

Oil and Gas Tax Guide for Africa 2015

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



Foreword

We are proud to present you with the second edition of our Oil and Gas Tax Guide for Africa. Our PwC oil and gas country specialists have provided up to date information on the oil and gas fiscal and regulatory regimes in their countries along with significant developments. We have included information for 19 countries and we plan to expand our coverage to other countries in future editions.

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

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

A handwritten signature in black ink, appearing to be 'D. White'.

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Contents

Algeria	5
Angola.....	13
Cameroon	25
Egypt.....	39
Gabon	49
Ghana	61
Ivory Coast	74
Kenya	81
Liberia	89
Libya	97
Morocco	105
Mozambique	113
Namibia	124
Nigeria	138
Republic of Congo	156
Senegal	162
South Africa	168
Tanzania	178
Uganda	188

Algeria

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Country profile

Brief overview of the oil and gas developments in Algeria

Algeria's first commercial oil discovery occurred in 1956 with production beginning in 1958. Algeria currently has proven reserves of 12.2bn barrels and produces at a rate of 1.37m bpd which provides around 35% of the country's gross domestic product. The country is considered the leading natural gas producer in Africa. All of the country's proven oil reserves are held onshore and there has been limited offshore exploration. The Algerian territory has been divided into Zones A, B, C and D with specified tax rates applicable in each registered Zone. The hydrocarbon reserves discovered to date in Algeria are contained within approximately 200 oil and gas fields: 73 situated in the Illizi Basin, 57 in the Central Saharan Basin, 34 in the Ghadames-Rhourde Nouss and 31 in the Oued Mya Basin.

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

Fiscal regime

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

The Law 86-14 implemented the former Hydrocarbons Code (hereafter referred to as "Law 86-14"), which remains applicable to any contracts concluded with Sonatrach before the entry into force of the new Hydrocarbons Code introduced by the Law No. 05-07 in 2005 (hereafter referred to as "Law 05-07").

Activities outside the exploration and exploitation (notably well services, pipeline transport etc.) are taxed under the standard tax regime (at a rate between 19% and 26%).

Algeria

Regulators

The key regulators in the oil and gas industry include:

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

Forms of contracts

Exploration and production agreements provided by the 1986 Hydrocarbons Law includes joint ventures, partnerships, production sharing, and risk service contracts.

The 2005 Hydrocarbons Law includes two main instruments:

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

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

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

For unconventional liquid or oil and gas, the exploration period is 11 years with an exploitation period of 30 – 40 years dependent upon the resource.

The production period may be extended for up to 10 years.

Taxation regime

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

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

- **Royalties:** Royalties on gross revenues are paid by Sonatrach for the whole production. The standard royalty rate is 20%, however it can be reduced to 16.25% or 12.5% for Zones A and B respectively. A reduced rate of 10% is also applicable dependant on certain economic and geographical criteria being fulfilled. Sonatrach is liable for the monthly payment of the royalty (article 39 of the law No. 86-14, as amended).
- **Income tax:** Under a product sharing contract (PSC), the payment of income tax is ensured by Sonatrach and included in the foreign partner's share of hydrocarbon production.
- **Income tax applies to the foreign company's share of "profit oil".** Profit oil is calculated as the foreign company's gross revenue less royalties, transportation costs, depreciation costs and exploitation costs borne by the company.
- **The profit oil is subject to tax at the rate of 38% which is withheld at source by Sonatrach.** Oil companies are not authorised to consolidate all their activities in Algeria to determine their corporate income tax liabilities.
- **Tax on corporate earnings:** This tax only concerns the share of profit oil belonging to Sonatrach. That share amounts to profit oil minus the foreign partner's share and the corresponding income tax. The maximum tax is 85%. Reduced rates of 75% for Zone A and 65% for Zone B apply.
- **The Windfall Tax (Tax on exceptional profits (TPE)):** TPE applies to exceptional profits on contractas under Law 86-14. When the monthly fixed average of FOB Brent oil exceeds USD 30, a tax rate of 5%-50% is applied to the foreign partners production part.

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

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

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

The rates of the surface fee per square kilometre are (in Algerian Dinars (AD)):

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

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

Algeria

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

Petroleum Income Tax (PIT): PIT is calculated based on the law applicable to the contract. In both cases, the taxable income is the value of production by each perimeter where exploitation activities are undertaken, less deductible expenses (royalties, exploration and development costs, abandonment reserves).

Contracts entered into before 20 February 2013

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

Accrued production in 10 ⁹	First accrued production point (S1)	70
	Second accrued production point (S2)	385
PIT rate	First level	30 %
	Second level	70 %
Marginal rate	Level when PV is between S1 & S2	$\frac{40}{(S2-S1)} \times (PV-S1) + 30$

Contracts entered into after 20 February 2013

For contracts starting after 20 February 2013, the PIT calculation is based upon the profitability of the exploitation activities and the tax rate is from 20% to 70%, through the calculation of coefficient R1 and R2 replacing the previous thresholds (S1 and S2).

The coefficient (R1) is the ratio between the sum of the Gross Profit updated at a rate of 10% from the first year where the contract entered in force up to the year preceding the determination of the rate of PIT (i.e. Accumulation 10%) and the sum of the Investment Expenses updated at the same rate (i.e. 10%) from the first year where the contract entered in force up to the year preceding the determination of the rate of PIT during the same period (i.e. Cumulative 10%).

$$R1 = \text{Accumulation (10\%)} / \text{Cumulative (10\%)}$$

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

$$R2 = \text{Accumulation (20\%)} / \text{Cumulative (20\%)}$$

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

		Case 1	Case 2	Case 3
	$R1 \leq 1$	20%	30%	20%
PIT rate	$R1 > 1$ 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 include in the case 3 where the daily production is more than 50,000 BOE;
- Case 3 includes small deposits and underexplored perimeters with complex geology and/or which lack infrastructure.
- Additional profits tax (APT): APT is calculated by reference to the annual profits (less PIT). Royalties, PIT, depreciation and abandonment reserves are all deductible. The APT rate is generally 30% except for where the profits are to be reinvested (15%) or where the profits are in relation to unconventional oil and gas, small deposits and underexplored areas the rate is 19%.
- Tax on flaring: Although it is against the law, ALNAFT can give authorisation for up to 90 days to allow a company to undertake gas flaring. The tax is levied at AD 8,000 per thousand normal cubic meters (nm3) and is not tax deductible.

Other Taxes

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

- Payroll related taxes: Personal income tax is withheld at source by the employer according to a progressive scale (up to 35%). In addition, training tax and apprenticeship tax is withheld at the rate of 1% of annual payroll per tax.
- Social security contributions of 35% of the annual payroll split 26%/9% between the employer and employee respectively. However, the 2005 Law provides an exemption on social security contributions on the salaries of the employees of foreign oil companies where the employees care covered by their home country Tax is withheld at the rate of 24% on remuneration (consulting fees, management fees, services, remuneration, lease equipment, royalties etc.) paid by an Algerian resident to foreign service suppliers without a permanent establishment in Algeria, subject to the relevant double taxation treaty. Sonatrach will pay the tax on behalf of the foreign company, however the Contractor is required to annually calculate the amount of tax on its remuneration and will prepare the tax return to be submitted to the Algerian tax authority.
- Land taxes, registration fees and stamp duties apply at various rates.

Compliance

Annual corporate income tax (IBS) return:

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

The failure to file or the late filing of the annual IBS return is subject to jeopardy taxation by the tax authorities, with an increased penalty of 25%. Failure to submit the

Algeria

above mentioned listed documents by the due date will incur a lump sum penalty of AD 1,000 per document.

Monthly G 50 forms:

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

This form must be filed within the 20 days following the end of the month of the remuneration payment of the related taxes must be made at the same time.

The penalty for failure to withhold/insufficient withholding is 25% of the tax due. Failure to pay the related tax within the allotted timeframe is subject to a 10% tax penalty.

Annual declaration of wages and salaries (DAS):

Whilst oil companies are exempt from IBS, they are required to file an annual declaration of salaries on a G29 form. The form requires details of the beneficiaries (local or expatriate), as well as the gross payment, the tax withheld, the net payment, and the period to which the payment relates. Employers paying wages and salaries must file the declaration before April 1 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.

Incentives in the oil and gas industry

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

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

Withholding tax

Services

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

Dividends

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

Royalties

The general withholding tax on royalties is 24%.

Interest

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

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

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

Thin capitalisation and Transfer Pricing

There are no thin capitalisation rules in Algeria.

Regarding the transfer pricing regulation, as a general principle, the arm's length principle should be adopted in respect of payments made to related parties. Profits indirectly paid to related foreign companies may be added back to the taxable basis in Algeria. In principle, an Advanced Pricing Agreement may be available from the Algerian tax authorities through a binding ruling procedure.

Companies monitored by the Department for large sized companies (Direction des Grandes Entreprises ("DGE")) must file transfer pricing documentation with their annual tax returns to the tax authorities. Generally exploration and production companies will be monitored. Algeria is not a member of OECD and therefore not bound by the OECD guidelines, however the Algerian Administrative guidelines refer to OECD transfer pricing methods.

On request of the tax authorities, in the framework of a tax audit, companies operating in Algeria and undertaking cross-border transactions must provide supporting documentation relating to their transfer pricing policies.

A lack of or insufficient documentation at the time of filing the tax return will trigger AD 500,000 tax penalty can apply. In the case of a tax audit, an additional penalty of 25% of deemed transferred profits applies.

Algeria

Angola

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Country Profile

Significant developments

Under the ongoing tax reform, covering the Tax and Customs System as well as Tax Authorities and Justice, new legislation was published in October 2014 that has a strong impact not only on company and personal taxation, but also on the relationship between taxpayers and the Tax Authorities.

The legislation recently published includes changes in the General Tax Code, the Tax Enforcement Code, the Corporate Income Tax (CIT) Code, the Personal Income Tax Code, the Investment Income Tax Code and the Stamp Duty Code.

Brief history on oil and gas development

Angola is Africa's second largest oil producer, after Nigeria, producing over 1.7 million barrels per day (bpd).

The economy grew by 6.8% in 2013, below the expected / anticipated 7.1%. Angola's extra gross domestic product (GDP) came mostly from the non-oil energy, agriculture, fisheries, manufacturing and construction sectors. In 2014 the economy grew by 3.9% and is projected to decrease down to 3.8% in 2015 suffering from significantly lower oil prices.

The 6.8% GDP growth was driven by robust non-oil activity, notably in energy (22% expansion), fisheries (10%), agriculture (9%), manufacturing (8%) and construction (8%).

We highlighted some key trends and developments in Angola's oil and gas sector:

- Angola will see continued exploration of its prospective offshore waters. However, we expect a slowdown in high-cost, high-risk ultra-deepwater and pre-salt drilling as companies look to rein in capital expenditure and exercise tighter fiscal discipline.
- Oil production is set for strong growth over coming years, as a number of major new projects are brought online. Post-2020, production growth will slow, due to rapid natural decline rates at producing fields and tightening investment in a lower oil price environment.
- Gas production levels will remain low, and heavily linked to LNG exports. Looseness in the global LNG market and a lack of long-term sales agreements will depress demand for Angolan LNG, constraining.

Angola

Fiscal Regime

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

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

- Tax on income from oil (Imposto sobre o rendimento do petróleo);
- Oil production tax (Imposto sobre produção do petróleo);
- Oil transaction tax (Imposto de transacção do petróleo);
- Surface charge; and
- Training contribution.

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

Regulators

The key regulators in the oil and gas industry include:

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

Forms of contracts

The most common forms of petroleum contracts in Angola include:

Concession/Joint Venture

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

Production Sharing Contract

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

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

Risk Service Contract

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

Taxation regime**Direct taxes****Petroleum Income Tax**

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

The oil produced is split in two parts: cost oil and profit oil. Cost oil is a proportion of the total oil produced to which the oil companies carrying out the oil activities can dispose of freely to cover the costs that had to be incurred to produce the oil. Profit oil is the remaining oil produced.

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

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

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

Production and development costs, including their share of A&S costs, are recovered from each development area; any unutilised balance of cost oil will be used to recover exploration costs.

If the production and development costs are not recovered, they will be carried forward for future recovery against the respective development area. Development costs are capitalised and amortised at a rate of 25%.

PIT is payable on the actual profit computed in accordance with the rules established in Law 13/04 and the concession agreement, at a rate of 50%.

Oil production tax

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

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

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

Oil transaction tax

An oil transaction tax (TTP) is levied on the profit of oil companies operating in Angola under concession or RSA agreements. Taxable profit for TTP purposes is calculated in

Angola

accordance with the general rules applicable to the PIT, as per Law 13/04. There are, however, special TTP rules which are discussed below.

Deductible expenses

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

Non-deductible expense

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

TTP is levied at a rate of 70%.

Surface Charge

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

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

Training Contribution

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

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

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

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

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

Compliance Requirements

Tax returns and payments

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

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

Penalty

- Late submission of returns: Can go up to USD 500,000
- Late payment of tax: 35% of the tax payable plus 1% monthly interest

Angolan local content regulation in the Oil and Gas Industry

The Angolanisation concept

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

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

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

- Law 10/04, dated 12 November 2004, Law of Petroleum Operations, states that the Government should implement actions so as to promote and motivate the participation of companies (held by Angolan individuals) in the oil sector (Article 26).
- Dispatch 127/03, dated 25 November 2003, issued by the Ministry of Petroleum, establishes the policy concerning the contracting of goods and services for the oil sector. The main purpose of the Dispatch is to protect the involvement of the local entrepreneurs into the oil sector.
- In addition, this Dispatch also states in its article 2, §2.1, that the services listed therein should be carried out through association between foreign and national companies. In its article 16 it is clearly defined that preference should be given to national companies, provided that their fee quotes are not 10% higher than the fee quotes of the others.
- Finally, we mention the Decree 48/06 (dated 1 September 2006) which approved the requirements for public bids in the oil sector. This Decree clearly states in its article 6, §5, the definition of an Angolan company, which basically consists of having a no less than 51% of the capital held by Angolan individuals or entities. This Decree also refers in article 16, §9 that the Supervisory Ministry should prepare and keep an updated list of Angolan entities that provide services and goods to the oil sector, which must be consulted by the operators whenever a public bid is released.

Angola

Sonangol's prior approval of the contracts

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

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

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

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

Incentives in the oil and gas industry

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

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

Oil exploration and production companies

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

Withholding tax

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

The obligation to withhold and pay this tax lies with the company contracting the services, and these companies are required to provide their service suppliers with

a certificate confirming the payment of the tax withheld to allow those suppliers to deduct these values against their CIT payments.

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

Investment Income Tax (IAC)

Dividends

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

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

Interest

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

The tax rate is 10% for the following interest:

- Bond interest.
- Interest from shareholders' loans.

The tax rate is 5% for the following interest:

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

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

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

Royalties

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

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

Angola

Capital gains tax (CGT)

According to the new CIT Code, the capital gains arising from the disposal of bonds, securities or other financial instruments issued by any company, of Treasury Bills and Bonds, as well as of Central Bank Securities, are taxable under IAC Code, as referred to above. The positive balance calculated in each period, between capital losses realised, provided these do not arise within the scope of a commercial activity subject to CIT or personal income tax, are also taxable for IAC.

Thin Capitalisation and Transfer Pricing

There are no thin capitalisation rules in Angola.

Recently regulations have been in force relating to transfer pricing rules and documentation. According to those rules, any commercial transactions between a taxable person and some other person, liable for CIT or not, with whom they have a special relationship, must be agreed upon, accepted and operated according to terms or conditions identical to those which would have been agreed upon, accepted and operated between independent entities in comparable transactions. Transfer pricing documentation will be required upon fulfilment of specific requirements.

Indirect taxes

Value-added tax (VAT)

There is no VAT in Angola. A consumption tax exists but it has more the nature of an excise duty.

Custom Duties (Direitos Aduaneiros)

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

According to Law 11/04 importation of goods for the oil & gas sector is exempt. The exemption applies to goods that are not available in Angola and are exclusively for use in petroleum operations. The exemption also applies to the general customs services fee.

Consumption tax

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

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

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

Type of Service	t
Hotel management and similar services	10
Telecommunications	5
Water supply	5
Electricity supply	5
Lease of areas designated for collection and parking of motor vehicles	5
Leasing of machinery and other equipment, if not subject to IAC	5
Leasing of areas used for conferences, colloquiums, seminars, exhibitions, showrooms, advertising or other events	5
Consultancy services, namely legal, tax, financial, accounting, IT, engineering, architecture, economics, real estate, audit services and legal services	5
Photographic services, film processing and imaging, IT services and construction of web sites	5
Private security services	5
Tourism and travel services promoted by travel agencies or equivalent tour operators	5
Canteen, cafeteria, dormitory, real estate and condominium management services	5
Access to cultural, artistic and sporting events	5

The responsibility for consumption tax payment and any declarative obligations lies with the producer, supplier of goods, or service provider, rather than the final consumer. However, the consumption tax, in practice, increases the final price attributed to the goods produced or services rendered.

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

Services providers are exonerated from the obligation to pay consumption tax in the provision of services to the oil & gas companies, but will only receive from the later the amount due for the services, although it should include in their invoices the assessed consumption tax. The obligation of paying the tax should now be done by the oil & gas companies, pursuant to the provisions of the Consumption Tax Regulation.

The consumption tax amount supported by oil & gas companies will be deductible for Petroleum Income Tax purposes.

Angola

Employment Income Tax (IRT)

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

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

Taxable employment income for IRT purposes comprises any remuneration paid in cash or in kind to an individual in the form of regular or incidental wages, salaries (including any amounts withdrawn as remuneration by the partners of unincorporated businesses), bonuses, premiums, entertainment and travel allowances on the value exceeding that payable to civil servants, subsidies, rewards, directors' fees, in respect of dependent or independent services, irrespective of the source, place, currency and form stipulated for its calculation and payment.

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

- Insurances mandatory according to Law
- Retirement pensions
- Housing allowances for up to 50% of the rental price
- Vacation and Christmas allowances up to 100 % of the basic salary
- Food and transport allowance up to AKZ 30.000 of the monthly global amount
- Employees' contributions paid to social security

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

Some of these items are:

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

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

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

For self-employers, companies must withhold tax from any payments made to them at a rate of 10.5% (corresponding to 70% of the 15%) or 6,5% depending on the services being rendered.

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

For self-employers and income received by company managers income is subject to a flat rate of 10.5% (corresponding to 70% of the 15%) contrary to income earned by workers carrying out industrial and commercial activities on which a rate of 6,5% or 30% applies, depending on the turnover volume in relation to that foreseen for the respective activity in the minimum profits table.

Social Security Contributions (Segurança Social)

Registration

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

Contributions

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

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

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

Property taxes

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

Leased

According to the recent regulation, rents paid by Angolan entities (individuals or companies) that carry out commercial activity must withhold 15% IPU from rents paid. The IPU so withheld must be paid over to the tax authorities by the end of the following month. Where the tax was not withheld, the landlord will have to pay the additional tax assessed in tax return filed, in January and July of the following year.

Not Leased

IPU is levied on the patrimonial value, as follows:

- Up to 5.000.000 (Kwanzas) 0%
- Over 5.000.000 (on the excess) 0,5%

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

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.

Angola

Stamp tax is due on the acquisition of real estate by the acquirer, at a rate of 0.3%.

Stamp tax also applies on the registration of letting and sub-letting contracts at a rate of 0.4% or 0.1% for commercial or residential leases, respectively.

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

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

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

Cameroon

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Country profile

Brief history on oil and gas development

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

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

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

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

After a period of decline, an increase in discovery of proven reserves is expected due to the development and the intensification of drilling activities¹ under the signature of new Petroleum Contracts and the retrocession of the Bakassi peninsula to the Republic of Cameroon.

From 2011 to 2013, Cameroon's oil production in million barrels was as follows: 21.6 in 2011, 22.6 in 2012 and 24.2 in 2013.

As at 31st October 2014, Cameroon's oil production was established at 22.69 million barrels, hence an increase of 15.10% compared to 2013 at the same period. According to the National Hydrocarbon Company (NHC), this increase is due to the entry into production of three new oil fields namely Padouk, inter-Inoua Barombi and Barombi fields, as well as the increase in production of the Dissoni field. It is worth noting that the Mvia oilfield located onshore in the Douala-Kribi-Campo basin entered also into production in November 2013.

1 65 wells of exploration and appraisal have been drilled in Cameroon between 2008 and 2013.

Cameroon

According to NHC's forecasts, an increase and even a double of the overall oil production is expected in 2016 (up to 57 million barrels) due to the exploitation of new oilfields.

Cameroon joined EITI² in 2005 and acquired the status of EITI-Compliant country on October 17th, 2013.

Reservoir estimates

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

Significant new developments

The 2014 Finance Law specifically targets the disposal of oil and gas rights – consequently, capital gain realised as a result of the total or partial, interim or final transfer of rights/interests in natural resources shall be subject to a tax on the income realised, irrespective of whether these transfers occur in Cameroon or abroad. The tax rate imposed shall be 16.5%.

The following developments also result from the 2014 Finance Law which came into force on 1st January 2014, subject to stabilization clauses provided by some oil contracts:

- Application of thin capitalisation rules;
- The obligation to submit transfer pricing documentation at the same time as the Annual Tax Return, for entities falling under the Large Taxpayers' Unit (LTU).

Fiscal regime

Institutional overview and regulatory framework

There are two regulatory frameworks in Cameroon:

- Conventions of Establishment concluded before the Petroleum Code of 1999 (some of which are still in force);
- The Petroleum Code (published in 1999).

According to the Conventions of Establishment, Petroleum Operations cover exploration and production operations and any other activities related thereto.

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

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

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

² Extractive Industries Transparency Initiative.

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

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

Forms of contracts

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

Conventions of Establishment and Contracts of Association

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

Concession Contracts

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

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

Production Sharing Contracts

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

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

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

Government participation

The State, either directly or through a duly mandated government body or unit reserves the right either to acquire or to have acquired, an interest under any legal

Cameroon

form whatsoever, in all or part of the petroleum operations which are the subject of a Petroleum Contract, in accordance with the terms and conditions provided in such Petroleum Contract.

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

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

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.

Capital investment regulations

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

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 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 employment of qualified personnel of Cameroonian nationality for the purposes of their petroleum operations. Therefore, and as soon as petroleum operations start, 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.

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

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

Taxation regime

Direct taxes

Petroleum/oil taxation

There are two main regimes of petroleum taxation in Cameroon:

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

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

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

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

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

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

The main differences between the two types of contracts are:

- PSCs are not subject to royalties based on the production, but Concession Contracts are;
- There could be “excess profit tax” calculated according to the provisions of the Concession Contract³;
- In the case of PSC, a part of the production (Cost Oil) is allowed to the oil company to cover petroleum costs and the “Profit Oil” is shared between the State and the Oil Company according to a ratio agreed upon in the PSC.

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

3 “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 Investments) is equal to or greater than one point five (1.5) but 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 equal to or greater than two point five (2.5);
- No “excess profit tax” will be due if “R” ratio is less than one point five (1.5).

Cameroon

Petroleum Code and the oil contracts, export fees, and exemption from customs duties on listed equipment during the exploration phase;

- Taxation in the form of: annual surface rental fees, CIT at a rate between the common rate (33% since January 2015) and 50% (40% being the rate agreed within the majority of PSCs), customs duties during the exploitation phase.

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

- Each Operator / Holder of the oil contract is responsible for its own CIT;
- Exploration and development costs shall be amortised according to modalities set out by the oil contract;
- Equipment shall be amortised from the commencement of their utilisation;
- Exploitation cost shall be booked in expense accounts;
- Losses can be carried forward to a maximum number of years provided 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 upon renewal.

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

For Exploration Authorisation, the amount of flat fees shall be XAF 15,000 /km² at the granting and XAF 10,000/km² at the renewal, with a minimum levy of XAF 6 million.

For Exploitation Authorisation, the flat fee is as follows:

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

Annual Surface Rental fee

Holders of petroleum contracts and Authorisations deriving therefrom are subject to an annual surface rental fee. The payment of the annual surface rent is due as from 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;
- The following 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 million⁴.

Gas taxation

There is no specific regime for gas taxation in Cameroon.

Liquefied natural gas (LNG) regime

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

Withholding taxes

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

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

Cameroon

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

Capital gain tax (CGT)

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

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

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

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

Consumption tax

There is no such tax in Cameroon.

Sales tax

There is no sales tax other than VAT applicable to oil operations in Cameroon.

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 destined 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.

Other custom duties

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

OHADA Levy

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

Data processing fee

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

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

SGS Inspection fees

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

Cameroon

Registration duties

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

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

Stamp duty

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

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

The social contribution is divided into three parts:

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

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

- Contribution for old age pension: 4.2%.

Incentives in the oil and gas industry

Capital allowances

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

Investment tax credits

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

Tax exemption

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

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

Exemption 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 shall apply 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 the deadlines provided by the Petroleum Contract.

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

Quarterly returns

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

Payment of income tax

The payment of CIT for a given fiscal period shall be effected in four installments. Each installment shall be determined by application of the rate of CIT on the estimated portion of the taxable income for the year attributable to the quarter. Each installment shall be paid no later than the 15th of the month following the quarter in which it

Cameroon

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%.

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.

Profit repatriation issues

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

- The right to freely deposit, retain and acquire or borrow funds abroad, including proceeds of sale of their proportional share of production, and to freely dispose thereof, to the extent the amount exceeding their tax obligations and local needs for petroleum operations on the territory of Cameroon;
- The right to transfer and freely retain abroad, the proceeds from sales of hydrocarbons, dividends and proceeds of any type from invested capital as well as the proceeds from the liquidation or disposal of their assets;

Transfer Pricing and thin capitalization Regulations

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

This obligation shall apply where:

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

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

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

Interest charged on loans obtained from associates or related companies holding (directly or indirectly) at least 25% of the capital or voting rights of the debtor company shall not be deductible in either of the situations below:

- Loans granted exceeding one and a half times the equity value; or
- Interests paid to shareholders exceeding 25% of the gross operating income.

Other tax issues

Payroll taxes

Personal income tax

Persons liable: tax residents

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

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

After deduction of charges, the Personal Income Tax is calculated according to a progressive rate ranging from 11 to 38.5%.

Other Taxes/Contributions on payroll

In addition to the Personal Income Tax and social insurance contributions made to the National Social Insurance Fund (NSIF), there are other taxes and contributions imposable on the salaries of employees working in Cameroon. These are divided

⁵ The turnover threshold to be considered is at least equal to XAF 3 Billion.

Cameroon

into taxes to be borne by the employer, and taxes to be borne by the employee, as summarised in the table below.

Other Taxes / Contributions on payroll	To be borne by the Employee	To be borne by the Employer
CRTV Royalty	Depends on the amount of gross salary; this royalty does not surpass XAF 13 000 per month.	N/A
Local Development Tax	Depends 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 benefits in kind being considered for their actual amount. The rate is 1.5%.
National Employment Fund (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 contributions

No other statutory contributions are applicable in Cameroon.

Egypt

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Country profile

Brief history on oil and gas developments

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

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

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

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

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

Fiscal regime

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

This law overrides the domestic law when calculating taxable profits.

Egypt

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

The upstream industry:

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

The Downstream Industry:

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

The Midstream Industry:

The midstream industry processes, stores, markets and transports commodities such as crude oil and natural gas. Midstream operations are usually included in the downstream category.

Please note that the upstream industry pay bonuses called “Signature and production bonuses” that are payable to the government for each of the respective Petroleum Concession Agreements.

Regulators

The key regulators in the oil and gas industry include:

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

Forms of contracts

In Egypt, there is only one type of contract / concession agreement; that is the profit sharing agreement as described above.

Royalty

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

Taxation regime

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

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

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

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

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

Compliance Requirements

Tax returns and payments

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

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

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

Penalty

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

Incentives in the oil and gas industry

Upstream activities:

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

Tax Losses (All Activities):

Income tax losses may be carried forward for 5 years.

Withholding tax

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

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

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

Egypt

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

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

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

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

Dividends Tax

- A 10% WHT will be imposed on dividends paid by Egyptian companies to resident corporate shareholders. The 10% WHT can be reduced to 5% if both of the following conditions are met:
- The shareholder holds more than 25% of the share capital or the voting rights of the subsidiary company.
- The shares are held for at least two years.
- Profits of foreign companies operating in Egypt through a PE 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.

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

Participation exemption

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

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

However, dividends received by an Egyptian resident corporate shareholder from another resident subsidiary is not added to the taxable income of the recipient entity

and only the WHT tax applies upon the distribution (i.e. the WHT imposed upon the distribution of the dividends is a final tax based on the latest amendments of the law).

Capital gains tax

Sales of listed shares

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

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Sales of unlisted shares

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

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

Concession Agreements

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

Transfer Pricing and Thin capitalization

Transfer Pricing:

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

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

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

Egypt

methods for determining such neutral price, according to the rule of the law, are as follows:

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

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

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

Thin capitalization:

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

- Debt-to-equity ratio does not exceed 4:1 The Egyptian transfer pricing rules (i.e. arm's-length principle) must be followed (see Transfer pricing in the Group taxation section for more information). In case of a tax audit, if the interest rate cannot be supported by appropriate documentation (demonstrating arm's length), the Tax Authority has the right to adjust this price to arrive at a 'neutral price' and recalculate the taxes due accordingly;
- The interest rate should not exceed twice the discount rate as determined by the Central Bank of Egypt at the beginning of the calendar year in which the tax year ends; and
- The loan should be business related.

Indirect Taxes

General Sales Tax (GST)

The upstream activities

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

The midstream and downstream activities

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

Proposed new VAT Law

The tax authorities have announced the intention to introduce a new VAT System. There is no official publication of the new VAT law to date and therefore VAT is not applicable in Egypt.

Under the provisions of the new VAT Law, the standard tax rate is expected to be increased (12% or 14% compared to the current sales tax rate of 10%). The services will become taxable (most services are currently not taxable under the sales tax legislation). Moreover, the threshold for registration of the resident companies is expected to increase. The implementation of the reverse charge (self-assessment mechanism) on certain supplies by non-residents to Egyptian customers. Finally, it is expected that the exemptions under the new VAT law will be fairly limited.

The new VAT law is expected to transform the current GST system (which is partly VAT-like as applicable to goods and partly on selected services) closer to a modern full-fledged VAT system.

Custom Duties

The upstream activities

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

The midstream and downstream activities

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

Social Security contributions

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

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

- a. A treaty exists between Egypt and the employee's country, and it allows him/her to join the social insurance scheme, or;
 - b. The employment contract exceeds one year.
- In both cases, the employee will be expected to join the scheme.
 - The Social Insurance Law covers both Egyptian employees and foreign employees whose countries have treaties with Egypt for reciprocal Social Insurance treatments.
 - Managers of an LLC should contribute into the social insurance system regardless of their nationality.
 - Countries with reciprocal treaties are Greece, Cyprus, Morocco, Libya, Sudan, Jordan, Syria, Iraq, Lebanon, Somalia, and Palestine.

Social Insurance Rates

- Employers and employees are both liable to pay towards social insurance, although it is the responsibility of the employer to remit the amount, and it is calculated by reference to the amounts paid by the employer to the employee.
- The thresholds for calculating social insurance per month are presently EGP 1,012.5 on basic salaries and EGP 1,830 on variable elements. Variable elements include the remainder of the basic salary, if it is in excess of EGP 1,012.5 per month, as well as overtime, bonuses, representation allowances and similar emoluments.

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

Egypt

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

Payroll contributions

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

- Employees are taxed according to the following brackets; and are entitled to annual salary tax exemptions (EGP 7,000):
 - EGP 0 - 6,500 0%
 - EGP 6,500 - 30,000 10%
 - EGP 30,000 - 45,000 15%
 - EGP 45,00 - 200,000 20%
 - More than EGP 200,000 22.5%
- Non-resident employees are subject to tax at the same tax brackets mentioned above with also the annual exemption of EGP 7,000.

Property taxes

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

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

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

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

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

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

Factors affecting the taxable amount:

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

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

- $\text{Rental value} = (\text{Market value} \times 60\% \times 3\%)$.
- $\text{Taxable amount} = (\text{Rental Value} \times 68\%)$.

Stamp taxes

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

Stamp taxes apply as follows:

- Land registration/property transfers/transfer of deeds (including lease agreements);
- Banking Transactions;
- Insurance Premiums; and
- Payments by Governmental Bodies.

There are two distinct types of tax:

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

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

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

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

Egypt

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

Gabon

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Country profile

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

Significant new development

On 28 August 2014, a new hydrocarbon law was enacted with new regulatory and fiscal terms to apply to oil contracts to be concluded with the State of Gabon from the date of publication of the said law.

A major change is that where prior contracts provided for a share of production on a “net of tax” basis (i.e. with the payment of Gabonese Income Tax made on their behalf by the Gabonese Republic), new contracts provides for a corporate tax to be paid.

Also the new hydrocarbon law provides for a possible minimum 20% State participating interest in petroleum operations and a 15% Gabon national oil company participating interest in petroleum operations.

In order to avoid any further VAT refund issue, a new VAT regime has been introduced by the new Hydrocarbon law where an exemption or 0% VAT regime mostly applies for petroleum operations.

Gabon

Brief history on oil and gas development

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

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

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

Fiscal regime

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

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

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

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

Concessionary system

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

Production sharing system

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

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

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

PSC must cover certain provisions, including:

- Cost of oil recovery terms
- State revenue terms (tax oil, corporate tax, other taxes and royalties)
- Transfer of working interest restrictions and approval
- Dismantling and site remediation
- Provision for diversified investment and for investments in Hydrocarbon
- Domestic supply obligations; and
- Post drilling obligations, health and safety matters and environment management.

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

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

The JOA typically includes:

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

Taxation regime

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

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

Gabon

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

Direct taxes

Corporate Tax

With the new hydrocarbon law, two tax regimes currently apply to the PSCs.

PSCs signed prior to the new Hydrocarbon Law

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

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

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

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

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

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

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

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

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

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

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

PSCs signed after the new Hydrocarbon Law

Where prior PSCs provided for a share of production on a “net of tax” basis (i.e. with the payment of Gabonese Income Tax made on their behalf by the Gabonese Republic), new contracts provides for a corporate tax to be paid.

The tax basis for corporate tax consists of the share of production allocated to the Contractor (the Contractor’s Profit Oil). The corporate tax is due at a rate of 35% and shall be paid in kind or in cash at State’s will.

Ring fencing

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

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

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

Royalties

Rental Royalties

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

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

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

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

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

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

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

The rates are varied from time to time.

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

Gabon

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

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

Proportional Mining Royalty

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

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

However, the last PSC established by the State provides that oil companies, despite the fact that they do not own mining titles, owe a PMR which is not included in the cost oil. The PMR rate varied and could be negotiated in the PSC signed prior the new Hydrocarbon law came into force

From the new hydrocarbon law, the PMR is still negotiable but cannot be less than 13% and higher than 17% in conventional zone and cannot be less than 9% and higher than 15% in deep offshore zone.

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

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

Calculation of the PMR is based on the FOB value of the hydrocarbons. For determination of this FOB value, the price adopted is the Official Price defined by the State of Gabon.

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

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

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

Withholding Taxes

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

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

- Payment for the provisions of services, etc. by resident independent contractors (self-employed) (rate of 9.5%);
- Payment for the provisions of services, etc. by foreign vendors (rate of 10% before applicable treaty relief)
- Tax on properties;
- Directors' fees (15% or 20%);
- Personal income tax (progressive scale);
- Social security contribution (employees' shares.)

Indirect taxes

VAT

For deliveries of goods and services relating to the oil industry, the Contractor, its subcontractors are exempt from VAT or a 0% VAT applies.

For deliveries of goods and services not relating to the oil industry, Contractor, its subcontractors and affiliates shall pay VAT (at the normal rate of 18%) to the vendors but they will be allowed to claim the VAT paid to the vendors. VAT repayments are denominated in CFA Francs.

Import Taxes

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

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

Computer royalty

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

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

Export Taxes

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

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

Compliance

General Reporting Requirements

The General Tax Code stipulates that a company should maintain documents and records such as the journal and ledgers, balance sheet, income statement and any other

Gabon

documents describing rights, obligations and other matters relevant to the company. The law also requires that these records be kept for ten years.

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

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

Statutory Reporting Requirements

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

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

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

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

Practice In Upstream Oil and Gas Industry

It is common for a PSC to keep three sets of records:

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

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

Ongoing tax obligations include:

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

USD Bookkeeping

The PSC entity is automatically entitled to maintain its books, and calculate its Income Tax liability, in USUSD. However, VAT and withholding tax, are to be calculated in CFA Francs.

Payment of Tax

The Corporate Income Tax (CIT) payments of a PSC entity are effectively counted by the Gabonese Republic as oil revenue, rather than as an Income Tax receipt. The CIT is remitted in kind to the State, as opposed to the Public Treasury.

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

CIT payments are due on each lifting.

According to the new hydrocarbon law, subject to prior notice the Gabonese Republic can ask for a payment of the tax oil in cash.

Audits

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

Ministry of Finance focuses on withholding tax and VAT liabilities rather than Corporate Income Tax.

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

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Transfer pricing and Thin capitalisation regulations

Transfer pricing

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

Thin capitalisation

There is no specific thin capitalisation regulation in Gabon. However, the OHADA Uniform Act requires shareholders' equity to be above half of the company's authorised share capital where the company has losses.

Double tax treaties

Gabon has signed a few tax treaty: Belgium, Canada, France, OCAM (consisting of Cameroon, Central African Republic, Congo, Democratic Republic of Congo, Ivory Coast, Benin, Gabon, Burkina Faso, Madagascar, Mauritius, Niger, Rwanda, Senegal, Chad, Togo: today OCAM has been dissolved but application remains for limited countries as long as reciprocity between the countries applies) and UDEAC (consisting of Cameroon, Central African Republic, Congo, Gabon, Chad, Equatorial Guinea)

Others Tax issues

Employee Income Taxes

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

Gabon

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

- Is domiciled in Gabon; or
- Is present in Gabon for more than 180 days within a fiscal year¹.

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

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

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

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

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

The Personal Income Tax is computed according to the following progressive rates

Based on the employee's dependents.

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

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

Social security, Healthcare and Social Housing Fund

The contributions for pension are jointly borne by the employer and the employee; the employer share is 16 % of wages with an annual ceiling of XAF 18,000,000, and the employee share is 2.5 % of wages with an annual ceiling of XAF 18,000,000.

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

The contribution for healthcare is jointly borne by the employer and the employee; the employer share is 4.1 % of wages with an annual ceiling of XAF 30,000,000, and the employee share is 1 % of wages with an annual ceiling of XAF 30,000,000.

A contribution to the housing national fund of 2% shall be calculated with an annual ceiling of XAF 18,000,000 and borne and paid by the employer.

Gabon

Ghana

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Country profile

Brief history on oil and gas development

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

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

Since the commencement of the 4th Republic (which began in 1993), the search for commercial quantities of oil and gas has intensified. In 2007, a Petroleum Agreement with Tullow Ghana Limited, Kosmos Energy and EO Group for the Jubilee field resulted in the discovery of significant oil and gas reserves at Tano Cape Three point Basin.

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

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

Eni Ghana Exploration & Production Limited has also recently signed a contract with Malaysia's Yinson Holdings Bhd for the chartering, operation, and maintenance of

Ghana

a floating production, storage, and offloading vessel to process oil and gas from the Offshore Cape Three Points (OCTP) block in the Tano basin, 60 km offshore Ghana.

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

Reservoir estimates

Total proven reserves in the Jubilee Field is about 3 billion barrels. Ghana is reported to have between 5 and 7 billion barrels of Oil reserves.

Significant new development

In the last few years, the upstream petroleum industry has experienced a number of reforms aimed at the regulation and improvement of activities within the industry. Some significant developments in the industry are:

- The Special Chamber of the International Tribunal of the Law of the Sea (ITLOS) in Hamburg rejected a request made by Côte d'Ivoire that Ghana be ordered to suspend all oil exploration and exploitation in the disputed zone including the TEN Project. Development work on the TEN Project continues and the project is now over 55 percent complete with all 10 of the wells expected to be online at first oil already drilled. The project remains within budget and on schedule with first oil expected in mid-2016. ITLOS ordered a number of provisional measures which both Ghana and Côte d'Ivoire are required to comply with; including continued cooperation until ITLOS gives its decision on the maritime boundary dispute which is expected in late 2017;
- The establishment of the Petroleum Commission in July 2011 as a regulator of the upstream oil and gas industry taking over from GNPC – which hitherto played the role of regulator;
- The introduction of local content regulations to ensure the use of Ghanaian goods and services as a means of increasing the level of Ghanaian participation in the petroleum industry; and
- The enforcement of increased license and renewal fees for Petroleum Operators and service providers.

Fiscal regime

Institutional oversight and regulatory framework

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

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

- Ghana National Petroleum Corporation Law, 1983 (P.N.D.C.L 64) (GNPCL) – which established the GNPC as the National Oil Company of the upstream oil and gas industry in Ghana. The law also sets out the functions, administration and corporate governance aspects of the GNPC;
- Petroleum Exploration and Production Law, 1984 (P.N.D.C.L 84) (PEPL) – to provide the framework for the management of oil and gas exploration, development and production in Ghana. The law also establishes the basis of contractual relationship

between the Republic of Ghana, GNPC and the petroleum operators in the upstream operations through the basic terms and the conditions of a Petroleum Agreement (PA);

- Petroleum Commission Act, 2011 (Act 821) – which established the Petroleum Commission with the object to regulate and manage the utilisation of petroleum resources and to coordinate the policies in relation to them.

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

- Petroleum Income Tax Law 1987 (P.N.D.C.L. 188) (PITL) – which provides for the taxation of income of Contractors carrying out upstream petroleum operations;
- Internal Revenue Act, 2000 (Act 592) (IRA) – which is the prevailing principal tax legislation in Ghana and provides general rules on taxation. To a lesser extent, the IRA rules affect the taxation of Petroleum Operators (Contractors) and their services providers (Subcontractors). Beyond these two groups, the IRA has significant impact on the taxation of service providers within the industry which make supplies mainly to Subcontractors and other service providers (who provide services within the industry to enterprises which are neither Contractors nor Subcontractors);
- The Petroleum Revenue Management (Amendment) Act 2015 – was passed in 2015 is expected to help Ghana to efficiently manage revenue from crude oil and also empower government to set aside proceeds from crude oil to fix lapses in the management of oil revenue under the previous legislation.
- Petroleum Agreements – these are agreements entered into under the PEPL between the Republic of Ghana, GNPC and Contractors in the upstream operations. PAs have provisions which govern some aspects of the taxation of Contractors as well as the Subcontractors;
- Any Double Taxation Agreements (DTA) in Force with the Republic of Ghana.

Forms of contracts

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

As a guide, Ghana has in place a model PA which is often appropriately modified to reflect the terms agreed between the Government of Ghana (the State), the GNPC and the Contractor. The PA requires ratification by the Parliament of Ghana and will usually specify the area that has been applied for and awarded, the exploration period and the related work program and cost, and sanctions in case of default. It also states the benefits to be derived by the State in the form of royalties and income tax and the Contractor's portion of benefits and responsibilities.

Government participation

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

Ghana

Regulatory Bodies

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 grant licenses to companies that trade in LNG.

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

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

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

Industry sectors – upstream and downstream

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

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

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

Capital investment regulations

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

Local content regulations

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

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

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

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

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

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Taxation regime

Direct taxes

Petroleum/oil taxation

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

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

Under the PITL, allowable expenses are those incurred wholly, exclusively and necessarily in petroleum operations and generally include:

- Bad debt;
- Tax losses brought forward from previous years;
- Rental and royalties;
- Contribution to a pension or provident fund to the extent that the total contribution by both the employer and the employee does not exceed 35% of the total remuneration of the employee; and
- Training and education of Ghanaian citizens and national in approved institutions.

Expenses not allowed include:

- Personal or domestic expenditure;
- Interest, charges, fees or borrowed amount in excess of commercial rate;
- Capital expenditure;

Ghana

- Expenditure recoverable under an insurance contract;
- Any income tax or profit tax or similar tax; and
- Depreciation (Capital allowances is granted in place of the depreciation).

Contractors can carry forward tax losses indefinitely.

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

Royalties

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

Sub-contractors are not liable to royalties.

Gas taxation

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

Liquefied natural gas (LNG) regime

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

Withholding taxes

In Ghana and under generally applicable tax rules, a resident entity or PE is required to withhold tax on payments to resident and non-resident suppliers. The applicable withholding tax rate depends on the type of transactions. Under some PAs, there are specific exemptions from the deduction of withholding taxes on cost reimbursements between a Contractor and its affiliates.

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

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

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

Payment	Rate %
Resident Persons	
Payment to Subcontractors for works and services (including rental of tools and equipment)	5
Rent on residential properties to individuals and artificial persons (as investment income)	8
Rent on non-residential properties as non-business income to individuals and artificial persons	15
Supply of goods and services exceeding GHS 500	5
Non-Resident Persons	
Payment to Subcontractors for works and services (including rental of tools and equipment)	5
Royalties, natural resource payments and rents	10
Management, consulting and technical service fees and endorsement fees	20
Short term insurance premium	5

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

Payment	Rate %
Resident Persons	
Interest (excluding individuals & resident financial institutions)	8
Dividend	8
Rent on residential properties to individuals and artificial persons (as investment income)	8
Rent on non-residential properties as non-business income to individuals and artificial persons	15
Fees to lecturers, invigilators, examiners, part-time teachers and endorsement fees	10
Fees to directors, board members, and similar persons	20
Commissions to insurance agents, sales person and fees to directors, board members, etc	10
Commission to lotto agents	7.5
Supply of goods and services exceeding GHS 500	5
Non-Resident Persons	
Dividend	8
Royalties, natural resource payments and rents	10
Management, consulting and technical service fees and endorsement fees	20
Repatriated Branch after tax profits	10
Interest Income	8
Short term insurance premium	5
Income from Telecommunication, shipping and air transport	15

Ghana

Capital gains tax (CGT)

Capital gains tax is payable by both Contractors and Subcontractors at the rate of 15% on capital gains accruing to or derived by a Contractor or a Subcontractor from the realisation of a chargeable asset owned by the Contractor/Subcontractor.

Other taxes or payments

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

- Additional Oil Entitlement (AOE): The Government of Ghana has a specified percentage entitlement to the crude oil being produced in Ghana. The AOE is a further Government entitlement to the Contractor's share of crude oil produced. This share is based on the after-tax inflation-adjusted rate of return that the Contractor achieved with respect to each field and can be viewed as a form of windfall tax. AOE is computed monthly, quarterly or yearly depending on the provisions of the PA of the Contractor. A provisional AOE calculation is first prepared based on the best estimate of factors (which can be revised retrospectively). A final computation of AOE is then made within thirty days following the filing of annual tax returns by the Contractor;
- Payments for rental of Government property, public lands or for the provisions of specific services requested by the Contractor from public enterprises. (The rates charged the Contractor for such rentals or services should not exceed the rates charged to other members of the public who receive similar services or rental);
- Surface rentals payable to the State per square kilometre of the area remaining the beginning of each contract year as part of the contract area usually of the following amounts

Phase of Operation	Surface Rentals per Annum
Initial Exploration Period	USUSD30 per sq km
1st Extension Period	USUSD50 per sq km
2nd Extension Period	USUSD75 per sq km
Development & Production Area	USUSD100 per sq km

Indirect taxes

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

VAT/NHIL (VAT) in Ghana is at a rate of 17.5% on taxable supply.

Under most PAs, Contractors, their Subcontractors and Affiliates are not subject to VAT. As such the GRA has provided a mechanism through which Contractors can be relieved from paying VAT. Under this mechanism, the GRA provides VAT Relief Purchase Order forms (VRPOs) to Contractors, which the Contractors in turn complete with any VAT amount charged on invoices issued to them (by service providers) and furnish to those providers in lieu of cash settlement of VAT charged. By this process no cash outlay is made in respect of VAT charged. Therefore, a Contractor is not required to account for VAT, but would necessary register for VAT for purposes of obtaining the VRPO forms.

A Subcontractor is required to register charge and account for VAT on their services (including claiming any input VAT incurred). Given that services are provided mainly to Contractors (which do not settle VAT in cash), Subcontractors often have significant VAT refunds due them. The Subcontractor can make a claim to the GRA for any refund

due. In practice, the GRA conducts an audit to confirm the refund amount before making the refund.

Per the VAT Law, supply of crude oil and hydrocarbon products such as natural petroleum gas, liquefied petroleum gas and diesel is an exempt supply outside the purview of VAT.

Consumption tax

N/A. See VAT.

Sales tax

This tax was replaced with VAT.

Custom duties

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

Stamp duty

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

Incentives

Capital allowances

From the year of commercial production, a Contractor may claim tax depreciation on petroleum capital expenditure at a rate of 20% on a straight line basis.

A Subcontractor is also entitled to tax depreciation on assets used to generate “other” business income. (Given a Subcontractor’s income from petroleum services is subject to final withholding tax on gross receipts from Contractors, any capital allowance calculation would only be deducted from other income to the extent that the assets in question were used to generate such other income.)

Investment tax credits

No special investment incentives are provided for the industry.

Tax exemptions

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

Export processing zones

There are no special location incentives available to the oil and gas industry in Ghana.

Group relief

Group relief is not available under Ghanaian tax laws.

Ghana

Compliance requirements

Annual Returns

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

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

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

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

Quarterly Returns

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

Payment of income tax

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

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

Payment of withholding tax

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

Audit and other reporting requirement

Audit

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

Quarterly Cost of Production

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

Profit repatriation issues

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

Generally, branch profits repatriated are subject to tax at 10%. Although the tax laws do not specifically exempt Subcontractors from the payment of branch profit tax, in accordance with the PAs, Subcontractors are subject to final tax on revenues from petroleum operations and therefore no further taxes should be payable by them on repatriation of profits.

Transfer pricing and Thin capitalisation regulations

Transfer Pricing:

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

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

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

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

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

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

Ghana

(Thin capitalisation)

Currently, thin capitalisation provisions do not apply to Contractors. However, interest charges on borrowed amounts in excess of the commercial rate may be disallowed in assessing the tax liability of Contractors. On the other hand, Subcontractors are subject to final tax at 5% on revenues on petroleum services and therefore should not experience any impact of thin capitalisation rules.

Others tax issues

Personal income tax

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

Number of days present in Ghana	Taxation of employment income	Applicable rate of tax
Less than 30/60 days*	Exempt	N/A
30/60 days to 182 days	Full employment income	15%
More than 182 days	Full employment income	Graduated scale

*PA will specify number of days of presence that qualifies for exemption.
The above is however subject to the any applicable DTA rules that may be in force.

Social security tax

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

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

Ivory Coast

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Country profile

Significant developments

- Côte d'Ivoire economy continues to grow, and the economic growth of 8.3% in 2014 is expected to continue into 2015 and 2016.
- Oil & gas discoveries have been made recently.
- Foxtrot finds oil, gas offshore Ivory Coast on the Marlin North-1 well. A declaration of hydrocarbons discovery has been submitted to Ivory Coast's Ministry of Petroleum and Energy and an evaluation and appraisal program will follow.
- The Saphir-1XB exploration well operated by Total on Block CI-514 found liquid hydrocarbons offshore west of Côte d'Ivoire
- There is a Project to build a gas pipeline between Ghana and Côte d'Ivoire of a total cost of 122,500 million XOF.

Brief overview on the development of the Oil and Gas sector

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

Production of oil and gas around 90,000 barrels /day (bbl/d) in 2011 has seriously decreased. The Government hopes to boost production from its current level of around 32 000 bbl/d to around 200 000 bbl/d by 2019.

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

According to available data, about 29 Production Sharing Contracts (PSC) have currently been signed for petroleum operations in Ivory Coast.

Fiscal regime

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

Ivory Coast

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

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

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

Regulators

The key regulators in the oil and gas industry include:

- Direction of the Hydrocarbons: regulates and supervises oil and gas operations carried out under the various contracts.
- PETROCI (National Petroleum Company of Ivory Coast): manages and supervises government's interest in the oil industry.
- Sub-Direction of Petroleum Operations of the Tax administration (DGI): deals with taxation issues related to the Petroleum activities.

Forms of Petroleum Contracts

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

Production Sharing Contract

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

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

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

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

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

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

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

Royalties – Bonuses

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

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

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

Production Sharing Contracts

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

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

The factor H is defined as it follow:

For a price of the crude oil between USD50 and 150 per barrels:

- $H = 1.629 - 0.141 \ln(\text{price of the crude oil deflated at January 2012})$
- $H = 1.08$ when the barrel price is lower than USD 50; $H = 0.88$ when barrel price exceeds USD200.

Taxation regime

Any oil company composing the Contractor benefits from the tax features included in the PSC.

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

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

Ivory Coast

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

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

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

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

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

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

Compliance Requirements

Tax returns and payments

The corporate income tax return must be filed by the 20th of April following the end of the fiscal year (31st December).

The due CIT will or will not be paid depending on the content of the PSC, the Government, however, will issue payment certificates to contractors based on the share of oil production it will receive.

Incentives in the oil and gas industry

The PSC provide that, with the exception of the corporate income tax paid in cash or in kind, the oil companies benefit from a general tax exemption, which 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 so that only the single taxes actually listed as exempted in the PSC are considered as exempted.

The exemptions may be extended to the vendors and sub-contractors of the oil companies by the PSC.

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

Withholding tax

Sub-contractors

Local oil companies are not subject to withholding tax.

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

Most of the recent PSC includes an exemption from withholding tax for the non-resident sub-contractors.

A simplified tax regime is enforced for the sub-contractors of oil companies under the PSC, which involves the payment of composite taxes included in an aggregate rate of 5.786% or 3.286% on their taxable revenue, depending if a corporate income tax exemption is available or not.

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Dividend and interest

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

Capital gains tax (CGT) – Transfer fee

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

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

Transfer Pricing and Thin capitalisation regulations

Transfer Pricing

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

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

Thin capitalisation

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

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

Ivory Coast

Indirect Taxes

Value-added tax (VAT)

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

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

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

The exemption applies to the 100% sub-contractors of oil companies as well.

Custom duties/Import tariffs

Customs duties in Ivory Coast are levied only on import. Rates vary for different items, typically from 0%, 5%; 10%; 20% to 35%, and are assessed with reference to the prevailing Harmonized Customs tariff applicable in the ECOWAS Zone.

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

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

Social security contributions

Social security contributions

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

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

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

Payroll contribution

Payroll contribution is exempted for oil companies signing PSC.

Employees are however still subject to WHT on their wages.

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

Others

Property taxes

Properties used for petroleum operations are exempted from property tax.

Stamp taxes

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

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Country profile

K

Significant developments

The taxation of upstream oil and gas has been rewritten with the enactment of a new Ninth Schedule to the Income Tax Act effective 1 January 2015.

In addition the Government is updating the Petroleum (Exploration and Production) Act of 1986 and has published a new Bill that is undergoing public scrutiny.

Brief history on oil and gas development

Kenya does not produce crude oil or natural gas, however the country is a prospective oil producer as exploration has hastened recently on the back of successful discoveries. There have been a number of successful wells drilled over the past three years. The wells are undergoing appraisal with a view to commence preparation of development plans for approval by the Government.

Kenya's GDP growth rate was 5.3% in 2014, driven mainly by an increase in private consumption and a rapid growth in capital investment. The other drivers of the economy include agriculture, construction trade, infrastructure development and mobile telephony.

Fiscal regime

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

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

Entities engaged in hydrocarbon exploration in Kenya sign a PSC.

Kenya

Regulators

Regulatory environment

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

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

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

The key regulators in the oil and gas industry include:

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

Forms of contracts

An entity seeking to engage in oil and gas activities in Kenya is required to enter into a Petroleum Sharing Contract (“PSC”). The parties to a PSC are the Government of Kenya and the petroleum company.

The petroleum company provides the funds and bears the risk of exploration, appraisal, development and operating costs.

Upon attaining production the PSC allows the petroleum companies to recoup the costs incurred on exploration and development prior to sharing the production with the Government (portions determined under the PSC).

Taxation regime

Income Tax

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

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

Capital allowances

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

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

Other fees

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

Ring-fencing

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

Tax losses

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

Compliance Requirements

Tax returns and payments

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

Penalty

- Late submission of returns: is the higher of Kes 10,000 or 5% of the outstanding tax payable
- Late payment of tax: 20% of the tax payable

Interest

- Late payment of tax: 2% per month

Kenya

Incentives in the oil and gas industry

Kenya operates a taxes paid PSC regime.

Withholding tax

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

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

*A conflict exists between the Income Tax Act (“ITA”) and the model PSC as the ITA imposes withholding tax on dividends paid by a petroleum company and model PSCs specifically exempts dividends from taxation.

** Natural Resource Income means (a) an amount including a premium or such other like amount paid as consideration for the right to take minerals or a living or non-living resource from land or sea; (b) an amount calculated in whole or in part by reference to the quantity or value of minerals or a living or non-living resource taken from land or sea.

Subcontractors

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

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

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

Disposals

Direct disposals (farm out transactions)

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

Indirect disposals (share sale transactions)

The net gain will be subjected to tax based on the quantum of interest being disposed as follows

- Where the interest derived directly or indirectly from immovable property is below 20% of the total value of the interest, the net gain is not taxable.
- Where the interest disposed is between 20% – 50%, the net gain will be taxable using a prescribed formula.
- Where the interest disposed is above 50%, the net gain will be fully taxable.

Please note that there is a proposal before the National Assembly to change the taxation of the net gain as indicated above.

Notification to the KRA

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

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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

Kenya has enacted a transfer pricing legislation requiring, 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%.

Value-added tax (VAT)

Taxable goods for direct and exclusive use in oil exploration (excluding motor vehicles) are exempt from VAT. Taxable services are subject to VAT at 16% subject to existing remission granted to the petroleum company.

Kenya

Custom duties

General rule

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

Excise duties

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

Employment income tax

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

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

Social security contributions

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

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

National Health Insurance Fund

This is a statutory health insurance for which employees are required to contribute. Depending on the salary scale, contributions range from Kes 150 to a maximum of Kes 1,700.

Stamp duty

Farm out

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

Share sales

Stamp duty applies to the following transactions:

- Conveyance or transfer on sale of any stock or marketable security attracts stamp duty at 1% of the value; and
- Increase of in the capital of a company is subject to stamp duty at 1% of the value.

It worth noting that stamp duty is applicable where the underlying property is situated in Kenya however the law is silent on what constitutes property for stamp duty purposes and whether indirect transfers are subject to stamp duty.

Railway development levy

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

Import declaration fee

An import declaration fee of 2.25% of the Cost, Insurance and Freight ("CIF") value is also charged subject to a minimum of Kes. 5,000 payable in advance on application.

Double tax treaties

Kenya has double tax treaties with Canada, Denmark, France, Germany, India, Norway, Sweden, the UK and Zambia.

Kenya

Liberia

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Country profile

Significant developments

Significant slowing of oil and gas exploration activities in the sector, relinquishment of oil blocks, and a major restructuring of the National Oil Company of Liberia, reportedly as a consequence of financial difficulties.

Brief history on oil and gas development

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

The discovery of petroleum in deep water in the offshore area of countries in the Gulf of Guinea, resulted in recommencement of exploration activities in Liberia in 2000 after more than a decade of dormancy.

After announcement of an oil discovery in Liberia in February 2012, exploration activities along offshore Liberia intensified. No commercial finds have been reported yet.

Currently, the Liberian basin consists of thirty concessionary blocks. 17 of these blocks are from the continental shelf to water depths of between 2500 to 4000 meters. 13 of the blocs are considered ultra-deep with water depths of as much as 4500 meters.

Key private sector players in the industry currently include Africa Petroleum Corporation Company, Anadarko Liberia Company, ExxonMobil and Chevron Liberia Limited. Government participation is undertaken by the National Oil Company of Liberia (NOCAL).

Fiscal regime

Currently, the regulatory framework for the taxation of petroleum operations is administered by Liberia Revenue Authority in collaboration with the Ministry of

Liberia

Lands, Mines and Energy which oversees and regulates non-tax compliance and other compliance requirements.

The taxable income of a petroleum operator is determined according to the rules set in each applicable Production Sharing Contract (PSC). General provisions for the taxation of petroleum operators as contained in the Liberia Revenue Code of 2000, as Amended 2011 may apply as necessary.

Petroleum operators engaged in the exploration, development and production of hydrocarbons are generally subject to the following taxes in Liberia:

- Corporate income tax;
- Quarterly advance 2% turnover tax;
- Royalty on gross production before deduction of any cost;
- Customs user fees on imported goods.

Other non-tax financial obligations imposed on petroleum operations may be as specified in applicable PSC. These typically include:

- Surface rentals
- Contribution to the Bonus and Hydro Carbon Development Fund
- Contribution to the Rural Development Fund
- Contribution to the Personnel Training Fund
- Contribution to a Social and Welfare program

Regulators

The key regulators in the oil and gas industry include:

- NOCAL – This is the State Petroleum Company that holds all the oil concessions, manages and supervises government's interest in the industry in accordance with the New Petroleum Law of 2012.
- Ministry of Lands, Mines and Energy: – Regulates and supervises oil and gas operations carried out under the various licenses and leases.
- Liberia Revenue Authority: – Administers the Liberia Revenue Code of 2000, as Amended 2011 and other taxation issues relating to the industry.
- Environmental Protection Agency: – Regulates and ensures compliance with the Environmental Protection and Management Act.
- Liberia Extractive Industry and Transparency Initiative (LEITI): – Oversees the reporting of payments made by players in the extractive industry to the various government organs including contributions towards community social and economic welfare.
- National Investment Commission: – Considers, reviews and decides upon request for investment incentives by holders of hydrocarbon contracts with investment of over US\$10 million in accordance with the New Investment Incentives Code of Liberia.

Forms of contracts

The most common form of petroleum contract in Liberia is the Petroleum Sharing Contract (PSC)

This contract 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.

A PSC for gaseous hydrocarbons may differ from that of liquid hydrocarbons.

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 extent NOCAL elects to exercise its participation right in 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 waiver its equity participation interest in applicable PSC.

Taxation regime

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Direct taxes

Corporate Income Tax

Oil and Gas operators are generally subject to tax on taxable income at a rate of 30%. Applicable PSC may provide for a lower rate.

The taxable income is generally the operator's income (cost oil and profit oil share of income from each petroleum project and any other income) less allowable expenses in a specified license area.

NOCAL is also subject to corporate income tax on its share of profit oil.

For tax purposes, a permanent establishment which is a petroleum license holder is treated as resident legal entity.

Regardless of legal form, a petroleum operator's taxable income is determined separately for each PSC or other projects engaged in by the operator in Liberia. The contractor is not permitted to consolidate income or loss arising from a PSC or other project with that of any other.

Royalty

A petroleum operator, including NOCAL, engaged in the exploitation or extraction of petroleum deposits in Liberia is required to pay a royalty at a rate of 10% of gross production before the deduction of any cost.

Applicable PSC may waiver this requirement or provide for a different rate.

Liberia

Deductible expenses

Generally, expenses wholly, exclusively and necessarily incurred in the operations of a petroleum operator are deductible against gross income of the operator, with the following limitations:

- Pre-commencement expenses – Exploration expenses and development expenditure are deductible in the first tax period in which commercial production commences.
- Interest – Deduction for interest expenses in a tax year, other than interest paid to a resident bank, is limited to interest received during the tax year plus 50% of taxable income (excluding interest income). Excess interest can be carried forward indefinitely.
- Capital costs – No deduction is allowed for capital costs incurred during the year except the amount of annual allowance for depreciation computed in accordance with the tax provisions.
- Decommissioning expenses – Deduction for decommissions expenses is limited to actual amount paid during the tax year.
- Losses – A deduction is allowed for tax losses brought forward. Carry forward of tax losses commences in the first tax year in which operator commences commercial production; and has a seven – year period.
- Management fees – Deduction for management fees paid is limited to 2% of operating expenses for the tax period.

Non-deductible expenses

- Income tax paid on behalf of expatriate employees
- Loss from hedging transactions
- Any special incentive deduction granted.

Tax Compliance Requirements

Tax returns and payments

Every company engaged in petroleum operations is required to file tax returns for corporate income purposes as follows:

- Quarterly advance turnover tax return – Must be filed quarterly within 15 days after the end of the quarter. Any advance tax payable is due by the same date;
- Annual corporate income tax returns – Must be filed within three months of the end of the tax year. Any tax payable is due by the same date. The tax return must be accompanied by financial statements audited by a company which is a member of the Liberian Institute of Certified Public Accountants.

Penalty

Penalties are imposed for late payment of tax due and late filing of tax returns

Document retention

Generally, an entity is required to retain books and records for 7 years after the date of submission of return or date return should have been submitted. The documents must be retained in Liberia.

Liberia local content regulation in the Oil and Gas Industry

In Liberia, there is no specific or legal definition or statutory mandate for local content. It is however referred to in the following context:

- The need of Liberian individuals and/or companies to acquire shareholding of companies operating and/or providing services to natural resource operators;
- Obligation for service provider companies in extractive industry to recruit and train Liberian citizens;
- Reservation of certain businesses for only Liberian citizens;
- The need to purchase goods and services from Liberian individuals or entities owned by Liberians to the extent such goods and / or services are available and meet specified standards.

Contractors and their subcontractors are generally encouraged to give preference to enterprises goods from Liberia and employ Liberian citizens if standards determined at discretion of contractor can be met.

To encourage development of local content provide Liberian companies with opportunities for mentorship and assistance, NOCAL has stated that bids from groups that include a significant West African/ECOWAS upstream petroleum company that include a Liberian partner will have their bids evaluated with a 20% uplift in their signature bonus proposal.

Incentives in the oil and gas industry

Petroleum operators are typically granted the right to import into Liberia and re-export out of Liberia, including on behalf of their contractors and subcontractors, all goods necessary in the petroleum operations free of all duties and taxes.

A list of equipment, machinery and products used in petroleum operations which are exempt from customs duties on importation may be included in applicable PSC as determined by the National Investment Commission.

Foreign exchange controls – There are currently no foreign exchange controls in Liberia.

Withholding tax (WHT)

Petroleum operators are required to withhold tax on specified payments to resident and non-resident persons at rates specified in the Liberia Revenue Code of Liberia of 2000, as Amended 2011. However, the following payments made by petroleum operators to resident or non-resident persons suffer withholding tax at concessionary rates:

- Dividends – 5%
- Interest – 5%
- Services – 6%

Applicable PSC may provide for different rates.

Capital gains tax (CGT)

Gains arising on the disposal of property, including gains on transfer / assignment of operator's interest in petroleum license, are includable in the operator's income subject to corporate income tax at the applicable rate. Losses arising on disposal are deductible.

Transfer of interest in petroleum operations must be preapproved by NOCAL.

Liberia

Thin capitalisation and Transfer Pricing

There are no thin capitalisation rules in Liberia except that generally, deductibility of interest paid, whether to related party or to a third party, except interest paid to a resident financial institution in Liberia, is limited to the amount of interest income plus 50% of taxable income (other than interest income) in the tax year.

Applicable PSC may grant 100% deduction for interest expenses incurred in the tax year.

There are no detailed transfer pricing regulations in Liberia. The applicable general anti-avoidance provision requires transactions between related parties to be at arm's length. Generally, in any transaction arrangement between related persons, the Minister may distribute, apportion, or allocate amounts to be included or deducted in calculating income and credits between the persons, or determine the source of income, as is necessary to reflect the taxable income or tax payable which would have arisen for the persons if the arrangement had been conducted at arm's length.

Petroleum operators have an additional requirement to disclose contracts with related parties and the manner in which intercompany prices are charged, and also have related party agreements notarised in accordance with the laws of the related party's country of residence.

A petroleum operator may enter into an Advance Pricing Agreement with the Government of Liberia to agree on the pricing methodology in certain transactions with related parties.

Indirect taxes

Goods and Services Tax (GST)

Liberia operates a GST regime. Generally, petroleum operators are exempt from GST on raw materials and capital goods for use directly in petroleum operations.

Petroleum operators are entitled to export the fraction of hydrocarbons which is due to them pursuant the PSC, without payment of duty.

Custom duties

Goods imported by petroleum operator are exempt from customs duties on items used exclusively for petroleum operations.

The exemption does not generally apply to customer user fees, generally 2.5%, on unprocessed exports including inspection or pre-shipment inspection of goods although applicable PSC may provide exemption.

Employment income tax

Employees of petroleum operators are subject to the general personal income tax compliance requirements.

Resident employees, including expatriates who spend at least 182 days in Liberia in a calendar year, are subject to tax using the graduated scale of tax ranging from 0% to 25% depending on their income bracket. Non-resident employees of petroleum operator generally suffer withholding tax at a flat rate of 15% on gross remuneration.

The operator is required to withhold the tax due on a monthly basis and remit it to the Liberia Revenue Authority within 10 days of the end of month payment is made to the employee along with a withholding tax return. Penalties are imposed for late filing of returns and late payment of taxes.

Resident employees are required to file annual income tax returns within three months of the calendar year end.

Social security contributions

Both resident and non-resident employees are required to register for and make contributions to the National Social Security and Welfare Corporation (NASSCORP).

The employee contributes 3% of total earnings and the employer contributes 4.75% of the employee's total earning for the benefit of the employee.

The employer is required to remit both the employee and employer's contributions to NASSCORP on a monthly basis.

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Property / Real estate taxes

Real property within a petroleum area and used by petroleum operator is exempt from real estate tax.

Any other property owned by a petroleum operator, not within the license area, would be subject to real estate tax. The real estate tax is assessed on a specific property and is due by July 1st every year.

The rates of real estate tax vary depending on location, size, usage and whether or not the property is deemed to be on improved or unimproved land.

Improved land – Rates range from 1.5% to 0.143% of assessed value of the real property. Property on which tax is imposed typically include property for business or commercial use, industrial use, residential use, farm land in and outside urban areas as well as buildings and other improvements situated on public land.

Unimproved land – Rates range from LUSD 200 to 4% of assessed value depending on location of the property and usage.

Other Non-Tax obligations

An applicable PSC may impose additional financial obligations on a petroleum operator in Liberia. Non-tax but mandatory financial obligations of petroleum operators generally include the following:

- Surface rentals – An applicable PSC may require petroleum operator to pay specified amount of surface rentals over the license period. Surface rentals are usually payable annually with rates varying during the different exploration phases and well as

Liberia

during the development and exploitation phases specified in PSC and may be subject to inflationary adjustments.

- Bonus – This may be paid in phases depending on rate of production of crude oil from a delimited area over a specified consecutive number of days. The bonuses paid may or may not be recoverable as part of petroleum costs as may be stated in applicable PSC.

An operator may be asked to bid on an upfront payment (signature bonus) to be paid to the Government within a set number of days of contract becoming effective.

- Contribution to Hydrocarbon Development Fund – To stimulate research in the field of hydrocarbons and assist the government of Liberia achieve sustainability, petroleum operators are generally required to make contributions to the hydrocarbon development fund managed by NOCAL. The contribution paid is generally recoverable as part of petroleum costs.
- Contribution to Rural Energy Fund (REFund) – The REFund was established in accordance with the National Energy Policy to integrate renewable energy technologies into rural development. The contribution is usually paid annually as specified in applicable PSC and is generally recoverable as part of petroleum costs.
- Contribution to Personnel and Training Fund – Operators are generally required to make an annual contribution for Training programme to NOCAL as well as to the University of Liberia, through NOCAL for the enhancement of programmes in Geology, Mining Engineering, General Science and Environmental Studies. The amount payable and timelines are stated in applicable PSC. The contribution paid is recoverable as part of petroleum costs.
- Contribution to Social Welfare Programmes – Petroleum operators are also generally required to provide annual funding for social and welfare programmes in Liberia to NOCAL. The contribution paid is recoverable as part of petroleum costs.

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Country profile

Significant new developments

Libya's officially recognised Prime Minister, Premier al-Thinni, has been forced to work out of the East since losing control of the capital Tripoli, where the established state oil firm NOC supervises the oil and gas sector. Al Thinni's government has set up a new oil firm, also called NOC and it is trying to have it control oil revenues although it is understood buyers are still dealing with the Tripoli based NOC.

Libya is seeking to double oil output to 800,000 barrels a day during 2015 after what appears to be successful negotiations to reopen pipelines feeding the export terminals of Zueitina, Zawiya and Mellitah. Mustafa Sanalla, Chairman of the Tripoli based NOC, also was hopeful that UN brokered negotiations between the two rival administrations would also permit the reopening of Es Sider and Ras Lanuf, Libya's largest and third largest oil ports.

Brief history on oil and gas development

Libya is a country located in North Africa situated on the Mediterranean coast and spans 1.77 million square kilometres. The population is over 6 million, with 97% being Arab or Berber and 97 % being Sunni Muslim. In 2011, the civil war overthrew a dictator who had been in power for 42 years. However Libya has struggled to transition in to a more democratic state with there being two rival administrations since July 2014. The rivalry between the two administrations has significantly hindered activity in the oil and gas sector.

The existing Petroleum Law, Law 25, was issued in 1955. In 1959 the first commercial discoveries were made in the Sirte Basin at the Amal and Zelten fields and by 1961 the first exports commenced. The first offshore discovery was made in 1976 at ENI's Bourri 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.

Libya

The 1970s also saw a change in the type of agreements being negotiated with Exploration and Production Sharing Agreements (EPSAs) replacing CAs.

A lack of investment in the oil sector during the 1970s and 1980s coupled with diplomatic issues which forced the American IOCs to withdraw in 1986, UN sanctions to be enforced in 1992 and US sanctions to be enforced in 1996, seriously hit the oil production due to a lack of investment and the inability to use the latest technology. UN sanctions began being lifted in 1999 and US sanctions in 2005. However, by the time the conflict commenced in 2011, oil production was 1.8 million barrels of oil per day, a little over half of that were produced at the end of the 1960s.

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

Reservoir estimates

According to the 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 per cent of those reserves are situated in the Sirte Basin. Libyan crude is sweet (low sulphur content) and generally light (high API gravity).

The Oil and Gas Journal estimated in January 2012 that Libya's proven natural gas reserves were 52.8 trillion cubic feet. New discoveries were expected to increase Libyan proven reserves in the short term prior to the events of 2011.

Fiscal regime

Institutional oversight and regulatory framework

LNOC audits the IOC operators of EPSAs for cost recovery purposes. The non-operating IOCs of EPSAs are required to register Libyan branches (to be the contracting party to the EPSA) which are not cost recoverable and are not audited by LNOC.

The Dewan (auditors of government contracts) performs cost recovery audits of the IOCs of the 2 remaining CA. The non-operating IOCs of CA have Libyan branches which are cost recoverable and are audited by the Dewan.

The Tax Department audits the IOCs for undeclared salaries and wages and to ensure the contracts with their main service providers have been appropriately registered.

Forms of contracts

Exploration and Production Sharing Agreements

Since the 1970s, EPSAs have been offered to the IOCs. EPSAs are signed with LNOC. The exploration phase has a minimum work commitment, normally for a period of 5 years and the IOCs take sole risk. If a commercial discovery is made, it is ring fenced and the remaining acreage is released. The IOCs can normally negotiate extending exploration rights in the remaining acreage with a newly agreed work commitment. A branch of a newly formed foreign registered joint venture entity (between LNOC and the IOCs) is normally appointed as the operator for the development phase and exploitation phase.

The costs are divided 50-50 between LNOC and the IOCs for the development phase. The costs of the exploration phase are shared per the production interests.

The IOCs recover a pool of costs (opex and capex) and once cumulative costs have been recovered, the IOCs take a reduced share of production based on defined factors within the EPSA.

Concession Agreements

The CAs were signed by the IOCs by the then Ministry of Petroleum during the 1950s and 1960s. The 1973 Participation Agreements gave a controlling interest of 51 per cent to LNOC. The IOCs were entitled to retain all the acreage for the entirety of the agreement. The duration of CAs were signed for at least 50 years.

Joint Operating Agreements

Joint Operating Agreements are signed to govern the relationship between the contracting parties as well as defining the rights and responsibilities of the nominated operator.

Technical Service Agreements

Technical Service Agreements are permitted by Petroleum Law, as amended, to provide offshore services to the operating IOCs through the head office or affiliate of the IOC operator.

Joint Venture Operating Agreements

LNOC has signed several Joint Venture Operating Agreements (JVOAs) with foreign investors for the operation of terminals.

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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.

Industry sectors – upstream, midstream, downstream

Upstream

Libya has had a policy of trying to spread production rights across nations. LNOC has in the past tried to prevent offshore deals that swap production rights between different foreign entities. Current EPSAs give LNOC first refusal to the sale of any production

Libya

rights. Libyan oil exports during 2010 went approximately 25% to Italy, 15% to France, 10% to Germany, 10% to Spain and 40% to other countries.

Midstream

Libya has a good network of pipelines but they are in need of modernisation. The Melitah subsea pipeline has had a significant impact on gas exports since its opening in 2004. The pipeline is 520km long, connecting to Gela in Sicily, flowing into the Italian mainland and then onwards to the rest of Europe.

Libya uses 7 export terminals to export crude oil some of which suffered severe damage during the 2011 conflict. In addition, the Farwah floating production and offloading unit is used for the Al Jurf field and the offshore Bouri field which has its own export terminal. LNOC has signed a JVOA with ENI, called Greenstream, which operates the Melitah Gas Plant.

In 1971, Libya became the second country in the world to export Liquid Natural Gas (LNG) at the Marsa El Brega plant. The LNG plant is owned by LNOC and operated by Sirte Oil Company.

Downstream

Libya has 5 domestic refineries that, according to the Oil and Gas Journal (OGJ), have a combined capacity of 378 thousand barrels per day. The largest refinery is at Ras Lanuf which had a capacity of 220 thousand barrels of oil per day prior to the 2011 conflict. UN Resolution 883 of 1993 banned Libya from importing refinery equipment. Consequently, Libya is seeking a comprehensive upgrade to its entire refining system, with a particular aim of increasing output of gasoline and other light products.

Libya has, through its overseas retail arm Oilinvest, refinery operations in Europe, namely in Germany, Italy and Switzerland.

Capital investment regulations

EPSAs contain an agreed minimum work commitment of the number of wells to be drilled and the amount of 2D and 3D seismic to be run. The agreement also contains a value for the minimum work commitment, where guarantees have to be put in place, as a penalty, if the minimum work commitment is not completed within the requisite time.

Local content regulations

EPSAs normally require that operators shall at all times use Libyan contractors, provided that they are competitive in terms of performance, price and availability. Since LNOC has representation on the IOCs management committee during the exploration phase, it would be involved in the awarding of major contracts. If a commercial discovery is made, then LNOC would have control of the newly formed operator.

Financing consideration (Thin capitalisation)

Libya has no thin capitalisation regulations.

Taxation regime

Basis of taxation

IOCs tax liability is in accordance with the Petroleum Law, as amended. Revenues are assessed at the official selling price, based on global market prices with a slight adjustment for the different types of Libyan blends. The law sets taxes on petroleum related income at 65 per cent, comprising of corporate income taxes and a surtax. Current corporate income taxes are 24 per cent and therefore the surtax is 41 per cent.

LNOC acts as receiving agent for the petroleum tax returns of the IOCs and issues receipts on behalf of the Ministry of Finance.

Direct taxes

Petroleum Tax

EPSA holders do not pay any petroleum related taxes and royalties. The wording of an EPSA states that the LNOC settles such taxes and royalties on behalf of the IOCs. Once an EPSA holder has recovered its cumulative costs, it takes a reduced share of production based on factors stipulated in the agreement in lieu of those taxes and royalties having been settled on its behalf.

The Libyan authorities accepted for a notional tax return to be filed, with the Ministry of Finance issuing a receipt, for home country tax recoverability purposes. The basis of this return is that all assets are written off over 10 years, royalty is assessed at 16.67% of revenue, liftings are valued at the official selling price used for cost recovery purposes and intangible drilling can be amortised over 20 years. The latter is based on a one time election where alternatively the intangible drilling costs can be expensed.

Concession holders pay royalties based on production at a rate of 16.67%. The Interim Agreements were signed in 1982 to introduce the Tax Paid Cost (TPC) as unfavourable taxation terms meant that IOCs stopped lifting and the CAs had no requirement to lift. The TPC system was initially intended to provide tax credits to the IOCs but has rather resulted in additional taxes being paid. The system provides the IOCs, a fixed margin of 6.5%. Fixed assets are written off over 3 years on a straight line basis.

Capital Gains Tax

Libya has no separate Capital Gains Tax. Capital gains are added to the tax payers normal taxable income and assessed accordingly.

Indirect taxes

Customs Duties

Petroleum Law, as amended, provides exemption on customs duties relating to oilfield specific materials or equipment. If equipment is imported on a temporary import basis then a deposit or guarantee would be required.

Stamp Duty

Stamp Duty Law applies duty on various documents and transactions. EPSAs are now subject to a stamp duty at a rate of 1% on the initial minimum work commitment of the exploration phase as defined within the individual agreements.

- VAT – Libya has no value added taxes.
- WHT – Libya has no withholding taxes.

Libya

Incentives

The main incentives to IOCs is the exemption from customs duties and, as branches of foreign companies, there is no requirement to make formal distributions, and are permitted to receive revenues for oil sales to offshore bank accounts.

The attraction for the IOCs to sign EPSAs is the relatively low cost of production, in some fields USD 1 per barrel, and its proximity to the European market. Libya is the single largest supply to the European market. In addition only 25% of Libya's oil has only been explored.

Compliance requirements

Statement of Cumulative Expenditure

The operating IOCs during the exploration phase have to file to LNOG on a monthly basis, a statement of expenditure and a final annual return which must be submitted within two months following the year-end the statement relates to.

Financial Declarations

For the concession holders a monthly Financial Declaration, coupled with a payment for taxes and royalties is required within 30 days after the month-end. A final annual Financial Declaration is filed four months after the year-end.

The notional Financial Declaration prepared by the EPSA holders should be filed quarterly, 30 days after the quarter-end. The final annual notional Financial Declaration should be filed three months after the year-end.

Branch Financial Statements

All registered entities in Libya have an obligation to file financial statements to the tax authorities. Filing should, under normal circumstances, be completed within four months of the entities year-end or one month after the date of the audit report, whichever comes first.

Profit repatriation issues

Libya has no profit repatriation issues. The IOCs operating as branches of foreign companies, are permitted to hold foreign currency accounts offshore and do not have to make any formal branch profit distributions.

Transfer pricing regulations

Libya has no transfer pricing regulations. The price of liftings by the IOCs is set for local tax and cost recovery purposes and the IOCs have no obligation to declare what price their products have been sold offshore.

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

Libya

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Country profile

Morocco is geographically close to many significant oil and gas producing countries and presents oil-rich geological potential. Although the growing interest of oil companies in the region could imply that Morocco's hydrocarbon assets and reserves have a lot of potential, its oil and gas reserves remain underexplored¹.

As of 31 December 2013, hydrocarbon exploration licensing was carried out on a total area of 394 165.70 Km² and included 52 onshore permits, 90 offshore permits, 4 onshore reconnaissance zones, 2 offshore reconnaissance licenses, 12 exploitation concessions and 4 Memorandums of Understanding (MOU) for oil shale².

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.

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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 30%.
- Value Added Tax: VAT is generally suffered at 20%, however oil and gas Hydrocarbons are subject to VAT at 10%.
- Surface rental: The holder or co-holder of an exploitation concession must pay to the State, in accordance with the rates and procedures provided by regulations, an annual surface rental proportional to the surface of the exploitation concession.
- Royalty: The holder or co-holder of a concession must pay to the State, in accordance with the scales, rates and procedures provided by regulations, an annual royalty on its share of the production of hydrocarbons originating from the concession, payable, in accordance with petroleum agreement provisions, either in cash or in kind, or partly in cash and partly in kind.

1 Source: www.morocco Summit.com

2 Source: Annual report 2013 published by ONHYM www.onhym.com

Morocco

Regulators

In Morocco, the oil and gas sector is regulated by the Hydrocarbon law. However, other laws may apply such as the tax code, laws on environmental impacts, labour Code and industrial property.

Key Regulators

- “*Office National des Hydrocarbures et des Mines*” (ONHYM): Established in 1928, it is a citizen organisation with a long mining history and is the basis for the discovery of almost all mines in Morocco;
- Ministry of energy, mines, water and environment (MEMWE) – Department of energy and mines: Develop and implement government policy in the fields of energy, mining and geology. Ensures as well the supervision of public enterprises under its jurisdiction (i.e. ONHYM) and controls sectors dependent on his authority;
- Moroccan Tax authority.

Forms of contracts

The hydrocarbon code distinguishes two forms of contracts of which oil companies must conclude with the state in order to be granted the reconnaissance license, the exploration permit or the exploitation concession: the Reconnaissance contract and the Petroleum Agreement.

- Reconnaissance contract: A contract concluded between the ONHYM and the company, for the reconnaissance and the evaluation of the petroleum potential of the area of interest. This contract is valid for a period of one year and can be extended.
- Petroleum Agreement: the purpose of this Agreement, which is concluded with the state, is to specify the rights and obligations of the Parties resulting from the Exploration Permit(s) and any Exploitation Concession which might derive there from.

The interested company agrees with the ONHYM on the delimitation of the area of interest and negotiates the terms of the Reconnaissance Contract or the Petroleum Agreement.

Taxation regime

The taxable profit is computed as difference between:

- The gross income is compromised of the value of the proportion relating to the holder of the exploitation concession in respect of a given fiscal year.
- The expenses, costs and amortisations relating to the same fiscal year as well as tax losses to carry forward.

The tax losses are subject to statute of limitation rules defined as follows:

- For the part relating to amortisations (other than nominal assets): the tax loss is carried forward without limitation in time.
- For the operating tax loss, it may be carried forward 4 years.

Expenses and costs should be understood as the expenses of the starting-up, of reconnaissance works, of operating cycle and those relating to the concession royalty and the surface rental.

Moreover, the expenses must be CIT deductible under the normal Moroccan tax law.

The CIT is payable on the taxable profit at the rate of 30%. However the Moroccan Tax Code (MTC) provides reduced rates:

- 17.5% in case of export (after 5 years tax holidays);
- 10% in case of taxable profit not exceeding 300,000 MAD.

A CIT exemption of 10 years is provided for oil and gas companies holding the exploitation concession as from the beginning of the production.

Concession royalty³

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 meters 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:⁴

- Exploration permit: for each exploration permit, a fee of 1,000 MAD is payable at 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.

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).

3 www.onhym.com

4 www.onhym.com

Morocco

Moroccan local content regulation in the Oil and Gas Industry

There is no specific rule provided with regards to the Moroccan local content, in the sense that it is not required for Moroccan individuals or entities to acquire the majority of share capital in oil & gas companies nor to hire a minimum number of Moroccan employees.

However, the Hydrocarbon Code provides that, in the petroleum agreement, the state will hold no more than 25% in the exploration licence and the exploitation concession.

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, financial income and non-current income at the rate of 0.5% or 0.25%. Moreover, the minimum contribution could not be lower than 3,000 MAD.

Withholding tax

Interest

Interest payments to non-residents is subject to 10% withholding tax. Having said this, the MTC provides withholding tax exemption for loans denominated in foreign currency for a period of 10 years or less.

Royalties

Royalty payments to non-resident entities attract 10% withholding tax.

Dividends

Dividends for companies operating in the hydrocarbon sector are exempt from withholding tax. Similarly, no withholding tax is levied on branch repatriation of profits.

Morocco currently has 50 double tax treaties (DTTs) in force under which the domestic withholding tax rates could be reduced provided all relevant conditions are met.

Capital gains tax (CGT)

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 DTT.

Capital gains realised by non-resident companies:

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.

Thin capitalisation and Transfer Pricing

Article 213 of the MTC provides that the Moroccan Tax administration is entitled to adjust the taxable income and/or the declared turnover of Moroccan companies which are “dependent”, directly or indirectly, on enterprises located inside or outside Morocco. In this case, the MTC allows the tax authorities to re-determine profits that have been indirectly transferred. These adjustments are performed by way of comparison with similar enterprises or by way of direct assessment based on available information to the tax administration.

Oil and gas companies are allowed to deduct financial interest relating to loans. However in the special case of Shareholder Current Account Advances (Shareholders loans), relating interests are deductible to the extent the following conditions and limits are respected:

- The share capital must be entirely paid-up;
- Deductible interest is computed on an amount not exceeding the amount of share capital; and
- Interest must be computed on the basis of rates provided by the Ministry of Finance. For 2015, the applicable rate is 2.97%.

Value-added tax (VAT)

As a general principal, all industrial, commercial and handcraft transactions performed in Morocco are subject to VAT at 20%. Nevertheless, acquisition by the holders of reconnaissance licenses, exploration permits or exploitation concession, as well as by their contractors or subcontractors, of goods and services necessary to the activity are exempt from VAT. The same rule is applicable for imported goods and services. It is worth noting that the VAT exemption is subject to some formalities and that sale of oil and gas are subject to 10% VAT.

Custom duties

Holders of a reconnaissance license, exploration permit or concession as well as their contractors or subcontractors are exempted from customs duties and import VAT on equipment, materials and consumable items that are necessary to undertake hydrocarbon activity.

However, these incentives are not granted if said materials and equipment may be purchased locally in the limit of 10% mark-up – price CIF – and in the same quality and delivery delay conditions.

Furniture and other personal items belonging to the personnel recruited aboard are released for consumption without payment of customs duties.

The materials and items having benefited from the above exemptions cannot be used but for utilisations they were imported for. The holders of hydrocarbons

Morocco

reconnaissance, exploration or concession may be subject to audit by the customs administration.

These items cannot be sold unless relating customs duties are paid. Furthermore, new items are eligible for the “temporary admission regime” as provided by the Moroccan Customs Code.

Holders of hydrocarbon reconnaissance, exploration or concession as well as the contractors and subcontractors, are eligible for the “temporary admission regime” in consideration of importing materials and consumable items necessary for hydrocarbon activity and annex services. As such, these items are exempted from the payment of the quarterly royalties as provided by the Customs Code. The list of those materials and items must be approved by the administration.

Business tax

Under law No. 47-06 a local business tax is levied in Morocco, the rate of which is based upon the value of the assets of the business. Rates range from 10 – 20% and 30%. Reconnaissance licence holders must pay this tax; however, holders of exploration permits and concessions are exempt.

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.

Employment income tax

Employers established in Morocco are required to withhold, on a monthly basis, the Income Tax and the Social Security Contributions and remit the amounts to the Treasury before the end of the following month.

Furthermore, if the Morocco resident employees receive both Moroccan and foreign source revenues, they will have to submit their personal individual tax return to the tax administration before the 28th of February of the following year.

Earned salary income is taxed at a progressing scale from 0% to 38%.

Moreover, the financial bill for 2013 has introduced a transitory tax called Contribution for social Solidarity (CSS) that has to be paid according to the following rates:

Net revenue (MAD)	Rates
360 000 to 600 000	2%
600 001 to 840 000	4%
Beyond 840 000	6%

The net revenue is deemed to be the net after tax and mandatory social security contributions. Moreover, please note that this CSS should no longer be in force starting from January 1st 2016.

Social security contributions

The only mandatory social security regime in Morocco is managed by the Moroccan Social Security Fund as regulated through the Dahir enacting the Law No. 1-72-184.

Except 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 contributions payable on earnings up to MAD 6,000 per month	8.98
Mandatory medical insurance	3.5
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

Property taxes

Oil and gas companies are subject to Municipal Services Tax.

Registration taxes

Registration is a formality that the law provides for some acts and conventions. The applicable rates are 1%, 1.5%, 3%, 4% and 6%. They vary depending on the nature of the operation with a minimum charge of 100 MAD. This minimum charge is increased to 1000 MAD for the acts of incorporation and capital increase of companies.

Oil and gas services companies

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

Morocco

the general tax law of Morocco and will suffer tax on profits at 30% where the annual taxable income exceeds MAD 300,000.

Mozambique

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Country profile

Significant new developments

With the enormous natural gas reserves recently discovered by Anadarko and ENI in the Oil & Gas Rovuma Basin off the northern coast of Mozambique which will provide the feedstock for the LNG facility and associated infrastructure in the Palma region the country updated in terms of legislation.

The Petroleum Law governs all aspects related to the petroleum operations, including the infrastructures (owned or held by a holder of petroleum right or a third party) used in connection with petroleum operations (it therefore typically include the LNG activities as well). It also applies to oil and gas consumption used in connection with production operations or transport.

The refining operations, industrial, distribution and marketing of petroleum products, are expressly excluded from the Petroleum Law, as these activities are governed by a specific Decree nº 2/2014, which established the Legal and Contractual Special Regime applicable to the Liquid Natural Gas in areas 1 and 4 of the Rovuma Basin (i.e. the LNG Regime).

In order to ensure benefits flow to the local private sector, the new Petroleum Law includes aspects such as to establish a more equitable profit sharing fiscal structure with international extractive companies, strengthen the governance arrangements supporting these sectors, and clarify the public sector and private sector's role in

Mozambique

exploiting and managing these resources and exploring options to support local content (LC) development.

Regulation on petroleum operations is currently under discussions and expected to be approved soon.

Brief history on oil and gas development

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

Currently Mozambique has one of the major sedimentary basins of Africa still not explored. It has also been proven that the country has natural gas at two sedimentary basins that can be explored.

Fiscal regime

In Mozambique petroleum operations are defined as “all or some of the operations related with the research, development, production, separation and treatment, storage, transport, sale or delivery of oil as agreed by the parties, including the operations of processing natural gas and ending of all concluding operations.”

Petroleum operations are governed by the following legislation:

- Law no. 21/2014, of 18 August (Petroleum Law);
- Regulations on Petroleum Operations, approved by Decree no. 24/2004, of 20 August (PO Regulations);
- Law no. 27/2014, of 23 September (Specific Rules on Taxation and Tax Benefits of Petroleum Operations);
- Petroleum Production Tax Regulations, approved Decree no. 04/2008, of 9 April (PPT Regulations);
- 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 terms of taxation of petroleum operations, they are subject to the general corporate taxation rules, as established in the Corporate Income Tax Code (CIRPC).

The Corporate Income Tax (IRPC) regime accommodates some specific rules related to the oil and gas sector and ensures a greater competitiveness in the sector, namely

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

Regulators

The key regulators in the oil and gas industry include:

- Ministry of Energy and Mineral Resource (MIREME): This ministry regulates the activities of companies operating the energy, oil and gas sector.
- National Institute of Petroleum (INP): This Institute is subordinate to MIREME, and is responsible for the negotiation of the petroleum concession contracts on behalf of the government.
- ENH is the entity that manages and holds the participating interests on behalf of the State.

Forms of contracts

In accordance with the Petroleum Law the petroleum operations shall be carried out through concession contract following a public tender. A public tender is launched by the Government for the activities of exploration, production and exploration of oil and gas.

The petroleum operations are subject to the prior execution of a concession contract under the Petroleum Law which will grant the following rights:

- Reconnaissance – the reconnaissance concession contract grants the 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 pipelines or gas pipelines systems for transportation of crude oil or natural gas or infrastructure for gas produce in the concession contract area;
- Construction and operation of oil pipeline or gas pipelines systems – an oil pipeline or a gas pipeline system concession contract grants the right to construct and operate oil pipeline or gas pipeline systems for the purpose of transporting crude oil or natural gas, in those cases that such operations are not covered by an exploration and production concession contract; and
- Construction and operation of infrastructure – which grants the right to construct and operate infrastructure for petroleum operations, such as processing and conversion, which are not covered by an approved exploration and production development plan.

The most common forms of petroleum contracts in Mozambique are the following:

Joint Venture Arrangement

This is usually an arrangement between ENH on behalf of the Government of Mozambique and oil companies. Companies operating under this arrangement jointly own and develop various oil and gas concessions and contribute towards costs and subsequently derive benefits based on their equity participation in an oil block.

The parties will typically sign a Joint Operating Agreement (JOA) to govern relations between them.

Mozambique

Exploration and Production Contract (EPC)

This type of agreement is basically an agreement between an Oil and Gas Company and the Government. The Government grants to the contractor a determined area for research, exploration or production on the contractor's own risk and costs.

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

An EPC contains the exclusive right to conduct petroleum exploration and production activities, as well as the non-exclusive right to construct and operate an oil or gas pipeline for the purposes of transporting oil or gas produced from the contract area, except where access to an existing oil or gas pipeline system is available on reasonable commercial terms.

The power to approve the execution of the EPC, development plans and any material amendments thereto is vested in the Council of Ministers.

Royalties

The Petroleum Production Tax (PPT) or Royalty is levied on the petroleum produced in the Mozambican territory from a development and production area, with such tax liability being generated upon the extraction of the petroleum produced from a petroleum deposit.

The PPT rates are 10% for crude oil and 6% for natural gas. Please note that when the production is intended for the development of local industry, the above rates are reduced by 50%.

The State may opt for the collection in kind of part or all of the PPT by means of notice by the tax administration, after consultation with the relevant services of the Ministry responsible for the petroleum sector.

The tax basis of the PPT shall be the value of the petroleum produced, which shall be determined based on the weighted average prices at which it was sold by the producer and its contractors in the month to which the tax to be assessed pertains.

Compliance Requirements

Tax returns and payments

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

Petroleum Production Tax

Petroleum Production Tax should be paid monthly to the tax authorities, by the end of the month following the month of production, and the respective return should be filed jointly with the following information:

- Quantity of petroleum produced during the month;
- Quantity of petroleum sold during the month;

- Quantity of petroleum stored at the beginning and at the end of each month;
- Quantity of petroleum inevitably lost;
- Quantity of petroleum used on the recuperation operations duly authorised by the government;
- Quantity of petroleum subject to tax;
- Amount of tax due in the period; and
- Any other relevant information required for the tax assessment.

Penalty

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

Corporate Tax

The Tax Code establishes the following deadlines for payment of this tax:

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

Corporate taxpayers should also comply, amongst others, with the following declarative obligations:

Declarative Obligations	Deadline
Annual Income Tax Return(M/22)	By the last working day of May or by the last working day of the fifth month subsequent to the end of the tax period for the taxpayers authorised to adopt a different tax year
Annual Declaration of Accounting and Tax Information (M/20) and supporting documents	By the last working day of June or by the last working day of the sixth month subsequent to the end of the tax period for the taxpayers authorised 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
Declaration of commencement of activities	Fifteen days before start of activities
Declaration of alterations	Fifteen days after occurrence of alteration
Declaration of termination of activities	Thirty days after termination
Declaration of substitution (applicable when tax assessed is less than tax due, or tax losses declared are higher than effective losses)	No legal deadline foreseen by law. However, it is recommended that such declaration be submitted together with the Annual Declaration of Accounting and Tax Information (M/20)

Every company engaged in petroleum operations is required to have separate file returns for each concession and individual tax returns.

Penalty

Late submission of returns: fine that varies from MZN 3.000 to MZN 65.000.

Mozambique

Late payment – fine that can be up to the double amount of tax due, plus daily interest calculated based on the MAIBOR rate + 2%

Principle of Independent Entities

With regards to the IRPC the following operations are considered to be conducted by independent entities applying the transfer pricing rules provided by the IRPC Code:

- transactions relating to different concession contracts of the same taxpayer;
- transactions relating to a concession contract and other activities of the same taxpayer;
- transactions relating to oil and gas operations downstream of the development plan/ point of delivery;
- services provided to activities downstream to the delivery point; and
- any transactions between entities with special relationships.

According to this principle, when two or more taxpayers develop activities of reconnaissance, research, development and production of oil and gas within the same concession agreement, each taxpayer must separately calculate the taxable income of the petroleum operations in respect of that concession contract, as if they are associated entities conducting intergroup transactions, applying transfer pricing principles (i.e. principle of independent entities.)

Profits and Gains

Further, without prejudice of the IRPC 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 and gas operations, regardless if the disposition occurs abroad;
- unused amounts of the fund related to the costs for the demobilisation of oil and gas operations;
- any other withdrawals related to Demobilisation Fund (discussed later) of oil and gas operations; and
- any other amounts obtained by virtue of oil and gas operations in respect of the concession contract.

Costs and Losses

In terms of the Petroleum Tax Regime, the following, amongst others are considered costs and losses derived from petroleum operations:

- operating costs;
- overhead such as warehouses, vehicles, offices, camps, installations, equipment, used in the petroleum operations.
- professional training of Mozambican employees;
- expenses incurred in the signing of a concession contract, excluding any bonus associated with this acquisition;
- contributions in cash to the Demobilisation Fund and direct costs of demobilisation;
- expenses of any downstream activity of the concession contract or services provided under an activity related to the referred contract; and
- general administrative expenses.

The enacted law also provides for non-deductible expenses, which include:

- fraudulent activities;
- hedging losses;
- expat personnel training expenses and training programmes not in compliance with the legislation;
- bribes;
- petroleum trading or transport costs downstream of the delivery point specified in the agreement;
- independent experts consulted with for purposes of determining petroleum price, if not requested by Government;
- petroleum Production Tax;
- commissions paid to intermediaries;
- arbitration costs, except those to defend exploration, development or production activities;
- indemnities paid for damages; and
- damages caused by negligence or fraud.

Amortisation

The concessionaire must depreciate all depreciable items of tangible and intangible assets in accordance with the IRPC.

The prospecting and exploration costs carried out under a concession contract are treated as depreciable items of tangible assets, and are subject to amortisation.

Further the development and production costs carried out under a concession agreement are considered as depreciable items of tangible assets, and consequently subject to amortisation. Please see the table below with the amortisation rates:

Assets	Rate
Prospecting and Exploration Costs	100%
Development costs	25%
Petroleum Production Assets	20%
Acquisition of Petroleum rights	10%
Other Assets	10%

The amortisation is deducted with the above rates unless the working life of the petroleum operation approved in the development plan is reduced, in which case the rate shall be divided by the number of expected years of oil and gas operations.

Incentives in the oil and gas industry

The fiscal benefits available for the petroleum operations are the following –

- Exemption from customs duties, VAT (17%) and excise duties on import of capital equipment, listed in Class “K” of the Customs Tariff Schedule, during a period of 5 years counting from the commencement of activity’s date.
- In addition to those listed in the Class “K” of the customs tariff schedule, the exemptions from customs duties, VAT and excise duties also apply on importation of specified goods/equipment used for exploration purposes.

Mozambique

The above benefit shall only be granted whenever the goods to be imported are not made in Mozambique or, if so, such goods do not satisfy the specific features in terms of purpose and functionality required by or inherent to the nature of the activity to be developed and exploited.

Whenever the tax benefit refers to the acquisition of goods intended to the direct realisation 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 authorisation of the competent entity, in which case the sanctions provided for in the applicable legislation will be applied.

Withholding tax

Withholding tax is an advance payment of income taxes. It is deductible from payments made on qualifying transactions which include payments in respect of services, rent, dividend, interest, royalty, commission. Note however that payments for services between local entities subject to Corporate Tax are exempted from withholding tax.

Payments to non-residents without permanent establishment are taxed through a final withholding tax of 20% on the income listed on the specific legislation.

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

- telecommunications services and international transport services, including assembly and installation of the equipment made by such service providers;
- construction and rehabilitation of infrastructure of production, transport and distribution of electricity in rural areas, within the scope of public rural electrification projects;
- chartering of seafaring vessels for fishing and cabotage activities;
- Securities listed on the Mozambican Stock Exchange.

By the 20th day of the following month all amounts withheld have to be delivered by the company to the tax authorities.

However, if payments of income subject to withholding is to be made to foreign entities, proof of payment of the tax has to be presented to the commercial bank or central bank (when applicable) before the transfer is processed or approved. Therefore in these cases the withholding tax has to be paid to the State before the transfer is made.

However, the applicable withholding tax rate may be reduced where the recipient is a resident of a country that has a double tax treaty with Mozambique.

Mozambique has currently in force, Double Taxation Treaty (DTTs) with some African, European and Asian countries, namely, Portugal, Italy, Mauritius, United Arab Emirates (UAE), Macau, South Africa, Botswana, India and Vietnam.

Capital gains

In Mozambique, capital gains are not taxed separately from other company's incomes, they must be added to the remaining company's income and taxed at the end of the year based on the Corporate Income Tax rate (e.g. 32%).

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

- Capital Gains from direct or indirect transfer of shares, participating interests and other rights involving assets located in Mozambique, between non-resident entities, are regarded as obtained in the country; and
- Capital Gains of non-resident entities are wholly considered for taxation.

Transfer pricing and Thin capitalisation

Transfer pricing

Regarding transfer pricing rules, currently the Corporate Income Tax Code only have generic rules, according to which –

The Tax Authorities may proceed with the necessary corrections for assessing the profits for tax purposes whenever:

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

Please note, however that the Corporate Tax Code was changed, and the change included additional transfer pricing rules, with regards to the definition of the concept of special relations.

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Thin capitalisation

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

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

Indirect Taxes

Value-added tax (VAT)

As per the VAT Code in force, VAT is levied on the supply of goods and services, carried out in the national territory by a taxpayer acting as such and, in any case, on the importation of goods. Mozambique (unique) VAT rate is 17%.

Mozambican VAT is levied on the supply of goods or services carried out within the national territory without exceptions (territoriality concept), as well as on the imports (e.g. entry of goods in the territory, with a few exceptions).

Mozambique

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

Custom duties/Import tariffs

Custom duties in Mozambique are levied only on imports. Rates vary for different items, typically from 0% to 20%, and are assessed with reference to the prevailing Harmonized Custom Tariff.

Social security contributions

Pension contribution

Companies must be registered before the national social security system. In order to register the company (as a contribution payer) before the National Social Security System, a proper form must be completed and a letter must be submitted to such Authorities.

Social Security is payable by employers and employees on their monthly remuneration. The aggregate rate of contribution is 7%, 4% and 3% payable by employers and employees, respectively.

These amounts must be delivered to the Social Securities authorities until the 10th of the following month.

Other taxes

Municipal Individual Tax

This is a fixed value payable annually by all resident individuals aged between 18 and 60. The tax is payable once a year in February. This tax replaces the National Reconstruction tax within the Municipalities.

It is levied on the salary of the employees. Currently the IPA in Maputo amounts to MZM 295.00. This tax is payable in March of each financial year, and must be withheld from the employees' salary during February.

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 any building on the land, with the grounds on which it is based, where the source of income depends mainly on the existing structures and not on the land itself.

The obligation to pay the property transfer tax is triggered at the moment that the onerous transmission of a property right or a minor right as referred above is considered transmitted (including as referred above, the signature of promise of sale agreements).

The current rate of property transfer tax is 2% of the transfer value.

Municipal Tax on Real Estate

This tax is levied on buildings situated within a municipality. The rates applicable are 0.4% for buildings used for habitation purposes and 0.7% for buildings used for commercial purposes. This tax is paid in two instalments, being the 1st in January and 2nd instalment in June, and can be paid in one instalment until 31 January. Currently, the value of immovable property is determined on the grounds of a formula established by the State Department for Sale of State Real Estate.

Stamp taxes

Under the Stamp Duty Code, stamp duty is payable on any agreement, bank transactions, and specific acts foreseen in the said Code, executed in Mozambique. The payment of the stamp tax is due by the 20th day of the following month of first execution of the agreement or other act.

Stamp duty is chargeable either at fixed rates or ad valorem (i.e. in proportion to the value of the consideration) depending on the class of instrument.

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Country profile

The Republic of Namibia is a country in southern Africa whose western border is the Atlantic Ocean. It shares land borders with Angola, Zambia, Botswana and South Africa. As a coastal state, Namibia has its Exclusive Economic Zone delineated with an area of 564,748km², of which 86,698km² relates to the Namibian shelf, with water depths ranging between 0 to 200 metres.

Brief history on oil and gas development

License blocks are deep and ultra deep water depths. Prior to 2011, 20 wells were drilled ('95– '99: 13). In 2012, 2 wells were drilled. In 2013, three wells were drilled. In 2014, one well was drilled. To date no wells have been drilled in 2015. While seismic survey data is considered to be very promising, no commercial oil was discovered to date with the limited exploration activities carried out. The petroleum industry in Namibia is thus still in its infant stage.

Fiscal regime

The laws that regulate the petroleum industry in Namibia are Petroleum (Taxation) Act 3 of 1991 (PTA), the Income Tax Act 24 of 1981 dealing with administrative provisions and the Petroleum (Exploration and Production) Act 2 of 1991 responsible for the levying of royalties.

PTA is paid annually for the benefit of the State Revenue Fund in respect of taxable income received by or accrued to or in favour of any person from a licence area in connection with exploration or production operations carried out in any tax year in such licence area. The tax rate is 35% with an additional profit tax payable on a sliding scale of between 15% and 25%.

Royalties are payable at 5% of gross revenues. The market value of crude oil is used as the basis to levy royalty and petroleum tax.

Activities relating to downstream activities are not considered to be petroleum activities and are taxed under the Income Tax Act.

Namibia

Government participation

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

Forms of contracts

The current practice in the market is to make use of the Model Petroleum Agreement. The Model Petroleum Agreement serves as a basis of negotiation with applicants for exploration licenses. This Model is a concession type agreement and its clauses are drawn from the international petroleum industry practice and should therefore not hold any surprises for international petroleum companies.

The Model makes provision for the applicant of a license to commit to a minimum exploration work program, and further sets out the procedures to be followed by a licensee on discovery of petroleum.

Forms of Petroleum Leases / Licences

The Minister of Mines and Energy is mandated to appoint the Petroleum Commissioner according to the provisions of the Petroleum Act. This Ministry is responsible for assessing licence applications in respect of oil and gas. According to law, it is the Minister's duty to ultimately recommend the granting or denial of the licence application.

The Petroleum Act stipulates three types of licences for which prospectors can apply, namely:

Reconnaissance Licence – This licence is granted for the purpose of conducting a preliminary exploration of a considerable expanse of land or sea-bed acreage in order to determine where prospecting should be focused once an exploration licence has been obtained. This licence can be extended twice and is valid for no more than two years.

Exploration Licence – This licence is used to enable the systematic prospecting for oil and gas deposits. It is issued for a period of four years, and can be extended twice for no more than two years each time.

Production Licence – This licence allows the holder to carry on production activities within a specific production area and to sell or dispose of petroleum derived from such production activities from this area. This licence is valid for 25 years and can be renewed only once, for no more than 10 years.

Namibia adopted an Open Licensing System in 1999 for Reconnaissance, Exploration and Production licenses. The Petroleum Commissioner confirmed that this will change and revert to bid rounds in future.

Annual licence fees

License holders are required to pay annual charges to the State Revenue Fund. The charges are calculated by multiplying the number of square kilometers included in the block or blocks by the amounts provided for in Section 67 of the Petroleum Act. In the case of exploration licenses, the charge is calculated as follows:

- During the first four years, NUSD60 per square kilometer
- During the next two years, NUSD90 per square kilometer

- During the subsequent two years, NUSD120 per square kilometer
- Thereafter, NUSD150 per square kilometer

In the case of the production licenses, the fee is NUSD1,500 per square kilometer.

Taxation regime

Petroleum income tax is levied at 35% of taxable income and an additional profits tax (APT) levied on the after-tax net cash flows from petroleum operations. The after tax net cash flows is determined by deducting the exploration and development expenditure as well as the petroleum income tax from gross income.

Income tax is levied in respect of each license area. License areas are taxed separately even if the taxpayer has been granted the right of exploration in different license areas.

Taxable income is calculated as "Gross income" less deductions allowed in determination of taxable income.

Gross income¹ is defined as:

- the total amount,
- in cash or otherwise,
- received by or accrued to or in favour of a person
- from a license area in connection with exploration operations, development operations or production operations
- excluding amounts of a capital nature

There are certain specific inclusions that would form part of gross income:

- Market value of Petroleum produced, saved or delivered (including appropriated for refining purposes)
- Closing crude form inventory (50%)
- Profit on disposal of petroleum asset/licence area or transfer of such asset/licence area
- Sale of petroleum information in relation to such license area
- Any income received or accrued to a person as condition of the license
- Capital gains arising on sale of assets after production commenced is taxable in hands of licence holder
- Insurance proceeds in respect of any loss of petroleum produced or saved or any income that would have been included in gross income had the loss not occurred
- Any amounts received or accrued to the license holder prior to the year of production in respect of these items are carried forward to the year of first production and are included in gross income in that year.

Deductions² allowed in the determination of taxable income are:

- Expenses actually incurred
- in respect of the particular license area
- in the production of gross income

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

Namibia

Including such expenditure so incurred in respect of:

- a) (i) repairs or maintenance of any premises occupied for purposes of carrying out exploration operations, development operations or production in or in connection with such licence area, including repairs of machinery, implements, utensils and other articles employed by such person for such purposes;
- (ii) charges, fees or rent for or in respect of land or buildings occupied for purposes of carrying out production operations in or in connection with such licence area;
- (iii) contributions to a fund or scheme, approved by the Permanent Secretary, in respect of any person employed by such person in or in connection with production operations in or in connection with such licence area;
- (iv) interest and other moneys paid during the year of assessment on loans or other debts which, to the satisfaction of the Permanent Secretary, has been utilised or incurred for purposes of carrying out explorations or production operations in or in connection with such licence area;
- (v) any royalty levied under, and paid in terms of, the provisions of the Petroleum (Exploration and Production) Act, 1991, in connection with petroleum produced and saved in such licence area;
- (vi) the advancement of the education and training of Namibian citizens at institutions approved by the Permanent Secretary, and the provision of educational and scientific material and equipment in terms of any term or condition of a production licence issued in respect of such licence area;
- (vii) wages and salaries of persons employed by such person in or in connection with production operations carried out in such licence area;
- (viii) consumable items used in respect of the production, conveyance and storage facilities in or in connection with production operations, carried out in such licence area; the right of use of any plant, machinery, equipment or other article used in or in connection with exploration operations, development operations or production operations carried out in such licence area;
- (x) customs duty in respect of the importation for use in or in connection with production operations carried out in such licence area of plant, machinery, equipment spare parts, materials, supplies or consumable items to be used in or in connection with such production operations;
- (xi) General administration and management directly connected with production operations carried out in such licence area. If the expenditure was incurred outside Namibia, and the expenditure is otherwise an allowable deduction under this Act, the deduction will only be allowed to the extent to which provision is made in the terms and conditions of a production licence. If no such terms and conditions exist, the Permanent Secretary can determine the amount which he considers just and reasonable.
- (xii) the restoration of a licence area, or any part thereof, after cessations of exploration operations, development operations or production operations in such licence area to the extent to which such expenditure may, by virtue of any term and condition of a licence issued in respect of such licence area, be allowed as a deduction in determining such person's taxable income;
- (b) any debts due to such person to the extent to which they are proved to the satisfaction of the Permanent Secretary to be bad, provided such amount is included in the current tax year or was included, but not deducted, in any previous tax year in such person's income;
- (c) any amount which has been included in the gross income of such person in terms of section 7(1)(d) (closing stock) in the immediately preceding tax year in respect of such licence area.

Royalties

Royalties are payable quarterly and are calculated as 5% of gross revenues using the market value of the crude oil as a basis. The minister may prohibit the removal of petroleum from the production area and any other dealings in respect of the petroleum if the payer fails to remit payment. The royalty paid is deductible in the determination of the taxable income of the license holder³.

Withholding taxes

The general principle, on which Namibia's tax system is based, is the source principle. This implies that residents and non-residents are taxed on exactly the same basis in respect of income which is from a Namibian source or deemed source. All non-resident taxpayers (individuals as well as companies) have to submit a tax return in respect of their Namibian source income.

In terms of the provisions of the Income Tax Act, certain types of income will be subject to withholding tax. These are:

- Royalties (30% x 33%* corporate tax rate = 9.9%);
- Management, consulting, technical, administration and directors fees (Withholding tax on Services, 25%**).

Petroleum companies are exempt from withholding taxes on dividends.

* It has been announced by the Minister of Finance that the corporate tax rate will be reduced to 32%, this is however not enacted yet.

** It has been announced by the Minister of Finance that the withholding tax on services rate will be reduced to 10%, this is however not enacted yet.

Compliance dates

Royalties withholding tax is payable within 14 days after the end of the month during which the liability for payment is incurred.

Taxes withheld on payment for Services are payable to Inland Revenue within 20 days after the end of the month during which the amount was deducted or withheld.

Capital gains tax

Mining Licences/Rights

In terms of the Namibian Income Tax Act, any sale/donation/ expropriation cession, grant or other alienation or transfer of ownership of a licence or right to mine minerals is specifically included in the definition of gross income. The definition also includes a sale of shares in a company for a licence or right to mine minerals in Namibia.

Section 15 deems these profits to be from a Namibian source irrespective of:

- whether the transaction is concluded in or outside Namibia;
- the place where the payment of such amount is made;

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

Namibia

- the place where the funds from which the payment is made are held.

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

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

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

The Minister of Finance announced during the 2015 budget that the proceeds on the sale of petroleum licences will be taxable in future, however this was not enacted yet. No further information is available at this stage.

Petroleum information and assets

Section 7 of the Petroleum Taxation Act⁴ determines the amounts to be included in the gross income of companies falling under the Petroleum Tax Act. Paragraph (f) states that “any amount received by or accrued to or in favour of such person in the tax year from such licence area and deemed, under the provisions of section 12(1), to be gross income for purposes of this section;”

Section 12(1) of the Act⁵ deals with profit made on the sale/disposal of the licences/assets relating to the petroleum operations.

Where the amount received exceeds the capital expenditure incurred in respect of the licence area;

“the amount of such excess shall be deemed to be gross income received by or accrued to or in favour of such person from such licence area in the tax year in which such amount was so received or so accrued.”⁶

Accordingly the profit on sale of assets is included as taxable income. The amounts are only subject to tax in year that production starts. Capital gains arising on sale of assets after production commenced is taxable in hands of the licence holder.

Incentives

Prior to production

Accumulated exploration expenditures are deductible in full in the first year of production (unless they have already been transferred to another license area that has gross income from production).

⁴ Petroleum (Taxation) Act 3 of 1991

⁵ Petroleum (Taxation) Act 3 of 1991

⁶ Section 12(1)(b) of the Petroleum (Taxation) Act 3 of 1991

During production

Exploration expenditures incurred when production already commenced are immediately deductible.

Accumulated development expenditures are deductible in three equal instalments commencing in the first year of production.

Losses

Losses resulting from allowable deductions may be deducted as an allowable loss against the gross income from the license area in the next year. Losses may be carried forward without limitation.

Losses arising from different licence areas may, however, not be offset against income from another license area or other operations.

Compliance requirements

Petroleum entities are subject to the administrative procedures set out in the Income Tax Act.

Income Tax compliance requirements for a branch, company, joint venture, business person or close corporation will consist of:

- Submission of provisional tax returns (including payment of provisional taxes); and
- Submission of annual tax returns.

Provisional returns and payments must be made, as follows:

- The 1st provisional tax return and payment is due 6 months before the end of the tax year in question. The payment should be based on the taxable income for the first six-months of the tax year and should be calculated at the relevant corporate tax rate;
- The 2nd provisional return and payment is due at the end of each financial year (determined by the year-end of the company, branch, joint venture or close corporation). Provisional tax payable must be calculated based on actual taxable profit for the year, at the relevant corporate tax rate, less the amount paid on the first provisional;
- The 1st and 2nd provisional payments should be equal to at least 40% and 80% respectively of the tax payable for the year. Penalties and interest may be levied on an underestimation of provisional taxes; and
- A top-up provisional payment should be made no later than 7 months after the financial year-end of the company, equal to outstanding taxes for the year, after deducting 1st and 2nd provisional payments (if necessary).

The company/branch/joint venture is required to submit an annual income tax return to the Directorate Inland Revenue. This return is due no later than 7 months after the financial year end of the company. Extension for the submission of the income tax return may be granted by the Receiver of Revenue for an additional 5 months on receipt of a written request for such.

Namibia

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 Authorities⁷ where the two terms are deemed to be complementary – “regularly” being concerned with repeated actions and “continuously” with an ongoing assignment or assignments.

It is however strongly advised to obtain professional advice prior to commencing activities in Namibia and/or written confirmation from Inland Revenue whether the activities, as envisaged, will constitute taxable activities or not.

“Namibia” is defined for the purpose of the VAT Act as including the territorial sea, excluding the economic zone and the continental shelf. As such, for VAT purposes, goods or services supplied by a taxable person up to 200 nautical miles from the low watermark may be subject to VAT.

Compulsory VAT registration

If taxable supplies being zero-rated and standard rated supplies exceed NUSD200,000 in any 12 month period, VAT registration is obligatory. It should however be noted that it was announced by the Minister of Finance in the 2015 Budget Speech that the VAT threshold will be increased from NUSD200,000 to NUSD500,000, but this has not yet been enacted.

A person who becomes liable to register will have to apply to the Commissioner of Inland Revenue for registration within 21 days of becoming liable to register.

As VAT registered person, license holders must levy VAT at 15% on invoices for goods or services supplied locally. Goods sold and exported from Namibia may be subject to VAT at 15%. Goods subject to the fuel levy, will be zero-rated (0%) whether supplied locally or exported.

As VAT-registered persons, license holders are entitled to claim credit for VAT paid on invoices issued by Namibian suppliers against VAT charged on supplies made in Namibia or partly in Namibia. Import VAT paid on goods imported into Namibia and used or consumed in making taxable supplies by the VAT registered person may also be claimed against VAT charged on supplies made in Namibia or partly in Namibia, provided sufficient documentary proof is retained to support the VAT and Import VAT claims.

⁷ Case N27 1991 NZTC 3, 229

Custom duties/Import tariffs

Import VAT on goods

Imports, generally, are subject to VAT at the standard rate of 15% on the higher of the open market value of the goods or the free-on-board value (FOB) uplifted with 10%. In the latter case, the effective rate of Import VAT is 16.5%. The importer is responsible for paying the VAT when the goods are imported. It is irrelevant whether or not the importer is a registered person.

Where the importer is registered for VAT and has an Import VAT account (deferment account), Import VAT becomes payable by the 20th of the month following month of import.

In any other case, the VAT is payable when the goods are physically entered into Namibia.

Import VAT exemptions

License holders are exempt from paying import VAT under Schedule V, paragraph 2(f) of the Value-added tax Act 10 of 2000 (the VAT Act), and rebated from customs duties (full rebate of duty less ad valorem duties) in terms of rebate item 460.23, Schedule No. 4, Part 2 of the Customs and Excise Act, Act No. 20 of 1998 (the Customs and Excise Act).

The goods imported by the license holders must be for use solely in operations in connection with the prospecting for or the mining of natural oil or natural gas to qualify for exemption from import VAT, and subject further to the provisions of rebate item 460.23 above for rebate of customs duties, to the extent indicated.

The following will also 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 Swaziland into Namibia do not attract Customs duties⁸. Excise duties on excisable goods not subject to duty at source collection in the SACU country of manufacture, e.g. wine, will attract excise duties on importation into Namibia.

Imports from outside SACU member countries may attract Customs duties which will be a cost to the importer (not claimable).

Goods entered into a bonded warehouse

Only goods subject to Customs duties at a positive rate may be entered or stored in a Customs & Excise storage warehouse (Customs bonded warehouse) in Namibia.

8 Article 18 of the SACU Agreement, 2002

Namibia

When goods are cleared into a Customs bonded warehouse, the payment of Customs duties and Import VAT is deferred to the date of clearance and release of the goods for home consumption in Namibia.

If goods are moved to another Customs bonded warehouse, payment of duties and Import VAT is also suspended. The liability to pay Customs duties is acquitted when goods are directly exported from the Customs bonded warehouse.

Goods may stay in a Customs bonded warehouse for period of 5 years.

Control over stock in a Customs bonded warehouse is very important and subject to Customs inspections. This can be quite an administrative burden.

Export Levy

It should also be noted that the Revenue Authorities are considering the introduction of an export levy on raw materials exported from Namibia. This has not yet been enacted but it is our understanding that the export levy will vary from <1% to 2% for the following:

- Diamonds, Zinc, Lead, Uranium, Copper, Gold, Manganese, Fluorspar
- Other Metals, Precious and Semi-precious stones, Dimension stones & Marbles; and
- Gas, crude Oil.

Export Incentives

- In general, export incentives are available where the entity exporting minerals mined in Namibia is approved as an Export Processing Zone Entity (EPZ entity) by the Minister of Trade and Industry.
- An EPZ entity, in short, is not subject to income tax, VAT or Import VAT in Namibia. Thus, the export of minerals from Namibia will not be subject to Namibian VAT and the EPZ entity will not be required to retain all documentation as is required for VAT purposes in order to export the minerals from Namibia.
- Proof of export may however be required to be retained for purposes of retaining EPZ status in Namibia.
- Note, however, that the generation and exclusive exportation of electricity could possibly be regarded by the Minister of Trade and Industry qualifying for registration under an EPZ entity. Goods or services must be wholly exported and the Minister only allows upon special application up to 30% of production as local supplies. If the intention is to supply goods or services mainly locally, an EPZ registration will not be possible.

Fuel rebates

Fuel users in the mining sector are entitled to partial fuel levy refunds by the Road Fund of Namibia Administration (RFA) on bulk fuel purchases (diesel) for off-road use. To qualify for such refunds, fuel users should register with the “RFA” and submit claims on a specified form accompanied by the original purchases invoices issued in the name of the refund claimant by fuel wholesalers registered in terms the Namibian Petroleum Products and Energy Act.

Transfer pricing and Thin capitalisation ***Transfer pricing***

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

⁹ Section 16 of Petroleum Income Tax Act

When determining gross income, a sale of petroleum is considered to be at arm's length if:

- the price provided in the sale agreement is the only consideration
- the sale is not affected by any relationships other than the relationship created in the sale agreement
- the seller or any associated person to the seller, has not interest in the subsequent resale of the petroleum.

In the absence of an agreement, which is normally used to determine the market value of petroleum produced in a specific licence area, the amount will be determined by the permanent secretary with regard to the amount that would be obtained between a willing buyer and willing seller acting in good faith.

Thin capitalisation

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

Foreign exchange regulations

All remittances of dividends, interest, royalties etc. to countries outside the ZAR common monetary area need approval from the central bank. To obtain this, foreign denominated loan, trademark/royalty and similar agreements are submitted to the Bank of Namibia for approval when these are entered into.

It is advised that all foreign investments are registered with the Bank of Namibia (BON). In respect of the repatriation of investment money, the BON requires a formal application, through an authorised dealer, to be submitted. We were advised by an authorised dealer that the BON may prescribe a minimum investment period before capital invested may be repatriated.

We advise that an authorised dealer should be consulted prior to effecting any forex movements, as the BON applies regulations exclusively through authorised dealers in Namibia, informing them on a regular basis 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.

Individuals

Personal income tax

All persons other than companies are regarded as individuals and their year of assessment runs from the 1st of March to the 28th of February. There is no distinction between different classes of individual taxpayers and married men and women are taxed on the same basis. The same principles apply for individuals and for other taxpayers except for certain inclusions, exemptions and deductions, which relate specifically to individuals.

Services rendered within Namibia will be deemed to be from a Namibian source.¹⁰

¹⁰ Section 1 of the Income Tax Act, Act 24 of 1981

Namibia

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

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

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

- Employees’ tax by way of PAYE.
- Provisional tax payments.
- Assessment when PAYE and provisional tax payments fall short of the assessed liability for the year.

The due dates of annual income tax returns are as follows:

- Persons with taxable income of less than NUSD50 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 Act¹¹ 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 is NUSD81-00 by each (NUSD 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 NUSD81,300 per annum, NUSD6,775 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 NUSD81,300 per annum and are payable by employers to the Accident Fund in terms of section 69 of the Act.

Property taxes – Transfer duty

Natural Persons: Fixed property

Value of property NUSD

0 – 600,000	Nil
600,001 – 1,000,000	1% of value exceeding NUSD 600,000
1,000,001 – 2,000,000	NUSD 4,000 plus 5% of value exceeding NUSD 1,000,000
2,000,000 and above	NUSD 54,000 plus 8% of value exceeding NUSD2,000,000
Other Persons	
Any value	12%

The Minister of Finance announced that the Transfer Duty Act will be amended to levy transfer duty on the sales of shares of entities who own property and/or mining rights. The new legislation is expected to be tabled during 2015. The detail and effective date of this amendment was not yet announced. It is our understanding that the sale of a mining and petroleum rights/licences or the shares of the company holding such a rights/licences may also be subject to Transfer Duty. From our initial discussions with Namibian Inland Revenue it seems that this will not apply to petroleum licences.

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) NUSD 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	NUSD 2 for every NUSD 1,000 or part thereof of the value/consideration, depending on the specific transaction
Authorisation of share capital	NUSD5 for every NUSD1,000 or any part thereof of the nominal value of the shares.

Namibia

The basic transactions can be summarised as follows: Transaction stamp duty	
Registration of a bond over immovable property	NUSD5 for every NUSD1,000 of debt secured
Stamp Duty payable in respect of the transfer of immovable property:	
Where the value of the consideration exceeds NUSD20,000	NUSD100
and for every NUSD NUSD1,000 or part thereof of the value or consideration in excess of NUSD20,000	NUSD12

Annual duties

Annual Duty is calculated at 0.04% on the issued share capital of the company and is payable annually. The minimum amount payable is NUSD 80 per annum.

Nigeria

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Country profile

Significant new developments

There has been no progress in the effort to combine 16 different Nigeria petroleum laws into a single document called the Petroleum Industry Bill (PIB). The PIB seeks to set out a new legal framework for the organisation and operation of the entire oil industry in Nigeria as well as update the existing laws to reflect the changing dynamics of the oil and gas industry worldwide. The bill has been under review since 2002 when it was first drafted. Since then, the passage of the bill has been delayed with several versions in circulation. The petroleum minister set up a special task force in August 2012 to review the various versions submitted and produce a new bill for presentation to the National Assembly.

Nigeria

In the last draft version circulated in July 2012, the PIB sought to improve administrative efficiency by creating two distinct entities for the two different subsectors – the upstream and downstream oil sectors. Since then, the PIB has undergone public hearing in which various interest groups and stakeholders have raised certain issues including the 10% net profit contribution to a host community fund, increased tax rate applicable on gas income, and environmental issues amongst others.

How soon the PIB will be signed into law remains unknown given the multiple missed deadlines. If and when passed, the law will replace the current Petroleum Profit Tax regime with Nigerian Hydrocarbon Tax and Companies' Income Tax.

International Oil Companies (IOCs) in Nigeria continue to divest their interests in onshore oil blocks. This move by the IOCs is to reduce their exposure to onshore activities in Nigeria, due to the security concerns in the Niger Delta, oil theft, and long delays to the PIB setting out terms for new exploration. The IOCs are therefore focusing on more challenging frontiers in the deep offshore, where host community and related issues are less of a challenge. The divestment from onshore oil blocks presents an opportunity to promote indigenous participation in upstream activities.

In 2013, the Federal Government of Nigeria announced the opening of the second Marginal Field licensing round for 31 marginal fields, 16 of which are located onshore and 15 on the continental shelf. The Department of Petroleum Resources and Federal Ministry of Finance were expected to announce the winning bids during the second quarter of 2014. Till date, no announcement has been made.

Brief history on oil and gas development

Nigeria, a country located in West Africa along the Gulf of Guinea on the Atlantic Ocean, is a federal constitutional republic comprised of 36 states and its Federal Capital Territory, Abuja. English is the official language of Nigeria, and its currency is the Nigerian Naira (NGN). The petroleum industry is Nigeria's largest industry providing 95% of foreign trade earnings and over 70% of Government's revenue.

Oil was first discovered in Nigeria in commercial quantities by Shell-BP at Oloibiri (Yenogoa Province, now Bayelsa State) in 1956. The ownership of mineral resources resided in the British colonial masters at that time. However, the Nigeria government, after its independence in 1960 began to exercise greater control over the industry.

In 1971, Nigeria joined OPEC and in line with OPEC resolutions, the Nigerian National Oil Corporation (NNOC) was established, later becoming Nigerian National Petroleum Corporation (NNPC) in 1977. This giant government parastatal, with all its subsidiary companies, controls and dominates all sectors of the oil industry, both upstream and downstream.

Reservoir estimates

According to the June 2015 BP Statistical Energy Survey, Nigeria had proven oil reserves of 37.1 billion barrels at the end of 2014, equivalent to 43 years of current production and 2.2 % of the world's total reserves. In addition, proven natural gas reserves stands at 5.1 trillion cubic metres, 2.7% of the world total.

Fiscal regime

The main regulatory framework for the taxation of petroleum operations in Nigeria is the Petroleum Profit Tax Act, 1958 (as amended). According to the Act, petroleum

operations refers to upstream activities and is defined as “the winning or obtaining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account by any drilling, mining, extracting or other like operations or process (not including refining at a refinery) in the course of a business carried by the company engaged in such operations, and all operations incidental thereto and sale of or any disposal of chargeable oil by or on behalf of the company”.

Activities outside the above definition, including downstream activities, gas operations, crude oil refining activities etc. are not considered to be petroleum activities and are therefore taxed under the Companies' Income Tax Act regime.

Regulators

The key regulators in the oil and gas industry include:

- NNPC: manages and supervises government's interest in the industry.
- Department of Petroleum Resources (DPR): regulates and supervises oil and gas operations carried out under the various licenses and leases.
- Federal Inland Revenue Service (FIRS): administers the Petroleum Profits Tax Act (PPTA) and other taxation issues relating to the industry.

Forms of contracts

The most common forms of petroleum contracts in Nigeria include:

Joint venture arrangement

This is usually an arrangement between NNPC on behalf of the FGN and oil companies. Companies operating under this arrangement jointly own and develop various oil and gas concessions and contribute towards costs and subsequently derive benefits based on their equity participation in an oil block.

The parties will typically sign a Joint Operating Agreement to govern relations amongst themselves.

Production Sharing Contract

The Federal Government is the holder of the concession (one or many blocks), and appoints a Contractor to conduct petroleum operations in the area.

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

Risk Service Contract

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

The Contractor is subject to tax under the Companies Income Tax Act, since it is carrying out operations on behalf of the concession holder.

Nigeria

Special transactions/arrangements

Farm out arrangements

A farm out arrangement may be a financing or technical arrangement typically adopted when the license holder is incapable of developing the license area on its own. It is also used by the license holder to reduce risks.

The license holder called the “farmor” surrenders a percentage of his rights to the “farmee” in return for funding and provision of technical services required. Such funding may involve partial or full reimbursement of past costs previously incurred by the farmor.

Carry arrangements

A carry arrangement is one in which one party to a joint venture called the “carrying party” finances exploration and development costs in return for a reward out of probable future production. The carrying party is compensated for taking on additional risks based on agreed terms.

Unitisation arrangements

Under a unitisation arrangement, two or more companies may decide to jointly develop an oil/gas field that cuts across different licenses with different equity interest, as a single unit.

It involves 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.

Assignment of interest and transfer of shares

The Petroleum Act provides that prior consent of the Minister (of Petroleum Resources) is required before a holder of a licence area can assign his right to another party. A Nigerian court recently ruled that transfer of shares and ownership of an oil and gas asset amounts to indirect transfer of interest in such asset, and therefore requires Ministerial consent.

Forms of petroleum leases

Oil Exploration License (OEL): License granted to a company to explore for petroleum. An OEL is not exclusive to the licensee thus another licensee may be granted another OEL to cover the same area.

Oil Prospecting License (OPL): License granted to a company for the purpose of exploring, prospecting and winning petroleum. The duration of the license is 5 years for JV operators and 10 years for PSCs. It covers a fixed area, not more than 2,590km².

Oil Mining Leases (OML): License granted to an OPL licensee who has satisfied all the conditions imposed on the license and discovered oil in commercial quantities. It covers a fixed area, not more than 1,295km².

Oil is deemed to have been discovered in commercial quantity if the Minister is satisfied that the licensee is capable of producing at least 10,000 barrels per day of crude oil. The duration of the license is usually a maximum of 20 years but is renewable upon approval.

Royalty

The Petroleum Act, 1969 requires the holder of an OPL or OML to pay royalties to the FGN as soon as production starts. This is usually in form of monthly cash payments at the prescribed rate or by way of royalty oil. The prescribed royalty rates are as follows:

JV operations

Area	Rate %
Onshore production	20
Onshore production up to 100 meters water depth	181/2
Onshore production beyond 100 meters water depth	162/3

Production Sharing Contracts

For PSCs operating under the Deep Offshore and Inland Basin Production Sharing Contracts Act of 1999 (as amended), the applicable rates are:

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

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Taxation regime

Petroleum Profits Tax (PPT) is levied on the profits of corporate bodies engaged in petroleum operations. Individuals (either singly or in partnerships) are not allowed to engage in petroleum operations. PPT is assessed on an Actual Year Basis.

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

Revenue

The chargeable income of a company engaged in petroleum activities is the sum of the following:

- the proceeds of all chargeable oil sold by the company in that period;
- the value of all chargeable oil disposed by the company in that period; and
- all income of the company for that period incidental to and arising from any one or more of its petroleum operations.

Adjusted profit

This is computed by deducting from all outgoings and expenses incurred by the company wholly, exclusively and necessarily, in its petroleum operations for that period, whether within or outside Nigeria, from revenue.

Nigeria

Assessable profit

This is obtained after the deduction from the adjusted profit for the period, any loss incurred by the company in any previous accounting period. The loss deducted cannot exceed the adjusted profit for the period.

Capital allowances

A company engaged in petroleum operations is entitled to claim capital allowances on any qualifying capital expenditure (QCE) if it owns the QCE at the end of the accounting period and the QCE was in use for purposes of its petroleum operations. Depreciation is not deductible for tax purposes; capital allowance is however granted in lieu.

Petroleum Investment Allowance (PIA) is granted to a petroleum company in the first year a QCE is incurred. The following PIA rates are applicable to companies in JV operation.

QCE for	Rate %
Onshore Operations	5
Offshore Operations:	
-Up to and including 100m of water depth	10
-Between 100m and 200m of water depth	15
-Beyond 200m water depth	20

PSC operators are entitled to Investment Tax Credit (ITC) at a rate of 50% of QCE for PSC executed prior to July 1998 and PIA at a rate of 50% for PSC executed with effect from July 1998.

Annual allowance is granted in addition to PIA, in lieu of depreciation. The current rates are 20% for all categories of QCE in the first four years and 19% in the fifth year. The balance of 1% is retained in the books until the QCE is disposed.

Restriction of capital allowance / minimum tax

Capital allowance is restricted to the lower of:

- Actual computation; and
- 85% of assessable profit less 170% of Investment Tax Allowance.

The restriction on capital allowances ensures that there is a minimum tax payable at 15% of the company's assessable profits.

Chargeable profits

This is obtained after deducting allowable capital allowances from the assessable profit.

Assessable tax

This is derived after applying the applicable tax rates (below) on the chargeable profit determined.

- 85% for petroleum operations carried out under a Joint Venture (JV) arrangement with the NNPC or any non PSC over 5 years.
- 65.75% for non PSC operation in its first 5 years during which the company has not fully amortised all pre-production capitalised expenditure.

- 50% for petroleum operations under PSC with the NNPC.

Tertiary Education tax

It is payable by only Nigerian companies and is levied at the rate of 2% on assessable profit, that is, tax adjusted profit before capital allowances. It is deductible for tax purposes in the determination of PPT.

Compliance requirements

Tax returns and payments

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

Estimated tax returns must be filed within two months of the fiscal year (which runs from 1 January to 31 December), that is not later than the last working day in February of every year.

The estimated tax is paid in monthly installments starting with the first instalment which is payable not later than the third month of the accounting period (i.e. March) with a final 13th installment (if there is an underpayment). Revisions are made if there is any significant change in the parameters used in the estimate i.e. production, cost and price.

Actual tax returns must be filed within five months after the end of the accounting period, that is, not later than 31 May. The final installment of tax is payable within twenty-one days after the service of the notice of assessment of tax for such accounting period.

Penalty

- Late submission of returns: Initial penalty of NGN 10,000 and NGN 2,000 for each day such failure continues.
- Late payment of tax: 5% of the tax payable.

Electronic Filing

The FIRS recently launched the Integrated Tax Administrative System (ITAS) project, an online portal for taxpayers to file tax returns and remit taxes electronically and a one-stop tax database. The first and second pilot stages of the ITAS project have been inaugurated which would allow companies subject to PPT electronically file their estimated tax returns, pay the monthly tax instalments due, submit revised estimates and the final annual returns.

Recent Developments in Oil and Gas Taxation

Requirements for Upstream Companies to file CIT Returns

In two separate workshops held in June and September 2014, the FIRS has requested that upstream companies start to file CIT returns, to verify expenses incurred prior to production. This is based on Section 55 of the CIT Act which provides for “every company” to file its returns. Although this applies to all upstream companies, emphasis was made on the following:

- Each party in a PSC arrangement is now required to submit an additional return separate from the return filed by the Contractor. However, this would continuously

Nigeria

be challenged by the oil companies given certain peculiarities in the CIT Act such as commencement rules and excess dividend tax.

- Sole Risk and Marginal Field Operators (MFOs) are also required to submit CIT returns and compute their PPT returns based on equity interest.

Applicability of withholding tax to Dividends from Gas Profits

In a Tax Appeal Tribunal (TAT) case held in January 2015 between the FIRS and a taxpayer (Agip), the TAT held that since Agip's gas income is liable to tax under Companies Income Tax Act (CITA), Agip is subject to all the provisions of CITA in assessing its gas income. Therefore, Agip is liable to WHT on dividends paid out of its gas profits as provided under Sections 80 and 9(1) (c) of CITA.

The TAT's ruling provides some clarity on the previously divergent interpretations of Sections 11(2) and 60 of the PPTA by players in Nigeria's upstream petroleum industry. By determining that gas income is taxable in its entirety under the provisions of CITA, the TAT's ruling effectively removes gas operations from the scope of the PPTA. This therefore has significant impact beyond the main issue in this dispute in view of the consequential issues that may arise such as the application of commencement rules, excess dividend taxation and so on. It is expected that the judgment will be appealed given that there are tenable arguments for both interpretations on the subject.

In the meantime, companies that have adopted the practice of exempting their dividends paid out of gas profits from WHT and other provisions of CITA should begin to re-assess their positions and review their past and current tax uncertainty treatment while awaiting a conclusive ruling by the courts. The entire process could take years.

Tax Deductibility of Intercompany Interest

On 18 September 2014, the TAT ruled that upstream companies can take tax deductions for interest charges on their related party loans, provided that these loans are obtained at arm's length. This ruling was issued in a case brought before the TAT by the Nigerian Agip Oil Company Limited (Appellant) against the FIRS.

Historically, the tax deductibility of inter-company interest expense has posed a major challenge to upstream companies, especially considering that such companies need huge funding to carry out their operations in such a capital intensive industry. The offshore entities are better able to secure such loans on better terms for on-lending to their Nigerian entities. The reference to arm's length in the ruling gives credence to the need for a robust transfer pricing analysis to substantiate the arm's length nature of all intercompany transactions including loans.

In addition, the judgement will have impact on tax accounting and reporting by affected companies in terms of their reserve for uncertain tax positions. This requires a reassessment as it remains to be seen whether the FIRS will appeal the judgement.

Oil and Gas Free Zone Authority Establishes Tax Administration Unit

The Oil & Gas Free Zone Authority (OGFZA) has established the Free Zones Tax Administration (FZTA) Unit with effect from January 2015 to streamline the administration of permissible taxes within the tax free zones. According to the OGFZA, this has become necessary to avoid unfriendly situations where various tax agencies relate directly with free zone enterprises often resulting in unending disputes. Going forward, all tax matters relating to the free zones will be coordinated by the FZTA.

Some of the responsibilities of the FZTA unit include:

- To interface between the Free Zones (FZEs) and various tax agencies;
- Harmonise and coordinate the process of collecting allowable taxes in the Oil and Gas Free Zones;
- Serve as a tax collection agent for all tax agencies in the collection of allowable taxes in the free zone;
- Liaise with tax agencies and obtain tax clearance certificates for employees and receipts for contractors of FZEs;
- Submit all tax clearances and receipts to FZEs for distribution to their employees and contractors,
- Conduct periodic tax audit of FZEs to ensure compliance;
- Issue tax notifications to FZE to remit tax as and when due; and
- Arbitrate on any tax dispute arising between an FZE and any tax agency.

All FZEs were directed to refrain from dealing directly with the various tax agencies.

Applicable Crude Oil Price for PPT Purposes

There has been a long standing dispute between the FIRS and oil producing companies on the applicable price of crude oil to be used for tax purposes. The TAT on 23 January 2015 ruled that the realisable price (RP), and not the official selling price, should be used for the tax years during which the relevant Memorandum of Understanding (MOU) between the government and the oil companies remained valid.

The MOU is an agreement reached between the FGN and oil companies in Joint Venture operations with NNPC. The aim of the MOU was to secure a profit margin for the oil companies during difficult oil market conditions. The MOU, first signed in 1986, was revised in 1991 and again in 2000. The 2000 MOU signed between the NNPC (on behalf of the FGN) and major oil companies stipulated that revenue, royalty and PPT computations should be based on RP being the amount earned by the oil companies from crude oil sale.

The 2000 MOU was neither officially renewed nor terminated until 17 January 2008 via a letter from DPR. The letter stated that the RP will be replaced with the Official Selling Price (OSP) as advised by NNPC effective from 1 January 2008.

In the case referenced above, the TAT decided that the RP was the appropriate pricing methodology applicable to the PPT returns for 2006 and 2007. Although this ruling provides some comfort to affected oil producing companies for the periods in which the MOU remained valid, there are other related issues which have not been addressed. Generally, the FIRS seeks to use the higher of the OSP and the RP in calculating revenue and issuing tax assessments to upstream companies. This ruling does not prescribe the appropriate basis for crude oil pricing for periods and operations not covered by any MOU.

Tax Treatment of Oil Asset Disposals

In a recent decision (February 2015), the TAT held that no capital allowance claw-back (balancing charge) should be computed on the disposal proceed relating to intangible assets on which no capital allowance had been previously claimed.

The ruling comes off the backdrop of an ongoing issue in the oil and gas industry, concerning the apportionment of disposal proceeds between tangible and intangible assets, by the buyer and seller. For the case in question, the Company sold its interests in an oil concession to a third party. Under the sale, the consideration for both tangible and intangible assets was apportioned accordingly by the purchaser (presumably agreed with the seller since it was a commercial transaction between unrelated parties);

Nigeria

and the Company computed balancing charge only on the tangible assets and some intangible portion categorised as QCE and in respect of which capital allowances had been previously claimed.

The Tribunal found that no capital allowances were claimed or granted by the FIRS in respect of the intangible assets. It therefore held that the assets did not amount to QCE and so should not be included in the computation of balancing charge. The decision clarifies that balancing charge cannot be computed for expenses written off to profit or loss account at the time they are incurred. If they are subsequently disposed and a capital sum received, any excess over original cost would be taxable under capital gains tax at 10% rather than PPT at a much higher rate.

The ruling addressed key principles of capital allowance claw-back but did not address the pertinent issue of the appropriate split of consideration between tangible and intangible components of the disposal. However, based on the outcome of the decision it appears that the FIRS cannot exercise its discretion to allocate consideration between tangible and intangible if two commercially independent parties have agreed on a split.

Pending any further ruling on the allocation of proceed between tangible and intangible portions, taxpayers should ensure that any apportionment is agreed between both buyer and seller and treated the same way by both parties.

PSC Tax Returns – Preparation by Contractor versus NNPC

Under a PSC arrangement, the concession is held by NNPC (or an alternative holder), which engages other companies as contractors to conduct petroleum operations on a designated contract area. The contractors take on the financing risk of operating the field and are entitled to recover costs and a share of profit when commercial production commences.

One of the parties to a PSC arrangement is appointed as the Contractor, to execute petroleum activities on behalf of the parties to a PSC, perform administrative functions and represent the interests of the NNPC. In line with the PSC Act and the individual PSCs, the NNPC is mandated to submit the tax returns prepared by the Operators for each contract area to the FIRS. In practice, the NNPC usually amends these returns to the detriment of the contractors resulting in increased government take in the form of tax oil payable to the FIRS.

In a recent case (May 2015) between PSC parties and the FIRS, the TAT nullified the assessment raised by the FIRS on the basis that the FIRS did not consider the returns prepared by the Contractor, which were significantly different from what was submitted by the NNPC. The TAT asserted that both the PSC Act (Deep Offshore and Inland Basin Production Sharing Contracts Act) and the PSC between the NNPC and the Contractor vest the former with the right to prepare PPT returns for the contract area, while the NNPC had only a responsibility to deliver the returns to the FIRS.

Although the NNPC has the right to participate in preparing the PPT returns, the tax returns prepared by Operator is the foundation for determining tax payable to the FIRS. It was held that the assessment by the FIRS should indicate the names of the parties to the PSC in line with Section 37(1) of the PPTA and Sections 11 and 12 of the PSCA, as they were the affected taxpayers in the scenario. The TAT also ruled that the parties to the PSC had the right to object to the FIRS' assessment as they were the affected taxpayers.

Nigerian Content in the Oil and Gas Industry

Nigerian Oil and Gas Industry Content Development Act (NOGICDA)

The NOGICDA (Local Content Act) was passed in 2010 to increase the level of Nigerian content in the oil and gas industry. Nigerian Content means “...the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilisation of Nigerian human, material resources and services in the Nigerian oil and gas industry.

Compliance with Nigerian content is a condition precedent for:

- renewal of licenses and permits to operate in the industry;
- short-listing companies during pre-qualification exercises and for the grant of contracts in the oil and gas industry.

The Act introduces a levy of 1% on every contract awarded in the upstream oil and gas sector of the economy. Any violation of the Act is liable for a fine of 5% of the contract value and may result in outright cancellation of the contract.

Marginal fields

In a bid to increase participation of Nigerians in the upstream sector of the oil and gas industry, FGN commenced the first reassignment of marginal fields formerly assigned to IOCs to indigenous players in February 2003 with 24 licenses being awarded. Section 16 of the Petroleum Act provides the criteria for the determination of marginal fields and the DPR's Guidelines for Farm-out and Operation of Marginal Fields require oil companies to update their portfolio of underdeveloped fields and periodically report to the DPR.

Encouraged by the performance of marginal field operators who currently account for about 1% of the nation's production, and have increased the reserve base of the country from recent discoveries, the government have announced a second licensing round for marginal fields.

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Incentives in the oil and gas industry

Oil exploration and production companies

In addition to capital allowances, the following incentives are available to oil exploration and production companies:

- dividends paid by E&P companies are exempted from withholding tax;
- graduated royalty rates and lower PSC tax rates to encourage offshore production;
- tertiary education tax is treated as a tax deductible expense for oil exploration and production companies.

Pioneer status incentive

In recent times, indigenous oil and gas companies have sought the relief granted under the Industrial Development (Income Tax) Relief Act (IDITRA) to exempt their corporate profits from tax for up to five years. The incentives granted by the IDITRA typically apply to companies under CITA and not companies engaged in petroleum operations under the PPTA. Notwithstanding, the Nigerian Investment Promotion Commission (NIPC) continues to process pioneer certificates for exploration and production companies on the basis that, oil and gas exploration and production is included in

Nigeria

the list of pioneer industries. The FIRS have in the past challenged the pioneer status awarded to such companies.

In order to address the identified lapses, abuse and loopholes in the pioneer incentive scheme, the Ministry of Industry, Trade and Investment has now released a list of 44 industries and products that are eligible for the pioneer status. The gazette dated 27 May 2015 essentially reproduced the list of industries and products as approved by the Council of Ministers in 1989. This implies that all the industries and products that were added to the approved list within the past 26 years since 1989 are no longer eligible for the incentive. Eligible companies are exempted from income tax for three years and this may be extended for one or two years.

Gas exploitation in the upstream sector

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

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

Gas utilisation in the downstream sector

- An initial tax free period of three years renewable for an additional two years or an alternative of an additional investment allowance of 35 per cent;
- 15% investment capital allowance which shall not reduce the value of the asset;
- Interest on loans for gas projects is to be tax deductible provided that prior approval was obtained from the federal ministry of finance before taking the loan;
- All dividends distributed during the tax holiday shall not be taxed.

Oil and Gas Export Processing Zone

The Oil and Gas Export Free Zone is located at Onne/Ikpokiri area of Rivers State. It is exclusively for the use of oil and gas companies and related service companies. It focuses exclusively on the oil and gas industry.

Approved enterprises operating within the Zone are exempted from all federal, state and local government taxes, levies and rates. The Export Free Zone offers a range of tax concessions plus other investment incentives including minimal bureaucracy, to ease the flow of business.

Personal income tax

Individuals including employees, Partnerships and Unincorporated Trusts are liable to tax under the PIT Act. The principal basis of liability to tax under the PIT Act is residency. A person is considered resident if he is physically in Nigeria for at least 183 days (including leave and temporary absence) in any 12-month period or serves as a diplomat or diplomatic agent of Nigeria abroad. Resident persons are liable to tax on their worldwide income.

In the case of employment, a non-resident person is liable to tax in Nigeria if the duties of his employment are wholly or partly performed in Nigeria, unless:

- The duties are performed on behalf of an employer who is in a country other than Nigeria;
- The remuneration of the employee is not borne by a fixed base of the employer in Nigeria; and
- The remuneration of the employee is liable to tax in that other country under the provisions of the avoidance of double taxation treaty with that other country.

PIT rate is applied on a graduated scale on taxable annual income as set out below:

Scale	Rate
First NGN 300,000	7%
Next NGN N300,000	11%
Next NGN N500,000	15%
Next NGN N500,000	19%
Next NGN N1,600,000	21%
Above NGN N3,200,000	24%

Taxpayers are entitled to a consolidated relief of the higher of NGN 200,000 or 1% of gross income plus 20% of gross income.

PAYE tax must be remitted on or before the 10th day of the month following the payment of salary. There is a penalty for failure to remit of 10% per annum on the amount plus interest on annual basis at bank lending rate.

Employers must file an Annual PAYE return before 31 January every year in respect of emoluments paid to employees in the preceding year and file an estimated annual return for the current year not later than 31 March. There is a penalty for failure to file returns of NGN500,000.

Withholding tax

WHT is an advance payment of income taxes. It is deductible from payments made on qualifying transactions which include payments in respect of contracts, fees, rent, dividend, interest, royalty, commission. However, WHT is not applicable on dividends distribution made out of profits on which PPT has been paid.

The company making payments is expected to deduct the tax and remit the tax deducted in the currency of transaction to the FIRS (for deductions from companies) or the relevant State Internal Revenue Service (SIRS) for deductions from individuals, partnerships and unincorporated bodies. WHT due to the FIRS and SIRS must be remitted not later than the 21st and 30th of the following month respectively. The applicable WHT rates on qualifying transactions can be found in the table below:

Nigeria

Natural 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/Building Contract ¹	2.5	5
All other types of Contracts, including Contracts for Service	5	5
All types of contracts, and agency arrangement, other than sales in the ordinary course of business	5	5

The applicable WHT rate may be reduced where the recipient is a resident of a country that has a double tax treaty with Nigeria.

Penalty

- Failure to remit WHT due to the FIRS: A penalty of 10% of tax due and interest at commercial rate;
- Failure to remit WHT due to SIRS: A fine of NGN 5,000 or 10% of tax due, whichever is higher, and interest at the bank lending rate.

Capital gains tax (CGT)

Gains accruing to a chargeable person (individual or company) on the disposal of chargeable assets shall be subject to tax under the Capital Gains Tax Act at the rate of 10%. There is no distinction between long-term and short-term gains and no inflation adjustment to cost for CGT purposes.

All forms of assets, including options, debts and foreign currencies, other than those specifically exempt, are liable for CGT. The gains on the disposal of shares are exempt from CGT.

CGT is applicable on the chargeable gains received or brought into Nigeria in respect of assets situated outside Nigeria. Capital losses are not allowed as an offset against chargeable gains accruing to a person from the disposal of any assets.

Transfer pricing and Thin capitalisation

Transfer pricing

The Nigerian Transfer Pricing (TP) rules were released in October 2012 and effective for basis periods commencing after 2 August 2012 e.g. a company with an accounting year end of 31 December will be required to have a TP documentation in place for accounting periods commencing 1 January 2013. The regulations give effect to the existing anti avoidance provisions contained in the Petroleum Profits Tax Acts. It aims

to provide certainty in the tax treatment of related party transactions and will apply to both domestic and cross border transactions.

Persons covered are “connected taxable persons” which is broadly defined to include individuals, permanent establishments created by head offices, subsidiaries, associates, partnerships, joint ventures and trusts to the extent that they participate directly or indirectly in the management, control or capital of another; or both of which have common control, management or shareholders.

Other highlights of the regulation include:

- Introduction of the Organisation for Economic Cooperation and Development (OECD) TP methodology;
- Provision for corresponding adjustments to avoid double taxation for residents in treaty countries;
- Requirement to file an annual declaration and disclosure forms regarding intercompany transactions with tax returns and documentation to be in place prior to returns filed;
- Penalties for non-compliance; and
- Introduction of Advance Pricing Arrangements.

A taxpayer may be exempted from the TP provisions where prices have been approved by other Government regulatory agencies.

Thin capitalisation

Currently, Nigeria does not have thin capitalisation rules, but the FIRS is considering introducing this in the near future.

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Cabotage levy

The Coastal and Inland Shipping Act (Cabotage) Act 2003 specifically restricts the use of vessels in domestic coastal trade, within the coastal territorial inland waters or any point within the waters of the exclusive economic zone of Nigeria, to vessels wholly owned and manned by Nigerian citizens. However, waivers may be granted to permit the use of foreign vessels in domestic coastal trade. A chargeable vessel is any craft capable of being used for marine navigation and for carriage of persons and property.

A surcharge of 2% of the contract sum performed is levied on any vessel engaged in coastal trade and payable into a fund to promote the development of indigenous ship acquisition capacity.

Gas flaring penalty

The gas penalty fee of NGN 10 per standard cubic feet was introduced to curb gas flaring. Since then, the penalty for gas flaring has increased to USD 3.50 per standard cubic feet. Penalty costs to operators typically form part of their operating expenses and are deductible on a case by case basis. Exploration and production companies are however, permitted to flare, whether or not Gas Flaring Permits/Certificates are granted by the Minister of Petroleum Resources.

Nigeria

This is supported by a recent TAT ruling held on 17 March 2015, in a case between an IOC and the FIRS, where the TAT ruled that the payment made by an oil producing company to flare gas in the course of crude oil production is not a fine to be disallowed for tax purposes but a necessary business expense that is fully tax deductible. This is regardless of whether a written permit was obtained from the government to flare gas.

The PIB prohibits the flaring of natural gas after a flare-out date to be specified by the Minister and also provides for a fine not less than the value of gas flared. Deductions regarding gas flaring penalties will not be allowed as specifically stated in Section 306 (k) of the PIB.

Indirect taxes

Value-added tax (VAT)

VAT is charged at a flat rate of 5% on the supply of goods and services except those expressly exempted under the Act and those subject to VAT at zero rates.

Exempt items include plants, machinery and goods imported for use in export processing zones or free trade zones, plant, machinery and equipment purchased for utilisation of gas in downstream petroleum operations, baby products, basic food items, medical products and services, pharmaceutical products, books and educational materials, and exported services. Zero-rated items include non-oil exports, goods and services purchased by diplomats, and goods and services purchased for use in humanitarian donor funded projects.

Every taxable person (both resident and non-residents) engaged in VATable activities in Nigeria is required to register as a VATable person within six months commencement of business and to charge VAT on invoices to customers. For a non-resident company, however, the local recipient of the service is required to withhold the VAT on the invoices and remit it directly to the FIRS.

Oil and gas companies are required to withhold VAT at source from payments to their suppliers / Contractors. The amount deducted must be remitted to the FIRS not later than the 21st of the following month.

Custom duties / import tariffs

Customs duties in Nigeria are levied only on imports. Rates vary for different items, typically from 5% to 35%, and are assessed with reference to the prevailing Harmonized Commodity and Coding System (HS code).

A bill to repeal the Nigeria Customs Services (NCS) Act 2004 and reform the Customs and Excise Management Act (CEMA) 1958 is being considered. The bill would enable all laws guiding the operations of the service to be consolidated in one document. It would also change the basis on which the customs and excise is computed.

Social security contributions

Pension contribution

A new Pension Reform Act was signed into law on 1 July 2014, replacing the old pension law which has been in operation since 2004. The new pension law introduced several key changes including:

- Increase in the minimum contribution into the Scheme. Employers are required to contribute a minimum of 10% of their employees' monthly emoluments while the employees are to contribute not less than 8%. Under the old law, the minimum contribution by both parties was 15% of basic pay, housing and transport allowances with a minimum of 7.5% by the employer;
- Inclusion of less private sector employers. A private sector entity is now subject to the scheme where it has 15 or more employees (previously the minimum threshold was 5 employees); The Act also provides that in the case of private 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; and
- The imposition of a 10-year jail term for persons found guilty of misappropriating pension funds.

National Housing Fund

This is applicable to Nigerian employees earning a minimum of NGN 3,000 per annum. The employer is required to deduct 2.5% of basic salary from employees earning more than NGN 3,000 per annum and remit same to the Federal Mortgage Bank of Nigeria within one month of deduction. NHF contributions by employees are tax exempt and employers are not required to make any contribution. Expatriate employees are exempted from the NHF contribution.

Employee Compensation Levy

Employers are required under the Employee Compensation Act (ECA) enacted in 2011, to register and contribute 1% of payroll to the fund in the first 2 years of commencement of the Act. The Act was enacted on 18 January 2011. Thereafter, employer's contribution would be based on assessments by the Nigeria Social Insurance Trust Fund (NSITF). The Act provides compensation for employees for any death, injury, disease or disability arising from or in the course of employment.

Industrial Training Fund (ITF)

Employers who have a minimum of 5 employees or annual turnover of NGN 50 million are required to contribute 1% of its annual payroll cost towards the ITF. The due date for payment is the first day of April of the year following that in which the payroll relates. An employer could get up to 50% refund of contributions made if adequate training courses were provided to the employees. Appropriate documentation should be kept to aid refund process.

Others

Property taxes

Property taxes in Nigeria are usually levied by the state government with varying rates depending on the state and the location of the property within the state. Also, Right of Occupancy fee and tenement rates are chargeable by state and local government authorities. The Lagos Land Use Charge law is seen as a unified property tax as it merges the tenement rate, development charges, ground rent and neighbourhood improvement rent into one single tax. Edo State's Land Use Charge law is also a combination of various land taxes. A new regulation to impose tax on real property in the Federal Capital Territory (FCT) has been introduced.

Nigeria

Stamp taxes

Under the Stamp Duty Act, stamp duty is payable on any agreement executed in Nigeria, or relating, whatsoever, to any property situated in or to any matter or thing done in Nigeria. Instruments which are required to be stamped under the Stamp Duties Act must be stamped within 40 days of first execution.

Stamp duty is chargeable either at fixed rates or ad valorem (i.e. in proportion to the value of the consideration) depending on the class of instrument. Stamp duty is imposed at the rate of 0.75% on the authorised share capital at incorporation of a company or on registration of new shares.

The PIB waives stamp duties that may accrue on the transfer of rights and assets involving NNPC and the Nigerian Petroleum Asset Management Company, the National Oil Company and the National Gas Company.

Republic of Congo

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Country profile

Brief history on oil and gas development

The Republic of Congo is a country located in Central Africa. It is bordered by Gabon, Cameroon, the Central African Republic, the Democratic Republic of the Congo, and the Angolan exclave of Cabinda.

The Republic of Congo is divided into twelve regions, with Brazzaville as the capital. The currency is the Coopération financière en Afrique Centrale (Central African CFA) franc (XAF), and the official language is French. However, several regional languages are also recognised.

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

Oil was first discovered in the Republic of Congo in commercial quantities in the 1960s by Elf Congo. Elf mainly prospected in the Grands Fonds area, offshore Pointe-Noire and they discovered the vast Emeraude deposit.

Société Nationale des Pétroles du Congo – SNPC – is the Congolese state owned Oil Company.

Main producers are Total, ENI and Perenco.

Republic of Congo

During 2014, daily production averaged 281,000 barrels.

Significant new development

The existing hydrocarbon code is currently being reviewed with the objective to have a new code passed during the next session of the parliament in July 2015 for the next round of block awards.

Reservoir estimates

According to the 2014 BP statistical energy survey, the Republic of Congo had proved oil reserves of 1.6 billion barrels at the end of 2014.

Fiscal regime

Institutional oversight and regulatory framework

Until the mid 1990s, oil companies were operating under a concessionary system where corporate income tax was due on the net profits realised.

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

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

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

Excluding royalty, the other taxes that oil companies are subject to are not very significant.

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

Forms of contracts

Since 1994, oil and gas activities are ruled by PSCs which are ratified by law and thus the force of a law.

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

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

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

State participation

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

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

Local content regulations

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

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

Financing consideration (thin capitalisation issue)

Thin capitalisation rules apply to shareholders having an effective controlling/managing role.

For those controlling/managing shareholders, the debt/equity ratio is 0.5 and the interest rate is limited to the BEAC rate (2.95%) plus two points.

Interests above those two thresholds are not deductible for corporate income tax purpose and are treated as dividends.

Comment

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

Taxation regime

Basis of taxation

Oil and gas companies are subject to a limited number of taxes, including:

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

Specific tax exemptions are available for the Oil and Gas companies.

Republic of Congo

Direct taxes

Under existing PSCs, the quantities of oil allocated to the oil companies' partners on a block are net of taxes, and namely net of corporate income tax (CIT).

As a result and as per provisions of the PSC, there is no real basis of taxation. In this regard, being the said basis theoretical for determining the CIT included in the profit from oil allocated to the State.

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

From a State perspective, this secures oil revenues and from an oil company's perspective, this fixes the amount of corporate income tax due and thus the net after tax profit derived from production.

In addition, oil companies have to pay a special reserve for diversified investments (Provision pour Investissements Diversifiés) but this is not really a tax since it is treated as reimbursable petroleum costs. Please note that the fiscal regime that applies to oil companies (i.e. upstream oil & gas companies) differs from the one which is applied to subcontractors.

Royalty

During the production phase and before any allocation of cost oil and for oil profit purposes, the State is entitled to a certain percentage of the oil production in consideration of a royalty.

The applicable rate is 15%.

Royalty can be paid in kind or in cash.

Withholding taxes

A 20% withholding tax is due on certain remunerations paid by Congolese companies to non-resident in consideration of intellectual property, non-commercial activities, interest and services rendered or used in Congo.

Dividends are subject to a 15% withholding tax, which may be reduced by a tax treaty depending on the country.

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

Capital gain tax

General Capital gains are taxable and treated as any other revenue.

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

Indirect taxes

Value added tax (VAT)

Oil & Gas companies are exempted from VAT on all their oil and gas related transactions. In this regard, transactions that are not directly intended for petroleum

works are subject to VAT at the rate of 18%, plus a surtax of 5% applied on the amount of VAT (they are classified as private/domestic expenses.)

Custom duties

Oil & Gas companies are benefiting from a specific regime with regard to their imports and exports.

Imports are classified in four categories and custom duties range from zero to standard rate. It is understood that most imported items are exempted.

Additionally, oil exports are exempted from exports duties.

Registration fees and stamp duties

Unless otherwise stated in a specific charter convention signed with the State, oil companies are not exempted from registration fees and stamp duties.

Registration fees are due on specific acts and especially contracts entered into with sub contractors, as well as lease agreement. Registration fees are proportional or fixed.

Stamp duties are not significant.

Incentives

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

Compliance requirements

Despite no corporate income tax due/payable, oil companies are nevertheless required to file an annual tax return (Document Statistique et Fiscal) before April 30 of each year.

Monthly returns must be filed for salaries and other withholdings. An arbitrary taxation will be made on taxpayers who omit to file their taxes returns.

Audit and other reporting requirement

Congolese authorities are entitled to audit oil companies.

Such audits are conducted:

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

Profit repatriation issues

Profit repatriation is guaranteed in the PSC.

Republic of Congo

Transfer pricing regulations

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

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

Other tax issues

Personal income tax

As any employer, oil companies are required to withhold personal income tax on the salaries paid to their employees according to a sliding scale with rates ranging from 0 to 45%.

A single tax at the rate of 7.5% based on the gross remuneration of employees shall be borne by the employer.

Social security contributions

Social security contributions are due in connection with salaries paid to employees according to the following table:

Name	Basis	Rate
Family allowance	Salary including benefit in kind capped at XAF 7,200,000 per year	10.035% borne by the employer
Labour accidents	Salary including benefit in kind capped at XAF 7,200,000 per year	2.25% borne by the employer
Retirement	Salary including benefit in kind capped at XAF 14,400,000 per year	8% borne equally by the employer and the employee 4%.

Senegal

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Country profile

Senegal is the westernmost country of Africa and covers an area of 196,190 km². It borders the Atlantic Ocean in the West and has terrestrial borders in the north with Mauritania, in the East with Mali, in the Southeast with Guinea and in the Southwest with Guinea-Bissau.

Senegal is one of only a handful of countries to have a near-enclave within its borders.

The official language is French.

Significant new developments

In October 2014, crude oil has been discovered off the Coast of Senegal. The oil reserve discovered might exceed 1 billion barrels, which makes this discovery one of the biggest in Senegal's history.

However, the oil companies are still at exploration stage. There is no exploitation of crude oil yet.

Regulators

- Petrosen: It is the State petroleum company that prepares and negotiates all petroleum conventions and contracts;
- Ministry of Energy: This department controls oil and gas operations carried out in Senegal;
- AGC: This agency is a joint comity set up to manage petroleum, mineral and fishing activities in the Common Maritime Zone between Guinea-Bissau and Senegal.

Forms of contracts

Production sharing contract

It is a risk service contract whereby the State or a State Company awards exclusive hydrocarbon exploration and exploitation rights within a defined perimeter, to one or several qualified persons or companies.

Senegal

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 into partnerships with the holders of conventions or service contracts.

The conditions of participation will then be specified in the related convention or service contract.

Taxation regime

The taxation of the petroleum operations is regulated in Senegal by the General Tax Code and the Petroleum Code.

Exemptions

During the exploration phase, holders of exploration permit are not subject to the following taxes:

- Employer payroll tax;
- VAT;
- Business license 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 30%).

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 a exploitation permit;
- Tax on built real estate, during the investments phase, plus 3 years after the issuance of a exploitation permit;
- Tax on non-built real estate, during the investments phase, plus 3 years after the issuance of an exploitation permit;
- Customs duties on all items of plant, equipment and materials intended to be used solely for petroleum activities (ranging from 0% to 20%).

A convention or contract may provide additional exemptions other than those provided by the law and mentioned above. It could be an exemption of withholding taxes on services.

Besides, the convention or contract may provide a 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.

Corporate Tax

Entities operating in the oil/gas sector are subject to corporate tax at a rate of 30%. This is the sole rate.

The corporate tax rate is applied on the taxable profit determined after deductions of all expenses which are deductible against that income according to the General Tax Code.

In order to be deductible, the expenses must meet the following conditions:

- lead 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.

Royalties

Holders of exploitation permit are subject to the payment of a royalty based on the value of hydrocarbons produced.

More precisely, the royalty is calculated based on the total quantities of hydrocarbons produced in the concession and not used in the petroleum operations.

The royalty rates applicable to the productions of crude oil or natural gas are determined as follows:

- liquid hydrocarbons exploited onshore: 2%;
- liquid hydrocarbons exploited offshore: between 2% and 8%;
- Gaseous hydrocarbons exploited onshore or offshore: between 2% and 6%.

Withholding taxes

Under the common tax law, any resident entity or permanent establishment shall withhold taxes on payments made to resident and non-resident, under certain conditions.

The applicable rates depend on the type of transactions and/or the country of residence of the suppliers (existence of a double tax treaty).

The withholding taxes applicable on payments are as follows:

Senegal

- payment made to a local suppliers for services rendered: 5%;
- payment made to foreign suppliers for services rendered or used in Senegal: 20%;
- payment of dividends: 10%;
- payment of bond interest: between 6% and 13%;
- Deposit or guarantee interest on accounts with a Senegalese bank: 8%;
- Payment of interest on loans: 16%.

Capital gains tax

The 30% corporate income tax rate is applicable on the capital gains from disposal of shares.

The capital gains are equal to the difference between the sale price (arm length price) less the acquisition value.

Transfer pricing and Thin capitalization regulations

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 regime.

There is no practice with regard to the legislation, but only the general guidance provided within that law.

The regulation globally corresponds to the OECD requirements standards, i.e. identifying related party transactions, choosing the suitable transfer pricing method and preparing the documentation to support the selection of such method.

The documentation should be available upon first request of the tax authorities. Otherwise, the tax authorities may set the prices themselves and apply the correlative tax reassessment accordingly.

Thin capitalisation

There is no limitation of total debt on equity.

However, there is a limitation of deductibility, for corporate tax purpose, of the interests paid or recorded for a loan granted by a shareholder (directly or via other entities).

Indeed, the interests are deductible only if the following 3 conditions are met:

- the share capital of the company receiving the loan shall be, beforehand, fully paid up;
- the deductible interests are calculated based on the amount of the loans within the limit of the share capital;
- the interest rate shall not exceed the base rate of the Central Bank (3.5% for FY 2015) plus 3 percentage points (i.e. 6.5%).

Value added tax (VAT)

VAT in Senegal is at a rate of 18%.

The input VAT can be put against the output VAT under certain conditions.

Personal income tax

Pay-as-you-earn tax

- Senegal operates a fairly straightforward PAYE system, in which the employer withholds monthly from each employee's gross taxable remuneration the tax due.
- Indeed, resident and non-resident individuals earning revenues from employment in Senegal (subject to any double tax treaty in force) are subject to a monthly taxation.

The amount due is calculated by applying a progressive tax scale going from 0% to 40%. The income bracket put under the 40% rate is easily reached.

But, there is a possibility to benefit from a tax reduction due to dependent family.

Minimum Withholding Tax

Any employee is liable to a minimum withholding tax payable monthly and calculated on an annual basis.

The tax due ranges between XOF 900 and XOF 36,000 annually.

If the spouse of an employee is unemployed, the latter has to pay then for himself and for his/her spouse (limited to one spouse).

Employer tax

Employers are subject to a 3% tax applicable on the total gross taxable salaries paid to the employees.

Social security contributions

The social security contributions are exclusively borne by the employer.

The 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 to 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
General	8.4%	5.6%	XOF 256,000
Executive	3.6%	2.4%	XOF 768,000

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%.

Senegal

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.

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Country profile

Brief history on oil and gas development

South Africa comprises of 9 provinces and its currency is the South African Rand (ZAR). South Africa remains a largely unexplored region in which there have been modest discoveries, mainly in gas, to date. However, refer to recent developments below:

South Africa currently has four upstream regions of interest:

- South Coast: This is the only producing area in South Africa.
- Orange River Basin: Situated off the northwest coast of South Africa adjacent to the Namibian border this is a vast and underexplored region.
- East Coast: This is the offshore area off the eastern part of the country. Interestingly, this region sits at the southern end of the Mozambique Channel in which a number of significant discoveries have recently been made further north.
- Onshore: Significant recent interest in onshore unconventional gas resources as indicated below.

South Africa has proven oil reserves of 15 million barrels at the beginning of 2015¹. In addition, proven natural gas reserves stand at 0.54 trillion cubic feet.²

At present, South Africa does not have significant proven oil and gas reserves and produces oil and gas from coal and imported crude oil. The relative under-utilisation of gas is as a result of the abundant coal resources in the country that allowed South Africa to produce petroleum and by-products as well as electricity cheaply from coal.

¹ Statistics by the South African Oil & Gas Alliance
² *ibid*

South Africa

However, declining coal resources and the relative cost of coal-produced electricity and petroleum in financial and environmental terms has seen South Africa make attempts to diversify its energy mix, including a proposed 2,600 kilometre terrestrial gas pipeline from Mozambique.

Should offshore exploration and onshore shale gas exploration prove to be successful, South Africa will have a localised supply of oil and gas to enable and promote the diversification of the country's energy mix.

South Africa has significant potential for unconventional gas discovery in the form of Coal Bed Methane and Shale Gas, for which it is ranked 12th and 8th in the world, respectively.

South Africa seems intent on developing its shale gas potential. In May 2015, the South African Government launched the ongoing Strategic Environmental Assessment of Shale Gas Development –some of the focus areas are measuring the impact of shale gas extraction on the environment, livelihoods and the Square Kilometre Array radio telescope.

Offshore exploration off South Africa's coast was previously limited primarily by the depth of the potential resources and secondly by the ocean currents. Recent improvements in exploration technology, coupled with the need for South Africa to diversify its energy mix, has seen increased interest in exploration activity off South Africa's coast, with 20 exploration licenses issued.

Coal bed methane exploration interest in South Africa continues to grow with 25 exploration rights awarded to date and some companies applying for production rights.

To date, five Technical Cooperation Permits have been issued for Shale Gas exploration. The Petroleum Agency of South Africa states that although shale gas volumes are highly uncertain, scenarios suggest the technically recoverable volumes may range from 30 Tcf to 500 Tcf in the main Karoo Basin.

Significant new developments

In terms of legislation, the proposed Amendment Bill to The Mineral and Petroleum Resources Development Act which would allow the State a 20% free stake in all new energy projects in South Africa as well as an additional option to purchase the rest of the 80% at an agreed amount, has been put up for re-evaluation. The bill had received push-back from industry due to uncertainty and unfavourable terms. Initially, the bill proposed that the State will have the power to declare specific minerals as 'strategic minerals' and as a result set the prices and limit exports of these minerals. The re-evaluation process may mean more favourable legislation may be expected before the bill is promulgated.

For downstream operations, the Government issued the Clean Fuels Standards and Biofuels regulations whereby fuel providers have to meet strict blend specifications on their Compliance dates were initially set at 2017, but the government has since revised compliance deadlines for a later, unannounced date.

Fiscal regime

The fiscal regime applicable to the oil and gas industry may be said to consist primarily of corporate tax, various indirect taxes, and a mineral and petroleum royalty regime.

South African companies are subject to corporate income tax in terms of the Income Tax Act No 58 of 1962 ('the Act'). However in addition, the taxation of oil and gas companies as defined is regulated by the Tenth Schedule to the Tax ('the Tenth Schedule'), which provides for specific treatment of various items applicable to these companies. 'Oil and gas companies' either hold any oil and gas right (as defined), or engage in exploration or production in terms of any oil and gas right.

South Africa also imposes a mineral and petroleum resources royalty that is payable to the State in respect of the extraction of inter alia oil and gas within 'South Africa' as defined.

Regulators

The key regulators in the oil and gas industry include:

- The National Energy Regulator (NERSA) is a regulatory authority established as a juristic person in terms of Section 3 of the National Energy Regulator Act, 2004 (Act No. 40 of 2004). NERSA's mandate is to inter alia regulate the Piped-Gas and Petroleum Pipeline industries in terms of the Gas Act, 2001 (Act No. 48 of 2001) and Petroleum Pipelines Act, 2003 (Act No. 60 of 2003).
- The Petroleum Agency South Africa (PASA), one of the Central Energy Fund (CEF) subsidiary companies, manages the promotion and licensing of oil and gas exploration, development and production in South Africa including the coastal areas offshore South Africa as part of creating a viable upstream oil and gas industry in the country. PASA could divest its operations to the Department of Energy (DoE) if recent proposed amendments to the governing legislation are enacted.

Forms of contracts

The most common forms of petroleum contracts in South Africa are defined by the Mineral and Resource Development Act which is in the process of being amended, and include:

- Reconnaissance permit – Permits are typically applicable for 12 months on a non-exclusive basis;
- Technical cooperation permits (TCP) – 12 months exclusive desk-top study, exclusive rights to apply for exploration rights;
- Exploration rights – Granted in respect of a specified area. These are typically exclusive, transferable, and extend for 3 years but may be renewable for a maximum of 3 periods of 2 years each;
- Production rights – These are governed by a signed non-standard Production Sharing Contract (PSC) between the operators and the State, and are typically exclusive, transferable, and extend for 30 years but are renewable.

Mineral royalties

A royalty is payable to the State on the extraction of resources in terms of the Mineral and Petroleum Resources Royalty Act and the Mineral and Petroleum Resources Royalty (Administration) Act of 2008.

South Africa

The royalty is based on value, taking into account two critical variables, namely the value of the minerals (the tax base) and the royalty percentage rate.

The tax base (i.e. the value of the mineral) is broadly speaking determined with reference to 'gross sales', subject to certain adjustments and exemptions. The royalty liability is thus only triggered when the minerals are sold or deemed to be sold, instead of at the time of extraction.

The royalty liability is equal to the tax base multiplied by the royalty percentage rate. The royalty percentage rate is in turn governed by two respective formulae – one dealing with 'refined' mineral resources and the other dealing with 'unrefined' mineral resources. Oil and gas falls into the category of a 'refined' mineral resource for purposes of this regime – on this basis a minimum royalty percentage of 0.5% and maximum of 5% will apply for oil and gas.

Taxation regime

South African tax resident entities are subject to South African tax on their world-wide income and gains, whereas non-resident entities are taxable on their South African 'source' income and certain specified gains, to the extent that these are not exempt in terms of a double taxation treaty.

'South Africa' is specifically defined for these purposes, and includes the territorial sea and areas beyond the territorial sea within which South Africa may exercise sovereign rights or jurisdiction with regard to the exploration or exploitation of natural resources.

Qualifying non-capital expenditure that is incurred in the production of taxable income is allowed as a deduction for income tax purposes.

The South African taxation of 'oil and gas companies' is determined in terms of the above principles, but is also further regulated by the Tenth Schedule as summarised below. The Tenth Schedule defines an 'oil and gas company' as any company that either holds any oil and gas right (as defined), or engages in exploration or 'post-exploration' in terms of any oil and gas right.

The current corporate tax rate is 28% for both South African resident and non-resident companies. The Tenth Schedule confirms that the rate for oil and gas companies in respect of their oil and gas income, shall not exceed this.

No branch remittance tax applies.

Direct taxes

Petroleum / oil taxation

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

Oil and gas deductions

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

- All exploration / post-exploration (previously 'production') expenditure and losses are deductible from the company's oil and gas income (other than certain

expenditure in respect of the acquisition of a right). References to post-exploration expenditure include expenditure incurred after the completion of the appraisal phase, to the extent that these processes are preliminary to refining.

- In addition, the following additional deductions are available against oil and gas income (also excluding the above expenditure in respect of acquisition of a right):
- 100% of capital exploration expenditure in terms of an oil and gas right; and
- 50% of capital post-exploration expenditure in terms of an oil and gas right.
- As a general rule, any assessed losses in respect of exploration and post-exploration losses are ring-fenced against oil and gas income and income derived from refining gas, with only 10% of the remaining losses being able to be offset against other income. The excess losses may be carried forward to a future year.

Oil and gas income is defined as the receipts and accruals derived by an oil and gas company from exploration or post-exploration (processes preliminary to refining) in terms of any oil and gas right, or from leasing or disposal of such rights.

Foreign currency gains or losses

A specific dispensation exists to determine currency gains and losses for tax purposes in relation to oil and gas companies with reference to the functional currency of the company.

Disposal of oil and gas rights

Special rules apply to disposals of oil and gas rights, which allow a disposing oil and gas company and the purchasing company (a new company or an existing oil and gas company) to agree in writing that one of the following treatments will apply to the disposal instead of the normal capital gains tax treatment, subject to various criteria and requirements:

- Rollover treatment, in terms of which the disposing company is deemed to dispose of the right at its tax cost. The acquiring company is also deemed to acquire the right for the same amount.
- Participation treatment, in terms of which the gains are treated as ordinary revenue, with the acquiring company obtaining an immediate corresponding deduction against its oil and gas income.

Fiscal stability

The Minister may enter into a binding agreement with any oil and gas company in respect of an oil and gas right held by that company (or to be acquired), which agreement will guarantee that the provisions of the Tenth Schedule (as on the date of the agreement) will continue to apply in respect of that right for as long as it is held. The oil and gas company may unilaterally terminate the above agreement.

Further detailed provisions apply in this regard.

Capital gains tax

For companies, 66.66% of gains are included in taxable income and taxed at the standard corporate rates. Refer special dispensation on disposal of oil and gas rights above. Non-residents are only subject to capital gains tax on certain specific disposals.

Thin capitalisation and transfer pricing

South Africa's thin capitalisation provisions seek to prevent taxpayers from deducting interest in respect of excessive amounts of 'connected party' debt in certain circumstances. The provisions are contained within the transfer pricing legislation, which are based on the 'arm's length' principle. Previously a safe harbour debt:fixed

South Africa

capital' ratio of 3:1 applied for thin capitalisation purposes, however this has been withdrawn for years of assessment commencing on or after 1 April 2012 and a draft Interpretation Note in this regard was released by SARS.

The draft Interpretation Note requires a functional analysis to be performed to support the appropriateness of the taxpayer's arm's length debt assessment as well as a comparability analysis taking into account the quantitative and qualitative factors that third party lenders would consider when making lending decisions. In addition, per the Interpretation Note the South African Revenue Services ('SARS') will adopt a risk-based audit approach in selecting potential thin capitalisation cases for audit, and will consider transactions in which the Debt:EBITDA ratio of the South African taxpayer exceeds 3:1 to be of greater risk. It is stressed that this is not a safe harbour. It is not clear when the Interpretation Note will be finalized.

The Tenth Schedule previously provided a safe harbour for oil and gas companies in terms of which no adjustment was to be made provided the interest-bearing debt in question did not exceed three times the market value of the shares of the South African borrower. This has been removed and the normal transfer pricing provisions now apply.

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

Indirect tax

Value-added tax (VAT)

There is no specific VAT dispensation for oil and gas companies.

VAT is charged at a flat rate of 14% on the supply of goods and services except those expressly exempted under the Act and those subject to VAT at the zero rate.

While all fee-based financial services are subject to VAT, the charging of interest is exempt. Other exempt supplies include residential rentals, non-international passenger transport by road or rail, and educational services. VAT at zero rate is applicable on exports and international transport. Other goods that may be zero rated are basic foodstuffs, specified goods utilised for farming purposes, the sale of an enterprise as a going concern, fuel subject to the fuel levy, petroleum oil and oils obtained from bituminous minerals (known as crude), illuminating kerosene for illuminating or heating, and deemed supplies by welfare organisations.

Every taxable person (both resident and non-residents) engaged in enterprise activities in South Africa as defined is required to register as vendor. In terms of a new amendment, the transfer of goods by a non-resident before the clearance for customs purposes (though within the defined territory of South Africa) is not liable to VAT.

Import of goods and services into South Africa are liable to import VAT. However, in the case of services no import VAT is payable if the services are used wholly for making taxable supplies. The importation of (inter alia) fuel levy goods, crude and illuminating kerosene (for illuminating or heating) is exempt from VAT.

Custom duties/Import tariffs

Ordinary customs duties are charged on importation of goods into South Africa which range between 0% and 45% (tobacco and textile industries) and between 0% and 20%

(other industries). The import duties may also include anti-dumping and countervailing duties of up to 150%.

No customs duties are charged on trade between South Africa and Botswana, Lesotho, Namibia, and Swaziland as these five countries constitute a Southern African Customs Union (SACU), provided the goods are of SACU origin or import duties were paid at first point of entry into the SACU.

Specific customs duties (imported goods), in addition to ordinary import duties and specific excise duties are charged in South Africa on excisable goods (oil, beer, spirits, tobacco and wine industry). The rate of specific import duty or specific excise duty is based on volumes / quantity of excisable goods imported or produced locally.

Tax incentives

Regime for oil and gas companies

There are no specific tax incentives for oil and gas companies, however, as 'oil and gas companies' enjoy special tax treatment, e.g. no withholding tax on dividends and certain interest and additional capital allowances. For further analysis please see section 6 above (Taxation regime – Direct tax).

Capital / special allowances

Specific capital allowances apply depending on the assets and their usage. Refer above for deductibility of capital exploration / post-exploration expenditure by oil and gas companies.

Certain manufacturing projects qualify for incentivized tax allowances.

A 150% income tax deduction is available for qualifying research and development expenditure incurred in South Africa, however, approval from the Department of Trade and Industry is required prior to claiming this deduction.

Industrial Development Zones

South Africa has certain specified Industrial Development Zones (IDZ), linked to international air or sea ports, to which certain VAT and customs dispensations apply. In addition, income tax incentives provide for additional allowances depending on the status of the industrial policy project and whether the project is located in an Industrial Development Zone.

Special Economic Zones

Special Economic Zones (SEZ) have been introduced into the Income Tax Act as a result of the initiative launched by the Department of Trade and Industry (DTI) to stimulate industrial growth in particular geographical areas. All SEZ's will qualify for VAT and customs relief and the employment tax incentive (refer below). Businesses operating within approved SEZs will be eligible for two additional tax incentives. Firstly, all such businesses can claim accelerated depreciation allowances on capital structures (buildings) and, secondly, certain companies (carrying on qualifying activities within an approved SEZ) will be subject to a reduced corporate tax rate (i.e. 15 per cent instead of 28 per cent).

The DTI is currently investigating the feasibility of ten additional SEZs.

South Africa

Employment tax incentive

Employers who are required to be registered for Employees' Tax (PAYE) are able to reduce the PAYE due to SARS by a determined incentive. The value of the incentive is determined using a formula which takes into account the "monthly remuneration" of "qualifying employees". There are various requirements for an employee to be considered to be a "qualifying employee", including a range of remuneration and the requirement that the employee is between the ages of 18 and 29 or is employed by an employer within a special economic development zone.

Group relief

South Africa operates on an entity basis for tax purpose, and hence there is no fiscal unity. However, certain transactions can be undertaken within a 'group of companies' as defined (typically common 70% equity ownership) on a rollover relief basis.

Compliance requirements

South African companies and all non-resident companies, trusts or other juristic persons deriving South African sourced income (not exempt income) are required to register for corporate income tax purposes. The resultant compliance obligations include the following:

- The filing of three provisional tax returns and related payments, on a 6-monthly basis – the first within 6 months after the commencement of the tax year, the second on the last day of the tax year, and a voluntary third provisional filing and top-up payment 6 months after tax year-end; and
- A more detailed annual income tax return, which must be filed (usually) within 12 months after the financial / tax year-end.

Provisional tax should be paid based on a realistic estimate of what the actual tax payable will be for the applicable tax year. Depending on certain parameters, penalties are levied if provisional tax is underpaid.

An annual mineral royalty return must be filed within 6 months of the taxpayer's year end. In addition, provisional mineral royalty returns must also be filed on a six monthly basis with the same timing as for the above provisional tax returns.

VAT returns must be submitted on a monthly or bi-monthly basis depending on turnover.

Additional compliance requirements may arise depending on the liability for the other taxes set out in this document.

Withholding tax (WHT)

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

'Royalties'

A 'royalty' withholding tax of 15% (from 1 January 2015, previously 12%) 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 scientific, technical, industrial or commercial knowledge or information or related assistance.

Dividends

Dividend withholding tax is payable at 15% on dividends declared by a South African company unless this is reduced in terms of a double taxation treaty. Interest withholding tax was introduced at the same rate from 1 March 2015, although certain specific exemptions apply. These withholding taxes are limited to 0% for distributions by oil and gas companies out of their oil and gas income (for distributions made on or after 1 April 2012) and for interest paid on loans applied to fund qualifying capital expenditure.

Interest

A 15% withholding tax applies to South African sourced interest payable to non-residents since 1 March 2015. Refer above for the application to oil and gas companies.

Services

It is expected that a withholding tax of 15% will apply on fees paid for certain services (including technical, managerial and consultancy services) from 2017.

Disposal of immovable property

A withholding tax of 5%, 7.5% or 10% may be levied where a non-resident company sells South African 'immovable property' as defined (potentially including shares in a property-rich company). Certain exceptions do, however, apply.

Profit repatriation issues

South Africa has a system of exchange controls, which regulate the flow of funds into and out of the country.

Various payments to non-residents require prior exchange control approval.

Dividends and disposal proceeds on shares should be able to be remitted from the country provided the share certificates were properly endorsed as 'non-resident'. Interest on loans is able to be remitted, subject to certain limits on the rates, provided the loan has been approved. Capital loan repayments require prior approval, but this is usually a formality.

Registration of foreign companies

A foreign company is required to register as an 'external company' in terms of the Companies Act No 71 of 2008, with the Companies and Intellectual Property Commission (CIPC), within 20 days of commencing to 'conduct business' in 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.

South Africa

Other tax issues

Personal income tax

Individuals are subject to South African income tax at rates up to 41% on a sliding scale. Non-residents are subject to tax on South African 'source' income unless exempt in terms of a double taxation treaty.

South African employers and certain non-resident employers are required to register for and withhold employees' tax ('Pay-As-You-Earn', or PAYE) from remuneration paid to employees in South Africa.

Additional payroll-based taxes may also be payable, including a Skills Development Levy, Unemployment Insurance Fund contributions, and annual contributions in terms of the Compensation for Occupational Injuries and Diseases Act.

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 R750,000 : 0%
- R750,001 to R1,250,000 : 3% on the value above R750,000
- R1,250,001 to R1,750,000 : R15,000 plus 6% on the value above R1,250,000
- R1,750,001 to R2,250,000 : R45,000 plus 8% on the value above R1,750,000; and
- R2,250,001 and above : R85,000 plus 11% on the value above R2,250,000

Transfer duty is usually not due where VAT is due.

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

Securities Transfer Tax

Securities Transfer Tax (STT) applies on the transfer of shares and other securities, at 0.25% on the higher of consideration or market value of the securities transferred.

Other

Donations tax

Disposals of assets below their market value may constitute a donation on which donations tax is payable at 20%, subject to various requirements and exemptions.

Levies

Various additional levies exist, such as air passenger tax, vehicles emissions tax, and a fuel and electricity levy.

Tanzania

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Country profile

Significant new developments

New legislation relevant to the petroleum sector was enacted in July 2015 including:

- The Petroleum Act (PA) 2015 (which replaces the Petroleum Exploration and Production Act 1980 and the Petroleum Act 2008);
- The Oil and Gas Revenues Management Act 2015;
- The Tanzania Extractive Industries (Transparency and Accountability) Act 2015.

Any comments made below in relation to the legislation above are based on the final Bills as presented to Parliament as copies of the assented Acts were not available at the time of writing.

Institutional changes introduced by the PA 2015, which covers upstream, midstream and downstream operations, include the following:

- A new Oil and Gas Bureau to advise on sectoral strategic matters;
- A new upstream regulator: the Petroleum Upstream Regulatory Authority (PURA), which amongst other things will advise on contractual matters with Contractors; as part of this responsibility PURA is given the remit to develop a model production sharing agreement ("PSA") for purpose of approval by the Cabinet, which once approved shall be guidance in negotiations;
- Expansion of the role of the existing Energy and Water Utilities Regulatory Authority (EWURA) which will be the regulator of mid and downstream activities;
- Designation of the Tanzanian Petroleum Development Company (TPDC) as the official National Oil Company (NOC).

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Tanzania

Brief history on oil and gas development

East Africa is a fast emerging destination for investment in oil and gas exploration, and could soon come to rival West Africa as a world class producer of oil and gas. Since 2000, hydrocarbon exploration activities in Tanzania have intensified with the number of active production sharing agreements (PSAs) increasing significantly in recent years. This interest has accelerated in particular in the period from 2010 following discoveries of commercial quantities of gas in the deep water offshore. The most recent offshore licencing round was completed in 2014, based on a new 2013 model PSA. However, no new offshore licences have been announced since January 2012.

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

Reservoir estimates

As at September 2015 Tanzania's estimate of recoverable natural gas reserves (from both onshore and offshore basins) was 55 trillion cubic feet (tcf).

Regulatory regime

Institutional oversight and regulatory framework

Petroleum exploration and development is now governed by the PA 2015, which empowers the Government to grant exclusive rights to explore for and produce petroleum in relation to a particular licence area.

There is no separate tax legislation for the oil and gas tax sector. Nevertheless, the general legislation does incorporate certain provisions that are specifically relevant to the sector.

Forms of contracts

An entity seeking to engage in oil and gas activities in Tanzania is required to enter into a PSA. The parties to a PSA are the Government of the United Republic of Tanzania, TPDC in its role as NOC and which is the licence holder, and the relevant entity ("The contractor").

Forms of Petroleum Licence

The PA 2015 provides for the following two types of licences:

- 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 and upon approval can be extended for additional periods of four years and three years for the first and second extensions respectively. Upon renewal, there will be a requirement to relinquish part of the licence area – normally 50% of the retained contract area.
- Development licence – Grants the 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 license. The license is granted for a period not exceeding twenty-five years and upon approval can be extended for an additional fifteen years.

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 production share arrangements provide for recovery of expenses against "Cost Oil" or "Cost Gas" (up to 50% of production in a calendar year).

The PA 2015 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	30% – 50%	15% – 40%
TPDC Share	70% – 50%	85% – 60%

These sharing ratios mirror the ratios set out in the 2013 Model PSA in relation to profit gas, but differ in relation to profit oil (for which the model provides a range of 10% to 35%). We assume that a revised model PSA will in due course be issued with production share terms consistent with those now provided for under the PA 2015.

Capital investment regulations

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

Local content regulations

The Petroleum Act 2015 sets out terms for Local content requirements set out in the PA 2015 include the requirement 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.
- Prepare a five year procurement plan indicating use of local services in insurance, finance, legal, accounts and health matters and goods produced in Tanzania.
- 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. Every twelve months a detailed programme for recruitment and training of Tanzanians should be submitted for approval.
- 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.

Tanzania

Taxation regime

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 sets 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 or assignment fee ranging between 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.

Income tax

Residence and source

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

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

Income tax rate

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

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

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

Capital allowances

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

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

Ring-fencing

Ring-fencing provisions apply to the extractive sector.

Transfer pricing

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

Thin capitalisation

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

Environmental expenditure

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

Investment disposals / capital gains tax

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

Alternative minimum tax

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

Withholding tax

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

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

- 15% (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.

Tanzania

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 (with at least four employees) is required to account for skills and development levy and workers compensation fund at rates of 5% and 1% respectively of payroll cash costs.

Social security contributions

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

Value Added Tax – Mainland Tanzania

A new VAT Act, the VAT Act 2014, came into force with effect from 1 July 2015.

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

The standard rate of VAT is 18%.

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

Supplies of certain goods and services are exempt from VAT.

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

Businesses with an annual taxable turnover (including imported taxable services) of more than 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 and gas sector include the following:

- Goods eligible for relief under the East African Customs Management Act (where imported by a registered and licensed 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, condensate stabilizer), and (ii) only applies to imports (i.e. local supplies are not covered); however there are transitional provisions to stabilise existing VAT reliefs where these are the subject of a commitment in an existing agreement with Government (e.g. MDAs and PSAs).

VAT deferral also applies on imported capital goods 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, with any tax due, on a monthly basis.

Businesses entitled to VAT refunds can claim any remaining credit six months after a refund first became due, subject to all intervening returns being rendered. Any claim for a VAT refund must be supported by an auditor's certificate. Businesses with 50% or more of turnover that relates or will relate to zero rated supplies (normally, exports) automatically qualify for refund on monthly basis.

Value Added Tax – 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's common external tariff ("CET") are as follows: 0% (raw materials, capital goods); 10% (semi-finished goods); 25% (finished final consumer goods).

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

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

Excise duty

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

Stamp duty

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

Local Taxes

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

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

Incentives

Refer to comments above in relation to capital deductions, customs duty exemption and VAT exemption / deferral.

Tanzania

Tax exemptions

Customs duty, VAT

Refer to comments above in relation to customs duty exemption, and VAT exemption / deferral.

Mtwara Oil and 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 repacking; sorting, grading, cleaning and mixing; breaking bulk; simple assembly and grouping of packages.

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

Compliance requirements

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

Every six months, the registered holder of a license is required to provide summaries of all geological and geophysical work carried out, drilling activity and results obtained, and a list of maps, or reports and other geological and geophysical data for the period.

In addition, within sixty days of the end of each licence term, the 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 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.

Tax filing and payment requirements

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

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

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 subsequent (2008 and 2013) model PSAs. The most recent (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.

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Country profile

Significant new developments

The legal framework that currently governs the operations of the petroleum industry includes the Petroleum (Exploration, Development and Production) Act, 2013 and the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013. The two 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 new Acts provide for the establishment of the Petroleum Authority of Uganda (PAU) and the National Oil Company (NATOIL). The National Oil and Gas Policy which was operationalised by the Petroleum (Exploration, Development and Production) Act provides for the creation of a Directorate of Petroleum, the Petroleum Authority of Uganda (PAU) and the NATOIL.

The three institutions will play separate but complimentary roles. The Petroleum Directorate will be responsible for policy making and monitoring of the oil and gas sector; the Petroleum Authority will regulate the sector and the National Oil Company will handle the commercial aspects of the sector.

Last year the Parliament of Uganda approved the Board of Directors for the Petroleum Authority and the National Oil Company. This year the Petroleum Directorate was established and the Acting Director of the new Directorate appointed. According to the National Oil and Gas Policy, the Petroleum Directorate comprises three departments, namely upstream, midstream and downstream. The Petroleum Directorate is also responsible for coordinating national capacity building for the oil and gas sector.

Uganda

The Government of Uganda incorporated the National Oil Company to take charge of the commercial interests of the state within the oil and gas industry. The company was incorporated under the Companies Act, 2012, on 12 June 2015 under the name, Uganda National Oil Company Limited.

The incorporation of the company is a step forward in taking the oil sector to the next stage of production following years of exploration. In accordance with the National Oil and Gas Policy and the Petroleum (Exploration, Development and Production) Act, the company will be responsible for handling the state's share of petroleum, managing the business aspects of state participation, and developing in-depth expertise in the oil and gas industry.

Other functions of the National Oil Company will include:

- Managing the business aspects of the State's participation in PSAs including the marketing of the industry's share of the petroleum received in kind;
- Developing an in depth expertise in the oil and gas industry;
- Optimising value for shareholders, administer joint venture, participate in meetings of licensees; and
- Investigating and proposing new upstream, midstream, and downstream ventures both locally and internationally.

The 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 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 licences.

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.

Brief history on oil and gas development

Geological field expeditions for petroleum exploration were first carried out by E.J Wayland in the early 1920's and are documented in the publication "Petroleum in Uganda" 1925. Shallow stratigraphic wells drilled by the African – European Investment Company between 1936 and 1956 revealed numerous shows and recovered free oil on test.

Oil exploration activities started again in the beginning of the 1980's when an aeromagnetic survey was carried out over the entire Albertine Graben in an effort to establish the presence of sedimentary basins as an initial step towards a systematic evaluation of its petroleum potential. This survey was very successful because it identified three depo centres along the entire length of the Graben. As a follow up to this survey, the petroleum unit in the Department of Geological Survey and Mines carried out a significant amount of geological and geophysical work from the late 1980's up to the early 1990's. This unit was transformed into Petroleum Exploration and Production Department (PEPD) in 1991.

There are currently four active Production Sharing Agreements (PSA) between the Government and the oil companies. One production license has been issued and a few applications are being discussed. The Government's development plan for Lake Albert Rift Basin includes a refinery and an international pipeline.

Reservoir estimates

To date, a total of 77 exploration and appraisal wells have been drilled in the country. Out of these, oil and/or gas has been found in 70 wells representing a success rate of over 90%. So far 21 oil / gas field discoveries have been made. This discovery relates to exploration in only about 40% of the prospective acreage. With key players like Tullow, Total and CNOOC continuing to invest significantly in the sector, more reserves are expected to be discovered.

Fiscal regime

Institutional oversight and regulatory framework

The Petroleum (Exploration, Development and Production) Act, 2013 together with the Petroleum (Exploration and Production) (Conduct of Exploration) Regulations, 1993 provide the current legal framework for exploration and production of petroleum in Uganda.

Key regulators in the petroleum sector include:

- Ministry of Energy and Mineral Development (MEMD) and the Petroleum Authority: the implementation and regulation of petroleum resources is the mandate of the Petroleum Authority which is under the MEMD. Under the provisions of the Petroleum (Exploration, Development and Production) Act, 2013 the Petroleum Authority (Authority) has taken over the functions of regulating the sector originally performed by the PEPD.
- Uganda Revenue Authority: administering collection of revenue from the oil and gas sector in accordance with the relevant laws; monitoring and assessing the impact of oil revenues in the economy; and participating in the formulation of tax measures to regulate collection of the correct revenues from oil and gas activities.
- The Central Bank: managing and administering the Petroleum Fund; and advising the Government on the impact of the petroleum sector on the economy to ensure that oil and gas activities do not impact negatively on the monetary policy and macroeconomic stability.
- National Environment Management Authority (NEMA): coordinating processes of environmental impact assessment for the sector; environmental monitoring and audits of the sector; issuing environmental guidelines and ensuring compliance of the sector with environmental guidelines and international standards.
- Uganda Wildlife Authority: monitoring impact of oil and gas activities on wildlife protected areas and compliance to regulations governing operations in wildlife protected areas; participating in evaluation of environmental impact assessments and environmental audits; and issuing consents to undertaking operations in wildlife protected areas.
- The office of the Auditor General: providing independent oversight of the Government's operations through financial and other management audits in accordance with the Constitution and other relevant legislation; and ensuring adherence to national and international accounting standards.
- Other Government Ministries and Agencies: all ministries that are responsible for policies relevant to oil and gas, and agencies dealing with implementation and regulation will be responsible for guiding and monitoring the work of the

Uganda

operational and managerial agencies placed under them. These include Ministry responsible for Justice and Constitutional Affairs; Ministry responsible for Finance, Planning and Economic Development; Ministry responsible for Water and Environment; Ministry responsible for Forests and Wetlands; Ministry responsible for Tourism and Wildlife; Ministry responsible for Labour; Ministry responsible for Trade and Industry; Ministry responsible for Education.

Forms of Petroleum licences

- A Petroleum Exploration licence confers on the licensee, the exclusive right to explore for petroleum. Under the new Act, a petroleum exploration licence will remain in force for a period not exceeding 2 years after the date of the grant of the licence, subject to renewal for a period not exceeding two years. The licence shall not be renewed more than twice. In the old Act a licence was granted for a period not exceeding 4 years from the date of grant of the license. Holders of petroleum licences may apply for renewal of the petroleum exploration licence, not later than ninety days before the licence is due to expire.
- A Petroleum Production licence is granted to the holder of a petroleum exploration licence, who has made a discovery of petroleum in an exploration area over any block or blocks in the areas which, following appraisal, can be shown to contain a petroleum reservoir or part of a petroleum reservoir. A production license confers on the licensee exclusive rights to carry on petroleum activities in the license area. However, a person may apply for the grant of a petroleum production licence in respect of a block or blocks or part thereof which, the person satisfies to the Minister, contains a petroleum reservoir or part of a petroleum reservoir notwithstanding that the person does not hold a petroleum exploration licence in respect of that block.

Forms of contracts

The Government of Uganda has four Production Sharing Agreements (PSAs) with International Oil Companies (Contractors) for the execution of exploration and production activities. The Government is represented by the MEMD which is responsible for implementation and regulation of petroleum resources. Petroleum (Exploration, Development and Production) Act is the basis of all PSAs.

The duration of contracts is stipulated in the Act. Typically, each agreement will last for about 30 years. For example, first exploration period of 2 years followed by second exploration period of 2 years. The relinquishment at the end of each exploration period is based on a pre-agreed formula specified in the Act and the PSAs.

The licences will be permitted to use the money from produced oil to recover capital and operational expenditures, known as “cost oil”. The remaining amount known as “profit oil”, will be split between the Government and the licences.

The PSAs include royalty and tax payments to be made by the contractors as well as profit sharing with the Government. Royalties will be computed on the basis of gross daily production. The contractor’s share of profit oil is then subject to tax at the corporation tax rate of 30%.

All the contractor’s exploration, development, production and operating expenditures as defined in the Income Tax Act are recovered as a percentage of the total gross oil production. For purposes of cost recovery, a ring fence applies around each contract

area. This means that if a contractor has more than one contract area, then cost recovery shall apply on a contract by contract area basis. The PSAs have a limit to the amount of costs that a contractor can recover, and if the actual costs incurred exceed the allowed limit, the balance is carried forward and recovered in future years against profits from that same contract area, until they have been fully recovered. The cost recovery limit ensures that the Government gets a share of the profit in all circumstances where there is oil production. As a result of the cost recovery limit, the contractor will always pay tax on their share of the profit oil as long as there is oil production.

Typical contract terms in the PSAs include bonuses (such as signature bonus), work commitments, time lines (such as exploration and production periods, extension provisions, etc.), relinquishments and decommissioning rules at the end of exploration and production, guarantees, national content and participation by Ugandans, training and skill transfer, ring fencing, contract stability, investment incentives, etc.

Government participation

According to the Petroleum (Exploration, Development and Production) Act, 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 NOC to be formed under the Companies Act to manage the commercial aspects of petroleum activities and participating interests of the State in the PSAs. The function of the NOC will include managing the business and commercial aspects of the state's participation in the subsector; to develop an in-depth expertise in the oil and gas sector; to optimize value to its shareholders; administer contracts of joint ventures; to participate in contractor's meetings; and to investigate and propose new upstream, midstream and downstream ventures locally and later internationally.

Since the NOC will be more relevant when production commences, it will use the period before production to build capacity so that it can effectively perform its role when production starts.

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 sub-contracted to specialized companies (subcontractor).

Where appropriate due to the nature of the services or the equipment provided and the length of time the services are required in Uganda, the non-resident service providers usually register local branches or local subsidiary companies in Uganda.

Midstream activities such as construction of the refinery and pipeline

The midstream sector activities will be governed by the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013.

Uganda

There is currently no company engaged in the midstream activity in Uganda. In line with the GoU's commitment to build and develop product value-addition chains, government has already identified and acquired land for a refinery at Kabaale in Hoima District and an oil pipeline from Kabaale via Nakasongola at a budgeted spend of USD4.6b (comprising USD2.05b for the refinery and USD2.57b for a processing plant) and USD144m respectively. Construction of the refinery in Uganda is expected to address the issue of having to transport Uganda's oil in its crude form which oil is said to be very waxy and heavy. This will in turn reduce costs associated with transporting such waxy and heavy oil such as heating the pipeline at several points on the way to the ports.

The first phase of production is expected to produce at least 20,000 barrels a day of refined fuel products such as diesel, gasoline and kerosene for supply to the domestic market which is anticipated to eventually increase to 60,000 barrels.

Downstream

Downstream activities are regulated by the Petroleum Supply Act, 2003. This Act provides for the supervision and monitoring, the importation, exportation, transportation, processing, supply, storage, distribution and marketing of petroleum products.

Capital investment regulations

The Investment Code of Uganda requires any investor operating a business in Uganda to be in possession of an investment license issued by the Uganda Investment Authority. A foreign investor is defined as a company having majority shares held by non-Ugandans or a company controlled by non-Ugandans.

Local content requirements

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

The Petroleum (Exploration, Development and Production) Act, 2013, the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 and the National Oil and Gas Policy provide a legal basis for implementation of local content requirements.

The Act requires contractors and subcontractors to give preference to goods which are produced or available in Uganda and services which are rendered by Ugandan citizens and companies, unless the goods and services are offered on terms which are not equal to or better than imported goods and services with regard to quality and availability at the time and in quantities required. Contractors and sub-contractors are required to notify Ugandan citizens and companies on the quality, health, safety and environment standards required, and notify Ugandans of the upcoming contracts as early as practicable.

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

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

The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 contains similar provisions on employment and training of Ugandans as those in the Petroleum (Exploration, Development and Production), Act 2013.

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

Financing consideration (Thin Capitalisation)

The general thin capitalisation rules in Uganda provide for a debt to equity ratio of 1.5:1. Therefore a tax deduction is disallowed for interest paid by a company on that part of the debt which exceeds the 1.5 to 1 foreign debt to foreign equity ratio.

This means that exploration and development operations can get tax relief to a maximum of the 1.5:1 ratio. Considering that exploration and development operations require significant funding which in many cases is obtained through related party debt rather than raising additional equity, the 1.5:1 ratio is a challenge as it does not reflect the economic and commercial financing profile of the petroleum industry.

Taxation regime

Basis of taxation

The taxation of petroleum operations in Uganda is based on the concept of economic rent. Economic theory focuses on the produce of the earth derived from labour and capital. Rent theory deals with how this produce is divided among the labourers, owners of the capital and landowners through wages, profit and rent. Therefore, economic rent in the petroleum industry is the difference between the value of production and the costs to extract it.

In Uganda, broadly income tax is charged on every person who has chargeable income for the year of income. Chargeable income of a person for any given year of income is defined as the gross income of a person for that year less total deductions allowed under the Income Tax Act (ITA). The gross income of a person for a year of income is defined as total amount of business income, employment income and property income derived by a person during the year of income, other than income exempt from tax. Business income is further defined as any income derived by a person in carrying on a business.

Uganda

Therefore on the basis of the above, provided a contractor and, or, subcontractor is carrying on a business in Uganda, the income they will derive from these operations will be subject to tax in Uganda in accordance with the above provisions of the Uganda tax law.

Taxation of petroleum operations

Royalties and cost oil are deducted from gross production in arriving at profit oil which is shared between the government and the contractors according to the terms of the PSA. Contractors are then taxed on their gross income (being the sum of cost oil, their share of the profit oil and any credits earned from petroleum operations) adjusted for allowed deductions in accordance with the ITA. The rate of tax applicable to the contractor's share of the taxable profit is the standard corporation tax of 30%.

Part IXA of the ITA contains special provisions relating to the taxation of petroleum operations. Significant changes were made to this part effective 1 July 2015 and these have been included in this publication. The taxing provisions contained in this part of the ITA prevail over provisions in other parts of the ITA and any petroleum agreement, in case of any inconsistency.

Tax allowable expenditures which are deductible from gross income include:

- petroleum exploration expenditure for the year of income and allowed deductions for 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.

Principle of ring fencing

Each contract area of a contractor is taxed as if it is a separate tax payer (that is it is ring fenced). Ring fencing puts a limitation on consolidation of income and deductions for tax purposes across different activities or different projects, undertaken by the same taxpayer. Tax deductible costs or expenditure incurred in respect of a contractor's petroleum exploration and development expenditure in one contract area or block or oil field are only deducted from income derived from that contract area only.

Losses arising from activities in one contract area are only carried forward and offset against future income derived from petroleum operations of that contract area only.

Withholding taxes

Participation dividends are subject to a withholding tax of 15%. Also, payments made by contractors to non-resident subcontractors are subject to withholding tax at the rate of 15%. A lower rate of withholding tax may apply if the dividend is paid to a resident of a country with whom Uganda has a favourable Double Taxation Agreement, 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, no withholding tax on the dividend paid to the resident shareholder.

All contractors are designated persons and are required to withhold tax on payments to a resident person unless the resident person is exempt. Therefore, payments by a

contractor to a resident subcontractor in respect of a right to use any tangible moveable property in Uganda are subject to withholding tax at the rate of 6%.

According to section 119 of the ITA a contractor paying an amount or amounts in aggregate of US\$1,000,000 to a resident person in Uganda for the supply of goods or services should withhold tax from the payment where the supplier of goods and services is not exempted from withholding tax.

Contractors are also required to withhold tax on payments to non-residents in respect of services rendered or provided to them in Uganda at the rate of 6%.

Tax withheld must be paid to the Uganda Revenue Authority (URA) within 15 days after the end of the month in which the payment subject to withholding tax was made. Failure to withhold tax makes the contractor personally liable to the tax to the URA. The contractor is required to maintain, and keep available for inspection by the Commissioner, records showing payments made to a payee and tax withheld from those payments.

Capital gains tax

A capital gain derived from disposal of an interest in a petroleum agreement is subject to tax at the rate of 30%. The gain is computed by comparing the proceeds to the cost base. The cost base is defined as the amount paid or incurred by the taxpayer in respect of the interest including incidental expenditures of a capital nature incurred in acquiring the interest, and includes the market value at the date of acquisition of any consideration in kind given for the asset.

Consideration for capital gains tax purposes is defined as the excess of the amount of money received (including the value of work undertaken by the transferee in respect of the part of the interest retained by the transferor) over any deductions allowed for expenditure incurred by the transferor in respect of the transferred interest. The part of the consideration attributed to the allowed deductions to the transferor is treated as recouped expenditure and is taxed as income in the year of income in which is received.

For indirect transfers involving a non-resident transferor, resident contractor is liable for the tax as an agent of the non-resident transferor.

Indirect Taxes

Value added tax (VAT)

Registration for VAT and items subject to VAT

Effective 1 July 2015, companies operating in the upstream sector that are not making or about to make taxable supplies are allowed to register for VAT. This implies that such companies can now recover any input VAT incurred effective 1 July 2015 during the period they are not making taxable supplies. Further, deeming provisions have been introduced where any VAT charged to a contractor in respect of supplies for use solely and exclusively in petroleum operations, is deemed to have been paid by the contractor without actual movement of cash.

During the production phase which is the final phase of the upstream activities, sale of residual oils for use in thermal power generation to the national grid is exempt from VAT. Sale of crude oil for any other purpose other than for thermal power generation is subject to VAT. Sale of crude oil on local market for local consumption is also subject to VAT. Supply of Liquid Petroleum Gas is also exempt from VAT.

Uganda

Services rendered by non-residents

A supply of services takes place where the services are rendered. Therefore where services are rendered locally in Uganda through a branch, subsidiary or permanent establishment of any form, there is an obligation to register for VAT in Uganda.

On the other hand, if the contractor is making the payment for services rendered directly to the non-resident sub contractor's offshore head office as opposed to paying for them locally, the contractor may be required to treat the services as imported from outside Uganda and therefore account for reverse VAT on the payment for the services if the services are not exempt. Services are said to be imported from outside Uganda if they are supplied by a foreign supplier to a contractor in Uganda.

Effective 1 July 2015, output VAT on imported services is recoverable as input VAT. Similarly

VAT on equipment, plant and machinery

Machinery and inputs for direct and exclusive use in the petroleum exploration and development is exempt from VAT but the exemption only applies at the time of importation of the goods into Uganda – as a result of the Fifth Schedule of the EACMA. This means that the local supply of such machinery by way of sale, lease or hire by a local supplier (sub-contractor) to a contractor does not qualify as a VAT exempt supply unless the equipment being supplied is specifically exempt from VAT and listed in the Second Schedule of VAT Act. As a result, when one imports the equipment, no VAT applies, but when one buys, leases or hires the equipment locally, VAT is payable.

In order for a contractor to benefit from the VAT exemption they must import the goods themselves, or be the consignees of the goods at the time of importation of the goods into Uganda. Hiring the goods from a sub-contractor and paying lease, hire or rental fees would give rise to VAT since the lease, hire and rental is not exempt from VAT. Further, the goods must be considered to be machinery and input for direct and exclusive use in oil and gas exploration and development activities.

Currently, there is no exemption from both VAT and Custom duties on imports of the goods and equipment required for the construction of the pipeline and/or refinery. This will obviously increase the overall cost of the midstream operations if the position is not reviewed by the Government.

VAT on importation of petroleum fuels

According to the VAT Act, petroleum fuels subject to excise duty (that is motor spirit, kerosene and gas oil), spirit type jet fuel, kerosene type jet fuel and residual oils for use in the thermal power generation to the national grid are all exempt from duty. All these products are currently imported from outside Uganda.

Custom duties

Machinery and inputs for direct and exclusive use in the petroleum exploration and development are exempt from import duties. In order for a contractor to benefit from this exemption, the contractor itself must import the goods, or be the consignees of the goods at the time of importation of the goods into Uganda.

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 for any period should be furnished, whether the contractor has Government petroleum revenues or other taxes are payable for the period or not.

Collection and recovery of taxes

Petroleum revenues include income tax, government's share of production, signature bonus, surface rentals, royalties, and any other duties, fees payable to the government. Petroleum revenues and other taxes charged in any assessment are payable within 7 days after the due date for furnishing a return. A contractor is required in each calendar quarter, to make a provisional payment consisting of;

- in the case of income tax, one quarter of the contractor's estimated income tax for the year; and
- in the case of petroleum revenues other than income tax, the amounts payable for the quarter under the petroleum agreement.

Payments must be made in USUSD, 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.

Offences and penalties

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

Profit repatriation issues

Participation dividends are subject to a withholding tax of 15%. A lower rate of withholding tax may apply if the dividend is paid to a resident of a country with whom Uganda has a favourable Double Taxation Agreement.

For branches, a tax is charged at the rate of 15% on repatriated profits. Repatriated profits are computed according to the following formula:

$A + (B - C) - D$
where

Uganda

- 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.

Employees whose only source of income is employment income derived from a single employer in Uganda are not required to file tax returns. The employer is required to withholding tax from the employee and pay the tax to the URA on the employee's behalf.

Below are the annual tax bands and rates applicable to individuals:

Resident individuals:

Chargeable income	Rate of tax
Not exceeding Ushs 2,820,000 (Approx USD1,000)	Nil
Exceeding Ushs. 2,820,000(approx USD1,000) but not exceeding Ushs. 4,020,000 (approx USD1,500)	10% of the amount by which chargeable income exceeds Ushs. 2,820,000.
Exceeding Ushs. 4,020,000) approximately USD1,500) but not exceeding Ushs. 4,920,000 (approx USD1,800)	Ushs. 120,000 (approx USD45) plus 20% of the amount by which chargeable income exceeds Ushs. 4,020,000.
Exceeding Ushs. 4,920,000 (approx USD1,800)	(a) Ushs. 300,000 (approx (USD110) plus 30% of the amount by which chargeable income exceeds Ushs. 4,920,000 and (b) Where chargeable income of an individual exceeds Ushs 120,000,000 an additional 10% charged on the amount by which chargeable income exceeds Ushs. 120,000,000 (approx USD42,600)

Non-resident individuals:

Chargeable income	Rate of tax
Not exceeding Ushs. 4,020,000 (approx USD1,500)	10%
Exceeding Ushs. 4,020,000 (approx USD1,500) but not exceeding Ushs. 4,920,000 (approx USD1,800)	Ushs. 402,000(approx USD145) plus 20% of the amount by which chargeable income exceeds Ushs. 4,020,000.
Exceeding Ushs. 4,920,000 (approx USD1,800)	(a) Ushs. 582,000 (approx USD210) plus 30% of the amount by which chargeable income exceeds Ushs. 4,920,000 and (b) Where chargeable income of an individual exceeds Ushs 120,000,000 an additional 10% charged on the amount by which chargeable income exceeds Ushs. 120,000,000

Uganda

Social security tax

All employers with five or more employees are specified as persons who are required to register as contributing employers to the National Social Security Fund (NSSF).

Contributions made for NSSF may be standard contributions or special contributions, depending on the eligibility status of an employee.

Standard contributions: These are made by eligible persons who are above the age of 16 but below the age of 55. They do not include:

- an employee employed in excepted employment;
- a non-resident employee; and
- an employee not employed in Uganda.

Eligible individuals' contribution to the National Social Security Scheme is 5% of gross cash wages. The 5% social security contributions should be paid on gross wages (cash wages). The employer's contribution is 10% of the employee's gross cash wages (cash payments). The employer's contribution is tax deductible on the employer.

Special contributions: For non-resident employees who opt not to register for standard contributions, special contributions are made by employers and are computed at a rate of 10% of the employee's gross wages.

A non-resident employee is defined under the NSSF Act as an employee not ordinarily resident in Uganda who is to be employed in Uganda for a continuous period of not more than three years or such longer period as is allowed in any particular case by the managing director of the NSSF.

Therefore contractors and subcontractors who employ non-resident employees as defined above are required to make contributions for the NSSF as discussed above.

The NSSF Act provides for an exemption from the payment of a standard or special contribution or both in respect of persons not ordinarily resident in Uganda who are liable to contribute to or are or will be entitled to benefit from the social security scheme of another country, if that scheme is approved by the Minister for this purpose.

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- Communicate tax contributions externally in financial statements, corporate responsibility or other reports, PR and marketing campaigns and investor communications
- Facilitate dialogue with your tax authorities

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