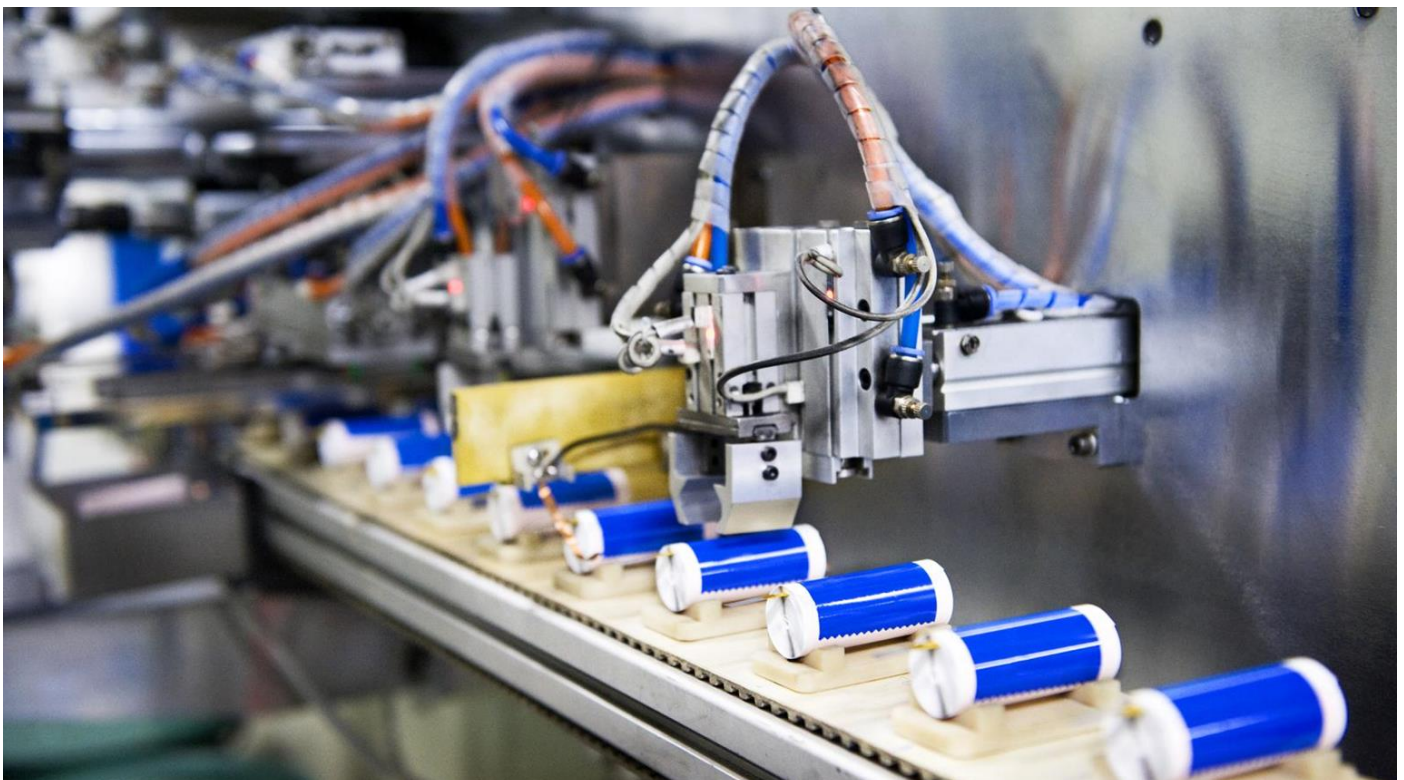
- The write-off period in respect of the electronic cables owned by a taxpayer is reduced to 10 years.
- The write-off period in respect of lines and cables that are not owned by the taxpayer but the taxpayer is leasing those electronic cables at a certain premium, will be reduced to the lesser number over years of which the taxpayer is entitled to use the asset or 10 years.

This came into effect from 1 April 2019.

Repeal of Exemption of certified emission reductions – Section 12K

The repeal took effect from June 1 2019. The reason for the repeal is to avoid a situation where taxpayers enjoy a double benefit for the same emissions reductions, namely an income tax exemption under section 12K of the Income Tax Act, as well as a lower carbon tax liability for a taxpayer under the Carbon Tax Act.

Carbon Tax Act: Please refer to the comments on the Oil & gas sector.





ESG



1. Environmental, Social and Governance

The energy and utilities sector is placing growing emphasis on Environmental, Social and Governance (“ESG”) considerations and is leading the way for other sectors. The incorporation of social and governance on top of environmental components into investment analysis, corporate strategy and decision making is already practised or on the cards by many organisations. Analysing and understanding ESG risks and mitigations will provide a degree of future-proofing against external influences, including market volatility, and protect long-term financial performance and value creation.

Environmental considerations

The energy and utilities sector will have to deal with increased costs from changes in carbon markets (i.e. retrofitting plants and equipment), early write-offs or devaluation of plants and equipment due to policy changes or reduction in demand for current products, as well as fundamental shifts in competitive and investment landscape driven by technological innovation or market changes.

Firms will need to explore new market opportunities (e.g. green transport, green steel, and renewable electricity) and take advantage of increased willingness of customers to pay green premium for products and services with strong ESG recognition.

They will also need to accept fundamental shifts in the competitive and investment landscape, driven by technological innovation or market changes as well as tax savings by shifting supply chains

Social considerations

For many years, South Africa’s economy and citizens have been faced with the triple challenge of high levels of unemployment, poverty and inequality. These challenges are a legacy of apartheid, which systematically excluded the majority of the population from decent and/or skilled work opportunities and has ultimately exacerbated these issues. Various regulations such as the B-BBEE ACt of 2003 and the Department of Mineral Resources and Energy (DMRE) Social and Labour Plan (SLP) requirements have been implemented to assist in addressing these challenges.

With this in mind and increasing stakeholder expectations, increased scrutiny and requirements for compliance with various social aspects must be considered in a company’s ESG strategy and reporting. The table below highlights some of the key social indicators to be tracked by organisations as per the 2022 JSE Sustainability Disclosure Guidelines:

Social considerations	
Labour standards	Pay equality; wage level and living wage; freedom of association and collective bargaining and characteristics of employees and workers in the workforce.
Community development	Community rights; skills for the future; employment and wealth creation and economic contribution.
Health and safety	Workplace health and safety
Customer responsibility	High risk product and services; product innovation and consumer data and privacy.
Supply chain	Supply chain (i.e. ensure that organisations within an organisation’s sphere of influence comply with labour standards)

Source: JSE Sustainability Disclosure Guidance, 2022

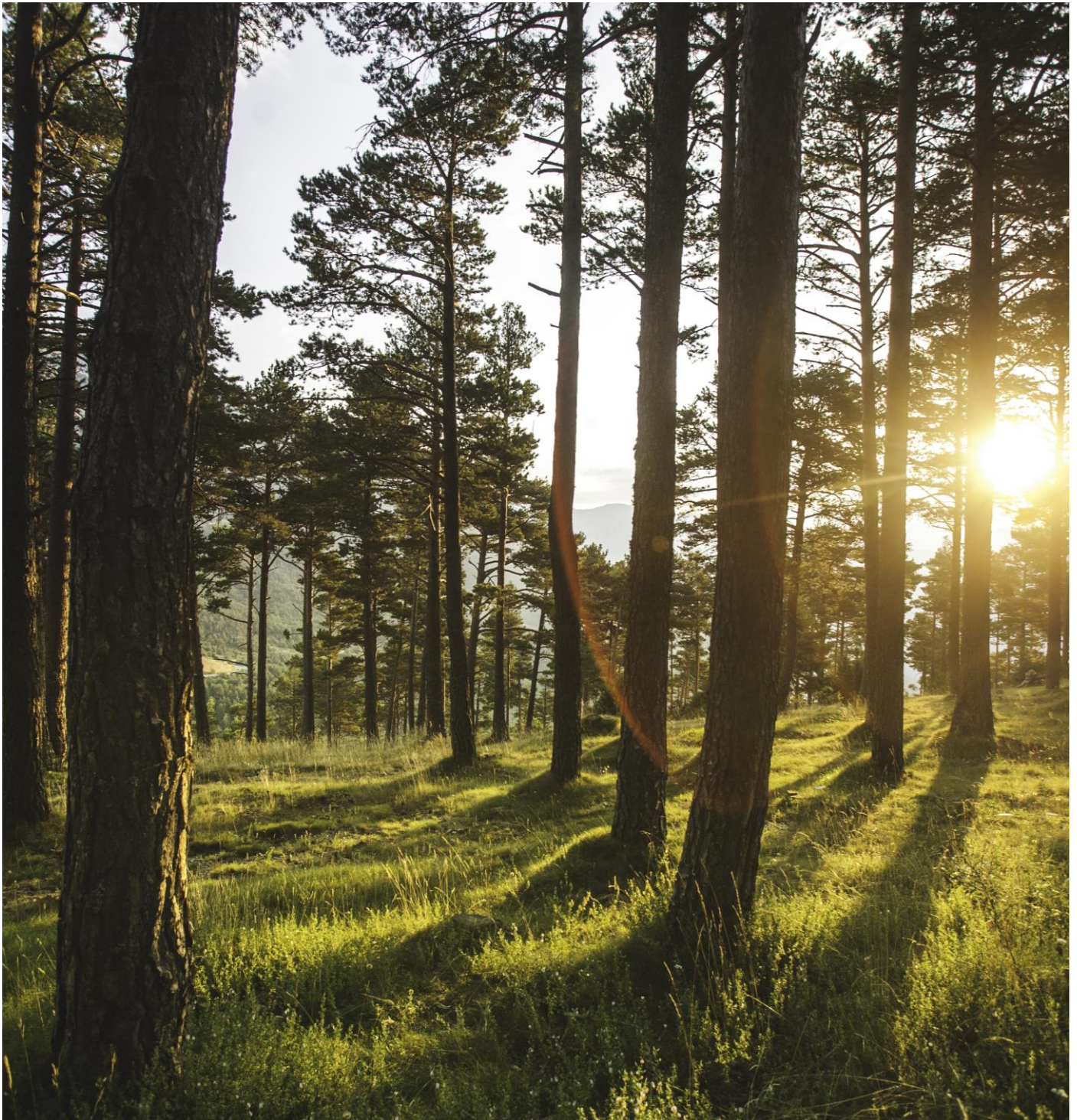
A Just Energy Transition is becoming more and more critical in the South African context, especially as existing infrastructure fails to meet the electricity demands of the country and load shedding continues. It is expected that the fossil fuel intensive and coal-based economy may create significant challenges in the scale of the energy transition, with consequential implications for workers, communities, municipalities and businesses that operate within or are dependent on the coal value chain. Therefore, it is essential for the mining industry in particular, to urgently identify the skills sets and future employment opportunities for its employees and equip them accordingly in order to protect them from the adverse effects brought about by the gradual closure of coal mines in the wake of the announced energy transition. This is also relevant to gold mines that have reached end-of-life.

Addressing social inequality and investing in the upliftment of affected communities with a short and long term vision - including a focus on education, skills and enterprise development - will be on top of the agenda of government and industry. Addressing this challenge will be best addressed through public-private partnerships with close involvement of the respective communities. This will ensure that funding is directed towards appropriate projects, communities are heard, and concerns are addressed. This provides an opportunity to create trust, change the narrative, and reduce business interruptions due to a lack of communication and mutual understanding.

Governance considerations

Increasing requirements for greater transparency and the ability to create value beyond financial returns will drive activity on this component.

Determining material ESG metrics for reporting will be crucial to ensure expectations of stakeholders are met and will address various areas that create value for an organisation. On the financing side, it will be beneficial to understand increasingly strict requirements from the investment and banking sector in order to enable securing lower borrowing and insurance rates for new projects. Providing transparency on relevant ESG metrics is an opportunity to enhance reputation and brand recognition.





Tanzania

Contact



David Tarimo

david.tarimo@pwc.com



Rishit Shah

rishit.shah@pwc.com



Joseph Lyimo

joseph.lyimo@pwc.com

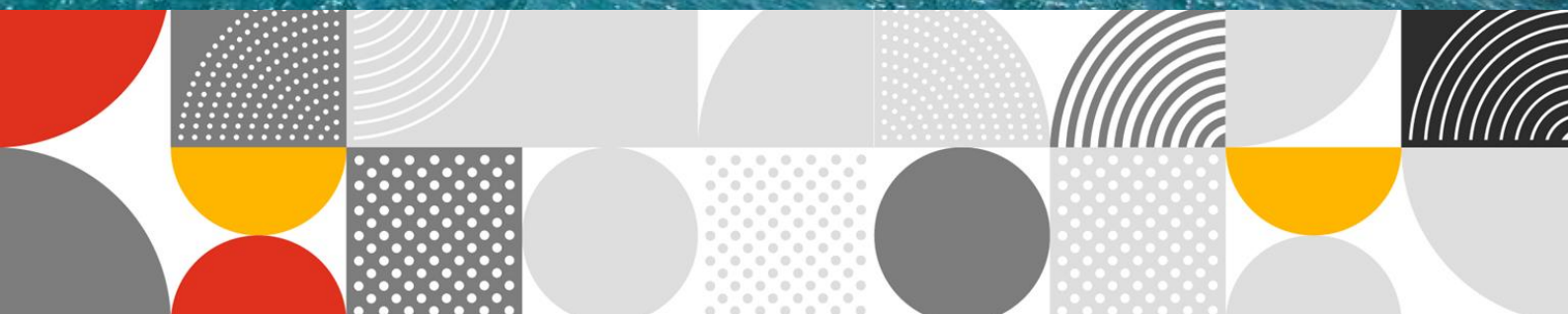


Jonia Kashalaba

jonia.k@pwc.com



Oil and Gas Sector



Brief overview of the Oil & Gas industry in Tanzania

Although there is a long history of oil & gas exploration in Tanzania, hydrocarbon exploration activity intensified in the year 2000 with the number of active production sharing agreements (PSAs) increasing significantly. This interest accelerated in the period from 2010 following significant discoveries of commercial quantities of gas in the deep water offshore.

The most recent offshore licensing round, which was based on a new 2013 model PSA, was completed in 2014 but had a muted response. No new offshore licences have been announced since January 2012. Preparations are underway for a fifth licencing round (for Tanzania Mainland) with the auctioning of some open blocks expected to be conducted at the end of 2023 or early 2024. In advance of this, it is understood that the 2013 MPSA and Petroleum Act 2015 will be reviewed to ensure that the fiscal terms and legal terms are aligned with the current business environment.

Tanzania is already producing gas for domestic use from Songo Songo and Mnazi Bay gas fields, which are near onshore. The Songo Songo gas field has been in operation since 2004. Following the commissioning in October 2015 of the Mtwara-Dar es Salaam natural gas pipeline, gas from the Mnazi Bay field has been supplied to this pipeline.

The big natural gas discoveries were made in 2013 and 2014 in the Ruvuma Basin – the northern part of which is in Tanzania, and the southern part in Mozambique (where even larger discoveries have been made). These reserves are approximately 100 km deep offshore, and the aspiration is to develop a liquefied natural gas (“LNG”) plant to enable export overseas. The current status is that exploration programmes and conceptual design work are complete, the site for the LNG plant has been agreed, and most recently that discussions on the Host Government Agreement (“HGA”) regarding the fiscal and regulatory framework have been completed. These discussions, which had resumed in November 2021 after a hiatus of more than a year, resulted initially in the signature in June 2022 of a framework agreement between Government and the project investors. Subsequently, an announcement on 19 May 2023 advised that agreement has been reached on the main elements of a host government agreement (HGA) to provide a regulatory framework and a production sharing agreement, and is subject to legal reviews and quality assurance before an expected signing in the following weeks. The next steps after this will be to carry out Front End Engineering and Design Work to set the platform for an expected Final Investment Decision (FID) by 2025 at the earliest with development taking up to a further five years from the date of FID.

In 2021, both Tanzania and Uganda signed an HGAs in relation to the East African Crude Oil Pipeline (EACOP) project and following the grant in early 2023 of construction approval licences, construction activities are expected to commence in the second half of 2023 following completion of land access processes. The time frame to complete construction of this \$3.55bn project is expected to be three years, and at 1,443 km the pipeline (which would start in Hoima, Uganda and end at the port of Tanga, Tanzania) would be the world’s longest electrically heated crude pipeline.

Oil and Gas Reservoir estimates

Tanzania’s estimate of recoverable natural gas reserves (from both onshore and offshore basins) is 57 trillion cubic feet (tcf).

Political updates

President Samia Suluhu Hassan, who was sworn in on March 19, 2021 as the sixth President of the United Republic of Tanzania, continues to emphasise the importance of fast tracking the LNG project. As noted above the last two years have seen significant progress in terms of actions taken to move this project forward, and there is an intention to also launch a new licencing round in the near future.

Regulatory framework

Petroleum exploration and development is governed by the Petroleum Act 2015 (PA 2015), which empowers the Government to grant exclusive rights to explore for and produce petroleum in relation to a particular licence area.

The key regulators in the oil & gas industry include:

- Oil & gas Bureau that advises on sectoral strategic matters;
- Petroleum Upstream Regulatory Authority (“PURA”), the upstream regulator, which amongst other things advises on contractual matters with Contractors; as part of this responsibility PURA has the remit to develop a model PSA for purpose of approval by the Cabinet, which once approved, shall serve as a guidance;
- Energy and Water Utilities Regulatory Authority (“EWURA”): the regulator of mid and downstream activities;
- Tanzania Petroleum Development Company (“TPDC”) now designated as the official National Oil Company (“NOC”).

There is no separate tax legislation for the oil & gas tax sector. Nevertheless, the general legislation does

incorporate sections specifically dedicated to the sector.

Fiscal/taxation regime

Forms of contracts

An entity seeking to engage in oil & 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, TPDC in its role as NOC and which is the licence holder, and the relevant entity (“The contractor”). The starting point for negotiations is the model PSA in place at the relevant time – the latest model PSA is the 2013 model, and previous models have included a 2008 model and a 2004 model

Forms of Petroleum Licence

The PA 2015 provides for the following two types of licence:

- Exploration licence – Grants the licensee 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. It can be extended twice; the first extension lasts for four years and the second extension lasts for 3 years. 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 licensee 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 licence. The licence is granted for a period not exceeding twenty-five years and upon approval can be extended for an additional twenty years.

Special arrangements

Fiscal clauses in the PSA

The model PSA (2013) incorporates a number of clauses on financial charges and taxation including the following:

- Payment and Annual Charges (article 11)
- Taxation and Royalty (article 16)
- Additional Profits Tax (article 17)
- Import Duties (article 23)
- Assignment and Transfer of Rights (article 27)

Charges include annual charges in respect of acreage, as well as signature and production bonuses. The taxation and royalty article set out the taxes to which the Contractor and its shareholders will be subject including income tax, 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 delivery to the Government of a percentage of petroleum production. Royalty is a first charge on production before recovery of costs. 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 article on assignment and transfer of rights provides for a transfer on assignment fee ranging 1% to 2%. However, this only applies in relation to transactions not subject to stamp duty. 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.

Government participation

The Government’s participation includes a right to royalties and through TPDC a share of production (as the production is shared between TPDC and the Contractor). The PA 2015 provides for a royalty rate of 12.5% for onshore production and 7.5% for offshore production, based on gross production before cost oil or cost gas recovery. The PSAs provide for recovery of expenses against “Cost Oil” or “Cost Gas” (up to 50% of production in a calendar year).

The 2013 model PSA sets out the levels of the share of “Profit Oil” or “Profit Gas”, which vary depending on whether the production is onshore or offshore, whether gas or crude oil is produced and also the level of production (with the Contractor share diminishing as the production level increases). The range of the relevant percentage shares are as follows:

	“Profit Oil”	“Profit Gas”
Contractor Share	10% - 35%	15% - 40%
TPDC Share	90% - 65%	85% - 60%

The contractor share provided for under predecessor models was higher – in particular, under the 2004 model ranging between 30% to 50% for profit oil, and

under the 2008 model to between 10% to 30% for profit oil, and between 15% to 40% for profit gas (subsequently adjusted in 2010 addendum to 20% to 50%).

Capital investment regulations

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

Compliance requirements

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

Every six months, the registered holder of a licence 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 licensee 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 regular reports (either monthly or quarterly): (i) Production Statement (ii) Value of Production Pricing and Royalty Statement (iii) Statement of Receipts and Expenditure (iv) a Cost Recovery Statement. Other required reports include an End-of-Year-Statement (to be submitted to Government and TPDC within sixty (60) 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 EITI (Extractive Industries Transparency Initiative) 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.

The new Tanzania Extractive Industries (Transparency and Accountability) Act 2015 formally legislates for these reporting requirements. The latest validation, being EITI's quality assurance mechanism to measure country progress in meeting the requirements of the EITI Standard, was issued in June 2020. This validation commended Tanzania for meaningful progress with considerable improvements in implementing the 2016 EITI Standard. Tanzania's next (third) validation commenced in April 2023.

Tax filing and payment requirements

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

- **Income Tax:** A statement of estimated tax payable is due for filing by the end of the first quarter, and estimated tax (“instalment tax”) is then paid on a quarterly basis during the accounting year. An annual income tax return (supported by a tax computation and certified financial statements) is required to be filed within six months of year end with any remaining unpaid tax due at the same time.
- **Transfer Pricing documentation:** A person transacting with associates is required to maintain contemporaneous transfer pricing documentation supporting that the transactions are conducted at arm's length. For entities whose transactions with associates exceed 10 billion Tanzanian Shillings, the transfer pricing documentation is submitted together with the income tax return for the year (within six months after year end). Where the filing threshold is not met, an entity will be required to submit to TRA the transfer pricing documentation within 30 days from the date of TRA request.
- **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 7 days after the end of each month.
- **VAT:** Once registered, a person is required to file monthly VAT returns by the 20th day 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).

Local content regulations

The PA 2015 and The Petroleum (Local Content) Regulations, 2017 set out the local content requirements. These include requirements for a contractor to:

- Give preference to the purchase of Tanzanian goods which are produced or available in Tanzania and services which are rendered by Tanzanian citizens and/or local companies. Where goods and services are not available in Tanzania, such goods shall be provided by a company which has entered into a joint venture with a local company, with the local company having a minimum 25% interest in the joint venture. (A local company is defined as one which is either (a) 100% owned by Tanzanian citizens; or (b) a company which is in a joint venture with a Tanzanian citizen or citizens whose participating share is not less than fifteen percent.)
- Prepare a five-year procurement plan indicating use of local services in insurance, finance, legal, accounts, health matters and goods produced in Tanzania.
- Give priority to qualified Tanzanian citizens in employment and training in any matter relating to the petroleum activity. A contractor is required to employ only Tanzanians in semi-skilled and unskilled labour.
- Give priority to a Tanzanian citizen in any matter relating to the technology transfer, research, development and innovation in any petroleum related activities.
- Feed into a report to be prepared by TPDC and submitted within 60 days of the end of the calendar year. The report will cover the extent of utilisation of Tanzania goods and services during the calendar year.
- In accordance with an approved local content plan, shall provide training and recruitment of Tanzanians in all phases of petroleum operations and gas activities. A detailed semi-annual report on recruitment and training of Tanzanians should be submitted to PURA.
- Prepare annually a corporate social responsibility plan to be agreed by the relevant local government authority.
- Comply with the integrity pledge as set out in the PA 2015.

Direct Taxes

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 or 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 incurred by an entity engaged in petroleum operations, and not being cost gas or cost oil expenditure, is subject to tax depreciation at 20% straight line basis – in other words, a straight-line write-off over 5 years. The claim for such depreciation cannot be deferred to a later period.

Cost gas/cost oil (income and expenditure)

Cost gas or cost oil revenue and expenditure are excluded from the income tax calculation. The practical effect of this is to align the income tax offset of cost gas or cost oil expenditure with the timing of cost recovery offset under the production sharing mechanism.

Decommissioning expenditure

Relief for decommissioning is limited to contributions paid into a decommissioning fund, being a fund outside the control of the person conducting the operations.

Ring-fencing

Ring-fencing is applicable to “each separate petroleum operation”, and the general rule is that each petroleum right constitutes a separate petroleum operation (subject to special considerations in relation to interaction of exploration licence and development licence). Ring fencing ends at the delivery point identified in the PSA.

Loss utilisation

For the extractive sector (including upstream oil & gas), the utilisation of losses brought forward is limited to 70% of current year profits, with any balance carried forward to subsequent years (i.e. a minimum of 30% of profits for the year are subject to tax irrespective of the quantum of losses brought forward).

Expenditure expressly disallowed

The income tax provision for oil & gas expressly disallow the following:

- Charitable expenditure
- Bonus payments in respect of grant, transfer or assignment of petroleum rights.

Annual charges

Tax relief is specifically provided for annual charges incurred under the PA 2015.

Disposal of interest in petroleum licence

A disposal of a petroleum right prior to commencement of production is treated as a disposal of an investment asset. The seller is required to notify TRA on the transaction within 14 days from the date of realisation of the right. If a gain arises, then tax is charged at the rate of 30% of such gain, which is computed separately from business income. This tax is collected by way of single instalment tax which is payable within 30 days from the date of realisation of the right. No tax depreciation is available on the cost of the licence for the purchaser.

Farm out commitment to future costs

A commitment under a farm out commitment to incur expenditure is treated as resulting in taxable income.

Withholding tax

“Technical services” (as defined) supplied to a person in the oil & gas sector, provided by a resident supplier (or permanent establishment) of a non-resident are subject to a 5% withholding tax, which is a final tax.

Other than the 5% resident withholding tax on technical services, there is no special withholding tax regime for the oil & gas sector and hence the general rates apply.

Where payments are made to non-residents, the rates include the following:

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

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

Transfer pricing

Transactions between related parties are required to be on an arm’s-length basis. This requirement also applies between ring-fenced activities of the same person. 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.

Indirect Taxes

Value Added Tax – Mainland Tanzania

The VAT Act 2014 came into force with effect from 1 July 2015 (replacing the VAT Act 1997). 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 import duties. For imported services, VAT is accounted for by registered businesses through a “reverse charge” mechanism, where exempt supplies constitute 10% or more of total supplies.

Businesses with an annual taxable turnover (including imported taxable services) of more than TZS 100 million must register for VAT. The Commissioner has the discretion to register those who wish to be registered as intending traders – for example, investors whose projects have not commenced production, but who wish to be VAT-registered in order to reclaim the VAT they incur on start-up costs.

VAT exemptions relevant to the oil & gas sector include the following:

- Goods eligible for relief under the East African Customs Management Act (where imported by a registered and licenced explorer or prospector for exclusive use in oil, gas or mineral exploration or prospecting activities).
- Various goods imported by a natural gas distributor (including CNG plants equipment, natural gas pipes, transportation and distribution pipes, CNG storage cascades, CNG special transportation vehicles, natural gas metering equipment, CNG refuelling of filling, gas receiving units, flare gas system, condensate tanks and leading facility, system piping and pipe rack and condensate stabilizer).
- VAT deferral also applies on imported capital goods where VAT payable is equal to or greater than TZS 20 million but subject to a requirement for (i) application for approval by TRA and (ii) provision of security. Where VAT deferral applies, the deferred VAT is accounted for as output tax and input tax in the same VAT return.

- The VAT deferral can be refused where there is any outstanding tax liability or outstanding tax return under any tax law.

Registered businesses must submit VAT returns and make payment of 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 of genuineness. Businesses with 50% or more of turnover that relates or will relate to zero rated supplies (normally, exports) automatically qualify for refund on a monthly basis.

Value Added Tax – Zanzibar

A separate but similar VAT Act applies in Zanzibar with a rate applied at a standard rate of 15%.

Customs 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, development and distribution activities (subject to 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, electronic communication services, and satellite television services.

Social Security contributions and personal income taxes

Social security contributions

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

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, Workers Compensation Fund

An employer is required to account for skills and development levy (if employing at least ten employees) and workers compensation fund at rates of 4% and 0.5% respectively of payroll cash costs.

Other taxes (property taxes, stamp taxes, etc)

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 governments normally charge 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.

Investment incentives

Incentives

Refer to comments above in relation to capital deductions, customs duty exemption and VAT exemption / deferral.

Tax exemptions

Customs duty, Value Added Tax

Refer to comments above in relation to customs duty exemption, and VAT exemption / deferral.

Mtwara Oil & gas Freeport Zone

The Export Processing Zones Authority (EPZA) 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 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 repackaging; 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.

Profit repatriation issues

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

Foreign exchange controls

Although the 2004 model PSA gave the Contractor the explicit right to maintain bank accounts outside Tanzania, this right is not reflected in the 2008 and 2013 model PSAs. In addition, The Natural Wealth and Resources (Permanent Sovereignty) Act, 2017 expressly states that earnings must be retained in local financial institutions except where dividends have been distributed. The 2013 model PSA also requires the Contractor to inform the Bank of Tanzania of all bank details and exchange dealings with other financial institutions. 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.

AfCFTA considerations

Tanzania joined the African Continental Free Trade Area ("AfCFTA") on 9 September 2021 after submitting the instruments of its ratification of the agreement to the African Union Commission (AUC).

Ratifying the AfCFTA agreement means that the country will now be able to access the market of over 1.3 billion people across the continent. Tanzania is yet to finalize the negotiation of the tariff concession that is being done under the EAC umbrella for it to start trading.

Pillar 1 and Pillar 2

Tanzania, not being a member country of the OECD/G20 Inclusive Framework has not approved or made any public statement on the adoption of Pillar one and/or Pillar two of BEPS.2.0.

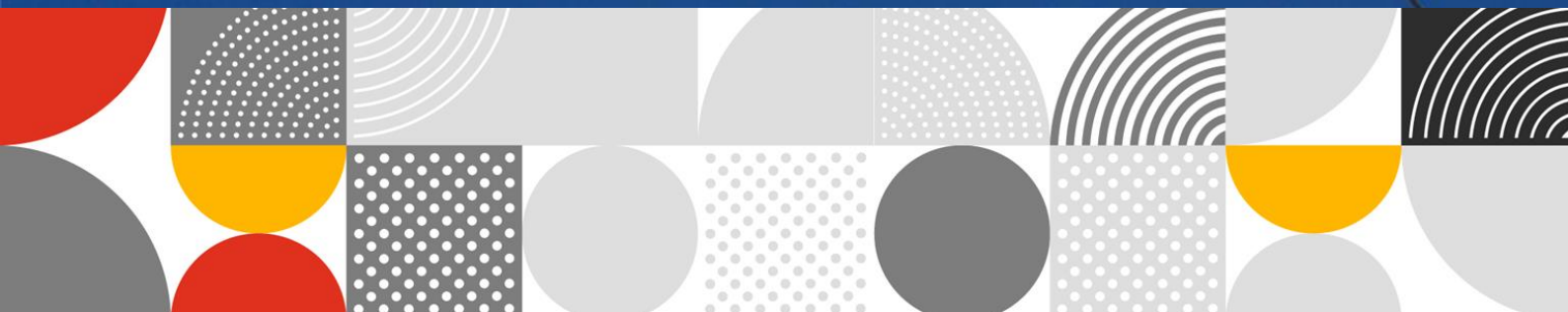
Energy Transition (Renewable energy etc.)

Tanzania has a portfolio of policies that have incorporated energy and environmental issues and which are geared to amongst many things, provide guidance in the transition to cleaner forms of energy. Tanzania has also participated in various international programs on climate changes and energy access such as the Paris Agreement. There are various governmental institutions that have a mandate to work on renewable energy and energy access in Tanzania.

In 2022 new regulations (the Environmental Management (Control and Management of Carbon Trading) Regulations Government Notice Number 636 of 2022) were issued governing carbon trading projects in Mainland Tanzania, the first piece of legislation on carbon trading in the country.



Power and Utilities Sector



Brief Overview of Power and Utilities development in Tanzania

Tanzania has abundant and diverse unexploited energy sources placing the country among the countries with highest potential in power generation in Africa. The energy sources in Tanzania range from biomass, natural gas, hydro, uranium, coal, geothermal, solar and wind.

Historically, hydropower (including Kihansi (204MW), Kidatu (180MW), Mtera (80MW)) had been the main source of electricity generation. But in recent decades this has changed with natural gas overtaking hydropower - including Songas (189MW), Ubungo I (102MW) and II (129MW), Kinyerezi I (150MW) and II (248MW). In the short term, this balance will switch back to hydropower once the 2,115MW Julius Nyerere Hydropower Station, also known as Rufiji Hydroelectric Power Station, is commissioned (expected in 2022). Longer term the balance is planned to shift back to natural gas as the most significant contributor, followed by hydropower, then coal then renewables.

As at 2019 total installed capacity was 1,602MW, comprising interconnected Grid System (1,566MW) and isolated Grid System (36MW). It is expected that power generation will increase to 5,000MW by 2025 following the completion of power generation projects such as Julius Nyerere Hydro Power Project (2,115MW), Ruhudji (358MW), Somanga Fungu (330MW), Mtwara (300MW), Rumakali (222MW) and the extension of Kinyerezi I (185MW).

In 2022, Masdar (an Emirati state-owned renewable energy firm) and the Tanzania Electric Supply Company (TANESCO) entered into an agreement to develop renewable energy projects in Tanzania. The initial focus is on developing 600 MW of capacity across solar photovoltaic (PV) and onshore wind assets. There are plans to explore opportunities for a further 2GW worth of renewable energy projects.

2023 will see the completion of the regional Rusumo Falls hydroelectric power plant whose capacity (80MW) will be shared equally by Burundi, Rwanda and Tanzania.

Challenges facing the industry

These include the risk of disruption to hydro-power generation as a consequence of uncertain weather patterns, lack of cost-reflective tariffs, the uncertain credit worthiness of the national electricity utility company Tanzania Electric Supply Company (TANESCO), low access to reliable electricity and costs associated with grid extension in a vast country with low population density.

Tanzania's electricity policy reflects goals set out in the Tanzania National Development Vision 2025, which envisages a significant increase in generation capacity so as to achieve the objective of "nurturing industrialisation for economic transformation and human development" and ultimately become a middle-income semi-industrialised country by 2025. Tanzania's Power System Master Plan 2020 ("PSMP 2020") projects the large-scale expansion of the generation, transmission and distribution capabilities - including a target of installed grid capacity of 20,200MW by 2044

Political updates

Please refer to section 2 of the oil and gas sector above.

Regulatory framework

Institutional oversight and regulatory framework

The Ministry of Energy and Minerals (MEM) oversees the Power and Energy sector in Tanzania. The MEM has the responsibility to form policies and promote investment in the Energy and Power sector.

Institutions that operate under the MEM to regulate Energy and Power sector include:

- Energy and Water Utilities Regulatory Authority (EWURA): an autonomous multi-sectoral regulator responsible for most regulation tasks including regulation of licensing, standards, tariff, performance monitoring and compliance.
- Tanzania Electric Supply Company (TANESCO): this is the country's main supplier of electricity and the operator of the transmission and distribution system. In Zanzibar, electricity is supplied by Zanzibar Electricity Supply Company (ZANESCO);
- Rural Energy Agency (REA): autonomous body under MEM that promotes and finances rural energy projects;
- Tanzania Petroleum Development Corporation (TPDC): responsible for oil & gas exploration and production activities;
- Tanzania Geothermal Development Company (TGDC): responsible for geothermal exploration and project development.

Legislation and Policy context

- EWURA Act 2001 and 2006: This Act makes provision for the establishment of the EWURA and the EWURA Consumer Consultative Council, lays down rules relative to powers and functioning of the Authority and the Council, and provides for the

resolution of disputes in relation to regulated services and goods, including the supply of water and sewerage services.

- National Energy Policy 2015: This policy, being a merger of previous policies including the National Energy Policy 2003, the Natural Gas Policy, the Petroleum Policy, the Renewable Energy Policy and the Bio-Energy Policy. The overall aim is to have efficient and sustainable energy production, procurement, transportation, distribution and end-use systems through energy pricing and private sector participation in the electricity market.
- The Rural Energy Act 2005: This establishes the Rural Energy Board, Fund and Agency to be responsible for promotion of improved access to modern energy services in the rural areas.
- The Electricity Act 2008: This sets out roles of the MoE (previously MEM) and EWURA on generation, storage, transmission, supply and use of electric energy. It also sets out criteria for tariff setting, licence awards and disputes resolution procedures.
- The Public Private Partnership Act 2010: set out the responsibilities and obligations of Government and industry in the Public Private Partnership coordination unit within the Tanzania Investment Centre.

Fiscal/Taxation regime

There is no separate tax legislation for the energy and power sector; hence, the general tax regime applies to the sector.

Corporate income tax - general

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

Much equipment used in the sector would be classified

as specialised public utility equipment qualifying for capital allowance at the rate of 25% reducing balance.

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.

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.

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 0.5% of turnover by a resident corporation with perpetual unrelieved losses (for the year of income and the preceding two years of income).

Transfer pricing

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

Withholding tax

There is no special withholding tax regime for the energy and power sector and hence the general rates apply.

Where payments are made to non-residents, the rates include the following:

- 15% (natural resource payment, royalty, service fees)
- 10% (dividends (normal rate), interest, rent)
- 5% (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, Workers Compensation Fund

An employer is required to account for skills and development levy (if employing at least ten employees) and workers compensation fund at rates of 4% and 0.5% respectively of payroll cash costs.

Social security contributions

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

Value Added Tax

Mainland Tanzania

The VAT Act 2014 came into force with effect from 1 July 2015 (replacing the VAT Act 1997). 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 import duties. However, for imported services, VAT is accounted for by registered businesses through a “reverse charge” mechanism, but only where exempt supplies constitute 10% or more of total supplies.

Businesses with an annual taxable turnover (including imported taxable services) of more than TZS 100 million must register for VAT. The Commissioner has the discretion to register those who wish to be registered as intending traders – for example, investors whose projects have not commenced production, but who wish to be VAT-registered in order to reclaim the VAT they incur on start-up costs.

VAT exemptions relevant to the power generation sector include the following exemptions related to solar power:

- supply of solar panels, modules, solar charger controllers, solar inverter, solar lights, vacuum tube,

solar collectors and solar battery.

VAT deferral applies on imported capital goods where VAT payable on each unit of capital goods is equal to or greater than TZS 20 million but subject to a requirement for application for approval by TRA. Where VAT deferral applies, the deferred VAT is accounted for as output tax and input tax in the same VAT return.

Registered businesses must submit VAT returns and make payment of 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 of genuineness. Businesses with 50% or more of turnover that relates or will relate to zero rated supplies (normally, exports) automatically qualify for refund on a monthly basis.

Zanzibar

A separate but similar VAT Act applies in Zanzibar.

Customs 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 Common External Tariff (“CET”) are as follows: 0% (raw materials, capital goods), 10% (semi-finished goods) and 25% (finished final consumer goods). However, the CET also provides for custom duty exemptions on equipment and inputs for direct and exclusive use in geothermal exploration, development and distribution subject to approval by the respective revenue authorities.

Further exemption is available on specialised equipment for development and generation of solar and wind energy including deep cycle batteries which use and/or store solar power. 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, electronic communication services, 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 governments normally charge a 0.3% service levy based on turnover generated in the relevant district. Local governments also levy property rates on properties that are payable on an annual basis at the rate determined by the municipalities for surveyed properties and fixed amounts for un-surveyed areas.

Compliance requirements

Tax filing and payment requirements

Refer to comments under the oil and gas section.

Profit repatriation issues

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

Incentives

Refer to comments above in relation to capital deductions, customs duty exemption and VAT exemption / deferral.

In addition, given the large-scale nature of power generation projects these may also qualify for “strategic investor status” and related tax reliefs. The conditions for eligibility are investment of not less than US \$50m for foreign investors or US\$ 20m for local investors, must create 1,000 local employment position (with significant number higher level positions in investments which do not require high level of technology), has ability to increase exports by 50% or reduce importation, has the ability to stimulate production by establishing economic ties in various social and economic sectors, has ability to improve technical skills by impacting new technological knowledge to Tanzanians, has the ability to produce goods or give important services for development social and economic sectors by considering the priority area at the relevant time. An eligible investor is entitled to tax reliefs in the form of exemption (i) of 75% import duty on deemed capital goods, and (ii) from withholding tax on interest on loans from non-resident unrelated banks.

Additional incentives are available for special strategic investors (upon approval by the National Investment Steering Committee).

The threshold for “special strategic investor” status is investment capital is not less than US\$ 300m, must be able to employ a least 1,500 people in permanent job position and with sufficient higher level posts in relation to projects that do not require high level of modern technology, must be able to reduce imports and increase foreign currency in the country or provide necessary facility for development of the social and economic sector, the investment local transaction should take place through locally registered financial institutions and must be able to produce foreign exchanges, good which will decrease importation of goods.

Tax exemptions

Value Added Tax (VAT)

Refer to comments above in relation to VAT exemption / deferral.

AfCFTA considerations

Refer to comments under the oil and gas section.

Pillar 1 and Pillar 2

Refer to comments under the oil and gas section.

Energy Transition (Renewable energy etc.)

Refer to comments under the oil and gas section.





ESG



ESG

The pressure to address environmental, social and governance (ESG) issues is an area of increasing focus for many companies in Tanzania. Various companies including those in the energy sector are being encouraged to integrate ESG into their core functions.





Uganda

Contact



Francis Kamulegeya

francis.kamulegeya@pwc.com



Pamela Natamba

pamela.natamba@pwc.com



Eeshi Katugugu

eeshi.katugugu@pwc.com

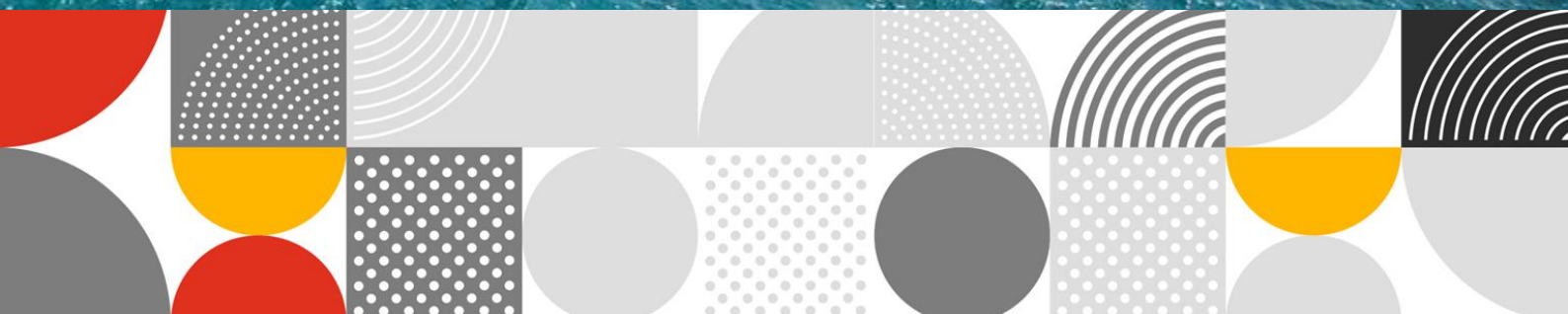


Veronica Magembe

veronica.y.magembe@pwc.com



Oil and Gas Sector



Brief history on Oil & gas development in Uganda

Geological field expeditions for petroleum exploration were first carried out by E.J Wayland in the early 1920's and are documented in the publication "Petroleum in Uganda" 1925. Shallow stratigraphic wells drilled by the African – European Investment Company between 1936 and 1956 revealed numerous shows and recovered free oil on test.

Oil exploration activities started again in the beginning of the 1980's when an aeromagnetic survey was carried out over the entire Albertine Graben, which forms the northern most part of the Western arm of the East African Rift Valley System stretching from the border with Sudan. Uganda shares the Graben with the Democratic Republic of Congo.

To date, the Albertine Graben is the most prospective of the five areas for Petroleum in Uganda. The other sedimentary basins include Hoima Basin, Lake Kyoga Basin, Lake Wamala and Kadam- Moroto Basin. A total of one hundred and sixteen (116) deep wells have been drilled in the Graben; and of these, one hundred and two (102) wells have encountered hydrocarbons on the surface. This represents an 80% drilling success rate. In addition, 21 oil / gas field discoveries have been made; 17 discoveries have been appraised and four discoveries reverted to Government. Moreover, only about 40% of the Albertine Graben has been explored. Exploration of the Kadam -Moroto basin has commenced whilst prospecting work is yet to commence for the other basins.

Currently, Uganda's oil reserves are estimated at 6.5 billion barrels of oil, out of which 1.4 – 1.7 billion barrels are estimated to be recoverable. At peak, Uganda plans to produce about 230,000 barrels per day. Recoverable gas resources are estimated at 500 billion cubic feet. First oil is expected in the first quarter of 2025.

The Government's development plan for Lake Albert Rift Basin includes a refinery, a crude oil pipeline, an industrial park which will accommodate petrochemical and energy-based industries and storage terminals. Following the transition from exploration to production phase in Uganda's Oil & gas sector in FY 2021/22, the update on the requisite infrastructure and skills in preparation for oil production is summarised below:

Current status of licensing

Currently, there are seven Production Sharing Agreements (PSA) between the Government and the oil companies. These include four PSAs held by TotalEnergies E&P B.V (TotalEnergies E&P) and

CNOOC Uganda Limited (CNOOC Uganda). An additional three PSAs were signed in September 2017 with Armour Energy Limited (one license for kanyataba contract area) and Oranto Petroleum Limited (two licenses for ngassa shallow and ngassa deep contract areas). More recently in February 2023 two new PSAs were signed ie Uganda National Oil Company (UNOC) signed a PSA with the Ministry of Energy and Mineral Development (MEMD) after being awarded an exploration license for Kasuruban, an oil block in Western Uganda in February 2023 and DGR Energy Turaco Uganda SMC Limited, owned by Australia's DGR Global which was awarded an exploration license in the areas of Kanywataba (Turaco block) located in Albertine Graben

To date, 9 production licences have been issued. Of these, TotalEnergies E&P holds 8 production licences over 13 fields issued in 2016. Five of the production licences held by TotalEnergies E&P were transferred from Tullow Uganda effective 1 January 2020. CNOOC Uganda holds 1 production licence over the Kingfisher field which was issued in 2012. CNOOC Uganda commenced the oil drilling process for the Kingfisher oil field in January 2023.

On the other hand, there are currently 5 exploration licences. Of these, Armour Energy Limited which holds an exploration licence over the Kanywataba block issued in 2017, Oranto Petroleum Limited which holds two stratigraphic licences over Ngassa shallow and deep plays. More lately in January 2023, the MEMD awarded two exploration licences to UNOC and DGR Energy Turaco Uganda SMC Limited

In May 2019, the Government of Uganda through the MEMD announced areas open for bidding for petroleum exploration. This was the second licensing round in Uganda. This licensing round covered 5 blocks in the Albertine Graben (i.e. Avivi, Omuka, Kasuruban, Turaco and Ngaji). The two aforementioned exploration areas operated by UNOC and DGR Energy Turaco Uganda SMC Limited for Kanywataba and Turaco blocks respectively were part of five blocks that Uganda auctioned in the 2019 licensing round. The MEMD plans to announce a Third Licensing Round in May 2023 with the aim of unlocking additional discoveries and attracting new investment.

Confirmation of the Final Investment Decision

The long awaited oil and gas final investment decision ("FID") was finally confirmed and announced on 2 February 2022 for the Tilenga, Kingfisher and EACOP projects. This implies that the Government of Uganda through UNOC, TotalEnergies E&P and CNOOC working with the Tanzania Petroleum

Development Corporation have committed to move ahead with investment in the requisite infrastructure for crude oil production. This also unlocks investments close to US\$ 15 billion in the next three years within Uganda. The FID for Uganda's oil and gas refinery project is set for June 2023

What next after this announcement?

The technical schedule for the projects indicates that first oil will be achieved 36 to 45 months after the FID. There is going to be intensive activity, as FID unlocks the detailed Engineering, Procurement and Construction (EPC) phase for the projects, where majority of opportunities lie including creating significant opportunities for Ugandan businesses whether directly (such as construction, camp management and drilling) or indirectly (such as cleaning and catering services and agricultural products, medical and health services, education services, waste management, health etc). In March 2023, PAU confirmed that it has approved contracts worth USD 6.8 billion since the announcement of FID and of these, at least USD 1.7 billion have been earmarked for Ugandans at different levels.

Progress on the Refinery Project

The Government continues to be keen on the refinery project. The Refinery Configuration Technical Feasibility study was completed. The Front-End Engineering and Design and Environmental Social Impact Assessment studies were completed in 2021. The Government signed a Project Framework Agreement (PFA) with the Albertine Graben Refinery Consortium (AGRC rebranded to Albertine Graben Energy Consortium- AGEC in June 2022) in April 2018 as a potential investor who will design, build, finance and operate the refinery. However, the current status of this proposed partnership is not clear and no further details are known on the progress of the project. The project is expected to be developed as a private-public partnership estimated to cost \$ 3-4 billion.

More recently, Africa Finance Corporation has advanced USD 20 million to the Government of Uganda for the construction of the refinery project. Other interested financiers include the African Development Bank and Prosper Africa. The Government of Uganda intends to raise its share of investments through debt and equity. Uganda which is expected to own 40% equity in the project, also invited other states in the East African Community (EAC) to co-own the project.

Currently the MEMD is facilitating the negotiation of three key agreements required to enable in Refinery project ie Crude Oil Supply Agreement, the Implementation Agreement and the Shareholder Agreement. AGEC contracted a joint venture between Det Norske Veritas-Germanischer Lloyd (DNVGL) and a Ugandan company, Atacama Consulting Ltd, to undertake the Environmental Social Impact Asset for the Refinery project. This is expected to be submitted to the Environmental authority for approval during Q1 of 2023.

This project will be operated by one of UNOC's subsidiaries, the Uganda Refinery Holding Company (URHC) which will hold a participating interest of 40%. URHC is optimistic that the project economics are attractive because of the inland location which implies that the products i.e. diesel, petrol, jet fuel, gas, heavy fuel oils can compete with imported petroleum products and the value addition projects mean the refinery will create significant economic activity by generating jobs and contributing to GDP growth.

Progress on the East African Crude Oil Pipeline (EACOP)

The EACOP is a 1,443 km crude oil export pipeline that will transport Uganda's crude oil from Kabaale Hoima in Uganda to Tanga Port in Tanzania. The project is to be constructed and operated through a pipeline company with shareholding from the Uganda National Oil Company, the Tanzania Petroleum Development Corporation and the two oil companies; CNOOC Uganda and TotalEnergies E&P.

The Host Government Agreements (HGA) for both Uganda and Tanzania, Shareholders Agreement (SHA) and Tariff & Transportation Agreement (TTA) were signed in April 2021. These agreements are required to provide a robust commercial and legal framework for the Project which is critical to achieving project financing and project viability for several decades. Enabling legislation has also been put in place through the East African Crude Oil Pipeline Bill which was gazette on 1 October 2021 and passed by the Parliament of Uganda and assented by the President of Uganda on 20 December 2021. The main purpose for the Act is to facilitate the implementation of the EACOP Project in Uganda and to implement the obligations of Uganda under the Intergovernmental Agreement ("IGA") and the Host government Agreement.

Following the signing of the key agreements in April 2021 and announcement of FID in February 2022, the East African Crude Oil Pipeline Company (EACOP) Limited was formed.

This company will construct the pipeline and is incorporated as a special purpose vehicle governed by the SHA in which TotalEnergies owns 62%, Uganda National Oil Company (UNOC) owns 15%, Tanzania Petroleum Development Corporation (TPDC) owns 15% and CNOOC owns 8%.

EACOP Limited received a license for construction of the pipeline in January 2023 and early civil works for the EACOP project have commenced starting with the acquisition of 47 Acres of land that will accommodate the pipeline, the EACOP main camp, and the pipe yard in Kakumiro District. EACOP also completed the acquisition of the similar areas required for construction and the land will be transferred to the Ugandan Land Commission and leased to EACOP per the HGA.

Development of Kabaale International Airport

In order to facilitate mobilization of equipment for construction of the Uganda Oil Refinery and assist in the development of agriculture and tourism in western Uganda, the government also decided to construct the Kabaale International Airport, located in Hoima district.

Construction of the airport commenced in January 2018 and was expected to be completed in three years. The Government signed a memorandum of understanding with Colas and SBI International Holdings under a joint venture. In 2019, the master plan and detailed engineering designs for phase 1 were completed. In this same year, the first phase of construction ie construction of a Code 4F Runway (which can handle big and heavy aircraft), Taxiway, Apron, multi-purpose Terminal Building for Cargo and Passengers etc commenced. However, the project completion was affected by the COVID 19 pandemic, price variations and bad which slowed down progress. As at October 2022, the project was at 85% completion and expected to be completed by December 3.

Development of Kabaale Industrial Park

The Government of Uganda, through the Ministry of Energy and Mineral Development acquired 29.57 km² (2957 hectares) of land near the oil fields of the Albertine Graben Region for the development of a petro-based industrial park. The Kabaale Industrial Park (KIP) is to accommodate, among others; - the Kabaale International Airport, which will be Uganda's 2nd International Airport, a Crude Oil Export Pipeline Hub, the Uganda Refinery, Polymer and Fertilizer Industries, Mixed (Light / Medium) Industries, Warehousing & Logistics, Agro-Processors, and Common facilities and services including worker housing, expatriate camps, schools, recreation areas, medical facilities.

A Master Plan for the development of the park was prepared by an international consultant, Ms. SMEC International, in consultation with Government Ministries, Departments and Agencies, was approved by Uganda's National Physical Planning Board. In January 2018, Government handed over the implementation of the Master Plan, development, and management of the park to UNOC.

UNOC intends to develop the industrial park through a Joint Venture with a strategic partner. UNOC and the Joint Venture Strategic Partner will form the KIP Holding Company which will be responsible for management, promoting national participation, direct investments, promotion, and attraction of external investments. In the Joint Venture, UNOC will provide the project assets and leadership on project stakeholder engagement, secure government pre-investment in some enabling infrastructure, provide technical expertise in upstream & refinery operations, and national content leadership.

On the other hand, the JV partner will make direct investments into the enabling infrastructure, provide pre built warehouses and offices, undertake well-structured marketing and promotion activities, and provide facility management services.

Development of Kampala Storage Terminal (KST)

Government acquired land in Namwambula village, near Kampala for setting up a multi user Storage Terminal. The terminal will serve as a distribution centre for petroleum products from the refinery to market centres in Kampala, Western Kenya, Northern Tanzania and Rwanda, a storage and distribution centre for imported petroleum products and a delivery point for the planned Hoima – Kampala products pipeline and the planned Eldoret (Kenya) – Kampala (Uganda) products pipeline. It will as well serve as the starting point for the planned Kampala (Uganda)-Kigali (Rwanda) products pipeline.

UNOC intends to develop KST through a Joint Venture with a strategic partner. The strategic partner will be expected to bring into the joint venture technical expertise, financial capability and experience in development and management of petroleum storage facilities.

The master plan was approved and ESIA completed and a NEMA certificate acquired. The development will be phased, starting with 140 million litres in Phase I. KST will be developed as a hub for all inland and trans-boundary pipelines for refined products in/through Uganda.

Skills development

In May 2019, the Government of Uganda set up the oil & gas sector skills council to boost the development of skills that are required for the oil & gas sector in Uganda in preparation for expected oil production phase in 2025. This is also in support of the existing vocational institutes ie Uganda Petroleum Institute in Kigumba (UPIK), Uganda Technical College of Kichwamba (UTC) and a new third institute in Nwoya district.

Fiscal and regulatory regime

Institutional overview and regulatory framework

The legal framework that currently governs the operations of the petroleum industry includes the Petroleum (Exploration, Development and Production) Act 2013, the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 2013, the Public Finance Management Act 2015 and the various regulations.

The upstream and midstream Acts were passed because the previous legislation did not cover the midstream petroleum operations, environmental protection and conservation, and the new emerging challenges created by the discovery of commercial petroleum resources in Uganda.

The two Acts provide for the establishment of the Petroleum Authority of Uganda and the National Oil Company. The National Oil & Gas Policy which was operationalized by the Petroleum (Exploration, Development and Production) Act also provides for the creation of a Directorate of Petroleum, the Petroleum Authority of Uganda (PAU) and the National Oil.

The Petroleum Directorate is responsible for coordinating development of the oil & gas sector in Uganda and coordinating national capacity building for the oil & gas sector. PAU monitors and regulates exploration, development and production in the sector and the Ugandan National Oil Company (UNOC) handles the commercial aspects of the sector and the participating interests of the State

In 2014, the Parliament of Uganda approved the Board of Directors for the Petroleum Authority and the Uganda National Oil Company. The Petroleum Directorate was established and the Acting Director of the Directorate appointed in 2016.

The Government of Uganda incorporated the National Oil Company under the Companies Act, 2012, on 12 June 2015 under the name, Uganda National Oil Company Limited.

The National Oil Company is a wholly owned state enterprise incorporated under the Companies Act and managed in accordance with the Companies Act, the Petroleum (Exploration, Development and Production) Act 2013, the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 as well as other laws governing state enterprises. Under the new Acts, the Government has powers to enter into agreements relating to petroleum activities with any person. The Minister of Energy and Mineral Development will be responsible for granting and revoking of licenses.

The incorporation of the company is a step forward in taking the oil sector to the next stage of production following years of exploration. In accordance with the National Oil & gas Policy and the Petroleum (Exploration, Development and Production) Act, the company will be responsible for handling the state's share of petroleum, managing the business aspects of state participation, and developing in-depth expertise in the oil & gas industry.

Other functions of the National Oil Company include:

- Managing the business aspects of the State's participation in PSAs including the marketing of the industry's share of the petroleum received in kind;
- Developing an in-depth expertise in the oil & gas industry;
- Optimising value for shareholders, administer contracts with joint venture, participate in meetings of licensees; and
- Investigating and proposing new upstream, midstream, and downstream ventures both locally and internationally.

The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 enables Uganda to develop the petroleum industry in a sustainable and efficient manner, regulate petroleum refining activities, gas processing and conversion, transportation and storage and in particular promote value addition to the petroleum. The Act also promotes state participation and national content in midstream operations.

The East African Crude Oil Pipeline (EACOP) (Special Provisions) Act 2021 was passed by Parliament on 9 December 2021 and assented to by the President on 20 December 2021. The main purpose of the Act is to enable and facilitate the implementation of the EACOP project in Uganda and to implement the obligations of Uganda under the Intergovernmental Agreement and the Host government Agreement, included prescribing a separate fiscal regime for the EACOP Project, Level 1 and Level 2 contractors

The Income Tax (Amendment) (No.2) Act, 2021 which was also passed by Parliament in December 2021 introduced a windfall tax and capped the deduction allowed for petroleum operations of a licensee in the year of income to the cost recovery limit stipulated in the PSA for contract areas 1, 2A and 3.

The regulations are as follows:

(a) The Petroleum (Refining, Conversion, Transmission and Midstream Storage) National Content Regulations 2016; (b) The Petroleum (Exploration, Development and Production) National Content Regulations 2016; (c) The Petroleum Exploration, Development and Production) Metering Regulations 2016; (d) The Petroleum (Exploration, Development and Production) Health and Safety and Environment Regulations 2016; (e) The Petroleum (Exploration, Development and Production) Regulations 2016; and (f) The Petroleum (Refinery, Conversion, Transmission, Midstream and Storage) Health, Safety and Environment Regulations 2016.

Key regulators in the petroleum sector include:

- **Ministry of Energy and Mineral Development (MEMD) and the Petroleum Authority:** the implementation and regulation of petroleum resources is the mandate of the Petroleum Authority which is under the MEMD. Under the provisions of the Petroleum (Exploration, Development and Production) Act, 2013 the Petroleum Authority (Authority) has taken over the functions of regulating the sector originally performed by the PEPD.
- **Uganda Revenue Authority:** administering collection of revenue from the oil & 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 & 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 & gas activities do not impact negatively on the monetary policy and macroeconomic stability.
- **National Environment Management Authority (NEMA):** coordinating processes of environmental impact assessment for the sector; environmental monitoring and audits of the sector; issuing environmental guidelines and ensuring compliance of the sector with environmental guidelines and international standards.

- **Uganda Wildlife Authority:** monitoring impact of oil & 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 & gas, and agencies dealing with implementation and regulation will be responsible for guiding and monitoring the work of operational and managerial agencies placed under them. These include Ministry responsible for Justice and Constitutional Affairs; Ministry responsible for Finance, Planning and Economic Development; Ministry responsible for Water and Environment; Ministry responsible for Forests and Wetlands; Ministry responsible for Tourism and Wildlife; Ministry responsible for Labor; Ministry responsible for Trade and Industry; Ministry responsible for Education.

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 can only be renewed twice. In the old Act a licence was granted for a period not exceeding 4 years from the date of grant of the licence. 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 licence confers on the licensee exclusive rights to carry on petroleum activities in the licence 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 seven Production Sharing Agreements (PSAs) with international oil companies (Contractors) for the execution of exploration and production activities. The Government is represented by the MEMD, which is responsible for implementation and regulation of petroleum resources. Petroleum (Exploration, Development and Production) Act is the basis of all PSAs. The duration of contracts is stipulated in the Act. Typically, each agreement will last for about 30 years. For example, first exploration period of 2 years followed by second exploration period of 2 years. The relinquishment at the end of each exploration period is based on a pre-agreed formula specified in the Act and the PSAs.

Generally, a licensee is 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”, is to be split between the Government and the licensee.

The PSAs include royalty and tax payments to be made by the licensees 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, 2013, 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, 2013 provides for a National Oil company 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 national oil company NOC will include managing the business and commercial aspects of the state's participation in the subsector; to develop an in-depth expertise in the oil & gas sector; to optimize value to its shareholders; administer contracts of joint ventures; to participate in contractor's meetings; and to investigate and propose new upstream, midstream and downstream ventures locally and later internationally.

Since the NOC will be more relevant when production commences, it will use the period before production to build capacity so that it can effectively perform its role when production starts.

Industry sectors – upstream, midstream, downstream

Upstream sector

Upstream sector is governed by the Petroleum (Exploration, Development and Production) Act, 2013. In Uganda, upstream activities are undertaken by companies that are party to a PSA and have an exploration or production licence (licensee).

Generally, in the upstream sector a significant amount of the activities are subcontracted to specialised companies (subcontractor).

Where appropriate due to the nature of the services or the equipment provided and the length of time the services are required in Uganda, the non-resident service providers usually register local branches or local subsidiary companies in Uganda.

Midstream activities such as construction of the refinery and pipeline

The midstream sector activities will be governed by the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013.

Downstream

Downstream activities are regulated by the Petroleum Supply Act, 2003. This Act provides for the supervision and monitoring, 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

There are two regulations in respect of national content, namely: a. The Petroleum (Refining, Conversion, Transmission and Midstream Storage) National Content Regulations 2016; b. The Petroleum (Exploration, Development and Production) National Content Regulations 2016;

The above regulations operationalize the local content provisions within the petroleum acts for upstream and midstream.

The local content regulations apply to both the oil & gas (O&G) exploration and production (E&P) licensees and the OFS. Key highlights include:

- The requirement to employ at least 70% Ugandans and a succession plan for the expatriates employed

- The requirement for OFS companies to register a Ugandan subsidiary or form a JV with a Ugandan company.
- In the case of a JV, the Ugandan company must hold at least 48% of the shareholding.
- The requirement to use available local raw materials and supplies.
- Ring fencing of specific goods and services to be provided by Ugandans and Ugandan companies.

The local content policy was also adopted as final in 2018 and is now operational. It remains unclear as to whether the new policy will impact the existing regulations. More recently, The National Local Content Act 2019 (“the Act”) was passed by Parliament in May 2020 but has yet to come into force pending Presidential assent. In March 2023, the Committee on Finance, Planning and Economic Development on the National Local Content Act 2022, reviewed the Letter from the President of Uganda returning the Act with a number of proposals which are yet to be finalized and resubmitted for discussion in Parliament.

The objective of the Act is to impose local content obligations on all persons using public money, utilising Uganda’s natural resources or carrying on an activity requiring a license. The overall aim is to prioritise Ugandan citizens and companies in the performance of such activities. The provisions of this Act are subject to the provisions of the national/local content provisions contained in the Petroleum (Exploration, Development and Production) Act 2013, the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 the Petroleum (Exploration, Development and Production) (National Content) Regulations 2016 and the Petroleum (Refining, Conversion, Transmission and Midstream Storage) National Content Regulations 2016.

The Act defines local content to include *“the quantum or percentage of locally produced goods, locally produced services and the utilisation of personnel, financing, goods and services by a local content entity in any operation or activity carried out in Uganda”*.

A local content entity is defined to mean *“Government, including a government, Ministry, Department, Authority, Local Authority, Local Government, statutory body or agency”*. It also includes a natural or artificial person, a partnership or any other entity contracted by a local content entity carrying on an activity under the Act.

Some of the specific requirements in the Act are set out below.

a) Requirement to prioritise Ugandan goods and services

The Act places an obligation on a local content entity to give preference to goods manufactured and services produced in Uganda. Exception is made where such goods or services do not meet the required quality, quantity or timeline for delivery or completion. In such case the local content entity must ensure that the required goods or services are provided by an entity that has a joint venture with a Ugandan company or citizen. Important to note is that a local content entity cannot reject locally manufactured goods or services provided by a Ugandan citizen solely on grounds of quality, where:

- in the case of goods, they have been approved by the national standards agency or through an international standards agency;
- in the case of services, they have been provided in accordance with best industry practices; and
- in the case of manufactured goods, the provider is willing to meet the required quality and time.

Similarly, rejection on the basis of the price of a good or service is prohibited if the price is competitive within five percent (there is scope for negotiation) or the same can only be procured in Uganda.

a) Employment of Ugandan citizens

All persons to whom the Act applies are bound to employ Ugandans and can only employ non-citizens after it has been certified by the Department that there are no Ugandans capable of performing the work. Where a non-citizen has been approved for a position, the law requires that provision is made for skills transfer and the entity must submit a succession plan in respect to the role performed by the non-citizen.

a) Subcontracting of contracts and public works

The Act expressly prohibits subcontracting of any contract or works contracted under the Act. It also sets out a mandatory requirement for foreign entities to subcontract 40% of contracted works to a Ugandan company that meets the criteria set out in Section 16 (i.e. if it is not a subsidiary or is not owned or does not form part of the same company group as the entity subcontracting its obligations, if it is not an agent of the entity subcontracting its obligations, if it is registered as a Ugandan company and has complied with all its tax obligations and obtained a tax clearance from

the relevant tax body, etc.)

However, liability for the subcontracted work still rests with the contracting party and not the subcontractor.

d) Local content plan

It is a mandatory requirement under the Act for every supplier, contractor or provider to develop a local content plan. These plans should be submitted for approval within six months of the commencement of the Act.

Financing considerations (Thin Capitalisation)

Effective 1 July 2018, the previous thin capitalization rules under the Income Tax Act, Cap 340, which were based on a debt to equity ratio were repealed and replaced by a provision based on tax Earnings Before Interest, Tax, Depreciation and Amortization (EBITDA) (EBITDA).

Previously the general thin capitalization rules provided for a debt to equity ratio of 1.5:1. Therefore a tax deduction was disallowed for interest paid by a company on that part of the debt which exceeded the 1.5 to 1 foreign debt to foreign equity ratio. Based on the new amendment, the deduction of interest is limited to 30% the EBITDA and the balance of 70% is carried forward for a maximum of three years. After the limit of three years, no tax deduction is allowed for that part of the interest that remains unutilised.

Taxation regime

Basis of taxation

The taxation of petroleum operations in Uganda is based on the concept of economic rent. Economic rent 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, generally, 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, Cap 340 (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.

Based on 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 accordance with the provisions of the Uganda tax laws.

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 licensee according to the terms of the PSA. Contractors are then taxed on their gross income (being the sum of cost oil, their share of the profit oil and any credits earned from petroleum operations) adjusted for allowed deductions in accordance with the ITA. The rate of tax applicable to the contractor's share of the taxable profit is the standard corporation tax of 30%.

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

Tax allowable expenditures which are deductible from gross income include:

- petroleum exploration expenditure for the year of income and allowed deductions for amortisation of intangible assets;
- the allowable deductions for depreciation of petroleum development expenditures for the year of income;
- the amount of any operating loss from previous years of income, determined in accordance with the ITA;
- Decommissioning expenditure.

Windfall Tax

The Income Tax Amendment Bill, 2021 proposes to introduce a windfall tax at a rate of 15% on the excess chargeable income after deducting corporate income tax payable by the licensee. The tax is apportioned on the basis of the number of calendar days in a year on which the international oil price per barrel equal to or exceeds \$75 per barrel.

The international oil price will be the higher of:

- the simple arithmetic average of per barrel of selling prices of three globally recognized international crude oil benchmarks similar to Lake Albert Crude. The benchmarks will be agreed between the Government of Uganda and the licensee, not later than sixty days prior to the commencement of commercial production; or
- Dated Brent.

Windfall tax is computed as $15\% * (A/B) * (C-D)$

where :

A = the number of calendar days in the year of income on which the international oil price equals \$75

per barrel or more;

B = the total number of calendar days in the year of income;

C = the net income generated from the petroleum operations by the licensee in the year of income;

and

D = corporate income tax payable by the licensee for the year of income.

The Act defines net income to mean the chargeable income of the licensee derived from petroleum operations in that year of income.

Principle of ring fencing

Each contract area of a contractor is taxed as if it is a separate taxpayer (that is it is ring fenced). Ring fencing puts a limitation on consolidation of income and deductions for tax purposes across different activities or different projects, undertaken by the same taxpayer. Tax deductible costs or expenditure incurred in respect of a contractor's petroleum exploration and development expenditure in one contract area or block, or oil field are only deducted from income derived from that contract area only.

Withholding taxes

Participation dividends are subject to a withholding tax of 15%. Also, payments made by contractors to non-resident subcontractors for services are subject to withholding tax at the rate of 10%. A lower rate of withholding tax may apply if the dividend is paid to a resident of a country with whom Uganda has a favorable Double Taxation Agreement, if directly related to petroleum operators under a petroleum agreement.

But where a resident shareholder controls at least 25% of the voting power in the petroleum company,

the dividend is exempt from withholding tax.

All contractors are designated persons and are required to withhold tax on payments to a resident person unless the resident person is exempt. Therefore, payments by a contractor to a resident subcontractor in respect of a right to use any tangible moveable property in Uganda are subject to withholding tax at the rate of 6%.

According to section 119 of the ITA a contractor paying an amount or amounts in aggregate of US\$ 1,000,000 to a resident person in Uganda for the supply of goods or services should withhold tax at a rate of 6% from the payment where the supplier of goods and services is not exempted from withholding tax. Contractors are also required to withhold tax on payments to non-residents in respect of services rendered or provided to them in Uganda at the rate of 6%.

Tax withheld must be paid to the Uganda Revenue Authority (URA) within 15 days after the end of the month in which the payment subject to withholding tax was made. Failure to withhold tax makes the contractor personally liable to the tax to the URA. The contractor is required to maintain, and keep available for inspection by the Commissioner, records showing payments made to a payee and tax withheld from those payments.

There are specific provisions for taxation of contractors. A non-resident contractor who derives a fee for provision of services/ service fee to a licensee is liable to pay non-resident contractor tax at 10% which is final tax. Licensees are required to withhold tax at the earlier of the time they credit the service fee to the account of the non-resident contractors or at the time of actual payment.

Effective 1 July 2022, income derived by a non-resident from the carriage of passengers, cargo or mail that is not embarked in Uganda is not income derived from a Ugandan-source service contract. Such payments are not subject to 15% WHT.

Double Tax Treaties (DTT)

Currently, Uganda is a party to nine (9) DTTs. There has been a change in the limitation of benefits clause effective 1 July 2016. A resident of a country with which Uganda has a DTT may only benefit from the treaty if they receive the income from Uganda in the capacity of beneficial owner (with full and unrestricted ability to enjoy the income and determine its future uses) and if they possess economic substance in the country of residence

Capital gains tax (CGT)

Currently, any capital gain derived from disposal of an interest in a petroleum agreement is subject to tax at the rate of 30%. The gain is computed by comparing the proceeds to the cost base. The cost base is defined as the amount paid or incurred by the taxpayer in respect of the interest including incidental expenditures of a capital nature incurred in acquiring the interest and includes the market value at the date of acquisition of any consideration in kind given for the asset.

Consideration for capital gains tax purposes is defined as the excess of the amount of money received (including the value of work undertaken by the transferee in respect of the part of the interest retained by the transferor) over any deductions allowed for expenditure incurred by the transferor in respect of the transferred interest. The part of the consideration attributed to the allowed deductions to the transferor is treated as recouped expenditure and is taxed as income in the year of income in which is received.

For indirect transfers involving a non-resident transferor, resident licensee is liable for the tax due as an agent of the non-resident transferor.

The compliance requirements are governed by Section 89 GE. Section 89 (1) GE lists the conditions to be met for a transfer of an interest to be considered a farm out that is:

- a) the existence of an agreement between the transferor or licensee and a transferee for transfer of part of the interest.
- b) The transferee must include as part of the consideration a commitment to undertake part or all of the work commitments of the transferor in respect of the part of interest retained by transferor.

The capital gains arising from disposal of an interest in a petroleum agreement is subject to tax of 30%. There is a requirement to notify the URA in writing by the person disposing of an interest where there is a change in the underlying ownership of the licensee. The resident licensee is liable to tax as the agent of the non-resident person. The disposal of an interest in immovable property located in Uganda by a non-resident person is viewed as a disposal giving rise to tax in Uganda which is subject to capital gains tax.

Taxation of rental income

For non individuals and companies (excluding partnerships), the deduction of expenses against rental income is capped at 50% of gross rents. Any excess expenditure is not eligible for carrying forward.

For individuals, the annual rental income in excess of UGX 2.8 million is subject to a flat rate of 12%.

Indirect Taxes

Value added tax (VAT)

Registration for VAT and items subject to VAT

Effective 1 July 2015, companies operating in the upstream sector that are not making or about to make taxable supplies are allowed to register for VAT. This implies that such companies can now recover any input VAT incurred effective 1 July 2015 during the period they are not making taxable supplies.

Further, effective 1 July 2015, the deemed VAT provisions were introduced to the effect that taxable supplies made by a contractor to a licensee for use solely and exclusively in petroleum operations, the VAT on the supply is deemed to have been paid by the licensee to the contractor. This means that the VAT is not accounted for as output tax (by the contractor) or input tax (by the licensee) and accordingly does not entail any cash movement, either between the parties or with the URA.

The sale of petroleum fuels subject to excise duty such as motor spirit, Kerosene etc and residual oils for use in thermal power generation to the national grid is 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 taxable services rendered directly to the non-resident, the contractor may be required to treat the services as imported from outside Uganda and therefore account for reverse VAT. Services are said to be imported from outside Uganda if they are supplied by a foreign supplier to a contractor in Uganda. Effective 1 July 2015, output VAT on imported services is recoverable as input VAT

VAT on equipment, plant and machinery

Machinery and inputs, other than motor vehicles, for direct and exclusive use in the petroleum exploration, development and distribution is exempt from VAT at the time of importation of the goods into Uganda.

The local supply of such machinery by way of sale, lease or hire by a local supplier (subcontractor) to a contractor will be subject to VAT unless the equipment being supplied is specifically exempt from VAT and listed in the Second Schedule of VAT Act.

In order for a contractor to benefit from the VAT exemption they must import the goods in their names. Hiring or renting the goods from a subcontractor would give rise to VAT. Further, the goods must be considered to be machinery and input for direct and exclusive use in oil & gas exploration and development activities.

VAT on petroleum fuels and gas

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.

Excise duty

The excise duty rates for some of the petroleum products are as follows:

- Motor spirit (gasoline) of UGX 1,450 per litre;
- Gas Oil (automotive, light amber for high speed engine) of UGX 1,130 per litre;
- Other gas oils of UGS 630 per litre.

Compliance requirements

The applicable VAT rate is 18%. The VAT Act allows for voluntary registration of entities undertaking upstream and midstream operations in the petroleum sector (including refining, conversion, transmission and storage) regardless of whether they are making taxable supplies.

Further the law allows licensees and contractors to claim input VAT in respect of imported services which results in a nil net VAT payable position in respect of imported services. This is an incentive to the oil & gas sector as VAT on imported services is a cost to other sectors of the economy (other entities providing business process outsourcing services).

Compliance requirements are governed by the Tax Procedure Code Act (TPC) 2014 which consolidates all administrative sections for specific tax laws including VAT Act. Monthly VAT returns filing, and payment are due within 15 days after the end of each month.

Custom duties

There is a customs duty exemption for equipment and inputs, other than motor vehicles, imported by a licenced company for direct and exclusive use in petroleum exploration, development and distribution. In order for a contractor to benefit from this exemption, the contractor itself must import the goods in their own name

Compliance requirements

Filing of returns

A contractor is required to file a number of returns as follows

- An annual estimate return – to be filed not less than 30 days before the beginning of the year of income showing estimates for each calendar quarter of the year;
- A monthly provisional tax return – to be filed not later than 7 days after the end of the month; and
- An annual consolidated petroleum revenue tax – to be filed not later than 90 days after the end of the year of income. A return required by the Commissioner should include particulars of Government petroleum revenues and other taxes prescribed by the Commissioner.

A return required by the Commissioner should include particulars of Government petroleum revenues and other taxes prescribed by the Commissioner.

A return required for any period should be furnished, whether the contractor has Government petroleum revenues or other taxes are payable for the period or not.

The penalty that applies to a petroleum licensee who fails to file a return or provide any other document to the revenue authority within the required timeframe is between USD 50,000 and 500,000.

The penalty to comply with requirement to have documentation to verify that the controlled transactions are consistent with the arm's length price for transfer pricing purposes attracts a penalty or imprisonment on conviction.

Collection and recovery of taxes

Petroleum revenues include income tax, government's share of production, signature bonus, surface rentals, royalties, and any other duties, fees payable to the government.

Petroleum revenues and other taxes charged in any assessment are payable within 7 days after the due date for furnishing a return. A contractor is required in each calendar quarter, to make a provisional payment consisting of;

- in the case of income tax, one quarter of the contractor's estimated income tax for the year; and
- in the case of petroleum revenues other than income tax, the amounts payable for the quarter under the petroleum agreement.

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

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 the individual:

- has a permanent home in Uganda;
- is present in Uganda;
- for a period of, or periods amounting in aggregate to, 183 days or more in any twelve-month period that commences or ends during the year of income;
- during the year of income and in each of the two preceding years of income for periods averaging more than 122 days in each such year of income; or
- is an employee or official of the Government of Uganda posted abroad during the year of income

Employment income includes among other things any wages, salary, leave pay, payment in lieu of leave, overtime pay, fees, commission, gratuity, bonus, or the amount of any travelling, entertainment, utilities, cost of living, housing, medical, or other allowance and benefit granted such as accommodation, company vehicles, shares and share options.

Below are the annual tax bands and rates applicable to individuals:

Resident individuals:

Chargeable income	Rate of tax
Not exceeding Ushs 2,820,000 (Approx. USD 783)	Nil
Exceeding Ushs. 2,820,000 (approx. USD 783) but not exceeding Ushs 4,020,000 per annum (USD1,116)	10% of the amount by which chargeable income exceeds Ushs. 2,820,000.
Exceeding Ushs. 4,020,000) approximately USD1,116) but not exceeding Ushs. 4,920,000 (approx. USD 1,366)	Ushs. 120,000 (approx. USD 33) plus 20% of the amount by which chargeable income exceeds Ushs. 4,020,000
Exceeding Ushs. 4,920,000 (approx. USD 1,800)	Ushs. 300,000 (approx. (USD 83) plus 30% of the amount by which chargeable income exceeds Ushs. 4,920,000 and Where chargeable income of an individual exceeds Ushs 120,000,000 an additional 10% charged on the amount by which chargeable income exceeds Ushs. 120,000,000 (approx. USD 33,333)

Non-resident individuals:

Chargeable income	Rate of tax
Not exceeding Ushs. 4,020,000 (approx. USD1,116)	10%
Exceeding Ushs. 4,020,000 (approx. USD1,116) but not exceeding Ushs. 4,920,000 (approx. USD 1,366)	Ushs. 402,000 (approx. USD 111) plus 20% of the amount by which chargeable income exceeds Ushs. 4,020,000.
Exceeding Ushs. 4,920,000 (approx. USD 1,366)	(a) Ushs. 582,000 (approx. USD 161) plus 30% of the amount by which chargeable income exceeds Ushs. 4,920,000 and (b) Where chargeable income of an individual exceeds Ushs 120,000,000 an additional 10% charged on the amount by which chargeable income exceeds Ushs. 120,000,000

Social security tax

All employers with five or more employees are specified as persons who are required to register as contributing employers to the National Social Security Fund (NSSF). Contributions made for NSSF may be standard contributions or special contributions, depending on the eligibility status of an employee.

Standard contributions: These are made by eligible persons who are between the age of 16 and 55. They do not include:

- an employee employed in excepted employment;
- a non-resident employee; and
- an employee not employed in Uganda.

Eligible individuals' contribution to the National Social Security Scheme is 5% of gross cash wages. The 5% social security contributions should be paid on gross wages (cash wages). The employer's contribution is 10% of the employee's gross cash wages (cash payments). The employer's contribution is tax deductible on the employer.

Special contributions: For non-resident employees who opt not to register for standard contributions, special contributions are made by employers and are computed at a rate of 10% of the employee's gross wages.

A non-resident employee is defined under the NSSF Act as an employee not ordinarily resident in Uganda who is to be employed in Uganda for a continuous period of not more than three years or such longer period as is allowed in any particular case by the managing director of the NSSF. Therefore contractors and subcontractors who employ non-resident employees as defined above are required to make contributions for the NSSF as discussed above.

The NSSF Act provides for an exemption from the payment of a standard or special contribution or both in respect of persons not ordinarily resident in Uganda who are liable to contribute to or are or will be entitled to benefit from the social security scheme of another country, if that scheme is approved by the Minister for this purpose.

In January 2022, the NSSF Act was amended to provide for mandatory contributions by all workers regardless of the size of the enterprise or number of employees, to provide for voluntary contributions to the fund and provide for midterm access to member's contributions for a member who is 45 years of age and above of a sum not exceeding 20% of accrued benefits.

Taxation of the pipeline project

The East African Crude Oil Pipeline (EACOP) Act, 2021 contains a specific fiscal regime of taxes applicable to the EACOP Project. In the case of any inconsistency between the provisions of the EACOP Act and the Special Provisions for the Taxation of Petroleum Operations as well as provisions of any other Ugandan law, except for the Constitution of Uganda, the provisions of the EACOP Act will prevail.

Some of the tax incentives that will be available to the pipeline project are provided below:

Corporate income tax

There is a 10 year corporate income tax holiday in respect to tariff income from owning and operating the pipeline. The tax holiday does not extend to the non-tariff income (such as interest on bank deposits). EACOP Limited will be exempt from branch profits tax since it is a resident of Uganda.

Withholding Tax

There is a reduced WHT rate of 5% on payments made by the EACOP company and its direct contractors to non-residents for the supply of technical and other services provided directly and exclusively for the pipeline project.

There are other WHT exemptions applicable to payments of interest, payments for the tariff to the pipeline company, importation of goods in Uganda, payments for purchase of an asset, payments for supply of petroleum for direct and exclusive use of the EACOP project as well as payments of tariff or interest accrued or dividend payments by the pipeline company

Custom duty

There will be no customs duties (i.e. import duty, VAT, withholding tax, excise duties or levies such as customs processing fees and infrastructure levy) on importation of goods for direct and exclusive use in the pipeline project, subject to obtaining approval from URA. This applies to licensees, contractors and subcontractors.

Value Added Tax

The VAT incentives that will be applicable to the pipeline project are as follows:

- There will be no reverse charge VAT charged on services imported by the pipeline company, its contractors and subcontractors directly and exclusively for the EACOP project, subject to obtaining approval from URA.
- The VAT charged on supplies made exclusively for the EACOP project by a contractor to EACOP Limited or by a subcontractor to such contractor, is deemed paid, subject to obtaining approval from URA.
- The supply of transportation and incidental services through the EACOP system by the pipeline company is zero rated.
- There will be no VAT on the import, sale and export of petroleum.

NSSF contributions

There will be an exemption for non-resident employees of the pipeline project and its contractors from NSSF contributions during the construction stage, if they are enrolled on similar contributions in their home countries.

Taxation of Oil Field Service (OFS) Companies

The OFS companies are taxed using the same regime as non-oil companies (which regime differs from exploration and production companies).

The OFS are subject to tax at the rate of 30% on the taxable income less allowable expenses incurred in production of income.

There are exceptions to the taxation regime for OFS which is different from the non-oil companies as follows:

Value Added Tax

Deemed VAT relief was introduced where any VAT charged to a licensee by a contractor in respect of supplies (with the exception of passenger automobile, and repair and maintenance of that automobile including entertainment) solely used for petroleum operations is deemed to have been paid by the licensee without actual movement in cash. The contractor is not required to account for deemed VAT payment as output tax. Also, the licensee does not claim the deemed VAT payment as input tax.

Withholding Tax

A non-resident contractor who derives a fee for provision of services/ service fee to a licensee is liable to pay non-resident contractor tax at 10%, which is a final tax. Other sectors are subject to 15%.

Tax Audits

Ordinarily, the Uganda Revenue Authority (URA) tends to carry out an audit of a company every three years, However, due to the nature of the oil & gas industry, we expect that more frequent audits will be carried out (e.g. annual). In practice, the audit starts with a notification from the URA to start an audit, followed by:

- A discussion between the URA and the taxpayer to agree start date of the audit
- A detailed review of information by the URA
- Reconciliation meetings between the URA and the taxpayer;
- Communication of the final audit position; and
- An assessment of the tax liability

The process of dealing with the assessment is as follows:

- URA serves an assessment of the outstanding tax liability based on the audit findings.
- The company may lodge an objection (within 45 days of receiving the assessment notice) for the assessment issued by URA.
- The Commissioner makes a decision on the objection raised by the company to the tax assessment within 90 days.

- The company may either concede and pay the outstanding tax liability or appeal to the Tax Appeals Tribunal/High Court (within 30 days of being served with an objection decision notice) if dissatisfied with the Commissioner's decision.

Property tax

The property tax rates are levied based on the area of location of the property, unless if specifically exempt. Properties located in Kampala Capital City are charged a rate of 6% of the value of property (determined by qualified and registered valuation surveyors) and are payable once in a financial year.

A property means immovable property and includes a building (industrial or non-industrial) or structure of any kind but does not include a vacant site.

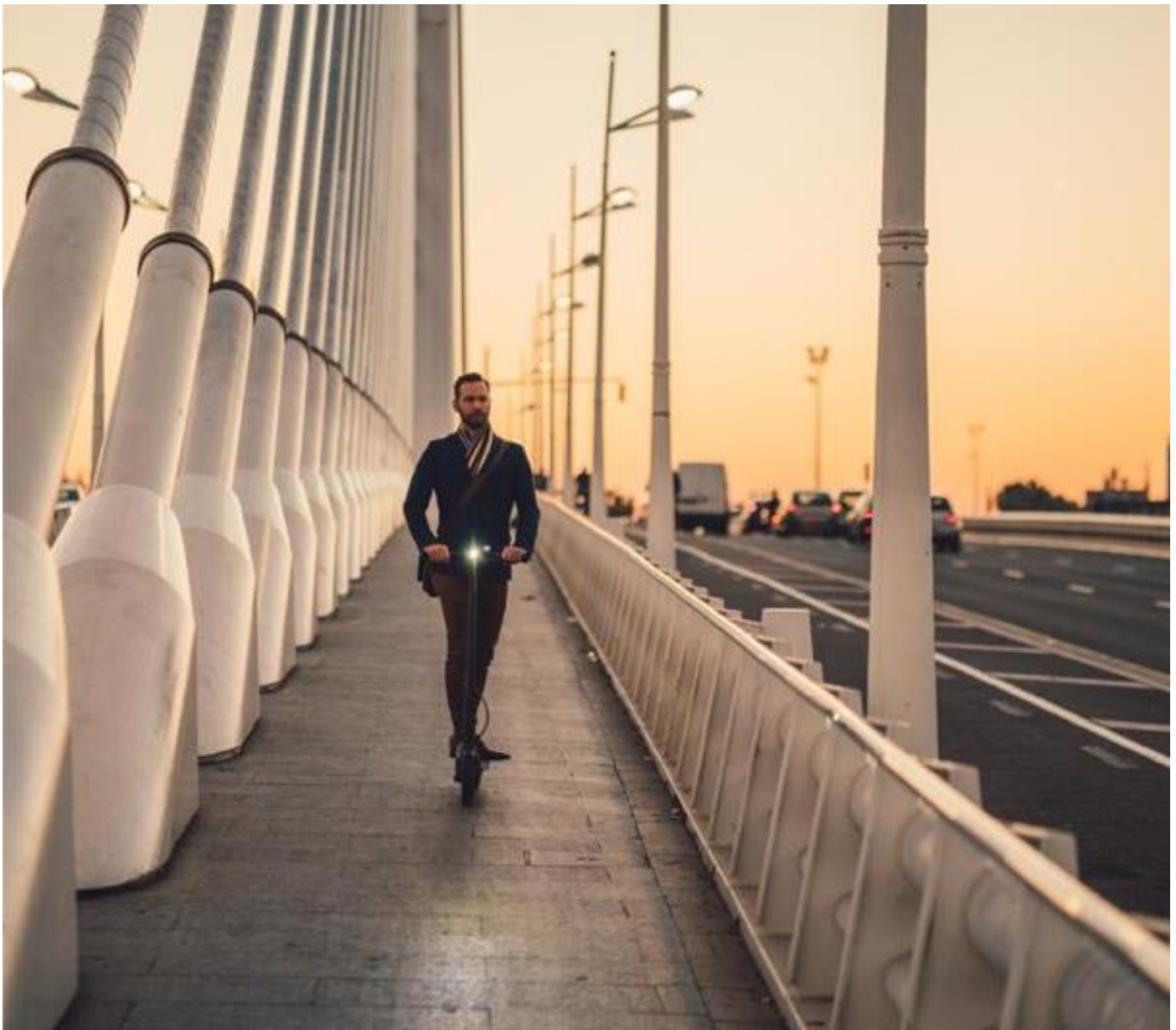
There are specific properties exempt from property rates such as residential owner-occupied properties.

Deemed Profit Taxation

There are no specific taxes on deemed profit in the ITA for the petroleum sector.

The general rules on taxation of deemed repatriated income for a non-resident company carrying on business through a branch in Uganda will apply for both oil & gas E&P and OFS.

There is a branch repatriation tax of 15% on the repatriated income of a branch of a foreign company. The repatriated income is determined in accordance with a pre-determined formula.





Zambia

Contact



George Chitwa

george.chitwa@pwc.com



Malcolm Jhala

malcolm.jhala@pwc.com



Emmanuel Chulu

emmanuel.e.chulu@pwc.com

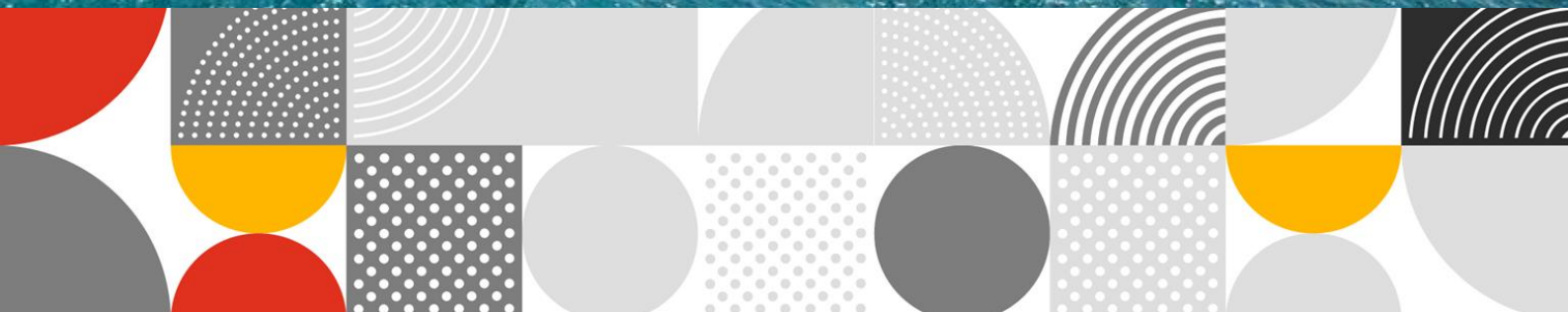


Nsansa Makonda

nsansa.n.mkonda@pwc.com



Oil and Gas Sector



Brief overview of the Country's energy industry

Energy - Electricity

Government's plans to implement cost reflective tariffs for electricity supplied by its National Electricity Carrier, Zambia Electricity Supply Corporation Limited ("ZESCO"), have reached an advanced stage following the successful completion of the electricity cost of service study (CoSS) in December 2021. The CoSS brought out key findings and recommendations including;

- Increase in load forecast (peak electricity demand) by 95% from 2,143 MW in 2020 to 4,199 MW in 2040,
- Requirement of US\$14 billion worth of investment to meet the projected demand.
- Increase in electricity tariffs by an average of 17% over the next five years, placing a heavier tariff burden on residential customers and subsequently reducing electricity tariffs for maximum demand and power purchase agreement (PPA) customers

The cost reflective tariffs have since been moderated and a gradual increase over a number of years has been approved by the Energy Regulatory Agency.

The stimulus plans

In response to the Electricity Cost of Service Study recommendations, Government has stated that it will update the CoSS recommended load forecast to 10,000 MW by 2040 to take into account the New Dawn Government's desire to attain universal access to electricity, stimulate agriculture production, achieve annual copper production of 3 million tonnes over the next decade and establish Zambia as a hub for electricity trade.

Regarding the CoSS recommendation on the revision of economic tariffs, the Government does not support the CoSS study recommendation which places a heavier tariff burden on residential customers. It instead wants to ensure that there is a reasonable balance between social and economic considerations in the tariff-cost allocation methodology to support different sectors towards economic recovery.

(Source:Government green paper on the findings and recommendations of the 2021 electricity cost of service study)

Our view

Government's commitment to implement cost reflective tariffs will improve the financial position of Zambia Electricity Supply Corporation Limited ("ZESCO") via increased revenues, which will result in enhanced service delivery and facilitate greater investment in the sector. It's also expected to create a conducive environment for new entrants into the Electricity generation and supply market, including further diversification of the energy mix. However, Government resolve to restructure ZESCO remains even more critical to ensure the end users pay the most efficient tariffs possible. It is our considered view that the proposed tariff adjustments towards a cost reflective tariff should incorporate savings from the restructure on an ongoing basis, as a way to cushion the planned upward annual tariff adjustments.

Energy - Renewable Energy

Government intended on implementing a Renewable Energy Investment Plan that would improve the energy mix. This would include scaling up the programme of rural electrification through the extension of the grid network and deployment of off-grid electrification solutions. As at 31 December 2021, 18 projects were completed consisting of 11 Grid extension projects and seven solar power plants (Source:ERB Sector report 2021).

The stimulus plans

Providing access to electricity to all Zambians remains one of the top aspirations of the New Dawn Government. In the year 2022 to September 2022, the Country had achieved a surplus in electricity generation capacity of 1,156 MW following the coming on board of 600 MW generation capacity at the Kafue Gorge Lower Hydro Power Station. To improve the energy mix, the Government intends to engage Maamba Collieries to increase thermal power generation from 300 MW to 600 MW.

Government has also increased allocation to the Rural Electrification Programme from K362.2 million to K743.6 million as it continues to improve access to electricity for the Country.

Our view

Government pronouncements regarding excess power generation capacity of 1,156 MW at the end of September 2022, is encouraging as it sets a conducive energy security environment for various economic

growth plans, top of list include the annual copper production of 3 million tonnes target. This is likely to encourage investors to align and fast track various investments. The Country energy mix needs steady but timely improvements, given hydro electricity continues to account for more than 80%. In 2016, El-nino weather effects brought to light how significantly vulnerable the country's energy supply is to climate changes. With El-nino weather effects projected to occur on a 7 to 10 years cycle, the Government is encouraged to plan ahead for its effect, including significantly enhancing the energy mix in support of achieving the target of estimated peak electricity demand of 10,000 MW by 2040.

Energy - petroleum

With the Government's commitment in 2022 to reform the fuel supply procurement process, the 2023 budget has shown consistency with its decision to withdraw from the importation and supply of petroleum products. It is the Government's view that this decision will not only provide business opportunities to Zambians to take part in the petroleum supply chain and create jobs but will also lower the transaction costs due to the elimination of middlemen. Further, Indeni petroleum Refinery Company Limited (INDENI), the Country's fuel refinery, continued under care and maintenance in the year, having been shut down in December 2020. In the 2023 Government budget pronouncements, INDENI is set to play other roles in the petroleum supply chain, which will not include its traditional feedstock processing.

The stimulus plans

In its continued effort to transform the fuel supply chain aimed at reducing transportation cost (currently on-road transport mode), the Government has announced plans to transform the Tanzania-Zambia Mafuta (TAZAMA) 1,710 Km petroleum pipeline from being a petroleum feedstock carrier to a finished products carrier.

In the long term, Government's 8th National Development Plan (NDP) indicates a focus to increase government owned storage capacity as well as national fuel mix, as follows:

- Fuel storage capacity increased to at least 550,000 cubic metres by 2026 (currently 401,348 cubic metres); and
- The percentage of biofuel in the national fuel mix is expected to increase to 20% by 2026.

Our view

Government's decision to reform the procurement processes to achieve a low cost pricing for fuel will contribute to helping the economy recover, given Fuel price affects the cost structure of all industries. That said, the use of the TAZAMA pipeline for the transportation of finished products does raise the question of how the security of the product will be assured. The risk of vandalism will be heightened and linked to that, the possibility of significant environmental damage from human initiated leakage. Our view is that the costs and associated risks could outweigh the benefits derived.

Political updates

The current administration was elected into office in the second half of 2021. The administration appears to take a pro-business stance and emphasis on foreign direct investment and jobs growth in their publications and reasoning changes made to legislation.

For example, it is well documented that the Government is making improvements to tax administration, including the implementation of a comprehensive tax payer compliance programme based on data analytics and the second run of a tax amnesty programme for the waiver of penalties and interest aimed at increasing tax payer engagement and compliance. Our understanding, based on the IMF's Extended Credit Facility (ECF), is that this takes into account past technical assistance recommendations, including those received through the Tax Administration Diagnostic Assessment Tool.

Further, regarding renewable energy, there have been enhanced incentives to stimulate the growth of the Green economy, such as the elimination of VAT on certain energy-saving appliances, machinery, and equipment, such as solar panels and solar batteries. In addition, in September 2021, the President of Zambia, His Excellency Hakainde Hichilema, announced the formation of a new Ministry of Green Economy and Environment, which we anticipate will aid in the development of sustainable policies for companies operating in the renewable energy sector of the economy.

Regulatory framework

As a preliminary step, an investor would have to register its desired corporate vehicle with the Registrar of Companies at the Patents and Companies Registration Agency ("PACRA"), the statutory regulator.

In Zambia, several corporate vehicles are utilised to incorporate and conduct business. However, from an investment standpoint, the majority of investors will operate via a private limited liability company (i.e. a subsidiary) or a branch of a foreign company (i.e. a branch).

Generally, the guidance in respect of the aforementioned registration is stipulated in the Companies Act (2017) as amended.

Other Considerations

In many respects a branch is effectively treated the same as a company in that a branch, like a company, is required to:

- Maintain accounting records for the business carried on in Zambia;
- Prepare annual financial statements, which should be audited by an approved auditor registered with the Zambia Institute of Chartered Accountants;
- Prepare and submit tax returns, as applicable; and
- Lodge annual returns with the Registrar of Companies.

A key disadvantage of operating through a branch is that any liabilities arising under a local branch will attach to the foreign parent entity. The foreign parent entity will therefore be unable to ring-fence any liabilities or exposures arising from the operations and activities of the branch. However, liabilities arising in a subsidiary may be ring-fenced as the subsidiary is treated as a separate legal entity from its parent company. Notwithstanding this, it is possible that the parent company may be pursued for the subsidiary's liabilities, mainly in cases of suspected fraud.

Once the investment vehicle is successfully registered, the local entity would be required to obtain the relevant licences in order to operate in Zambia in respect of the sector.

Fiscal/taxation regime

a. Forms of Energy licences/permits

The Energy Regulation Act No. 12 of 2019 provides guidelines of the most common forms of contracts pertaining to the energy sector. The criterion for awarding licences is based on the premise that the Energy Regulation Board must licence all enterprises conducting business in the energy sector. The most common forms of contracts include:

- **Electricity Licence** - This licence covers operations including generation, transmission, distribution, supply, and trading of electricity as well as off grid generation distribution and supply of electricity, embedded generation of electricity, and generation of electricity for own use.
- **Petroleum Licence** - This licence covers the following operations / services:
 - Pipeline transportation of crude oil, petroleum products and natural gas;
 - Refining of petroleum products;
 - Processing of natural gas;
 - Terminal storage of petroleum products;
 - Wholesale marketing of petroleum products;
 - Distribution, importation and exportation of petroleum products;
 - Distribution, Importation and Exportation of Liquefied Petroleum Gas;
 - Retail of petroleum products;
 - Transportation of petroleum products; and
 - Transportation and marketing of coal
- **Renewable energy and Non - renewable energy licence** - This licence covers the manufacture, supply, installation and maintenance of renewable energy generating equipment and production, storage, marketing and transportation of renewable energy.

The above licences, once approved, are valid indefinitely unless revoked or cancelled by the ERB or where the licensee surrenders these.

Provincial/local taxes other than income taxes

Certain levies may be payable to the respective local City Council as well as the requirement for trading licence to be obtained from the City Council.

a. Special arrangements

We are not aware of any special arrangements in the energy and utilities sector

Compliance requirements

As noted above, Companies Act (2017) as amended is the governing Act on the general operation of a Zambian resident company and provides for the incorporation, categorisation, management and administration of different types of companies; provide the procedure for the approval of company names, change of name and conversion of companies; provide for shareholders' rights and obligations, the conduct of meetings and the passing of resolutions by shareholders; to encourage transparency and high standards of corporate governance by providing for the functions and obligations of company secretaries and directors; provide for issue of shares, share capital requirements, procedures for alteration and reduction of share capital and disclosure requirements of companies; provide for the public issue of shares, the issue and registration of charges and debentures; incorporate financial reporting provisions, maintenance of accounting records, and access to financial information of companies; provide for amalgamations; provide for the registration of foreign companies doing business in Zambia; provide for the deregistration of companies; repeal and replace the Companies Act, 1994; and provide for matters connected with or incidental to the foregoing.

The operations of the sector are governed by various Acts of Parliament, including tax legislation as follows:

- The Income Tax Act, 1966 as amended ("ITA");
- Property Transfer Tax Act, 1984, Cap 340, as amended ("PTTA, PTT Act");
- Value Added Tax Act, 1995 as amended ("VAT Act"); and
- The Customs and Excise Duty Act, as amended (Customs and Excise Act).

The above outlines the principle Acts but is not an exhaustive list and the operations may be subject to additional regulation.

Local content regulations

In respect of local content regulations (perfectionist policies) aimed at encouraging local participation or upskilling within the sector, Zambia has no perfectionist policies that are generally applicable.

Direct taxes

The taxation of income is governed by the income Tax Act (1966), as amended and sets out the various mechanisms of collection of tax on income i.e. CIT, WHT or PAYE which are collectively called direct taxes.

Direct taxes also include Property Transfer Tax ("PTT") governed by the PTT Act.

Corporate Income Tax

Zambia principally operates a source-based system of taxation, and any income which is deemed to be from a source in Zambia will fall within the scope of taxation in Zambia. Generally, income will be deemed to arise from a source in Zambia if the capital or skills are employed in Zambia.

The tax residence of an entity widens the scope of taxation. Where the entity is resident in Zambia, then in addition to the business income, it will also be liable to Zambian income tax on interest and dividend income from a source outside the Republic.

In calculating corporate income tax a company generally would start from the accounting profit which is determined in line with generally accepted accounting principles. The accounting profit is adjusted to take into account specific provisions of the Income Tax Act (1966) as amended ("ITA"). The tax adjustments will either increase or decrease the taxable income of the entity by allowing or disallowing certain expenses, deferring recognition of certain items of income and expenditure, or by providing additional tax reliefs available under the ITA.

The ITA provides that generally expenses would be allowable for deduction if they are wholly and exclusively incurred for business purposes and are not of a capital nature. In this regard and with other specific provisions, the ITA precludes the deduction of the following expenses:

- Interest in excess of 30% of a company's tax earnings before interest tax depreciation and amortisation ("Tax EBITDA");
- Accounting depreciation on capital assets (with capital allowances granted instead as further discussed below);
- Depreciation and interest expenses on Right of Use assets (RoU) capitalised under IFRS 16 (no capital allowances are claimable on operating lease assets);
- General provisions including contingent employee provisions;
- Unrealised foreign exchange gains or losses only being taxable or deductible on realisation. An exception applies to foreign exchange losses of a capital nature incurred on borrowings used for the building and construction of industrial or commercial buildings. These are deductible on an accruals basis (this has not been tested in the courts of law); and
- Staff benefits i.e. in respect of personal to Holder vehicles and accommodation that are not taxable under payroll taxes.

The applicable tax rate is then applied on the taxable profit for the year at standard rate of 30% (35% prior to 1 January 2022) in respect of other income where no other tax rate is prescribed on the particular trading activity.

Filing requirements

Corporate entities operating in Zambia are required to file an annual corporate income tax return by 21 June each year following the end of the tax charge year. The final corporate income tax liability for each tax year must also be settled by 21 June each year. In addition to submission of the annual corporate income tax return, taxpayers are required to make quarterly payments of provisional tax based on the quarterly provisional income tax return. The quarterly payments can be offset against the final year end corporate tax liability.

The provisional tax returns/ payments are due on a quarterly basis for each charge year as follows:

- 1st quarter return due on 31 March, with 1st quarter tax payable by 10 April;
- 2nd quarter return due on 30 June, with 2nd quarter tax payable by 10 July;
- 3rd quarter return due on 30 September, with 3rd quarter tax payable by 10 October; and
- 4th quarter return due on 31 December, with 4th quarter tax payable by 10 January of the subsequent charge year.

It should be clarified that following submission of the first quarter provisional income tax return, a revised provisional tax return need only be submitted in the following quarters if there is a significant change in profit forecast which increases or decreases the final tax liability. Any revised return should be accompanied by appropriate quarterly payments of provisional tax which consider the change in projections.

The standard tax charge year runs from 1 January to 31 December. Taxpayers whose accounting periods do not coincide with the tax year are required to apply to the ZRA for approval to maintain their existing accounting period.

Transfer Pricing declaration sections of the income tax return

Over the past few years, the related party section of the tax return has been enhanced to capture information that is likely to be used by ZRA for purposes of risk assessments for audit selection. Part of this enhancement is for the taxpayer to make a declaration in terms of the completeness of the information provided in the return.

From the 2019 charge year onwards, the ZRA made further enhancements that captured in great detail related party information and transactions.

Withholding Tax

Zambia principally operates a sourced based system of taxation in respect of income tax and in that respect the system of collection of tax falls under WHT. In determining source one would also need to consider the "originating cause" of the income. In most instances this would involve determining where the capital (the funds and/ or the fixed assets necessary for the business) and skills (the labour and technical know-how) are employed.

The ITA provides that the following payments are subject to WHT:

- Dividends;
- Royalties;
- Management and consultancy fees;
- Commissions;
- Interest;
- Payments to Non-resident contractors
- Public entertainment fees
- Other

In the absence of a favourable double taxation agreement, all such payments made to non-resident suppliers are subject to WHT at 20% with a rate of 15% for payments made to residents. The WHT must be calculated and accounted for by the payer on the gross payment excluding taxes, for example Value Added Tax where applicable.

Effective 1 January 2023, interest income earned on green bonds listed on the Lusaka Stock Exchange (“LuSE”) Zambia shall be at the rate of zero percent with maturity of at least three years.

WHT relief on payments to non-resident entities

For payments to non-residents on which WHT is chargeable, relief may be obtained subject to the availability of a Double Tax Agreement (“DTA”) between Zambia and the country of residence of the recipient.

To benefit from reduced Double Tax Agreement (“DTA”) rates, an application must be made to the ZRA for a Limited Deduction Direction (“LDD”). An LDD form is required to utilise the reduced tax rates in the DTA. The ZRA will require a confirmation from the relevant tax authorities in the other country that the recipient is a tax resident in the country to approve the LDD.

Please note that the LDD must be secured before the DTA's reduced rates may be applied. The certificate / LDD has a one-year validity and is subject to renewal annually.

Filing requirements

WHT is payable at the earlier of when the payment is made; when the payment accrues to a person; and when the payment is in any way due to a person or held to that person's order or on their behalf, or it is in any way disposed of according to that person's order or in that person's favour.

WHT must be deducted by the payer before making any of the above payments.

In addition, WHT should be accounted for and paid within 14 days following the end of the month in which the transaction occurred by the recipient of the service.

Pay As You Earn

In the case of income earned from employment, any income earned as a result of employment exercised or office held in Zambia is liable to tax under the PAYE tax system in Zambia, irrespective of the period of stay in Zambia and irrespective of where or by whom the

emoluments are paid. The employer is responsible for paying the income tax arising on the emoluments under the PAYE regulations.

In determining the tax payable on emoluments received by an individual through employment, Zambia uses a progressive tax system that subjects the income to different tax bands. Under the PAYE system, the amount of tax which the employer deducts from any pay depends on the employee's total gross pay and the applicable tax rates.

Annual tax bands (2023)

Income Tax Band- per year	Tax rate
First ZMW 57,600	0%
From ZMW 57,601 to ZMW 81,600	20%
From ZMW 81,601 to ZMW 106,800	30%
From ZMW 106,801	37.5%

Monthly tax bands (2023)

Income Tax Band- per month	Tax rate
First ZMW 4,800	0%
From ZMW 4,801 to ZMW 6,800	20%
From ZMW 6,801 to ZMW 8,900	30%
From ZMW 8,901	37.5%

In addition to the above, the employer is required to pay a skills development levy of 0.5% of a company's total emoluments on a monthly basis.

Filing requirements

The same tax rates above apply to both Zambian and non-Zambian residents. PAYE deducted from employees' gross pay must be accounted for to the ZRA on a monthly basis by the employer.

The return and payment of the PAYE liability is due on the 10 days following the month in which the emolument is paid.

Property Transfer Tax

Based on the provisions of the PTT Act, PTT is payable on the transfer of “property”. “Property” includes:

- Land –this includes buildings and lease of land and buildings for a period in excess of 5 years at 5% of the realised value;
- Mining rights or interest in a mining right including the transfer of a mineral processing licence or an interest in the mineral processing licence at the rate of 5% (10% of the realised value prior to 1 January 2023);
- Intellectual property at the rate of 5%;
- Shares in a Zambian company – this excludes the allocation of shares for registration when first subscribed for by a member at 5% of the open market value or nominal value, whichever is greater; or
- shares of a company incorporated outside Zambia that holds at least 10% or more holding in Zambian company (indirect transfer) at 5% of the realised value

It should be noted that in the case of points 1 to 4 above the obligation to account for the PTT rests with the seller except in the case of an indirect transfer (point 5 above) PTT is payable by the Zambian entity whose shares are indirectly transferred.

Filing requirements

The PTT Act requires that the PTT return should be submitted to ZRA within 30 days of transfer. After ZRA has reviewed this return, they will issue an assessment of the PTT amount payable. Following issuance of PTT assessment by the ZRA, the sellers (Zambian company whose shares have been transferred in the case of an indirect transfer) then have 14 days to settle the assessment or otherwise appeal against the assessment.

Transfer Pricing

Transfer pricing rules apply to transactions between associated persons and require that transactions are undertaken on an arm’s-length basis. Otherwise, the associated person benefiting from a reduction in income as a consequence of any non-arm’s-length terms will have its taxable income adjusted as if the transactions had been undertaken on an arm’s-length basis.

In addition to maintaining up-to-date transfer pricing documentation, companies should ensure that there is a good audit trail and sufficient documentary evidence to demonstrate that related-party transactions were undertaken in line with the arm’s-length principle. Failure to provide transfer pricing documentation is an offence, with defaulters liable to various penalties.

From 1 January 2021, multinational enterprises with annual consolidated group revenue exceeding ZMW 4,795 million are required to submit Country by Country Reports (“CbCR”) to the ZRA within 12 months following the end of the financial year.

The document retention period in respect of transfer pricing is ten years.

The penalty for non-compliance with transfer pricing regulations is up to 80 million penalty units (i.e. ZMW 24 million).

Thin capitalization

Zambia no longer has thin capitalisation rules from 1 January 2019, instead, as noted in the corporate income tax section, effective 1 January 2019, the deductibility of interest expenses was limited in a given tax charge year to 30% of a company’s Tax EBITDA i.e. the sum of taxable income, gross interest expenses, depreciation and amortisation.

This restriction applies to all interest incurred by the company on both related party and third party transactions. Note that any interest which is not deductible on account of this ITA provision may be carried forward to be deducted in subsequent charge years for a period of 10 years for mining operations and companies carrying out electricity generation (exception: 5 years for all other operations)

Indirect taxes

Value-added tax

The VAT rate is 16% and is applicable to supplies of standard-rated goods and services.

The export of goods and services from Zambia are generally zero-rated. However, exports of services rendered physically from a place of business in Zambia would be considered standard-rated supplies of services and would be subject to a 16% VAT rate, regardless of whether the consumer is a non-Zambian resident.

Standard-rated goods imported to Zambia are subject to import VAT at the rate of 16%.

There is no specific dispensation regarding VAT for the energy sector. However, with effect from 1 September 2022, the amendment to the VAT Act reintroduced VAT on petrol and diesel in an effort to restore fiscal sustainability, broaden the tax base and maximise domestic revenue mobilisation which, we suppose, would extend to mining entities.

Furthermore, the recent amendments to the VAT Act enforce an increase of penalty on evasion of taxes from thirty thousand penalty units or ZMW 9,000 (Approximately USD 462) to three hundred thousand penalty units or ZMW 90,000 (Approximately USD 4,623). This aligns the penalties for fraudulent evasion of tax penalties and aiding and abetting fraudulent activities.

The amendments further clarify that the three months period within which a taxpayer can reclaim input VAT is determined from the date of the tax invoice or the prescribed documentary evidence and not the date of submission of the return in which that input tax is being deducted.

Customs Duty

Generally, the importation of goods into Zambia will be liable to import VAT and customs duty. All goods imported into Zambia must be cleared with ZRA customs officers at the border post before entry into Zambia. Accordingly, the importer of record must provide evidence of payment of customs duty and import VAT at the time of importation for the goods to be released by the Customs Officers.

Import VAT paid on importation can be recovered through the normal monthly VAT returns provided the Zambian entity is registered for VAT and provided the claim is supported by all relevant import documentation.

The importation of plant and equipment into Zambia will generally be subject to customs duty and import VAT ("import duties"). Import duties are payable by the importer once the goods have arrived at the Customs Border Post. The rate of duty applicable is determined by the HS Code (being the World Customs Organisation Harmonised Coding and Description System) of the product imported.

To support economic growth within Southern Africa, SADC member states give preferential treatment to goods that originate from within member States. Goods that fall under SADC rules of origin may be eligible for preferential tariffs when being imported or exported within the Free Trade Area. In order to qualify for these benefits, goods must fit one of the following criteria:

Wholly produced or obtained within a Member State. Items such as minerals, fish and livestock, fruit and vegetables, or products made with these locally-sourced items fit this criterion; Produced in a Member State using non-originated materials, but have been substantially processed within one; or Changed tariff headings due to the processing that occurred in a Member State.

Notable developments

In 2021, the Government suspended excise duty on petrol and diesel to cushion Zambians from the rise in fuel prices in the Global market. In June 2022, the subsidy was extended to 30 September 2022. This subsidy was later reversed, with excise duty being reinstated with effect from 1 October 2022 with the aim to remove inefficient reliefs that benefit the rich, and instead allocate the revenue collected to important areas such as free education and medical equipment.

It remains to be seen if the downward trend of global fuel prices will continue given the ongoing Russian-Ukraine conflict which has impacted the supply of these commodities in the world market. Further, the Statutory Instrument No. 62 issued on 30 September 2022, suspends customs duty, to 31 December 2022, on petrol and diesel imported or purchased from a bonded warehouse by an oil marketing company authorised and specified in the gazette by the Ministry responsible for energy.

Excise Duty

Excise duty is levied on particular goods or products imported or produced in Zambia and this includes electricity.

Currently, excise duty is payable on the supply of electricity at 3% of the open market value of the electricity exclusive of excise duty, surtax and VAT.

The market value of the electricity will be determined to be the price at which the company is able to sell its electric energy to the customer. Where the price of electric energy is sold at varying prices the excise duty will be determined on the value (the market value would fluctuate in this case) at which the energy is sold to these customers.

Social Security contributions and personal income taxes

Personal Income Tax

Non-residents are subject to tax on Zambian 'source' income unless exempt in terms of a double taxation treaty.

In Zambia employers are required to deduct and remit income tax on behalf of their employees under the 'Pay-As-You-Earn' (PAYE) Regulations using the PIT rates of tax. The final tax on Personal Income Tax is 37.5%

Skills development levy (SDL)

Zambian employers are required to pay a monthly levy amounting to 0.5% of their gross emoluments payable to its employees.

Social security contributions

Both employers and employees are required to make contributions to the National Pension Scheme Authority (NAPSA). The contribution rate is 5% of the employee's total earnings (a total 10% contribution from both the employer and employee), subject to a limit as prescribed by the authority. The maximum contribution limit for 2023 is ZMW 1,342.00 per employee per month (i.e. a total of ZMW 2,684.00 from both the employer and employee per month).

National Health Insurance contributions

Both employers and employees are required to make monthly contributions to the National Health Insurance Scheme. The contribution rate is 1% of the employee's basic salary, making a total contribution of 2% from both the employer and employee.

Other taxes

Capital Gain Tax

We understand that capital gains tax is levied in other jurisdictions on the gains from an investment that is incurred when the investment is sold i.e. the capital gains, or profits having been "realised". Zambia does not have a capital gains tax regime, and as such capital gains are not subject to tax. However, if the transferred property is subject to Property Transfer Tax ("PTT"), tax will be paid on the property's realised value. PTT has been covered in the direct taxes section above.

Stamp taxes

We understand that some jurisdiction Stamp Duty (tax) is charged on legal documents, usually in respect of the transfer of assets or property. Please note that no statutory stamp duty is applicable on the execution of contracts In Zambia, however, various fees apply on submission of documents which relate to the company's legal standing with the Registrar of Companies at the Patents and Companies Registration Agency ("PACRA").

On the other hand, an increase in the authorised share capital of the company will incur a capital registration fee amounting to 2.5% of the nominal value of the increased shares which is payable to PACRA.

Investment Incentives

In respect of new investments the Zambia Development Agency is the Government regulatory body that offers a wide range of incentives (under investment licences) in the form of allowances, exemptions and concessions to both foreign and local investors.

Generally, licences are granted to businesses that carry on the trading activities in a priority sector under the ZDA Act (i.e. electricity generation or manufacturing activities) that operates in a rural area, Multi-Facility Economic Zone ("MFEZ") or Industrial Park; which invests a minimum of US\$ 500,000: and which is approved by the ZDA would qualify for certain tax incentives.

For investment licences that met the above criteria and were obtained between 2013 and 2017, reduced tax rates were available for up to 10 years as well as 0% WHT on dividends for up to 5 years. However, with

effect from 1 January 2018 to 31 December 2021, there were no reduced rates applicable for corporate income tax or for withholding tax on dividends. In this period, corporate income tax on manufacturing and electricity generation activities were charged at 35% irrespective of the fact that the company obtained an investment licence.

The 2021 amendment act No.43 brought about the reintroduction of tax incentive specifically for profits derived from exports approved by the Zambia Development Agency and met the above criteria.

- 0% for a period of 10 years from first year of commencement of works
- 50% of profits taxed from 11th to 15th year
- 75% of profits taxed from 14th to 15th year
- 100% of the applicable tax rate thereafter.

As noted under the CIT section, the corporate income tax rate applicable to manufacturing companies currently is 30%.

In the case of dividends, a withholding tax rate of 0% is applicable for a period of 10 years starting from the year of commencement of operations on profits derived from exports of the approved investment.

African Continental Free Trade Area considerations

In addition, Zambia signed the African Continental Free Trade Area (AfCFTA) agreement in February 2021. Current, we are not aware of any changes to customs duty rates resulting directly from this agreement, but it is our understanding that the agreement is intended to create an expanded and secure market for the goods and services of member states through adequate infrastructure and the reduction or progressive elimination of tariffs and elimination of non-tariff trade and investment barriers.

Pillar 1 and Pillar 2

Zambia has been a member of the The Organisation for Economic Co-operation and Development (OECD) / G20 inclusive framework since December 2017. In October 2021 the inclusive framework found a two pillar framework that will be effective in 2023.

The aim of the aforementioned framework is to update and align tax rules in order to reduce tax planning and avoidance by large Multinational Entities (“MNE’s”. This would be achieved by regulation of the jurisdiction in which entities would be required to pay taxes and limiting tax competition.



Power and Utilities Sector



Brief overview of the Country's energy industry

Zambia is a landlocked country located in South-Central Africa. The landlocked country shares borders with Angola, Botswana, Democratic Republic of Congo, Malawi, Mozambique, Namibia, Tanzania, and Zimbabwe. English is the official language in Zambia and its currency is the Zambian Kwacha (ZMK).

In 1994, a new National Energy Policy (NEP) was adopted to encourage private sector participation and develop the largely untapped hydro potential for power generation to meet domestic demand as well as the regional market. In 2003, the Government of the Republic of Zambia established the Rural Electrification Authority ("REA") through an Act of Parliament with the aim of focusing on rural electrification by finding innovative ways to provide electricity to Zambians living in rural areas. According to the United Nations Economic Commission for Africa, "the Rural Electrification Master Plan in 2008, Zambia was able to expand access to electricity from about 20 percent before 2010 to above 40 percent in 2019."

In 2010, reforms in the energy sector paved the way for independent power producers to enter the market and in 2017, the Renewable Energy Feed-in-Tariff Strategy led to the introduction of non-hydro renewable energy being generated and sold to the grid. In 2019, policy reforms concluded that there was a need to diversify how energy was being generated to ensure that the energy sector in Zambia became financially sustainable and this led to discussions about electricity tariffs being increased.

Zambia's current economic performance has benefited from the smooth transition of the government following the presidential elections in 2021. GDP growth was 3.6% in 2021 up from a contraction of 3.0% in 2020. According to Fitch Solutions, real GDP is projected to grow at an average of 3.7% between 2022 and 2026, driven by an improved macroeconomic environment, rebounding mining exports and investments in the mining sector, increased household spending and improved electricity supply

The Energy Regulation Board which regulates the energy sector has divided it into three subsectors namely: Electricity sector, Petroleum sector and renewable energy sector.

Electricity:

Zambia currently has two primary utility companies, ZESCO and CEC. Thirteen independent power producers (IPPs) supplement electricity supply either through the sale of power to either ZESCO, CEC or use on private mines/businesses/villages. Sixteen operators make up the Zambian power sector: ZESCO and CEC are the core entities handling transmission and distribution. Northwestern Energy Corporation is involved in distribution. The utility companies and IPPs generate power through Coal, Diesel, Heavy Fuel Oil, Hydro and solar.

The national installed electricity capacity increased by 10.2% to 3,318.43MW in 2021 from 3,011.23 in 2020 attributable to the commissioning of 300MW out of the total 750 MW installed capacity at Kafue Gorge Lower and commissioning of 6MW out of the 15 MW installed capacity at Lusiwasi Upper hydro power plants. The national electricity generated grew by 16.3% from 15,159 GWh in 2020 to 17,636GWh in 2021. National electricity generation in 2021 remains heavily reliant on hydro generation at 16,072.9GWh, reflecting a 13.1% increase from 2020. This is attributable to improved rainfall and the commissioning of the two new hydro power plants.

Zambia's 2021 electricity consumption increased by 12% to 12,832 GWh in 2021 from 11,481GWh in 2020. This was mainly attributed to the 16% increased domestic consumption post COVID-19 pandemic from 3,867MWh in 2020 to 4,477 MWh in 2021. Excess generation exports grew by 60% to 2,150GWh in 2021 from 1,340GWh in 2020.

According to the World Bank, access to electricity in the country stood at 44.5% in 2020, up from 43.0% in 2019, however, access in rural areas remained limited at 14.0%. The government has a target of 51% by 2030 under its Rural Electrification Act of 2003.

Zambia's electricity capacity is forecasted to grow at a CAGR of 2.6% (992 Megawatts) over the next 10 years primarily driven by increased capacity from non-hydropower renewables. Non-hydropower renewables comprise solar power and biomass energy sources, with solar power making up the bulk. We noted that of the 992 MW of electricity capacity projected, 719 MW will be contributed by solar power and the remaining portion from hydropower due to the completion of the Kafue Gorge Lower hydropower project.

The largest electricity consumer in Zambia is the mining sector, which accounts for more than half of the country's overall electricity usage. However, a major influence on electricity consumption in Zambia is electricity price, as a large portion of the country's population is considered 'low-income' and is at risk of being priced out as a consumer.

Petroleum

The petroleum industry in Zambia is classified into two sub-sectors namely: upstream and downstream.

The upstream sector, as described by ERB, consists of Government institutions responsible for the transportation, refining, storage and distribution of petroleum products in the country. These include TAZAMA Pipelines Limited (TAZAMA), INDENI Petroleum Refinery Company Limited ("INDENI") and TAZAMA Petroleum Products Limited (TPPL).

The downstream sector, as described by ERB, is composed of OMCs, dealers and transporters who are involved in the distribution of petroleum products to the end consumers. There were 460 filling stations as at 31st December 2021. Additionally, 138 OMCs and 143 transporters were registered under the same period. Diesel remains the most consumed petroleum product in the country accounting for 69.6% of the total demand in 2021.

Furthermore, ERB statistics show that 1,272,064 and 499,863 metres cubed of diesel and petrol respectively, were imported into the country in 2021. Government contracted supplies accounted for close to 218,251 metres cubed of petrol and 419,852 metres cubed of diesel imports in 2021. This reflected an increase of 135.3% for diesel compared to 178,463 metres cubed in 2020. Equally, petrol increased by 191.5% compared to 74,866 metres cubed in 2020. The increase in imports by Government suppliers was partly attributed to meeting the market demand as there was limited production at INDENI which was only operational for 26.9 days

According to the 2021 ERB statistics, "national consumption of petroleum products increased by 10.2% to 1,464,822.66 MT in 2021 from 1,329,290.66 Metric Tonnes ("MT") in 2020. This growth was in line with the economic recovery in 2021. The consumption of diesel increased by 11.8 percent from 912,813.96 MT in 2020 to 1,020,201 MT in 2021. Equally, unleaded petrol increased by 16.9 percent to 396,661.37

MT in 2021 from 339,431.09 MT in 2020. Further, Jet A-1 recorded an increase of 33.1 percent from 16,573.4 MT in 2020 to 22,056.9 MT in 2021. Furthermore, LPG recorded a marginal increase of 0.5 percent from 7,945 MT in 2020 to 7,981 MT in 2021. Meanwhile, Kerosene and Heavy Fuel Oil (HFO) recorded a decline in consumption of 66.2 percent and 65.8 percent in 2021 from 2020 respectively."

Zambia has made significant investments in the petroleum industry which includes signing a USD 5 billion memorandum of understanding ("MoU") to construct the Angola-Zambia Oil Pipeline ("AZOP") which will transport refined petroleum and natural gas from Angola. According to the Ministry of Energy, "the pipeline is projected to supply 100,000 to 120,000 barrels per day of refined petroleum products and natural gas to turbine plants for the production of electricity of a capacity of 2,000MW."

Renewable energy:

Zambia has abundant water bodies and long hours of sunshine which has supported the increase in the use of renewable energy. The renewable energy in Zambia is dominated by hydro and solar power.

According to ERB, "Zambia has eight mini hydro power stations: Musonda falls power station (10MW) located in Luapula Province, Chishimba Falls power station (6MW) and Lunzua power station (14.8MW) located in Northern Province, Shiwang'andu power station (1MW) located in Muchinga, Lusiwasi Lower power station (12MW) and Lusiwasi Upper Power Station (15MW) located in Central Province, Zengamina power station (0.70MW) and Kasanjiku (0.64MW) power station located in North-western Province."

Zambia's first step into utility-scale renewable power came with its participation in the World Bank's Scaling Solar initiative during which Neoen/First Solar and Enel Green Power signed 25-year power purchase agreements with state-owned power company ZESCO in March 2017 for solar photovoltaic (PV) capacities of 54.3MW and 34MW respectively.

The solar industry is dominated by grid connected Bangweulu (54.3 MWp), Ngonye (34 MWp) located in Lusaka South Multi-Facility Economic Zone (LSMFEZ) and CEC's Kitwe Riverside (1MWp) solar power stations. Additionally, the existing solar off-grids include eight under Solera Power (0.01MWp, 0.015MWp, 0.024MWp, 0.025MWp, 0.024MWp, 0.024MWp,

0.015MWp, 0.024MWp), Standard Micro-Grid (0.01MWp), Chibwika Royal Establishment (0.032MWp) and Engie Power Corner (0.028MWp).

Zambia and the United Arab Emirates (“UAE”) recently signed a USD 2 billion solar power development pact. The pact/joint venture states that UAE through their renewable energy company, MASDAR, will partner with ZESCO to create a solar plant which will generate 2000MW in Zambia. Similarly, ZESCO has also signed a Power Purchase Agreement (PPA) with Integrated Clean Energy Power Company Ltd (CiEG), a subsidiary of China Huadian Corporation, to produce 2,400 Megawatts of renewable energy estimated at US\$3.5 billion.

Political updates

Zambia had a smooth transition of power in the 2021 presidential elections which were won by Hakainde Hichilema, leader of the then opposition party, United Party for National Development.

The new government has implemented policies and changes that have affected the energy sector as discussed below:

Increase in electricity tariffs for the period 2023 to 2027

ZESCO applied to the ERB for an adjustment in electricity tariffs as a result of being loss making. A financial review of ZESCO by ERB confirmed that ZESCO was facing challenges as a result of the growing gap between revenue and the operating costs. The tariff review process revealed that ZESCO had to increase its tariffs for the utility to operate efficiently while also covering its operating and maintenance costs. The Energy Regulation Board therefore granted approval for an increase in tariffs for a multi-year period of five years from 2023 to 2027.

Introduction of the Ministry of Green Economy and Environment:

A new ministry called the, “Ministry of Green Economy and Environment consisting of a department called, “Green Economy and Climate Change,” has been set up to formulate, review policies and legislation on Green Economy and Climate Change.

This also includes collaborating with other ministries on developing and implementing Green Investment and Climate Resilient programmes and projects which includes renewable energy projects.

Open Access:

The Electricity Act No. 11 of 2019 has also provided for open access to the electricity network. According to ERB, “Open access to the network will spur trade and attract private capital into the electricity sub-sector especially in the power generation segment. The market is envisaged to have eligible sellers and contestable buyers. This will provide consumer sovereignty and the competitive phenomenon is expected to enhance efficiency and service provision.”

Revised Pricing Cycle:

The new government revised the pricing cycle to 30 days from 60 days. Since January 2022, ERB has been announcing prices of petroleum products every month.

Private sector led procurement of petroleum products:

Government announced that it would no longer subsidize fuel to some OMCs. According to ERB, government is no longer involved in the procurement of petroleum products being imported into the country. The Oil Marketing Companies (“OMCs”) will procure petroleum products whereas ERB will only be involved in price regulation.

Regulatory framework

The key government regulators/agencies that are involved in the energy sector are listed in the table below:

Stakeholder	Mandate
Ministry of Energy (MoE)	The MoE: Drives policy making and target setting in Zambia's power sector and develops the long-term sector plan, the renewable energy policy, the electrification strategy, and energy efficiency/demand-side management policies and regulations
Energy Regulation Board (ERB)	ERB issue licences, regulate the operations and pricing of the energy and fuel sector, and investigates all energy and fuel related complaints
Rural Electrification Authority (REA)	REA oversees and implements the rural electrification program as mandated under the Rural Electrification Act of 2003 (as amended).

The main Regulations governing Zambia's electricity sector are the Energy Regulation Act, 2019; the Electricity Act, 2019; and the Rural Electrification Act 2003 & the Petroleum Act.

Generation, transmission, distribution and supply of electricity is regulated under the Electricity Act No. 11 of 2019. The Act defines the basic principles for tariff setting, the application for and approval of retail tariffs, and the multiyear and annual tariff adjustments. The two Grid Codes define additional principles as well as the main objectives of network tariff setting. While the Grid Code provides a formula for calculating the transmission network tariff, the Distribution Grid Code states that the ERB is responsible for defining a precise methodology for distribution tariff setting.

The Rural Electrification Act No. 20 of 2003, as amended in 2021, establishes REA whose primary role is to provide electricity to the rural areas of Zambia.

AfCFTA considerations

The African Continental Free Trade Agreement ("AfCFTA"), which became effective in January 2021, seeks to boost intra-African trade and create a single, continent-wide market through progressive elimination of tariffs and non-tariff barriers to trade. The agreement creates the world's largest free trade area connecting 1.3 billion people with a combined GDP of about \$3.4trillion which is a far larger market Zambia has access to under SADC & COMESA. According to a report from the World Bank, the AfCFTA has the potential to boost Africa's income by \$450 billion by 2035 and increase Africa's exports by \$560 billion.

With the AfCFTA in place, it is proposed that over the next 10 years, there will be access to new markets and increased revenue collection in the energy sector. This could create a larger market for Zambia that will trigger substantial investment in the energy sector. Zambia is already exported to neighbouring countries through bilateral agreements or traded on the SAPP market.

Zambia signed and ratified the AfCFTA on 4 February 2021 and has been making the necessary effort to ensure Zambia is well prepared for effective implementation of the AfCFTA, in accordance with the 2022 budget theme titled "growth, jobs and taking development closer to the people according to the International Trade Centre and Ministry of Small and Medium Enterprises Development.

Energy Transition

Following the National Policy on Climate Change in 2016, the Government set out to enact the first ever Climate Change legislation. The Climate Change Act, whose enactment is expected during the first half of 2023, will provide for the regulation of carbon in Zambia.



ESG



ESG reporting framework

There have been a number of initiatives currently underway with respect to ESG and sustainability reporting. It first pertains to companies that are listed on the Lusaka Securities Exchange (“LuSE”). Specifically, the Listing Rules require listed companies to prepare an integrated reporting that provides details of their sustainability strategy and initiatives on ESG.

Further to this, the Zambia Institute of Chartered Accountants (ZICA), the regulatory body for Accountants, has a special committee whose mandate is to focus on all matters concerning integrated/sustainability reporting. It is possible that this committee will investigate the adoption of the work of the International Sustainability Standards Board (“ISSB”) into the Zambia financial reporting framework.

Action or government pledges post-COP27 summit

At COP 27, Zambia represented the African Continent as Chair for the Africa Group of Negotiators (AGN) on Climate Change, a position it will also hold at COP 28. Through the Republican President, Mr Hakiaunde Hichilema, Zambia emphasised on the need to have a template that supports countries to start participating effectively in the carbon markets as would provide a new innovation source for funding. This is seen as an area of potential benefits to flow to the communities.

The country signed a memorandum of understanding with the European Union which is aimed at promoting sustainable management of forests and contribute to social economic development. This is aimed at combating the effects of climate change.

The Government of the Republic of Zambia has committed to continue providing a conducive policy and legal framework which is aimed at facilitating the participation of all stakeholders in addressing challenges of climate change.

ESG and Governance

Following the Presidential elections held in 2021, the fight against corruption in Zambia has taken centre stage. In the last two years, significant strides have been made in the fight against corruption. Zambian agencies such as the Anti Corruption Commission and Drug Enforcement Commission have made efforts to crack down on corrupt behaviour.

However, like many African countries, Zambia still has a long way to go in the fight against corruption.

Fiscal consideration towards Good ESG Practices

In addition to the effort to increase the fight against corruption, the Government has also made deliberate efforts to protect the country's environment. In 2022, The Ministry of Green Economy and Environment was established. This ministry's role is to formulate and review policies and legislation on the Green Economy and Climate change. The ministry is also a way for the Government to encourage investors to participate in the green economy by channelling investments to projects that are low carbon, resource efficient and socially inclusive. The Government has also outlined programmes that are aimed at strengthening climate change adaptation and mitigation, and promoting sustainable environmental, ecosystems and natural resource management.

During the year, the Government of the Republic of Zambia through the Ministry of Green Economy and Environment launched interim guidelines for carbon markets and trading. The guidelines are aimed at enabling the country to facilitate approval, implementation and regulation of carbon projects in the interim.

Furthermore, the Government is set to enact ‘the Climate Change act’ which is aimed at providing legislation around issues of climate change which is expected to be enacted in the year 2023.

In 2022, the Minister of Finance and National Planning proposed to exempt from withholding tax interest income earned on green bonds listed on the securities exchange in Zambia with maturity of at least 3 years to encourage investment in projects with environmental benefits.

The Government has also established a National Climate Change Fund as part of commitment to the fight against climate change.

Below is a summary of the existing policies, legislation and plans in support of green growth in Zambia:

❖ Green Bond Regulation

This was established under the Securities Act No. 41 of 2016. It sets out the Green Bond Guidelines and Listing Rules.

❖ Climate change

Statutory Instrument Number 66 of 2021 'The Forest (Carbon Stock Management) Regulations' provides a framework for the implementation of projects and programmes in forest carbon stock management.

❖ Climate Smart Agriculture Strategy

Promotes the implementation of climate smart agricultural practices that will sustainably increase productivity, enhance resilience, and reduce or remove GHG emissions.

❖ Tax incentives towards environmental protection

Environmental Restoration and Rehabilitation works tax credit which is used in ascertaining the gains or profits of a person involved in mining operations in respect of actual costs incurred by way of restoration and rehabilitation and Value Added Tax: 0% Energy saving appliances, machinery and equipment including solar panels and solar batteries.

Aligning compensation with executive management scorecard, diversity and inclusion, talent optimisation

There are currently no such alignments locally, as there are currently no regulatory or legal requirements to do so.

Community engagement (discuss social acceptance, fair work conditions, general safety of employees and customers with respect to ESG)

Efforts are being made to educate the public on matters concerning ESG. However, there is still a lot to be done to reach the desired levels. For many Zambian businesses, ESG is not a consideration in decision making. In spite of this, there are laws in place that protect the wellbeing of employees and customers. For instance, Zambia has stringent labour laws that ensure that workers are treated fairly and not discriminated against. Furthermore, the Competition and Consumer Protection commission also ensures that the rights of consumers are observed and that the standard of good practice is maintained.

Other benefits for ESG consideration

With about 40% of the country's wealth being in natural resources, Zambia has made environmental sustainability as one of the top priorities; National Capital Accounting is seen as an essential tool for success.

As a developing economy, it is important that ESG be adopted to aid in economic development and growth.

Community sensitisation is essential, as the burden is not the governments alone. Zambia should be commended for the steps that are being taken already, however, more remains to be done.

This will ensure that the economic growth being pursued is sustainable. It will also ensure that the systems in place support and promote the well being of the environment and the society at large.

Environmental sustainability and a good governance environment are part of the key pillars that the government has underpinned for a growth agenda for economic transformation; as outlined in the country's 8th National Development Plan (8NDP).

The country has recorded some successful transaction in sustainable investments which are as follows:

- Renewable energy - rural enterprise hub initiative
- Forestry protection - BioCarbonPartners Zambia, Lower Zambezi REDD+ Projects, Luangwa Community Forests Project.
- Climate resilient agriculture:- Yalelo – Expansion of Farmed Bream operations using climate resilient agriculture practices and renewable energy and Good Nature Agro – Legume seed producer and offtaker using climate resilient agriculture practices and renewable energy.
- Conservation management- African Parks Collaborative Management Agreements, Peace Parks/WWF Collaborative Management Agreements, Frankfurt Zoological Society and International Crane Foundation/WWF Collaborative Management Partnerships.

Interim guidelines on handling of carbon markets and trading in Zambia:

In a bid to benefit from carbon trading in the interim period, the Government, in 2021, issued Statutory Instrument (SI) No. 66 of 2021, the Forest (Carbon Stock Management) Regulations. The SI encourages community Forest management groups to mobilise and participate in carbon trading through, among other things, reduction in deforestation and forest degradation, forest conservation and sustainable management of forests. The SI is however restricted to forest related carbon and does not address other forms of carbon which are equally important with enormous potential for exploitation.

The Ministry of Green Economy and Environment have published interim guidelines on handling of carbon markets and trading in Zambia.

Commitment to global policy:

At the November 2021 Conference on Climate Change - Conference of Parties (COP 26), Zambia joined other nations to reaffirm their commitment to achieve net-zero by 2060.

During the COP26 Leaders' Summit in November 2021, The Zambian President, Hakainde Hichilema, affirmed Zambia's willingness to support and work closely with the global community in resolving climate change. The country committed to cutting its carbon emissions by 47% if adequately supported by world leaders and global partners. The President also explained that Zambia submitted a revised and updated nationally determined contribution to the Paris agreement with the ambitious pledge to reduce greenhouse gas emissions by 25% based on the 2010 levels by 2030 using a combination of our own domestic resources and other support that we have traditionally received."

The President also emphasised that Zambia will expedite implementation of activities through development of bankable project proposals to enable the country to access the necessary financing.

According to the British International Investment, "CDC has announced its support for the Green Growth Compact ("Compact"), a cooperation framework signed between the UK Government and the Government of Zambia.

The Compact outlines the countries' joint objective to build a stronger, more diversified and inclusive Zambian economy. The agreement will support Zambia in following a green development pathway contributing to global emission reductions whilst protecting Zambia's unique biodiversity for future generations, alongside building economic prosperity. Within five years, the Compact hopes to achieve many positives including facilitating £100 million new financing for Zambian small and mid-size enterprises (SMEs), increasing UK Foreign Direct Investment in Zambia by £1 billion and enabling 500MW of new renewable energy generation capacity in the country."



© 2023 PwC. All rights reserved. Not for further distribution without the permission of PwC. "PwC" refers to the network of member firms of PricewaterhouseCoopers International Limited (PwCIL), or, as the context requires, individual member firms of the PwC network. Each member firm is a separate legal entity and does not act as agent of PwCIL or any other member firm. PwCIL does not provide any services to clients. PwCIL is not responsible or liable for the acts or omissions of any of its member firms nor can it control the exercise of their professional judgment or bind them in any way. No member firm is responsible or liable for the acts or omissions of any other member firm nor can it control the exercise of another member firm's professional judgment or bind another member firm or PwCIL in any way.

